

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

In the Matter of	)	
Flying J, Inc., and TON Services, Inc.,	)	
Petition for Expedited Declaratory Ruling	)	
Regarding a Primary Jurisdiction Referral	)	CCB/CPD No. 00-04
From the United States District Court for the	)	
District of Utah, Northern Division	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 5, 2003**

**Released: May 9, 2003**

By the Commission:

**I. INTRODUCTION**

1. In this Memorandum and Order (Order), we grant the petition for declaratory ruling filed by Flying J, Inc., and TON Services, Inc. (collectively, Flying J) in connection with a primary jurisdiction referral from the United States District Court for the District of Utah, Northern Division, in *Flying J, Inc. v. Sprint Communications Co.*<sup>1</sup> The referral concerns four payphone compensation issues that have arisen in the *Flying J* litigation. Stated briefly, the four issues are: (1) the payphone compensation obligations of facilities-based resellers (FBRs); (2) retroactive adjustments for payphone compensation in connection with payphones that did not provide payphone-specific coding digits during the period covered by the *Bureau Waiver Order* and *Bureau Coding Digit Waiver Order*;<sup>2</sup> and (3) payphone compensation, together with related (4) overpayment set-offs, for the “Interim Period” of payphone compensation.<sup>3</sup>

2. Although listed separately, the four issues referred to us may be understood as raising two distinct questions concerning payphone compensation. In addressing these issues,

<sup>1</sup> See Order Granting Plaintiffs’ Request for Two Depositions[,], Denying Sprint Communications’ Motion To Change Venue[,], Granting in Part and Denying in Part Sprint Communications[?] Motion To Dismiss or, in the Alternative, To Stay on the Basis of Primary Jurisdiction[,], and Granting Sprint Communications’ Motion To Dismiss Plaintiffs’ Claim for Punitive Damages, *Flying J, Inc. v. Sprint Communications Co.*, Case No. 1:99-CV-111-ST, slip op. at 13 (D. Utah Jan. 10, 2000) (*Flying J Referral Order*) (attached to Flying J Pet. for Expedited Declaratory Ruling, Exh. A).

<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd 16387 (Oct. 7, 1997) (*Bureau Waiver Order*); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, TDS Telecommunications Corporation Petition for Waiver of Coding Digit Requirement*, CC Docket No. 96-128, Memorandum Opinion and Order, 13 FCC Rcd 4998 (March 9, 1998) (*Bureau Coding Digit Waiver Order*).

<sup>3</sup> *Flying J Referral Order* at 13. We define this period in the next paragraph.

we first reiterate the Commission's conclusions in the *Third Reconsideration Order*, *Fourth Reconsideration Order*, and *Fifth Reconsideration Order* that FBRs are under a direct payment obligation for payphone compensation.<sup>4</sup> Second, we find that the controlling Commission precedent is the *Fifth Reconsideration Order*, which set a per-call rate of \$0.238 and a default per-payphone rate of \$35.224 per month for payphone compensation and associated retroactive adjustments for both the Interim Period (November 7, 1996 to October 6, 1997) and the Intermediate Period (October 7, 1997 to April 20, 1999).<sup>5</sup>

## II. FACTUAL BACKGROUND

3. Flying J, which provides motorist services at approximately 140 travel plazas located in many of the 48 contiguous states, owns and operates over 3500 payphones.<sup>6</sup> Flying J has both coin-operated and coinless payphones, and its payphones are generally high-traffic phones generating, on average, hundreds of "dial-around" calls per payphone per month.<sup>7</sup> Flying J's "smart" payphones provide some call detail information.<sup>8</sup> At some of Flying J's travel plazas, all payphones, both smart and "dumb," route calls through an on-premises switch, which can also record some call detail information.<sup>9</sup>

