



April 21, 2017

Ex Parte

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

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

USTelecom submits this ex parte filing in response to the Petition for Waiver filed by Sprint in the above-referenced proceeding.¹ USTelecom and its members are supportive of the *Sprint Petition* as well as Cincinnati Bell's comments in the Commission's biennial review proceeding² which echo the need for deregulatory measures with respect to the payphone compensation rules. USTelecom urges the Commission to grant the requested waiver to Sprint and extend that relief to all covered completing carriers.

Commission Rule Section 64.1320 requires covered completing carriers to "undergo an audit of [their] § 64.1310(a)(1) tracking system by an independent third party auditor...to determine whether the call tracking system accurately tracks payphone calls to completion."³ More specifically, FCC Rule 64.1320(f) requires the filing of an annual certification by June 30, 2017, that there have been no material changes to the completing carrier's compliance with the criteria underlying the previous year's audit report. In combination, this means that a covered completing carrier is required to complete an audit each year to confirm the current practices are in compliance even though the rule purports to only require an initial audit then an annual certification of no material changes. Given the continuing decline in the number of payphone calls over the past decade, this audit requirement has become unnecessary and unduly burdensome.

Sprint has made a credible argument that there is good cause for a waiver because unique or unusual factual circumstances make application of the rule inequitable, unduly burdensome and contrary to the public interest, and that the applicant has no reasonable alternative.⁴ Given that for years USTelecom's member companies have consistently shown compliance with the compensation rules,

¹ *Sprint Petition for Waiver In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996*, CC Docket No. 96-128 (filed Apr. 7, 2017) (*Sprint Petition*).

² Reply Comments of Cincinnati Bell Any Distance *In the Matter of 2016 Biennial Review of Telecommunications Regulations: Wireline Competition Bureau*, WC Docket No. 16-132 (filed Jan. 3, 2017).

³ 47 C.F.R. § 64.1320.

⁴ See *Sprint Petition*, citing 47 C.F.R. § 1.925.

despite the declining nature of the payphone regime, coupled with the exorbitant cost of an annual audit, they agree that a waiver of the audit requirement is not only justified but also in the public interest.

USTelecom recognizes that although the audit requirements may have been justified when they were implemented, changed market conditions since then have eradicated any such justification. Call volumes on payphones have dropped by 99.5 percent as consumers increasingly make calls with their own mobile devices rather than payphones. All the while, the burdensome audit requirement has remained in place creating a need for a waiver.

In the *Sprint Petition*, Sprint notes that it has not been able to identify material changes to its tracking systems.⁵ USTelecom agrees with this assessment and submits that it has been years since any audits have identified material changes to most companies' payphone call tracking systems, largely due to the decline of the number and use of payphones. This evidence of continuous compliance throughout a period where there was a massive decline in payphone use and compensation shows that an audit is not necessary to protect the financial interests of the payphone service providers. Furthermore, waiver of the audit requirement will serve to minimize the regulatory burden and expense to all covered completing carriers, which will ultimately result in a cost savings to consumers, which is in the public interest.

In addition, USTelecom agrees that the alternative compensation arrangements as contemplated by Section 64.1320(a) are not a reasonable alternative to the audit given the low call volumes. As Sprint notes in its Petition for Waiver, payments in recent years have been at an all-time low.⁶ The rules suggest that a completing carrier would need an alternative compensation arrangement with each payphone service provider in order to avoid the audit requirements. However, the cost of negotiating and executing contracts with so many carriers for such a small amount of total compensation would not be cost-effective. Such a requirement would only serve to increase the financial and administrative burden to the covered completing carriers.

USTelecom respectfully requests that the Commission recognize that the annual payphone call tracking system audit is a requirement that has "live[d] on long past [its] usefulness,"⁷ and waive its applicability to Sprint and all covered completing carriers who are covered by these rules. USTelecom also supports Sprint's request that, if the Commission cannot rule on this waiver petition by May 1, 2017, that the Commission grant all covered completing carriers a temporary waiver until the Petition is ruled upon to avoid burdening the companies with the audit from which a waiver is sought.

Please contact the undersigned should you have any questions.

Respectfully submitted,



B. Lynn Follansbee
Vice President, Law & Policy

⁵ See *Sprint Petition* at 3.

⁶ See *Sprint Petition* at 4 ("Sprint made payments in 2015 to 85 payphone service providers and aggregators. Of those 85 PSPs, Sprint paid compensation of less than \$1,000 to 76 of them. In fact, payments to 62 were for less than \$10.").

⁷ See Blog Post of Commissioner O'Rielly, Taking Stock of FCC Paperwork Burdens, dated March 3, 2017.