

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

In the Matter of)
)
The Pay Telephone Reclassification)
And Compensation Provisions Of) CC Docket No. 96-128
The Telecommunications Act Of 1996)
)
RBOC/GTE/SNET Payphone Coalition)
Petition for Clarification) NSD File No. L-99-34
)
Bulletins Petition for Clarification)
)
WorldCom, Inc. Petition for Declaratory Ruling)
and Petition for Reconsideration)
)
AT&T Petition for Clarification and/or)
Reconsideration)
)
Global Crossing Telecommunications, Inc.)
Petition for Reconsideration and Clarification)

THIRD ORDER ON RECONSIDERATION AND ORDER ON CLARIFICATION

Adopted: November 21, 2001 Released: November 21, 2001

By the Commission:

I. INTRODUCTION

1. In this Third Order on Reconsideration and Order on Clarification, we address the Commission's rules regarding per-call compensation for payphone calls to ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from payphones. In the Second Order on Reconsideration, we modified the per-call compensation rules to address the difficulty faced by PSPs in obtaining compensation for coinless calls placed from payphones involving a switched-based reseller (SBR) in the call path.1 The modified rules provide that the first facilities-based interexchange carrier (IXC) to which a local exchange carrier (LEC) routes a coinless payphone call must

1 See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) (Second Order on Reconsideration).

(1) compensate the PSP for the completed call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion data to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or bill the underlying facilities-based carrier.²

2. Several parties have filed petitions for declaratory ruling, reconsideration and/or clarification of the *Second Order on Reconsideration*.³ We therefore take this opportunity to address the key issues raised in these petitions, and clarify on our own motion certain aspects of the per-call compensation rules. First, we decline to modify the rules as established in the *Second Order on Reconsideration*. Second, we reaffirm that, for purposes of payphone compensation, only calls that are answered by the called party are “completed” and thus compensable. Accordingly, we deny WorldCom, Inc.’s (WorldCom’s) petition for a declaratory ruling that a completed dial-around call is defined as one that is completed on the underlying carrier’s network, or one that is handed off to a SBR customer that does not have prior agreements with all PSPs to pay compensation. Third, we find that AT&T’s practice of compensating PSPs at the Commission-established rate for all calls that are sent to a SBR’s platform, regardless of whether such calls are completed, is inconsistent with the Commission’s policies and rules.

3. We further clarify that the Commission supports the preservation and establishment of direct relationships and agreements between PSPs and SBRs for tracking and payment of payphone compensation, and that the liability of the first facilities-based IXC is limited to the extent that SBRs enter into such direct relationships. We also reiterate that the Commission did not, by revising the payphone compensation rules, intend to nullify any current or future contractual arrangements. Finally, we clarify that carriers are only required to report to PSPs calls that are completed, and thus compensable. The remaining issues in the pending petitions will be addressed, to the extent necessary, by Commission order at a later date.

II. BACKGROUND

4. To implement Section 276 of the Telecommunications Act of 1996,⁴ the Commission has adopted several payphone compensation rules that define the relationship between PSPs and carriers in the call path in order to ensure that PSPs are adequately compensated for calls placed from payphones. In the

² See *id.*, 16 FCC Rcd at 8103.

³ See Bulletins Petition for Clarification, CC Docket No. 96-128 (filed April 16, 2001), WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration, CC Docket No. 96-128 (filed May 29, 2001), AT&T Petition for Clarification and/or Reconsideration, CC Docket No. 96-128 (filed May 29, 2001) and Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification, CC Docket No. 96-128 (filed May 29, 2001). The Common Carrier Bureau sought public comment on these petitions. See *Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration*, Public Notice, CC Docket No. 96-128, 16 FCC Rcd 15685 (2001).

⁴ 47 U.S.C. § 276. Section 276 requires the Commission to promulgate regulations to ensure that all PSPs are fairly compensated for every completed intrastate and interstate call, including coinless “access code” or “subscriber 800” calls dialed from their payphones. *Id.* An “access code” call means a call made using a sequence of numbers that, when dialed, connect the caller to the operator service provider (OSP) associated with that sequence, rather than the OSP presubscribed to the originating line. 47 U.S.C. § 226(a)(1). Access codes include toll-free numbers (such as those often dialed using calling cards), “10-10” numbers, and “950” Feature Group B numbers (950-0XXX or 950-1XXX anywhere, where the three-digit XXX denotes a particular IXC). See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Second Report and Order, CC Docket No. 91-35, 7 FCC Rcd 3251, n.1 (1992).