4. Beginning in 1998, Flying J noticed that it was receiving far less in payphone compensation than it expected based on traffic volumes at its payphones.<sup>10</sup> Indeed, Flying J estimated that the shortfall is as high as 80 percent and that some long distance carriers (IXCs) have paid nothing at all.<sup>11</sup> In October 1999, Flying J filed suit against Sprint in federal district court in Utah, seeking in excess of \$1.5 million in overdue payphone compensation.<sup>12</sup> Although Sprint acknowledged that it owes Flying J payphone compensation, it contended that the amount could not be determined without additional rulemaking or guidance from the Commission.<sup>13</sup> Sprint moved to stay the action pending referral to the Commission under the doctrine of primary

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<sup>4</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Order on Reconsideration, 16 FCC Rcd 20922, 20923-24, para. 4 & n.6 (Nov. 21, 2001) (*Third Reconsideration Order*); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Fourth Order on Reconsideration and Order on Remand, 17 FCC Rcd 2020, 2027, para. 18 n.51 (Jan. 31, 2002) (stating that "the first underlying facilities-based carrier should pay compensation to a PSP") (*Fourth Reconsideration Order*); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Fifth Order on Reconsideration and Order on Remand, FCC 02-292, 17 FCC Rcd 21274, 21294, para. 60 (rel. Oct. 23, 2002) (*Fifth Reconsideration Order*).

<sup>5</sup> *Fifth Reconsideration Order*, 17 FCC Rcd at 21277-78, para. 8, 21285, para. 33.

<sup>6</sup> Reply Comments of Flying J at 4 (May 19, 2000) (Flying J Reply).

<sup>7</sup> *Id.* & n.4.

<sup>8</sup> *Id.* at n.4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> Complaint at para. 22 (attached to Flying J Pet. for Expedited Declaratory Ruling, Exh. B).

<sup>13</sup> Mem. in Support of Defendant Sprint Communications Company L.P.'s Motion To Dismiss, or in the Alternative, To Stay at iii-v (attached to Flying J Pet. for Expedited Declaratory Ruling, Exh. D).

jurisdiction.<sup>14</sup> Flying J opposed the motion, arguing that the Commission had already addressed all disputed payphone compensation issues.<sup>15</sup> The court agreed with Sprint and, by order dated January 10, 2000, referred four specific issues to the Commission for resolution.<sup>16</sup> The court concluded that the following issues, as phrased by the court, are within the primary jurisdiction of the Commission: (1) “the FBR issues;” (2) “the retroactive adjustment or true up;” (3) “the overpayment for calls set-off;” and (4) “interim payments issues.”<sup>17</sup> In this Order, we more fully explain and analyze each of these issues consistent with the court’s referral.

5. According to the court, “[t]hese issues are pending before the FCC, resolution of these issues requires the FCC’s expertise and familiarity with the industry, these issues are unique to the regulated communications industry, [and] these are issues for which uniformity is important for the regulation of the business entrusted to the FCC and for which a decision by the FCC would be helpful to this litigation.”<sup>18</sup> While the court stayed the action insofar as it concerned the four disputed payphone compensation issues, it also directed the parties to proceed with discovery and other aspects of the litigation.<sup>19</sup>

6. Flying J filed this petition for declaratory ruling with the Commission on February 18, 2000. Several parties, including Sprint, the RBOC/GTE Payphone Coalition, Joint Commenters,<sup>20</sup> and the American Public Communications Council (APCC), filed extensive comments on May 1, 2000. Reply comments were filed on May 22, 2000.

### III. DISCUSSION

#### A. Facilities-Based Resellers

7. The first issue referred to us under the doctrine of primary jurisdiction concerns the general responsibility of FBRs for payphone compensation to PSPs.<sup>21</sup> We explain the issue

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<sup>14</sup> *Id.* at 16.

<sup>15</sup> Plaintiffs’ Mem. in Opposition to Motion To Dismiss or in the Alternative To Stay at 6 (attached to Flying J Petition for Expedited Declaratory Ruling, Exh. E).

