Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
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Modernization of Payphone Compensation Rules	)	**WC Docket No. 17-141**
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-128**
	)	
2016 Biennial Review of Telecommunications Regulations: Wireline Competition Bureau	)	**WC Docket No. 16-132**
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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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August 9, 2017

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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking to eliminate the Commission's payphone call tracking system annual audit and associated reporting requirements.[1] ITTA resoundingly applauds the *NPRM*, which ITTA called for a few months ago.[2]

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[1] *Modernization of Payphone Compensation Rules; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; 2016 Biennial Review of Telecommunications Regulations: Wireline Competition Bureau*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 5397 (2017) (*NPRM*).

[2] *See* ITTA Comments, CC Docket No. 96-128, WC Docket No. 16-132, at 8 (May 5, 2017) (ITTA Waiver Comments) (supporting request for waiver of the payphone call tracking system annual audit requirement, and suggesting blanket interim relief for all Completing Carriers "pending the Commission's completion of a review of the ongoing viability of Sections 64.1310(a)(3) and 64.1320" of the Commission's rules).

I. INTRODUCTION AND SUMMARY

Fundamentally, the *NPRM* proposes to eliminate the annual audit and associated reporting requirements embodied in Section 64.1320(f).[3] ITTA previously has demonstrated the changed circumstances that have caused the costs of the rule to far eclipse its benefits,[4] amply justifying its elimination.

In sum, since the annual audit requirement was established in 2003, the number of payphones in service, and correspondingly the amount of payphone compensation that Completing Carriers pay, has plummeted, while annual audit costs have held steady, if not increased. The alternative in the rules to complying with the annual audit regime – settling payphone compensation individually with payphone service providers (PSPs)[5] -- is not a reasonable alternative.[6]

It has been years since the annual audits have uncovered irregularities with the Completing Carriers' call tracking systems, and there are continuing safeguards for ensuring accurate payphone compensation in the absence of an annual audit requirement. Thus, at this point, *any* costs devoted to audits outweigh the benefits given the track record of Completing Carriers' compliance and the existence of alternative methods for detecting any lack thereof (if there was any). Even if there were any modest benefits, they would be far outweighed by the significant costs of compliance. Illustrating just how askew the requirement has become, one ITTA member spent approximately five times as much on its audit as the payphone compensation amount whose accuracy the audit is designed to ensure. Maintaining the annual

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[3] *See NPRM*, 32 FCC Rcd at 5399, para. 6; 47 CFR § 64.1320(f).

[4] *See NPRM*, 32 FCC Rcd at 5399, para. 6.

[5] *See* 47 CFR §§ 64.1310(a), 64.1320(a).

[6] ITTA agrees with the Commission that the transaction costs of negotiating, implementing, and managing alternative compensation arrangements with numerous PSPs outweigh the amount of compensation to be paid. *See NPRM*, 32 FCC Rcd at 5401, para. 11.

audit requirement in the face of such an imbalance defies common sense and any notion of reasonableness.[7] ITTA wholeheartedly supports the *NPRM*'s proposal to repeal Section 64.1320(f), and urges the Commission to eliminate Section 64.1310(a)(3) of its rules, as well as Section 64.1301(a)-(d).[8]

II. THE COMMISSION SHOULD ELIMINATE THE ANNUAL AUDIT AND ASSOCIATED REPORTING REQUIREMENTS IN THEIR ENTIRETY

A. Payphone Usage Will Only Continue to Trend Downward

Noting the assertion that the precipitous decline in payphone usage supports eliminating the annual audit requirement, the *NPRM* seeks comment on whether there is any reason to expect this declining trend to change in the future.[9] There is not. On a macro level, since 2003, the year the annual audit requirement was established, the number of payphones in service has free-fallen from almost 1.5 million to fewer than 100,000 today, a decline of over 93 percent.[10] To parse this further, if one tracks the drop in payphones in service in three-year increments, the figures over the last decade have been remarkably consistent: 48 percent from 2013-2016, 54 percent from 2010-2013, and 52 percent from 2007-2010.[11]

The *NPRM* correlates the decline in the number of payphones in service with the growth of mobile service.[12] Looking at the same three-year increments, the wireless industry inversely has experienced a consistent growth in mobile voice subscriptions: 10 percent from 2013-2016, 9

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[7] *See* ITTA Waiver Comments at 2-6.