First Payphone Order, the Commission concluded that the IXC, as the primary beneficiary of payphone calls, should compensate the PSP.⁵ The Commission also recognized that a reseller lacking its own facilities does not have the ability to track calls, and that the facilities-based carrier should therefore pay compensation to the PSP.⁶ A requirement to track, or arrange for tracking of, compensable calls was also established for the underlying IXC, and the IXC was permitted to recover the cost of such tracking from the reseller.⁷

5. Since the Commission issued this first order, it has issued a series of orders to clarify the compensation obligations for calls involving resellers and SBRs. In the *Payphone Order on Reconsideration*, the Commission modified its rules to provide that SBRs, because they are capable of tracking calls, should be responsible for paying compensation directly to PSPs.⁸ In its later *Coding Digit Waiver Order*, the Common Carrier Bureau (Bureau) responded to PSP complaints that IXCs refused to identify SBRs by clarifying that when SBRs identified themselves to the first facilities-based IXC as responsible for paying compensation, the IXC was obligated to provide this information to the PSP.⁹

6. In April of this year, the Commission released the *Second Order on Reconsideration*, in which it concluded that its earlier orders, while intended to make it easier for PSPs to identify and obtain compensation from SBRs, had not had their intended effect of ensuring the PSPs received compensation for each and every completed coinless call.¹⁰ Accordingly, the Commission held that, even where SBRs were involved in the routing of payphone calls, the first facilities-based IXC was required to compensate the PSP for each completed call, must track or arrange for the tracking of compensable calls, and must send to the PSP call completion information.¹¹ Carriers were required to implement the revised rules by November 23, 2001.¹²

⁵ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, 11 FCC Rcd 20541 (1996) (*First Payphone Order*).

⁶ See *id.*, 11 FCC Rcd at 20586 (also stating that the facilities-based carrier could choose to impose the payphone compensation amounts on these reseller customers).

⁷ See *id.*, 11 FCC Rcd at 20591-2.

⁸ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-128, 11 FCC Rcd 21233, 21277 (1996) (*Payphone Order on Reconsideration*).

⁹ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, CC Docket No. 96-128, 13 FCC Rcd 10893, 10915-16 (1998) (*Coding Digit Waiver Order*). See also *Bell Atlantic-Delaware, Inc. v. Frontier Communications Services, Inc.*, File No. E-98-48, and *Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp.*, File No. E-98-49, Memorandum Opinion and Order, 16 FCC Rcd 8112, 8119 (2001) (*Bell Atlantic-Frontier Order*) (“[T]he logical construction of the language from the *Coding Digit Waiver Order* requires the first IXC to pay [the PSP] unless the reseller has identified itself to the first IXC as being responsible for paying compensation.”).

¹⁰ *Second Order on Reconsideration*, 16 FCC Rcd at 8103.

¹¹ See *id.*

¹² We note that the United States Court of Appeals for the District of Columbia Circuit has rejected a stay of the *Second Order on Reconsideration* filed by Sprint Corporation. *Sprint Corp. v. FCC*, No. 01-1266 (D.C. Cir. Aug. 6, 2001).

III. DISCUSSION

7. *Definition of “Completed Call.”* WorldCom has requested that the Commission define a completed dial-around payphone call as one that is completed on the underlying carrier’s network, or one that is handed off to a SBR customer that does not have prior agreements with all PSPs to pay dial-around compensation.¹³ Many commenters oppose WorldCom’s request, asserting that such a change would be inconsistent with the Act and the Commission’s policies, and that compensation for uncompleted calls as well as completed calls would result in unearned revenue for PSPs and would create a competitive disadvantage for SBRs paying such compensation. We agree that WorldCom’s proposed redefinition of completed calls is inconsistent Section 276 of the Act, which requires the Commission to ensure that PSPs are “fairly compensated for each and every *completed* intrastate and interstate call using their payphones.”¹⁴ Moreover, WorldCom’s proposed redefinition runs contrary to our longstanding definition of “completed” calls to mean calls completed to the called party.¹⁵ We therefore deny WorldCom’s request.

8. We similarly reject AT&T’s petition seeking clarification that its general practice of paying compensation to PSPs for all calls that complete to a SBR’s platform is consistent with the Commission’s payphone compensation requirements. To accept AT&T’s position would be, in effect, to nullify the requirement to track or arrange for tracking of coinless payphone calls. We find that the petitioners have presented no compelling arguments in favor of changing the requirements in such a manner that would result in overpayment to PSPs. Accordingly, and in light of the Act and our own precedent noted above, we clarify that only calls that are completed (*i.e.*, answered by the called party) are compensable.