<sup>16</sup> *Flying J Referral Order* at 13.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.*

<sup>20</sup> *See* Joint Comments on Petition for Expedited Declaratory Ruling (filed by Cable & Wireless USA, Inc., Global Crossing Telecommunications, Inc., LDS Services, Inc., Qwest Communications International, Inc.)

<sup>21</sup> *See Flying J Referral Order* at 13. We confine our analysis to the four discrete issues referred to us by the federal district court in Utah. We therefore do not address commenters’ arguments concerning matters outside the scope of the referral, including federal preemption of state law, *see* Joint Comments at 11-12, a proposed quarterly accounting system, *see* APCC Comments at 8, the use of surrogate call count methodologies, *see* Excel Comments at 8, prospective changes to the entire payphone compensation scheme, *see* Flying J Reply at 12-13, or the availability of punitive damages, *see* APCC Reply at 10. We also disagree with the commenters who claim that Flying J’s petition is too vague or unspecific for us to resolve. *See* Joint Comments at 2-6; WorldCom Comments at 2-3; Excel Comments at 5. Our task is not, as WorldCom claims, to “help[] the [court] evaluate Flying J’s claims.” WorldCom Reply at 2 (emphasis added). Evaluating causes of action is the task of the trier of fact, not this Commission. Our task is simply to state the Commission’s rules with regard to four narrow issues referred to us. *See* RBOC/GTE Payphone Coalition Reply at 2.

(continued....)

this way: Are FBRs responsible to compensate PSPs when FBRs' customers use PSPs' payphones to make "dial-around" phone calls? As discussed, we answer this question in the affirmative.

8. The Commission stated in the *First Payphone Order* that, as a general matter, all IXCs that carry calls from payphones are required to pay per-call compensation.<sup>22</sup> The Commission also stated that both incumbent and non-incumbent local exchange carriers (LECs) must pay per-call compensation to the extent that LECs receive compensable payphone calls as "the primary economic beneficiary" of such payphone calls.<sup>23</sup> In the *First Reconsideration Order*, we clarified that "a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier."<sup>24</sup> The Commission decided in the *Second Reconsideration Order* and affirmed in the *Third Reconsideration Order* to omit non-facilities-based resellers from a direct payment obligation for Interim Period payphone compensation.<sup>25</sup> The Commission concluded in the *Second Reconsideration Order* that the first underlying facilities-based carrier "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 switch-based resellers that complete the calls."<sup>26</sup> We stated that the "elimination of [non-FBRs] from a direct payment obligation should eliminate some of the non-payment problems described in the *Second Reconsideration Order*."<sup>27</sup>

9. In addressing the specific FBR issue referred to the Commission, we reiterate the Commission's conclusion that the first facilities-based IXC to which a LEC routes a coinless payphone call must (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 FBR.<sup>28</sup> The Commission reiterated in the *Third Reconsideration Order* that these

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<sup>22</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, 20584, para. 83 (Sept. 20, 1996) (*First Payphone Order*).

<sup>23</sup> *Id.* & n.293.

<sup>24</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd 21233, 21277, para. 92 (Nov. 8, 1996) (*First Reconsideration Order*).

<sup>25</sup> *Fourth Reconsideration Order*, 17 FCC Rcd at 2027, para. 18. See also *Implementation of the 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, 8100, para. 4 (April 5, 2001) (*Second Reconsideration Order*); *Third Reconsideration Order*, 16 FCC Rcd at 20923-24, para. 4 & n.6.

<sup>26</sup> *Second Reconsideration Order*, 16 FCC Rcd at 8106, para. 16. In *Sprint v. FCC*, the D.C. Circuit vacated the Commission's directives but stayed its action vacating the rule until September 30, 2003. *Sprint v. FCC*, No. 01-1266 (D.C. Cir. April 1, 2003). See also *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

<sup>27</sup> *Fourth Reconsideration Order*, 17 FCC Rcd at 2027, para. 18.

