Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Request to Update Default Compensation Rate for Dial-Around Calls from Payphones	WC Docket No. 03-225

REPLY COMMENTS OF AT&T CORP.

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SUMMARY

The response by payphone service providers ("PSPs") to the Commission's request for current data on average dial-around call volumes was underwhelming. The RBOC Payphone Coalition ("RBOCs") declined to provide any new data. *See* RBOC Comments at 1. At the same time, the American Public Communications Council ("APCC") provided only conclusory results of an analysis it says it undertook, with only the sparest of details about its methodology. Before changing the per-payphone rate, the Commission should again request relevant data from the RBOCs and should require APCC to substantiate its estimates. It would be inappropriate to increase the per-payphone rate on the present record, let alone increase the per-payphone rate by 35 percent as suggested by APCC.

Most fundamentally, it would be improper to increase per-phone compensation when, as all agree, the cost of operating payphones has declined. The Commission has endeavored to make its payphone compensation rules "cost-based." Report and Order, *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, 19 FCC Rcd. 15636, ¶ 29 (2004). Accordingly, when call volumes declined at a rate greater than payphone costs, the Commission responded by increasing per-call compensation because PSPs had to spread their costs over fewer calls. *See id.* ¶ 1. When per-phone compensation is at issue, however, there is no reason for such an upward adjustment. In fact, a decline in payphone costs should lead to a cut in per-phone compensation, or else PSPs will reap a substantial windfall. In any event, the decline in the cost of operating payphones means that the per-phone rate cannot increase in the manner advocated by APCC. *See infra* Section I.

Second, APCC's proffered call-volume figure provides no basis for increasing per-phone compensation because it is unsubstantiated and unreliable. APCC prefaces its comments with irrelevant complaints about aspects of the payphone compensation regime that

are not at issue here. If APCC believes that other aspects of the payphone compensation rules should be modified, APCC should seek to initiate proceedings directed to those specific complaints. Further, when APCC actually purports to answer the question the Commission asked – what is the average number of dial-around calls at a payphone – it does so in conclusory and unsubstantiated fashion. APCC says that the average payphone sees 96 calls a month, but it essentially asks the Commission to take its assertion on faith. APCC does not provide a copy of its study, provides little detail about its methodology, and does not even identify which types of calls this number covers. Moreover, APCC uses a bloated and out-of-date two-year observation period, which has the effect of inflating the number because it introduces into the calculation stale and irrelevant data from 2002 – a time when all agree that call volumes were higher. The inflated character of APCC's data is confirmed by other data already available to the Commission, which demonstrate that current monthly call volumes must be much lower than APCC's 96 calls-per-month estimate. Finally, even if APCC's data were reliable, it would be inappropriate to rely on them to set a new per-payphone compensation rate without consideration of any data from the RBOCs, which comprise a major segment of the industry. *See infra* Section II.

While the Commission could decline to modify the per-payphone rate (as the RBOCS suggest) since the costs associated with payphones have declined since the per-payphone rate was set, the Commission cannot adhere to its current market allocation figures. As AT&T demonstrated in its Comments, the market allocation figures are grossly out of date and do not reflect the recent and dramatic changes in the telecommunications industry. The Commission should solicit data on market allocation and update the current market allocations, which were set before watershed changes in the long distance market occurred. *See infra* Section III.

Finally, the Commission should reject APCC's unsupported claim that the Commission has *already* changed the per-payphone compensation rate, but did so without changing the applicable regulation. Indeed, APCC's position is foreclosed by the explicit text of the Commission's governing regulation – which has not been amended – and by the Commission's own express statements that it has not changed the per-phone rate. Indeed, APCC's requested "clarification" would result in an unjustified windfall for PSPs since it would increase per-phone compensation based on an increase in the per-call rate alone without any reflection that the Commission changed that per-call rate because call volumes had plummeted. *See infra* Section IV.

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In the Matter of Request to Update Default Compensation Rate for Dial-Around Calls from Payphones	WC Docket No. 03-225

REPLY COMMENTS OF AT&T CORP.

Pursuant to 47 C.F.R. §§ 1.415 & 1.419, AT&T Corp. ("AT&T") submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking, *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WD Docket No. 03-225 (March 14, 2005) ("*FNPRM*").