9. *Reporting Requirements.* Several parties have filed petitions seeking clarification or reconsideration of the reporting requirements. We hereby clarify that the reporting requirements, as set forth in the *Second Order on Reconsideration*, apply only to completed, compensable calls. Therefore, carriers are not required to provide a report that includes calls not deemed to be completed to the called party. Further, we decline to modify the reporting requirements at this time, as we find the current reporting requirements to be reasonable and justified for the reasons set forth in the *Second Order on Reconsideration* and that petitioning parties have raised no new or persuasive arguments that these requirements should be changed.

10. *Tracking Responsibilities.* The payphone compensation rules require the first IXC to track or arrange for tracking of each call to determine whether it is completed and therefore compensable. In making the first IXC responsible for compensating the PSP, the Commission determined that the first IXC is reasonably certain to have access to the information necessary for per-call tracking or to be able to arrange for per-call tracking in its arrangements with SBRs that complete the calls.¹⁶ Several of the first

¹³ See WorldCom Petition at 2-3.

¹⁴ See 47 U.S.C. § 276 (b)(10)(A) (emphasis added).

¹⁵ See *First Payphone Order*, 11 FCC Rcd at 20573-20574 (“We conclude that a ‘completed call’ is a call that is answered by the called party.”); *Payphone Order on Reconsideration*, 11 FCC Rcd at 21242 (citing *First Payphone Order*); *Coding Digit Waiver Order*, 13 FCC Rcd at 10915 (“The Commission defined a completed call as a call answered by the called party. Because a blocked call is by definition not a completed call, the *Payphone Orders* do not require such compensation.”).

¹⁶ See *Second Order on Reconsideration*, 16 FCC Rcd at 8106.

IXCs, however, have indicated in their petitions and comments that it is technically infeasible to track a call to completion once it is routed to a SBR's switching platform. Even if true, we find that there are other options available to these IXCs to track or arrange for the tracking of coinless payphone calls. For example, IXCs can work with SBRs to review and reconcile call data records (CDRs) to track calls. We also note that, if PSPs agree, SBRs could establish a clearinghouse arrangement to provide for compensation to PSPs.¹⁷ We therefore decline to eliminate the requirement that the first IXC track or arrange for the tracking of payphone calls on the ground that a technically feasible solution does not exist or is not readily achievable.

11. *Private Contractual Relationships.* Global Crossing, in its petition, requests that the Commission limit the ability of carriers other than the first IXC to enter into private contractual arrangements for compensation with PSPs, and allow private contractual arrangements only with respect to compensable calls.¹⁸ We decline to impose this limitation. As stated in the *Second Order on Reconsideration*, the payphone compensation rules were not intended to nullify any current or future private contractual arrangements that PSPs may have with underlying facilities-based carriers or resellers.¹⁹ To the contrary, the Commission has repeatedly encouraged facilities-based carriers and resellers (both switched-based and switchless) to establish private contractual arrangements with PSPs for direct billing and payment to PSPs, assuming that the PSP agrees to the contract conditions.²⁰ Moreover, we believe that ideally the carrier ultimately responsible for the payment of compensation should make payments directly to the PSP.

12. The Commission therefore supports direct relationships between SBRs and PSPs for tracking and payment of payphone compensation. As in the *Second Order on Reconsideration*, we encourage SBRs to come forward as the responsible party and deal directly with the PSPs for tracking and payment of compensation, and likewise encourage PSPs to enter into these agreements. In such cases, the first IXCs would no longer be responsible for payment of compensation on behalf of SBRs that assume direct liability for compensable calls through private contractual agreements with PSPs. Any practice by an entity that restricts the ability of SBRs to enter into such agreements runs counter to the letter of the *Second Order on Reconsideration*, and, more generally, the spirit of the Commission's payphone compensation rules which are designed, first and foremost, to ensure that the responsible carriers compensate PSPs for all completed calls.

V. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(I), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154 (I), 154 (j), 276, that the Bulletins Petition for Clarification is DENIED to the extent described herein; WorldCom, Inc.

¹⁷ This would assume that such an arrangement constituted a separate agreement with a PSP to provide compensation, and that the arrangement was adequate to ensure that compensation for each and every completed call was actually received by the PSP. Otherwise, the SBR could not be considered to have "come forward" to pay compensation as required by our *Second Order on Reconsideration*.

¹⁸ See Global Crossings Petition at 10-11. Specifically, Global Crossing states that because resellers do not have the compensation obligation, they should not be in a position to dictate the terms under which the facilities-based carriers pay compensation. *Id.*

¹⁹ See *Second Order on Reconsideration*, 16 FCC Rcd at 8106-7.

²⁰ See *id.*, 16 FCC Rcd at 8098, 8107.

Petition for Declaratory Ruling and Petition for Reconsideration is GRANTED IN PART and DENIED IN PART to the extent described herein; AT&T Petition for Clarification and/or Reconsideration is DENIED to the extent described herein; and Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification is DENIED, to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary