

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

APCC SERVICES, INC., <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
v.)	Case No. 1:99-CV-00696-ESH
)	
AT&T CORP.,)	
)	
Defendant.)	

CFL, LLC, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
v.)	Case No. 1:01-CV-01531-ESH
)	
AT&T CORP.,)	
)	
Defendant.)	

THIRD AMENDED CONSOLIDATED COMPLAINT

Plaintiffs bring this Third Amended Consolidated Complaint (“Complaint”) against Defendant AT&T Corp. (“AT&T”) to collect compensation owed by AT&T under federal law and for other relief, including an order directing AT&T to comply with federal law, accountings of the sums owed by AT&T, interest, costs, and attorneys’ fees as provided by law.¹ Plaintiffs state as follows:

¹ By Order dated September 4, 2001, the Court consolidated *APCC Services, Inc. v. AT&T Corp.*, Civil Action No. 1:01-CV-00696 (ESH), and *Cfl, LLC v. AT&T Corp.*, Civil Action No. 1:01-CV-01531 (ESH).

Summary of Complaint

1. This action is brought by Plaintiffs on behalf of themselves and hundreds of entities, known in the telecommunications industry as independent payphone service providers, that own and operate over 400,000 public payphones located throughout the United States. Plaintiffs APCCS, Data Net Systems, Pacific, Intera, and Davel, known in the telecommunications industry as aggregators, are assignees of and collection agents for many of these independent payphone service providers. Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, Cfl, and Siouxland bring this action to collect compensation that AT&T currently owes them for completed access code and toll free calls that have been made since October 7, 1997 using these independent payphone service providers' payphones and for which AT&T is required to pay compensation under applicable Federal Communications Commission ("Commission" or "FCC") rules, regulations, and orders. AT&T is required to pay to the independent payphone service providers compensation for each such call, as prescribed by the FCC, under the rules, regulations, and orders issued by the FCC pursuant to Section 276 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 276. AT&T is violating the rules, regulations, and orders of the FCC and is failing to compensate the independent payphone service providers for each and every completed access code and toll free call using their payphones for which AT&T is required to pay compensation. AT&T's failure to pay the independent payphone service providers payphone compensation is an unjust and unreasonable practice that violates 47 U.S.C. § 201(b).

The Parties

2. Plaintiff APCC Services, Inc. ("APCCS") is a Virginia corporation with its principal place of business in Alexandria, Virginia. APCCS is the duly authorized billing and collection agent, assignee of the claims of, and attorney-in-fact for several hundred independent payphone service providers for the purposes of collecting compensation from AT&T and other carriers. The independent payphone service providers listed on Exhibit A to this Complaint have assigned all of their rights, titles and interests in claims, demands, and causes of action for said compensation to APCCS. The assignments are irrevocable. Under a separate agreement, APCCS has agreed to remit to an independent payphone service provider the funds received relating to that independent payphone service provider's assigned claims if the independent payphone service provider satisfies the conditions stated in the separate agreement. Should the independent payphone service provider not satisfy the conditions of the separate agreement, APCCS has no obligation to remit to the independent payphone service provider any of the funds recovered on the assigned claims. Since the filing of the original complaint, some independent payphone service providers have failed to satisfy the conditions of the separate agreement. Accordingly, APCCS has been relieved of any obligation to remit the funds received on the claims assigned by such independent payphone service providers. APCCS has kept proceeds it has collected from carriers on such claims and does keep proceeds collected from carriers on such claims.

3. Plaintiff Data Net Systems, L.L.C. ("Data Net Systems") is an Illinois limited liability company with its principal place of business in Rolling Meadows, Illinois. Data Net Systems is the duly authorized billing and collection agent, assignee of the claims of, and attorney-in-fact for 96 independent payphone service providers for the purposes of collecting

compensation from AT&T and other carriers. The independent payphone service providers listed on Exhibit B to this Complaint have assigned all of their rights, titles, and interests in claims, demands, and causes of action for said compensation to Data Net Systems. The assignments are irrevocable. Under a separate agreement, Data Net Systems has agreed to remit to an independent payphone service provider the funds received relating to that independent payphone service provider's assigned claims if the independent payphone service provider satisfies the conditions stated in the separate agreement. Should the independent payphone service provider not satisfy the conditions of the separate agreement, Data Net Systems has no obligation to remit to the independent payphone service provider any of the funds recovered on the assigned claims. Since the filing of the original complaint, some independent payphone service providers have failed to satisfy the conditions of the separate agreement. Accordingly, Data Net Systems has been relieved of any obligation to remit the funds received on the claims assigned by such independent payphone service providers. Data Net Systems has kept proceeds it has collected from carriers on such claims and does keep proceeds collected from carriers on such claims.

4. Plaintiff Jaroth, Inc. d/b/a Pacific Telemanagement Services ("Pacific") is a California corporation with its principal place of business in Walnut Creek, California. Pacific is the duly authorized billing and collection agent, assignee of the claims of, and attorney-in-fact for three independent payphone service providers for purposes of collecting compensation from AT&T and other carriers. The independent payphone service providers listed on Exhibit C to this Complaint have assigned all of their rights, titles, and interests in claims, demands, and causes of action for said compensation to Pacific. The assignments are irrevocable. At times relevant to this Complaint, Pacific also has been an independent payphone service provider to

which AT&T owes compensation for completed access code and toll free calls using Pacific's payphones and for which AT&T is required to pay compensation.

5. Plaintiff Intera Communications Corporation ("Intera"), formerly NSC Telemanagement Corporation, is a Delaware corporation with its principal place of business in Pleasanton, California. Intera is the duly authorized billing and collection agent, assignee of the claims of, and attorney-in-fact for 13 independent payphone service providers for purposes of collecting compensation from AT&T and other carriers. The independent payphone service providers listed on Exhibit D to this Complaint have assigned all of their rights, titles, and interests in claims, demands, and causes of action for said compensation to Intera. The assignments are irrevocable. At times relevant to this Complaint, Intera also has had a ten percent (10%) interest in compensation AT&T owes for disputed completed access code and toll free calls made on the payphones of NSC Communications Public Services Corporation, an affiliate of Intera.

6. Plaintiff Davel Communications Group, Inc. ("Davel") is an Illinois corporation with its principal place of business in Cleveland, Ohio. Davel is the duly authorized billing and collection agent, assignee of the claims of, and attorney-in-fact for two independent payphone service providers for purposes of collecting compensation from AT&T and other carriers. The independent payphone service providers listed on Exhibit E to this Complaint have assigned all of their rights, titles, and interests in claims, demands, and causes of action for said compensation to Davel. The assignments are irrevocable. In December 2005, Communications Central, Inc., one of the independent payphone service providers listed on Exhibit E, to which AT&T owes compensation for completed access code and toll free calls using Communications Central, Inc.'s payphones, was merged into Davel. At other times relevant to this Third

Consolidated Amended Complaint, Davel also was the 100% owner of Communications Central, Inc. In addition, at times relevant to this Third Consolidated Amended Complaint, Davel has been the one hundred percent (100%) owner of Telaleasing Enterprises Inc., one of the independent payphone service providers listed on Exhibit E, to which AT&T owes compensation for completed access code and toll free calls using Telaleasing Enterprises Inc.'s payphones.

7. Plaintiff Peoples Telephone Company, Inc. ("Peoples") is a New York Corporation with its principal place of business in Cleveland, Ohio. Peoples is an independent payphone service provider, which has provided pay telephone services to callers from over 43,000 payphones located throughout the United States, and to which AT&T owes compensation for completed access code and toll free calls using Peoples' payphones.

8. Plaintiff CfL, LLC ("CfL") is a South Dakota limited liability company with its principal place of business in North Sioux City, South Dakota. CfL is an independent payphone service provider, which has provided pay telephone services to callers from over 2,800 payphones located throughout the United States, and to which AT&T owes compensation for completed access code and toll free calls using CfL's payphones.

9. Plaintiff Siouxland Telephone Co., Inc. ("Siouxland") is an Iowa corporation with its principal place of business in North Sioux City, South Dakota. Siouxland is an independent payphone service provider, which has provided pay telephone services to callers from over 190 payphones located throughout the United States, and to which AT&T owes compensation for completed access code and toll free calls using Siouxland's payphones.

10. The named parties in paragraphs 2 through 9 of this Complaint are referred to collectively as "Plaintiffs"; and Jaroth, Peoples, CfL, and Siouxland, in their capacity as independent payphone service providers, and the independent payphone service providers listed

on Exhibits A through E, are referred to collectively as “Plaintiff independent payphone service providers.”

11. AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T resides, is found, and does business in the District of Columbia.

12. AT&T is a common carrier of telephone calls and is subject to the compensation payment obligations mandated by Section 276 of the Communication Act of 1934, as amended, 47 U.S.C. § 276, and the related rules, regulations, and orders of the FCC.

Jurisdiction and Venue

13. This action arises under Sections 206 and 207 of the Act, 47 U.S.C. §§ 206 and 207, and the rules, regulations, and orders promulgated or issued by the FCC by authority of the Act.

14. This Court has jurisdiction over the subject matter of this action pursuant to 47 U.S.C. § 207 and 28 U.S.C. § 1331.

15. Venue in this District is proper pursuant to 28 U.S.C. § 1391 in that AT&T is doing business in this District.

The Payphone Industry and Long-Distance Calling Services

16. Plaintiff independent payphone service providers own, install, operate, manage, or maintain payphone services and facilities at various locations around the country, which enable callers to access the telephone network when away from their home or office. Plaintiff independent payphone service providers recover the cost of their payphone services and facilities by receiving payment for the use of those payphones either from callers or from carriers. Plaintiff independent payphone service providers compete with each other and with the payphones owned and operated by local telephone companies.

17. Carriers, such as AT&T, provide numerous and varied telephone service offerings, many of which can be used from payphones. The FCC has determined that carriers' access code and toll free calls constitute approximately one-third of the use of a payphone's services and facilities.

18. Carrier services using access codes enable a caller to use the telephone network and to pay for the call by means other than by paying for the call by depositing coins at the originating telephone. Typical billing arrangements include, but are not limited to, the use of calling cards, credit cards, prepaid cards, collect calls, and third-party calls. These services, such as "1-800-COLLECT," "1-800-CALL ATT" and "10-10-288," are frequently used by callers when away from their home or office telephones. From a payphone, the access code allows the caller to reach the carrier's network to place a call without making any payment to the payphone service provider at the payphone itself. The carrier receives the payment for the call according to the particular payment method selected by the caller.

19. Toll free services are sold by carriers to subscribers that desire to generate calls to the subscriber without any telephone charges to the originating caller. Also referred to as "subscriber 800" calls, such as "1-800-FLOWERS," subscribers use these services to encourage calls by customers or other parties interested in the subscriber. These services were commonly known by the "800" dialing prefix originally associated with them. Today, the popularity of these services has resulted in the continued expansion of toll-free numbers that now include prefixes such as "888," "877," "866" and "855". Similar to access code calls, a caller using a payphone for a toll free call reaches the carrier's network without making any payment to the payphone service provider at the payphone itself. Carriers are paid by the subscriber for calls placed to that subscriber's toll free number.

Statutory and Regulatory Background

20. In February 1996, the Telecommunications Act of 1996 became law and, in relevant part, directed the FCC to prescribe regulations that “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.” 47 U.S.C. § 276(b)(1)(A).

21. Pursuant to the Act, the FCC has promulgated rules and regulations and has issued orders that require carriers, including AT&T, to pay compensation to independent payphone service providers for each and every compensable call. For the purpose of compensation, a compensable call is a completed call made from a payphone where the caller uses a carrier other than by using the payphone’s presubscribed carrier. A completed call is defined as any call that is answered by the called party. Access code calls and toll free calls are two types of calls where the caller uses a carrier other than by using the payphone’s presubscribed carrier.