[8] 47 CFR § 64.1301.

[9] *See NPRM*, 32 FCC Rcd at 5399, para. 7.

[10] *See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Payphone Statistics: 1997 – Most Recent at Tbl. 1 (Apr. 11, 2017) (Payphone Statistics Report), https://www.fcc.gov/general/iatd-data-statistical-reports; *see also NPRM*, 32 FCC Rcd at 5399, para. 7 (chronicling the decline in payphones from their peak year, 1999, through 2013, then again through 2016).

[11] *See* Payphone Statistics Report at Tbl. 1.

[12] *See NPRM*, 32 FCC Rcd at 5399, para. 7.

percent from 2010-2013, and 14 percent from 2007-2010.[13] In addition, at some point in the second half of 2014, the number of mobile voice subscriptions exceeded one per person in the United States, and the growth in mobile voice subscriptions continues to outpace the growth in United States population.[14] Given the correlation of the decline in the number of payphones in service with the growth of mobile service, as the number of mobile voice subscriptions per person continues to escalate, it is reasonable to project that the demand for payphone usage will continue to diminish.[15]

B. The Costs of Compliance are Unduly Burdensome and Warrant Elimination of the Rule

Noting that, "[n]ot surprisingly," the amount of compensation paid to PSPs has declined significantly over time as payphone usage has declined, the *NPRM* asks how compensation paid to PSPs relative to the costs of compliance has changed since adoption of the annual audit rule, and how the Commission should evaluate whether the audit costs relative to payphone compensation are too high.[16] Citing figures suggesting that the amount of payphone compensation has decreased by up to 99.5 percent, ITTA recently asserted -- and now reiterates -

[13] *See* FCC, Voice Telephone Services: Status as of June 30, 2016 at 2, Fig. 1 (WCB 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf (June 2016 Voice Telephone Report); FCC, Local Telephone Competition: Status as of June 30, 2013 at 2, Fig. 1 (WCB 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf; FCC, Local Telephone Competition: Status as of June 30, 2010 at 28, Tbl. 17 (WCB 2011), https://apps.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf.

[14] *Compare* June 2016 Voice Telephone Report *with* https://www.census.gov/popclock/ (interactive U.S. Census Bureau website where one may determine the United States population on any given date). To illustrate, as of June 30, 2014, there were approximately 314.5 million mobile voice subscriptions, and the population was approximately 318.6 million. By the end of 2014, there were approximately 322.5 million mobile voice subscriptions, and the population was approximately 319.8 million. As of June 30, 2016, there were approximately 337.8 million mobile voice subscriptions, and the population was approximately 323.1 million.

[15] Furthermore, with the proliferation of mobile service plans with unlimited voice minutes, it is increasingly unlikely that using a payphone to place a call will cost a consumer less than using her mobile phone.

[16] *See NPRM*, 32 FCC Rcd at 5399-400, para. 9.

- that industry-wide the degree of decline in payphone compensation even exceeds the 97 percent experienced both by ITTA members Cincinnati Bell and Arvig over the past decade.[17]

Having already recounted claims that compliance costs have either remained the same or increased,[18] referred to ITTA's recent assertions about the decline in payphone compensation, and cited Cincinnati Bell figures that the annual audit cost is currently five times the amount of annual payphone compensation it tenders, as well as Sprint figures that its annual audit cost is 15 percent of the payphone compensation it paid in 2016, the Commission asserts: "We believe that the existing evidence about audit costs relative to payphone compensation suggests the costs of the rule now outweigh the benefits . . . ."[19] ITTA agrees.