ARGUMENT

I. THERE IS NO LEGITIMATE BASIS FOR INCREASING PER-PHONE COMPENSATION IN LIGHT OF THE DECLINE IN THE COST OF OPERATING PAYPHONES.

Although APCC never says so expressly, it is proposing a dramatic – and unwarranted – increase in the monthly per-payphone compensation rate by almost 35 percent. The Commission's payphone compensation regime is intended to permit PSPs to recover the cost of operating their phones and earn a fair rate of return. Yet it is undisputed here that payphone operating costs have markedly declined in recent years. If anything, this decline warrants a cut in per-payphone compensation; at a minimum, no increase is justified.

The current per-phone compensation rate was calculated by multiplying the average number of calls at a payphone by the per-call rate (and then allocating carriers' obligations based on a market share calculation). *See FNPRM* ¶ 6. Accordingly, the Commission multiplied 148 – its figure for average calls per month – by the per-call rate ($0.238) to arrive at a per-phone rate of $35.224. *See id.*

APCC now proposes increasing the input for the per-call rate to $ .494 (to reflect the Commission's recent increase in that rate) while reducing the monthly call figure to 96. APCC Comments at 7-10. Multiplying these two figures would result in a monthly per-phone rate of $47.424, *an increase of nearly 35 percent* from the current per-payphone rate. Putting aside the obvious problems with APCC's average call-volume figure, *see infra* Section II.B, there is no justification for an increase in the per-phone compensation rate, given that it is undisputed that the cost of operating payphones has declined. As the Commission recently noted, the joint and common cost of operating a payphone declined 15 percent from 1999 to 2002, Report and Order, *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, 19 FCC Rcd. 15636, ¶¶ 9, 80 (2004) ("*Per-Call Rate Order*"), and there is no reason to believe that these declines have not continued.[1]

The Commission has designed its payphone compensation system to ensure that PSPs recover their costs and earn a reasonable rate of return. For example, the Commission has characterized the per-call rate for dial-around calls as "a cost-based compensation rate." *Id.* ¶ 29;

[1] The RBOCs' comments are internally inconsistent because they first acknowledge "an approximate reduction in joint and common payphone costs of 15%" but then argue that "costs have remained largely unchanged." RBOC Comments at 1-2.

see also Third Report and Order and Order on Reconsideration, *Implementation of the Pay Tel. Reclassification and Compensation Provisions of the Telecomms. Act of 1996,* 14 FCC Rcd. 2545, ¶ 74 (1999) ("compensation amount" intended to "allow[] a PSP to recover its costs"). The FCC has accordingly used a "method of calculating the dial-around compensation rate [that] spreads the costs of payphones, which are largely fixed, over a measure of the number of payphone calls." *Per-Call Rate Order* ¶ 15. Similarly, in arriving at the number of payphone calls for purposes of calculating a per-call rate, the Commission used the figure for a "marginal payphone," meaning one that "is able to just recoup its costs, including earning a normal rate of return." *Id.* ¶ 39.

In the per-call context, this cost-based rationale led the Commission to increase the per-call compensation amount in light of declining call volumes. As the Commission explained, "[b]ecause the dial-around compensation rate is derived by spreading the largely fixed costs of payphones over a measure of the number of calls, the decline in call volumes also requires us to reexamine the dial-around rate." *Id.* ¶ 1. By contrast, when per-phone compensation is at issue, costs are not spread over a number of compensable calls, so there is no necessary relationship between the number of calls and the appropriate level of compensation. And when payphone costs have declined – as all agree they have here – there can be no basis for *increasing* per-phone compensation. *See* RBOC Comments at 2. APCC's proposal should be rejected for this reason alone.

II. APCC'S CALL-VOLUME FIGURE IS UNSUBSTANTIATED AND LACKS RELIABILITY.

A. APCC's Complaints About Disparate Aspects of the Commission's Payphone Compensation Rules Are Irrelevant To This Proceeding.

APCC prefaces its comments with a series of irrelevant complaints about the Commission's payphone compensation rules, claiming that there is "Unfairness in the

Compensation System Generally." APCC Comments at 2.[2] APCC's goal in including this grab-bag of complaints in its comments appears to be to elicit the Commission's sympathy when it considers APCC's request to increase per-phone compensation by nearly 35 percent even though payphone costs have fallen by at least 15 percent. This effort should be rejected.