<sup>28</sup> *First Reconsideration Order*, 11 FCC Rcd at 21277, para. 92; *Third Reconsideration Order*, 16 FCC Rcd at 20922, para. 1.

rules were appropriate because “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 [F]BRs that complete the calls.”<sup>29</sup> We also stated, however, that if FBRs “come forward as the responsible party and deal directly with PSPs for tracking and payment of compensation,” the first underlying IXC “would no longer be responsible for payment of compensation on behalf of [F]BRs that assume direct liability for compensable calls through private contractual agreements with PSPs.”<sup>30</sup> Thus, under the Commission’s existing rules, the first facilities-based IXC remains responsible to the PSP for all completed, compensable payphone calls, including calls completed by FBRs, unless the FBR has assumed direct contractual responsibility for such compensation.<sup>31</sup> We hasten to add, however, that where a PSP is owed per-phone, as opposed to per-call, compensation for the Interim and Intermediate Periods, the compensation obligation is allocated among IXCs as set forth in the *Fifth Reconsideration Order* without regard to whether a given carrier is facilities-based or an FBR.<sup>32</sup>

10. Finally, commenters raise several related issues concerning FBRs, including whether a credit card-based “platform” qualifies as a “switch” with the result that such a provider would be an FBR.<sup>33</sup> As an initial matter, no party submits any evidence that a credit card-based platform possesses “switching capability” under any of the Commission’s existing definitions.<sup>34</sup> In addition, we found in the *First Reconsideration Order* that “it would be significantly burdensome for some parties, namely debit card providers, to track and pay compensation to PSPs on a per-call basis.”<sup>35</sup> Without the requisite technical evidence and in light of the burden the Commission previously noted in the context of debit cards,<sup>36</sup> we decline to find that credit card-based platforms constitute switches under current technology and Commission rules.

## **B. Retroactive Adjustments for the Waiver Period, and Payments and Associated Overpayments for the Interim Period**

11. The other three issues referred to us are closely related, and we therefore address them together.<sup>37</sup> These issues may be re-stated as whether IXCs are responsible for payphone

<sup>29</sup> *Third Reconsideration Order*, 16 FCC Rcd at 20925, para. 10.

<sup>30</sup> *Third Reconsideration Order*, 16 FCC Rcd at 20926, para. 12. *But see id.* at para. 10 n.17 (noting that FBRs that do not provide compensation for each and every compensable call, whether through a clearinghouse or by contract, cannot be considered to have “come forward” to pay compensation as required by the Commission’s *Second Reconsideration Order*).

<sup>31</sup> We note that a prior order resolving a payphone compensation dispute between two carriers expressly stated that it was applying the Commission’s prior rules concerning payphone compensation. *See In the Matter of Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp.*, File No. E-98-49, Memorandum Opinion and Order, 17 FCC Rcd 15918, 15919, para. 1 (rel. Aug. 14, 2002).

<sup>32</sup> *Fifth Reconsideration Order*, 17 FCC Rcd at 21291, para. 54.

<sup>33</sup> *See, e.g.*, Sprint Comments at 2-3; Excel Comments at 3.

<sup>34</sup> *See, e.g.*, 47 C.F.R. § 51.319(c) (defining “switching capability” in the context of specific LEC unbundling requirements).

<sup>35</sup> *First Reconsideration Order*, 11 FCC Rcd at 21277, para. 92.

<sup>36</sup> *See* RBOC/GTE Payphone Coalition Reply at 3 (arguing that debit cards and credit cards use similar platforms).

<sup>37</sup> *Flying J Referral Order* at 13.

compensation during the Interim Period of November 7, 1996 to October 6, 1997, and whether IXCs deduct from such amounts any overpayments they made to PSPs in the past.<sup>38</sup>

12. As an initial matter, the general question of per-call and per-phone payphone compensation during the Interim and Intermediate Periods subsumes the issue of retroactive adjustment of payphone compensation for the waiver period. Thus, any such retroactive adjustment must be resolved in the Flying J litigation according to the requirements of the *Fourth* and *Fifth Reconsideration Orders*.<sup>39</sup> In the *Fifth Reconsideration Order*, we determined that the monthly per-payphone rate for the Interim and Intermediate Periods should be \$35.224, which is based on a per-call rate of \$0.238 and 148 calls per month.<sup>40</sup> A carrier is obligated to compensate PSPs on a per-call basis when the carrier receives payphone-specific coding digits<sup>41</sup> A carrier should compensate PSPs on a per-payphone basis only when the carrier does not receive payphone-specific coding digits for a particular payphone.<sup>42</sup> These conclusions resolve the Interim Period compensation issue referred to us.