Nevertheless, the *NPRM* drills down further on how to assess the impact of compliance costs associated with the rule, seeking comment on whether it should compare such costs to total payphone compensation, or against some other value, such as the "likely benefits of avoiding incorrect compensation payments."[20] ITTA submits that either way, the end result remains that the costs of compliance militate towards elimination of the rule.

With respect to comparing compliance costs to payphone compensation, the Commission need not create precedent by establishing a bright-line standard. In the case of Cincinnati Bell, having to spend five times as much on its audit as the payphone compensation amount whose

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[17] *See* ITTA Waiver Comments at 5 (citing Sprint Comments, WC Docket No. 16-132, at 1 (Dec. 5, 2016) ("if Sprint's experience is typical, payphone calling volumes have decreased by 99 percent in the last decade"), and Letter from B. Lynn Follansbee, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 2 (filed Apr. 21, 2017) (USTelecom *Ex Parte*) ("[c]all volumes on payphones have dropped by 99.5 percent")). *See also NPRM*, 32 FCC Rcd at 5400, para. 10 (citing ITTA's assertion).

[18] *See NPRM*, 32 FCC Rcd at 5399, para. 8.

[19] *See id.* at 5400, para. 9.

[20] *Id.*

accuracy the audit is designed to ensure speaks for itself. In other words, common sense and reason should dictate the outcome.

Comparing compliance costs with the benefits of avoiding incorrect compensation does not alter the imbalance. It is reasonable to assume that it is highly unlikely that a payphone call tracking system would understate usage by more than half. Even in the case of an understatement by half, where a properly functioning payphone call tracking system would result in the carrier in reality owing twice as much compensation, in the Cincinnati Bell scenario the costs still outweigh the benefits since the costs are five times the compensation amount.

In sum, the Commission got it right in expressing its belief that the costs of the rule outweigh the benefits. The Commission should finalize that conclusion and eliminate the rule.

C. Retention of the Rule is Not Necessary to Ensure Compliance with the Underlying Payphone Compensation Requirements

The *NPRM* seeks comment on what effect elimination of the annual audit and associated reporting requirement would have on Completing Carriers' compliance with the Commission's rules regarding compensation to PSPs.[21] ITTA believes it would have no effect. As the *NPRM* reiterates, "relieving Completing Carriers of the audit requirement would not relieve them of their obligation to ensure that they are compensating PSPs for all compensable calls."[22] In its request earlier this year for waiver of the audit requirement, Cincinnati Bell asserted that audits of its call tracking system have "never identified any deficiencies," and "[f]or more than a decade, [Cincinnati Bell] has been found to be appropriately compensating PSPs."[23] USTelecom confirmed that "it has been years since any audits have identified material changes to most

[21] *See NPRM*, 32 FCC Rcd at 5400, para. 10.

[22] *Id. See* ITTA Waiver Comments at 3 (Cincinnati Bell "firmly acknowledges that relieving it of the audit requirement would not relieve it of its obligation to ensure that it is compensating [PSPs] for all compensable calls").

[23] Cincinnati Bell Any Distance Inc. Petition for Waiver, CC Docket No. 96-128, at 2 (filed Apr. 25, 2017).

companies' payphone call tracking systems," and concluded that "[t]his 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 PSPs.[24] The *NPRM* itself views payphone compensation compliance issues as a thing of the past.[25] ITTA agrees.

In the prospective absence of an annual systems audit requirement, continuing safeguards exist to ensure accurate payphone compensation from Completing Carriers to PSPs. Even in the absence of an audit, if any complaint were to arise concerning the accuracy of a Completing Carrier's call tracking or compensation to PSPs, the Commission retains authority to investigate it. In addition, most long-distance providers use a clearinghouse such as the National Payphone Clearinghouse (NPC) to process quarterly payments to PSPs, and the NPC has an effective investigation and dispute resolution process in place to address any disparities between Completing Carrier and PSP data that may arise. Moreover, the NPC would notify Completing Carriers if it noticed any irregularities in the quarterly data they provide it.[26] With payphone compensation compliance issues a speck in the rear-view mirror, having such safeguards in place is yet another reason why the audit requirement is unnecessary, supporting the Commission's repeal of it.