To the extent APCC believes that aspects of the payphone compensation regime are unfair to PSPs, its remedy is to challenge them directly in appropriate proceedings. These complaints provide no substitute for substantial evidence that would be necessary to support and justify an increase in per-phone compensation or for overlooking the methodological flaws in APCC's submission to the Commission. APCC's complaints ring especially hollow, given that it has actually declined to pursue its challenge to one of the Commission orders that it criticizes. For example, APCC complains that the Commission's "current 'tollgate' rule" has resulted in PSPs' having "great difficulty collecting the full amount of compensation owed." *Id.* at 4. Yet APCC ignores that it withdrew its petition for review challenging that rule in the D.C. Circuit. It should not be permitted to pursue a collateral attack of that order in this proceeding.

B. APCC's Call-Volume Figure Is Unsubstantiated and Flawed.

The fundamental problem with APCC's claim that its data show an average call-volume figure of 96 is that it is entirely unsubstantiated and that it is inconsistent with record evidence recently presented by the RBOCs and APCC. In this proceeding, APCC simply states its conclusion and provides only the barest details of how its call-volume estimate was calculated. *See* APCC Comments at 7-10. In fact, although APCC says that its call-volume

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[2] Specifically, APCC complains that "carriers are in control of the call tracking process and the compensation payment process." APCC Comments at 2 (citing 47 C.F.R. § 64.1310(a)). It also contends that the Commission's various "'tollgate'" rules regarding switch-based resellers have resulted in PSPs being denied compensation and that "'regulatory lag'" resulted in "unreasonably low" compensation. *Id.* at 2-4.

figure comes from its "dial-around compensation clearinghouse," it never specifically identifies which categories of calls is comprises. *Id.* at 7; *cf. FNPRM* ¶ 12 (seeking data only on "the average number of compensable dial-around calls placed at . . .payphones"). It does not attach any study to its comments or provide any detail about how exactly it was conducted or by whom. It is therefore impossible for the Commission to assess the figure's reliability, and the Commission cannot rely on it to change the per-phone compensation amount. Indeed, the law is settled that "an agency's reliance on a report or study without ascertaining the accuracy of the data contained in the study or the methodology used to collect the data 'is arbitrary agency action, and the findings based on [such a] study are unsupported by substantial evidence.'" *City of New Orleans* v. *SEC*, 969 F.2d 1163, 1167 (D.C. Cir. 1992) (quoting *Home Health Care, Inc.* v. *Heckler*, 717 F.2d 587, 592 (D.C. Cir. 1983)).

Indeed, in the *FNPRM*, the Commission warned parties against the approach adopted by APCC:

> We urge PSPs to provide us with current data showing the average number of compensable dial-around calls placed at their payphones. We request that parties submitting data provide details that will enable us to evaluate the data and determine how to use the data. Data submissions should include, if possible, details showing how the data were gathered, how samples were selected, the total number of payphones of each type (e.g., "dumb" vs. "smart," RBOC vs. independent) in the sample and in the population from which the sample was taken, and the types of locations represented in the sample. We caution commenters at the outset that attempts to gain advantage by failing to provide us with the necessary context to evaluate their submissions will result in their data being discounted or rejected.

FNPRM ¶ 12. Because APCC has failed to adhere to these commands, its submission should be "rejected." *Id.*

In any event, even the spare details APCC does provide demonstrate that the figure must be rejected. First, there is no legitimate basis for using a two-year window (from July 2002 through June 2004) to arrive at an average call-volume figure. All parties agree that payphone call volumes are falling, and the historical data suggests that this trend will continue. *See* AT&T Comments at 7-12. Given that fact, use of a lengthy window of data can only serve to inflate the *current* call-volume number. This is so because APCC's estimate necessarily incorporates the higher average volumes from early in the two-year period, which serve to offset the lower numbers from its end. Tellingly, APCC provides no breakdown of call volumes within this period (for instance on a quarter-by-quarter basis), suggesting that the data from late in the period would indeed reflect a call-volume figure much lower than 96. In the past, the Commission has relied on shorter time windows when calculating call volumes. For example, when the Commission arrived at its 131 average call-volume figure in the *First Order*, it did so based on PSP data collected over one- to six-month windows. *See* Report and Order, *Implementation of Pay Tel. Reclassification and Compensation Provisions of the Telecomms. Act of 1996,* 11 FCC Rcd. 20541, ¶ 124 & n.422-424 (1996) ("*First Order*"). When the Commission revised that number upward to 148 in the *Fourth Order* it used data from the RBOCs and APCC gathered over a "longer observation period," but those periods ranged only from one month to one year.[3]