13. The *Flying J* court also referred to us the related question of retroactive adjustments for any IXC overpayments to PSPs.<sup>43</sup> In the *Third Payphone Order*, we stated that IXCs may recover their overpayments of per-call compensation paid during the Intermediate Period at the same time as the PSPs receive payment from the IXCs for the Interim Period” and

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<sup>38</sup> See *id.*

<sup>39</sup> In *APCC v. FCC*, the D.C. Circuit ultimately affirmed the Commission’s payphone dial-around compensation rate, *American Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000), and in the *Fourth Reconsideration Order* and *Fifth Reconsideration Order*, we set forth a per-phone compensation scheme for the Interim and Intermediate Periods. We also note that, in the *Per-Phone Compensation Waiver Order*, we stated that “a retroactive adjustment of payphone compensation for the period covered by the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order* is not necessary.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, AT&T Request for Limited Waiver of the Per-call Compensation Obligation*, CC Docket No. 96-128, Memorandum Opinion and Order, 13 FCC Rcd 10893, 10914, para. 35 (April 3, 1998) (*Per-Payphone Compensation Waiver Order*). The Commission reached this conclusion because, at that time, the D.C. Circuit had vacated the Commission’s methodology for setting per-phone compensation in *Illinois Pub. Telecoms. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), and because the parties in the *Per-Phone Compensation Waiver Order* proceeding had not provided information on alternative methods of estimating average call volumes. *Per-Payphone Compensation Waiver Order*, 13 FCC Rcd at 10914, para. 35. Nothing in the *Per-Phone Compensation Waiver Order* suggests that the Commission would permanently waive the obligations of IXCs, FBRs, LECs, and PSPs to provide payphone compensation or make restitution for past overpayments.

<sup>40</sup> *Fifth Reconsideration Order*, 17 FCC Rcd at 21285, para. 33. See also *Fourth Reconsideration Order*, 17 FCC Rcd at 2025-26, para. 14. Interest should be paid on Interim Period compensation at the rate established under section 6621 of the Internal Revenue Code, 26 U.S.C. § 6621. *Fifth Reconsideration Order*, 17 FCC Rcd at 21285, para. 32, 21307-08, paras. 99-101.

<sup>41</sup> *Fourth Reconsideration Order*, 17 FCC Rcd at 2034, para. 36 n.100.

<sup>42</sup> *Id.*

<sup>43</sup> *Flying J Referral Order* at 13. Flying J argues that resolution of Interim Period payphone compensation and associated retroactive adjustments is “irrelevant” because it does not seek any payphone compensation for the Interim Period. Flying J Reply Comments at 14. Other commenters claim that the issues are not irrelevant because IXCs should be able to deduct any overpayments immediately, without waiting for the Commission to set the Interim Period payphone compensation rate. Sprint Comments at 5; WorldCom Comments at 5; Excel Comments at 6; Joint Comments at 9-10. As discussed herein, we resolved Interim Period compensation and retroactive adjustments in the *Fifth Reconsideration Order* and therefore need not address these arguments.

that, “[i]n the event that the amount the IXC overpaid is larger than the amount it owes to the PSP for the Interim Period, the IXC may deduct the remaining overpayment from future payments to PSPs.”<sup>44</sup> In the *Fifth Reconsideration Order*, we provided detailed payment and refund guidelines:

After th[e] effective date [of this Order], PSPs and IXCs may render bills to one another or otherwise arrange for payment of outstanding Interim and Intermediate Period compensation obligations or refunds. They may use whatever commercially reasonable payment or dispute resolution processes to handle this process they may currently use in their dealings with one another or to which they may otherwise mutually agree, including clearinghouse processes. In accordance with the [statement in the] *Third [Payphone] Order* that “IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXCs for the Interim Period,” we clarify that this means IXCs (or other carriers rendering payment) shall initially claim an offset for refunds of overpayments only against amounts claimed by the PSP for Interim and Intermediate Period compensation. Only after the carrier and the PSP have resolved the offset against this amount, “the IXC may deduct the remaining overpayment from future payments to PSPs.” We further clarify, however, that IXCs (or other carriers claiming refunds) may only withhold *undisputed* amounts from future payments. Thus, any carrier wishing to deduct a refund out of future payments to PSPs may only do so after providing that specific PSP notice of the refund claimed, and allowing the PSP adequate time to dispute the claim. To the extent a PSP disputes any portion of the refund claimed, the carrier may not deduct that portion from any future payment until it resolves the dispute with the PSP. Again, carriers and PSPs may use existing commercially reasonable processes to handle these disputes and arrange for payment. The only requirement we place on these processes is that if a carrier is able to apply undisputed amounts against future payments, the carriers must allow PSPs to make payments of refunds over a reasonable number of future payments, subject to ongoing accrual of interest, if reasonably requested by the PSP.<sup>45</sup>

14. We therefore find that the *Fifth Reconsideration Order* resolves the “retroactive adjustment or true-up” issue for payphone compensation during the waiver period as well as the “overpayment for calls set-off” and “interim payments” issues for Interim Period payphone compensation.<sup>46</sup>

#### IV. CONCLUSION

15. In sum, any payphone compensation payment, refund, or overpayment disputes between Flying J and Sprint in the litigation should be resolved according to the per-call and per-phone amounts and guidelines set forth in the *Fifth Reconsideration Order*. To the extent that

<sup>44</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2636-37, para. 198 (1999) (*Third Payphone Order*).

<sup>45</sup> *Fifth Reconsideration Order*, 17 FCC Rcd at 21307, para. 97 (citations omitted) (original emphasis).

<sup>46</sup> *Flying J Referral Order* at 13.

Sprint is liable for payphone compensation to Flying J under the facts of the *Flying J* litigation, which is an issue for the court to decide, Sprint should pay Flying J at rates of \$0.238 per call for payphones that did provide payphone-specific coding digits to Sprint and \$35.224 per-phone for payphones that did not provide payphone-specific coding digits to Sprint.<sup>47</sup> To the extent that Sprint is entitled to recover overpayments to Flying J, Sprint may only recover such overpayments according to the guidelines set forth in the *Fifth Reconsideration Order*.<sup>48</sup> Finally, to the extent that FBRs have come forward and identified themselves to Flying J as responsible for calls initially routed to Sprint as the first facilities-based carrier, Flying J must seek restitution from such FBRs. If FBRs have not come forward to identify themselves, however, Sprint retains responsibility for these calls. For per-phone compensation for the Interim and Intermediate Periods, responsibility shall be allocated as between Sprint and FBRs as set forth in the *Fifth Reconsideration Order*. In any event, Sprint must track or arrange for tracking of all compensable calls and 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 to bill the underlying FBR.<sup>49</sup>

## V. ORDERING CLAUSES

16. Accordingly, pursuant to sections 4(i), 205, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 205, and 276, IT IS HEREBY ORDERED that the Petition for Expedited Declaratory Ruling filed by Flying J is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>47</sup> Per-phone compensation for the Interim Period, if relevant in the litigation, should be paid according to the guidelines set forth in the *Fifth Reconsideration Order*. See *Fifth Reconsideration Order* at para. 97.

<sup>48</sup> *Id.*

<sup>49</sup> *First Reconsideration Order*, 11 FCC Rcd at 21277, para. 92; *Third Reconsideration Order*, 16 FCC Rcd at 20922, para. 1.