[24] USTelecom *Ex Parte* at 2.

[25] *See NPRM*, 32 FCC Rcd at 5400, para. 10.

[26] *See* ITTA Waiver Comments at 3 (citing Letter from Karen Brinkmann, Counsel to Cincinnati Bell, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-132, at 1-2 (filed Apr. 4, 2017)); *see also NPRM*, 32 FCC Rcd at 5400, para. 10 (seeking comment on these assertions from ITTA Waiver Comments). This quarterly data would continue to be rolled up into the quarterly report required to be provided to PSPs under Section 64.1310(a)(4), and, as such, repeal of the audit requirement would have no effect on compliance with Section 64.1310(a)(4). *See NPRM*, 32 FCC Rcd at 5400, para. 10 (seeking comment on effect of elimination of audit requirement on compliance with rule regarding provision to PSPs of quarterly reports containing information for identifying compensable and noncompensable calls).

III. THE COMMISSION SHOULD ELIMINATE THE QUARTERLY CFO CERTIFICATION OF THE ACCURACY OF COMPENSATION TO PSPs AND NEED NOT ADOPT ANY REQUIREMENT IN LIEU OF SUCH CERTIFICATION OR THE ANNUAL AUDIT

For the same reasons discussed above militating towards removal of the annual audit requirement, no replacement requirement, such as a self-certification, is warranted.[27] For that matter, the Commission likewise should eliminate the requirement of Section 64.1310(a)(3) that the Completing Carrier's chief financial officer (CFO) submit a sworn statement on a quarterly basis attesting to the accuracy of the payments tendered to each PSP that quarter. Due to their very nature, CFOs treat sworn statements with the utmost of gravity, and numerous internal processes (with their attendant resources) are now triggered quarterly to ensure that CFOs are able to support these statements without fear of criminal exposure. However, given the record of accuracy of payphone call tracking systems in conjunction with the plummeting sums at issue, devoting such internal resources to this endeavor is overkill.[28]

If the Commission nevertheless adopts an annual self-certification requirement, such a requirement should supplant both the annual audit and the quarterly CFO sworn statement.[29] Because these would be certifications against the backdrop of years of Completing Carrier compliance with payphone compensation to PSPs,[30] it would be sufficient for such certification to be that there were no material changes to the Completing Carrier's payphone call tracking

[27] *See NPRM*, 32 FCC Rcd at 5401, para. 12 (seeking comment on whether the Commission should adopt an alternative requirement to the annual audit).

[28] ITTA acknowledges that it previously advocated that an annual sworn statement would be "more than sufficient" to ensure that CFOs and their staffs are tendering payphone compensation payments with due accuracy. ITTA Waiver Comments at 8. Having reviewed the *NPRM* and the record supporting it, ITTA now believes that such a requirement would be so much more than sufficient as to be simply unnecessary.

[29] *See NPRM*, 32 FCC Rcd at 5401, para. 12 (also seeking comment on whether an annual self-certification could replace the quarterly sworn statement).

[30] *See supra* Sec. II.C.

system.[31] Anything more involved would be tantamount to going through the audit process again, and would defeat the purpose of the regulatory relief provided through repeal of the rule. In addition, for the reasons discussed above, such certification also should replace the quarterly sworn statement requirement.