Not only is APCC's data derived from an overlong observation period, it is stale. Even though APCC's comments were submitted on June 27, 2005, the data provided by APCC come from as early as July 2002, and do no include the second half of 2004 or any part of 2005. The Commission has recognized the importance of using data that actually "overlap" the period

[3] Fourth Order on Reconsideration and Order on Remand, *Implementation of the Pay Tel. Reclassification and Compensation Provisions of the Telecomms. Act of 1996*, 17 FCC Rcd. 2020, ¶ 12 n.34 (2002) ("*Fourth Order*"); Letter from Michael K. Kellogg to Rose M. Crellin, FCC (CC Docket No. 96-128 Mar. 24, 1998) (providing RBOC data ranging from one month to one quarter); Letter from Robert F. Aldrich to Magalie Roman Salas, Secretary, FCC (CC Docket No. 96-128 Mar. 26, 1998) (providing data based on one year observation period).

for which that data will be used to calculate compensation amounts. *Fourth Order* ¶ 12; *see also* AT&T Comments at 14 (discussing Commission's use of market share data that actually overlapped the compensation periods in question). Here, the Commission is considering a prospective change to the per-phone compensation rate that would presumably govern for several years after it is issued. Given that all agree that call volumes are declining, it is critical for the Commission to use data that are as timely as possible when calculating this rate. Indeed, the Commission has specifically requested "*current* data." *FNPRM* ¶ 12 (emphasis added). APCC's conclusory claim that more timely data – which it apparently possesses but has chosen not to disclose – are "too recent" to be "reliable," APCC Comments at 7, provides no basis for using data that are years out of date.

APCC's gamesmanship on this point is striking. Previously, when APCC sought an increase in the per-call compensation rate – and when it stood to benefit from declining call volumes – APCC ignored earlier periods and asked its members to collect data to determine a "per month average based upon the most recent three months for which information is available." APCC, *Request that the Commission Issue a Notice of Proposed Rulemaking (or in the Alternative, Petition for Rulemaking) to Update Dial-Around Compensation Rate,* Attachment 1 at D.5.3 (Corrected Copy Aug. 30, 2002) (attached in relevant part as Exhibit A to these Reply Comments). Now, when it benefits APCC to understate the decline in payphone call volumes, APCC relies upon a two-year sample of data that encompasses time periods where call volumes were more robust.

What is more, whereas APCC previously insisted that its members provide call-volume estimates based upon the "most recent three months for which information is available," it now presents data that are at least one-year old averaged together with data that are as many as three-years old. Thus, when it suited APCC to establish that call volumes were falling, APCC provided information about "the most recent three months for which information is available" without regard to its current position that the most recent data are not sufficiently "reliable." APCC Comments at 7 (seeking to justify its exclusion of data from the third and fourth quarters of 2004). What the D.C. Circuit held long ago applies to APCC's approach in these proceedings: neither an agency nor a party may "'blow hot and cold.'" *Trans World Airlines, Inc.* v. *Civil Aeronautics Bd.*, 385 F.2d 648, 669 (D.C. Cir. 1967).

The Commission should direct APCC to substantiate its call-volume figure, provide data broken down into smaller observation periods, and provide more recent data.

C. Other Sources Demonstrate That APCC's Call-Volume Figure Is Inflated.

As AT&T demonstrated in its Comments, data already in the Commission's possession demonstrate large declines in payphone call volumes. *See* AT&T Comments at 9-10, 12. A comparison of these data to those now submitted by APCC demonstrates that APCC's current figure is greatly inflated.

First, as AT&T has shown, the RBOCs submitted dial-around payphone data to the Commission in early 2002 relating to periods as late as 2001 that showed average call volumes of 116 calls per month. *See FNPRM* ¶ 10; AT&T Comments at 9. That calculation significantly *overstates* the relevant number of calls at an average payphone because it was not limited to access code and subscriber 800 calls that are subject to per-payphone compensation. For example, the data submitted by the RBOCs would have overstated the number of compensable calls because they would have included 0+ calls, *i.e.*, "credit card, collect, and third number billing calls." *Fourth Order*, ¶ 21 & n.54. Indeed, the Commission estimated that the number of 0+ calls from payphones averaged about 18.67 calls per month. *Id.* ¶ 25. Deducting those calls from 116 would result in a figure of approximately 97 *in 2001*.[4]

Yet APCC now asks the Commission to calculate prospective per-phone compensation obligations in 2005 using essentially the same figure, notwithstanding the dramatic and conceded declines in payphone call volumes since 2001. APCC contends that independent payphones generate higher dial-around call volumes than RBOC phones, *see* APCC Comments at 5, but the degree of such differential is impossible to substantiate since the RBOCs have declined to submit data in this proceeding.

In any event, a second data point already available to the Commission also demonstrates that APCC's number is inflated. The RBOCs submitted a study to the Commission last year demonstrating that average call volumes at its phones had declined by *60.3 percent* between 1998 and September 2003. *See* AT&T Comments at 12. If one reasonably assumes that the number of access code and subscriber 800 calls has declined at the same 60.3 percent rate, then the revised per-month figure would be *59*. (In fact, the decline should be even more pronounced since nearly two years have passed since the RBOCs collected their data in the per-call proceeding.) Although APCC claims that RBOC phones have lower call volumes than APCC phones, it does not suggest that the rate of decline in payphone calls between the two categories would be different.

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[4] The RBOC data also were overstated because they "assume[] that a call was completed if it had a hold time of 40 seconds or more." *FRPRM* ¶ 11. The Commission, on the other hand, has rejected such proxies and instead considers a call to be "completed for purposes of determining compensation" only "if it is answered by the called party." *Id.*

D. The Commission Cannot Rely Solely on APCC Data in Calculating Call Volumes.

In the past, the Commission has relied on data from both the RBOCs and independent PSPs when calculating average call volumes. *See First Order* ¶ 24; *Fourth Order* ¶ 12 n.34. As the Commission has implicitly recognized in using data from both sources, no data set that excluded the RBOCs could possibly be representative of the payphone industry as a whole. Indeed, as the Commission has noted, in 1999, "RBOC call data account[ed] for a total of nearly four billion payphone calls originating at more than 85 percent of the payphones in the United States." Fifth Order on Reconsideration and Order on Remand, *Implementation of the Pay Tel. Reclassification and Compensation Provisions of the Telecomms. Act of 1996*, 17 FCC Rcd. 21274, ¶ 51 (2002) (*"Fifth Order"*).

Indeed, in the past, the Commission has relied exclusively on RBOC data. For example, in making its market allocation determinations, the Commission concluded that RBOC data alone would suffice "[b]ecause the RBOC data account for such a large percentage of payphones, we did not seek data from the 1300 non-BOC incumbent local exchange carriers." *Id.* ¶ 51 n.88. The Commission went on to note that the information provided by the RBOCs "has great geographic diversity and includes both rural and urban areas." *Id.*

To the extent that RBOC phones tend to reflect different call volumes than independent phones, setting an industry-wide per-phone compensation amount based on independent phone data alone would clearly result in an inaccurate figure. Accordingly, the Commission should direct the RBOCs to submit their call-volume figures and use them, along with (substantiated and current) APCC data to arrive at a new call-volume figure.

To the extent that these parties cannot or will not provide such data, the Commission should leave the current per-phone rate in place, since it does not currently have any reliable basis for updating it. Such a step would be appropriate since, in the absence of reliable data, it would be fair for the Commission to presume that the decline in call volumes and the increase in the per-call rate may very well simply cancel each other out. *See FNPRM* ¶ 9 n. 36 ("The two changes in inputs may very well offset each other; a lower average call volume may be offset by the higher pre-call rate."); *accord* RBOC Comments at 1.

III. THE COMMISSION MUST UPDATE MARKET ALLOCATIONS.

While it might be permissible for the Commission to leave the current per-phone compensation amount in place, there is no legitimate justification for not updating the market allocation figures – the third critical rate-setting input, without which no carrier's compensation obligation can be calculated.