Finally, if the Commission does adopt the self-certification requirement, or in the unfortunate event the Commission retains the quarterly sworn statement requirement, it should not have to be executed by the company's CFO.[32] The certification should be sufficient from any officer of the company at least down to the Vice President level. Preferably, however, the certification should be acceptable from any duly authorized official of the company charged with ensuring the accuracy of payphone compensation. This would be consistent with Section 64.1320(e), which recognizes the key role in payphone compensation matters of "the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with payphone service providers over compensation."

IV. THE COMMISSION SHOULD REMOVE DEFUNCT PAYPHONE COMPENSATION RULES FROM THE CFR

As the *NPRM* notes, certain other rules regarding the provision of payphone service were intended to apply solely on an interim basis and their terms have long since expired. ITTA agrees that Section 64.1301(a)-(d) by its terms no longer applies to any entity and should be removed.[33] Doing so is eminently appropriate as a matter of clearing regulatory underbrush.

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[31] In the event there were material changes, it would be reasonable for the Commission to require the Completing Carrier to describe its compliance with the factors delineated in Section 64.1310(c)(1)-(9). However, the Completing Carrier should *not* be required to undergo the unnecessary expense of engaging a third-party auditor to verify its compliance.

[32] *See NPRM*, 32 FCC Rcd at 5401, para. 12 (seeking comment on whether the certification could be a company official other than the CFO).

[33] *See id.* at 5402, para. 14; 47 CFR § 64.1301(a)-(d).

The *NPRM* also seeks comment on whether provisions of Section 64.1320 other than the annual audit requirement remain relevant today, and whether the remaining requirements imposed by these rules are still warranted.[34] With the dramatic changes in the communications landscape since Section 64.1320 was adopted in 2003, including the precipitous drop in payphone usage, it is difficult to envision many, if any, new carriers poised to become Completing Carriers; even then, the payphone compensation amounts they would handle would be low and likely only to get lower.[35] Again in the realm of clearing regulatory underbrush – an act of which ITTA is always a proponent – the Commission may wish to eliminate all of Section 64.1320 except paragraph (e).[36] As noted above, Section 64.1320(e) requires each Completing Carrier to provide, or make publicly available, contact information for the person or persons responsible for handling the Competitive Carrier's payphone compensation and for resolving disputes with PSPs over compensation. Coupled with retention of the enforceable requirement in Section 64.1310(a) that each Completing Carrier establish an accurate payphone call tracking system, Section 64.1320(e) helps "protect PSP's right to full compensation for coinless access code and subscriber toll-free calls originating from their payphones."[37]

V. CONCLUSION

It is hard to conjure a rule that has so long since outlived any usefulness it may have once had as the annual audit requirement. This is so in light of the drastic decline in payphone usage since the rule was adopted in 2003, as well as the high likelihood that usage will continue to

[34] *See NPRM*, 32 FCC Rcd at 5401-02, para. 13.

[35] *See supra* Sec. II.A.

[36] In this case, the Commission should delete from paragraph (e) references to the System Audit Report. In addition, should the Commission adopt a self-certification requirement, it may wish to retain most key elements of paragraphs (b) and (c) for the event that a Completing Carrier is unable to certify that there were no material changes to its call tracking system over the previous year. *See supra* note 31.

[37] *Id.*

plummet as it has for over a decade. The skewed cost of the audits relative to the amount of payphone compensation Completing Carriers actually owe, Completing Carriers' longstanding track record of accuracy of their payphone call tracking systems, the existence of additional safeguards to ensure that Completing Carriers continue to appropriately compensate PSPs, and the lack of a reasonable alternative to the payphone call tracking system requirement together overwhelmingly support the *NPRM*'s proposal to repeal the rule and associated reporting requirement. For the foregoing reasons, the Commission also should remove the quarterly CFO sworn statement requirement and defunct payphone compensation rules. Doing so will realize the welcome proclamation that "the Commission is committed to clearing regulatory underbrush."[38]

Respectfully submitted,

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August 9, 2017

[38] *NPRM*, 32 FCC Rcd at 5417, Statement of Commissioner Michael P. O'Rielly.