As AT&T demonstrated in its comments, there is no question that market allocations have changed dramatically since the Commission last calculated them nearly five years ago. *See* AT&T Comments at 12-18. The Commission should update its allocations to reflect these changes in the marketplace and to prevent carriers (such as AT&T) that have lost market share from being forced to subsidize carriers (such as the RBOCs) that have gained it. *See id.* No matter what the Commission decides to do with the per-phone rate, it must solicit market allocation data and update individual carriers' compensation obligations.

IV. APCC'S REQUEST THAT THE COMMISSION "CLARIFY" THAT THE PER-PHONE RATE HAS *ALREADY* INCREASED IS BASELESS.

As the Commission explained in the *FNPRM*, its intention in instituting this proceeding is to "consider modification of the default rate of per-payphone compensation." *FNPRM* ¶ 1; *see also id.* ¶ 9 (Commission will "revise the per-payphone compensation rate" "if necessary"). Yet APCC contends that the Commission has in reality *already* changed this rate –

without notice to anyone or any perceptible change in the relevant regulations. This argument should be summarily rejected.

Section 64.1301(e) of the Commission's Rules, governs per-payphone compensation for payments for the relevant period:

> *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, <u>in the amount listed in Appendix C</u> for any payphone for any month during which per-call compensation for that payphone for that month was or is not paid by the listed entity."

47 C.F.R. § 64.1301(e) (emphasis added).

Appendix C specifies, for example, that AT&T's share is $11.98 per month based on a total rate of $35.224 per payphone per month. *See Fifth Order*, App. C. This regulation has not been amended. The fact that Section 64.1301(e) (with its cross-reference to Appendix C of the *Fifth Order*) remains in force and has not been amended is a complete answer to APCC's contention that carriers' per-phone compensation obligation has already changed.

Moreover, the Commission itself has explicitly stated that its recent increase in per-call compensation did not change the per-phone rate. The Commission expressly "decline[d] to delay our decision in order to re-visit per phone compensation." *Per-Call Rate Order* ¶ 91. Instead, the Commission said it would issue a Further Notice of Proposed Rulemaking at a later time "to determine whether to set a new rate for per-payphone compensation." *Id.* These statements are impossible to square with APCC's claim that the very same order in which they appear actually doubled per-payphone compensation.

Finally, APCC's view that per-payphone compensation has already changed based on modification of one of the inputs originally used to calculate it is contrary to the

Commission's entire methodology for calculating this rate. The Commission's recent increase in the default rate for per-call compensation was based on declining payphone call volumes. *See Per-Call Rate Order* ¶ 1; AT&T Comments at 7-9. Yet APCC contends that the Commission ignored those very same declining call volumes by adjusting per-phone compensation based on this new per-call rate while at the same time using the same old and inflated call-volume figure to determine a new per-phone compensation value. The Commission would not have adjusted its compensation rules in such an irrational way, and APCC's suggestion to the contrary should be rejected.

CONCLUSION

For the reasons stated above and AT&T's Comments, the Commission should (i) refuse to increase per-phone compensation in light of the decline in payphone costs; (ii) solicit more comprehensive and reliable call-volume data; (iii) solicit new market allocation data and update its allocations with that data; and (iv) reject APCC's baseless request for "clarification" of the existing compensation amount.

Respectfully submitted,

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Counsel for AT&T Corp.

Dated: July 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2005, 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: July 25, 2005
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

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Exhibit A

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August 30, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Dear Ms. Dortch:

Attached please find a corrected version of the Request that the Commission Issue a Notice of Proposed Rulemaking (or in the Alternative, Petition for Rulemaking) to Update Dial-Around Compensation Rate ("Petition") originally filed yesterday by the American Public Communications Council. The corrected version includes the attachments to the dial-around cost study that appears as Attachment 1 to the Petition, which were inadvertently omitted from the copies filed yesterday.

We apologize for any inconvenience this may have caused.

Please call me if you have any questions.

Sincerely,

Jacob S. Farber
Counsel for the American Public Communications Council

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Request to Update Default Compensation Rate for	)
Dial-Around Calls from Payphones	)

REQUEST THAT THE COMMISSION ISSUE A NOTICE OF PROPOSED RULEMAKING (OR IN THE ALTERNATIVE, PETITION FOR RULEMAKING) TO UPDATE DIAL-AROUND COMPENSATION RATE

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August 29, 2002

Per-Call Cost Study for Dial-Around Calls

Prepared by:

Wood & Wood Consulting, Inc.
4625 Alexander Drive, Suite 125
Alpharetta, Georgia

August 2002

Instructions

Purpose of Study

In order to develop a rate for dial around compensation to be proposed to the FCC, it is necessary to collect specific cost and other information for a representative number of payphone locations. A group of locations has been randomly selected for study.

In order for the final study to be statistically valid, it is essential that information be collected for each of the locations chosen. Your timely contribution is vital to this effort.

Confidentiality of all Submitted Information

We understand that some of the information requested is competitively sensitive in nature. In order to respect this confidentiality, the following safeguards have been put into place:

1. All information is being collected by an independent third party. No information submitted by any company will be divulged to any other company at any time or for any reason.

2. All information will be coded immediately upon receipt. The identity of the provider and the location ANI will be replaced by a code whose key resides only with the independent third party conducting the study. At no time will the information be presented in a way that reveals the identity of the provider or the payphone location being studied.

3. Information that is specific to a given provider or payphone location will be consolidated with information received from other providers. The cost analysis that will be presented to the FCC – and the only analysis that will be made public – will be based on these aggregated values.

If you have any questions or concerns regarding the security measures that have been put into place, please contact Don Wood via any of the methods described below.

Data Input Form

Attached is a data collection form. This form contains a description of the information requested, a data entry field, and an illustrative example of the requested information. A separate form should be filled out for each requested location.

The form is designed to be self-explanatory and to require a minimum amount of time to complete. If you have any questions, please call us (toll free) at 1-877-583-3555. At the voice prompt, enter extension 201 (Don Wood) or extension 203 (Gregory Kraigher). You may also reach us by email at APCCsurvey@woodandwood.net.

Completed forms can be returned via one of three methods. You can email the completed form to APCCsurvey@woodandwood.net (this is the preferred method). You can also fax a printed copy to us at 770.475.9972, or return the printed form via US mail to the following address:

APCC
Dial Around Compensation
Cost Study

line			Answer	Example
1	Company APCC or CBID Number (If known)	===>	0	XXXXX
2	ANI:	===>		NPA-NXX-XXXX
3				
4	**Commissions**			
5	In order to calculate the dial around compensation rate based on the FCC methodology, we need to compare the commissions being paid for a given ANI to the traffic patterns and costs that are specific to that ANI.			
6	Do you currently pay any commission to the location owner at this location?	===>		Y or N
7	If yes, please provide the following information about the commission structure for this ANI:			
8	Do you currently pay a commission to the location provider for coin calls?	===>		Y or N
9	If yes, what commission, as a percentage of coin revenue, applies for this ANI?	===>		X%
10	Is this commission paid on the basis of gross or net revenue? NOTE: For purposes of this question, net revenue is defined as gross coin revenues minus the amount of the local line charges and minus any applicable taxes.	===>		Gross or Net
11				
12	Do you currently pay a commission to the location provider for OSP calls?	===>		Y or N
13	If yes, what commission, as a percentage of OSP revenue received, applies?	===>		X%
14				
15	Do you currently pay a commission to the location provider for dial-around calls?	===>		Y or N
16	If yes, what commission, as a percentage of DAC revenue, applies? NOTE: For purposes of this question, revenue is defined as the amount of DAC revenue actually received.	===>		X%
17	If a commission is being paid on a basis that is fundamentally different from the structure described above, please describe the method used to calculate commissions for this ANI.	===>		Describe method
18	Based on the cost and traffic characteristics for this ANI, what commission (as a percent of revenue) would you be willing to pay to the location provider if and when the contract with this location owner is renewed for the following call types...			
19	For Coin calls?	===>		X%
20	For OSP calls?	===>		X%
21	For DAC calls?	===>		X%
22	How many phones are included in the contract that applies to this ANI?	===>		X

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line				Answer	Example
1		Company APCC or CBID Number (If known)	===>	0	XXXXX
2		ANI:	===>		NPA-NXX-XXXX
23		If this phone were the only phone included in this contract, and *based on the cost and traffic characteristics of this ANI*, what commission (as a percent of revenue) would you be willing to pay to the location owner for the following call types...			
24		For Coin calls?	===>		X%
25		For OSP calls?	===>		X%
26		For DAC calls?	===>		X%
27		Do you *receive* any compensation *from* the location provider to maintain or service this ANI?	===>		Y or N
28		If yes, how much do you receive each month?	===>	$ -	$ XX.XX
29					
30		Which of the following best describes this location?			
31		(Please place a check mark next to the best description)			
32	a	Transportation hub (airport, train station, bus terminal)	===>	-	
33	b	Gas station/convenience store	===>	-	
34	c	Retail (enclosed mall, strip mall, grocery store)	===>	-	
35	d	Restaurant or bar	===>		
36	e	Office or industrial building	===>	-	
	f	High density residential	===>	-	
37	g	Roadside, highway rest stop	===>	-	
38	h	Hotel/motel	===>		
	I	Hospital or other health care	===>		
	j	Education facility (school, university, museum)	===>		
	k	Park, public sports or amusement area	===>		
39	l	Other (specify)	===>		
40					
41		**Location of Payphone**			
42					
43		Is your phone the only payphone at that location?	===>	0	Y or N
44		If your answer is yes, how far is it to the nearest other payphone?	===>	0	X Miles
45		If your answer is no, how many other payphones are situated at that location?	===>	0	X
46					
47					
48		**Traffic Information**			
49		The FCC methodology is based on the average number of all calls for a given ANI, including all call types.			
50		For this ANI, provide the average number of *completed* calls per month for the call types listed below. If possible, provide a *per-month* average based on the most recent three months for which information is available.			
51		Local coin	===>	0	X
52		Long distance coin	===>	0	X
53		0+ or 0- (use OSP records, if available)	===>	0	X
54		Directory assistance calls (use DA provider records, if available)	===>	0	X
55		Total calls	===>	-	X
56					
57		**Equipment Information**			

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line				Answer	Example
1		Company APCC or CBID Number (If known)	===>	0	XXXXX
2		ANI:	===>		NPA-NXX-XXXX
58		We need information regarding the type of equipment at this location and about the associated installation costs of that equipment.			
59	a	Telephone set (vendor, model, features)	===>	0	Describe equipment
60	b	Pedestal	===>	0	Describe equipment
61	c	Enclosure	===>	0	Describe equipment
62	d	Other	===>	0	Describe equipment
63	e	Provide the amount of the costs you incurred to install all of the necessary equipment at this location. Include both material and labor costs. Do not include telephone company charges for the installation of the line and do not include the cost of the equipment provided in a - d above.	===>	$	$ XX.XX
64					
65		**Telephone Company Charges**			
66		Provide the name of the local exchange telephone company (ILEC or CLEC) that provides the line at this location.	===>	0	LocalTel
67		What is the amount of the monthly recurring local line charges that you pay at this location? Include the basic line charge, any applicable federal charges (e.g. subscriber line charge and the universal service charge), and state surcharges (e.g. number portability, 911 surcharge and the universal service charge) that appear on your LEC's phone bill, and taxes based on any of these charges. Exclude any late payment charges or fees. **Also exclude local usage charges**, if any, such as message unit (per call) or per minute charges.	===>	$ -	$ XX.XX
68		Do you have a choice at this location between being billed on a measured or flat rate basis?	===>	0	Y or N
69					
70		What is the amount of the one-time installation charge paid to the LEC for the installation of the line for this location?	===>	$	$ XX.XX
71					
72		**Operating Expenses**			
73		What is the amount of your monthly overhead (sometimes referred to as Selling, General, and Administrative) cost per payphone. Include administrative, legal, rent, advertising, and similar costs. **Exclude coin collection expenses.** *NOTE: we are asking for the total amount of the overhead costs you incur in an average month, divided by the number of payphones that you have in operation in that month.*	===>	$ -	$ XX.XX

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line				Answer	Example
1		Company APCC or CBID Number (If known)	===>	0	XXXXX
2		ANI:	===>		NPA-NXX-XXXX
74		What is the amount of your monthly Maintenance and Repair Expenses Per Payphone? Include both materials (e.g. spare parts) and labor costs. **Exclude coin collection expenses from this amount**. NOTE: we are asking for the total amount of the maintenance and repair costs you incur in an average month, divided by the number of payphones that you have in operation in that month.	===>	$ -	$ XX.XX
75		***Thank you very much for your assistance***. This information represents an essential component of our efforts.			
76					