22. Pursuant to the Act, the FCC has promulgated rules and regulations and has issued orders establishing the per-call rate for all compensable calls. For all compensable calls for the period from October 7, 1997 to April 20, 1999, the FCC has set a rate of \$.238 per call. Thereafter, effective April 21, 1999, the FCC changed the rate to \$.24 per call, which rate remained in effect through September 26, 2004. On September 27, 2004, the FCC-mandated rate became \$.494, and that rate is currently in effect.

23. By regulation, the FCC requires each carrier, including AT&T, to which a compensable call from a payphone is routed, to track or arrange for the tracking of each such call

so that it may accurately compute the compensation it is required to pay to each payphone service provider. 47 CFR § 64.1310(a). Each carrier may use the tracking method of its choice.

24. The FCC regulations also provide that carriers and independent payphone service providers shall establish arrangements for the billing and collection of compensation for such completed calls. 47 CFR § 64.1310(b).

25. By order, the FCC requires each carrier to make payment of the compensation due independent payphone service providers at least on a quarterly basis.

26. Further, the FCC requires a carrier which fails to make its compensation payment by the required due date to pay interest at the simple interest rate of 11.25% per year, accruing on its unpaid obligations from the date due until paid.

Billing and Payment Procedures

27. Under FCC-approved procedures adopted by the telecommunications industry, independent payphone service providers, or the billing and collection agents for groups of independent payphone service providers (such as Plaintiffs APCCS, Data Net Systems, Pacific, Intera, and Davel), provide to carriers (such as AT&T) on a calendar quarter basis a list of the telephone numbers of the payphones owned and operated by the independent payphone service provider or group of independent payphone service providers. The telephone number of a payphone also is referred to in the telecommunications industry as an “ANI,” short for “Automatic Number Identification.” The payphone ANI is used by the carrier to identify the payphone from which a call originates.

28. Under these billing and payment procedures, the list of payphone telephone numbers, or payphone ANIs, for which compensation is sought is then matched by the carrier to its records of calls made during the calendar quarter. The carrier also may compare this list of

ANIs to the list of ANIs provided by various telephone companies to authenticate that the ANIs submitted by the independent payphone service providers are payphones. The carrier is then required to remit payment for all of its compensable calls to the respective independent payphone service provider, or to the billing and collection agent for a group of independent payphone service providers, by the beginning of the next calendar quarter after the carrier receives the list of ANIs.

29. Unless the payphone service provider and the carrier reached a different agreement, compensable calls from a payphone made through a carrier on or after October 7, 1997 were to be compensated according to the default rates set by the FCC. The FCC orders require the carrier to compensate an independent payphone service provider either (1) at a per call rate to be paid for each compensable call, or (2) for certain payphone lines paid at a surrogate rate pursuant to an FCC waiver of the per call rate requirement, at a flat rate per payphone line per month, regardless of the number of actual compensable calls.

Plaintiffs' Billing of AT&T for Compensation

30. Pursuant to the FCC-approved procedures, Plaintiffs have submitted statements to AT&T for the payment of compensation for each calendar quarter from October 7, 1997 through December 31, 2009. Plaintiffs continue to submit statements to AT&T for the payment of compensation for each calendar quarter as it becomes due. Payments are due on the first day of the quarter immediately following the quarter in which the statement is submitted (*e.g.*, statements for compensation for calls made during 4th Quarter 1997, were submitted in the 1st Quarter 1998, and became due on April 1, 1998).

COUNT I

**(VIOLATION OF 47 U.S.C. § 201(b) AND RULES,
REGULATIONS AND ORDERS OF THE FCC
REGARDING PER CALL COMPENSATION)**

31. Plaintiffs incorporate herein paragraphs 1 through 30 by reference.

32. On numerous Plaintiff independent payphone service providers' payphone lines, AT&T has failed to pay Plaintiff independent payphone service providers any compensation for completed AT&T access code calls and toll free calls placed from Plaintiff independent payphone service providers' payphones for the respective quarter.

33. On all Plaintiff independent payphone service providers' payphone lines where, for the respective calendar quarter, AT&T paid on a per call basis for calls completed on the Plaintiff independent payphone service providers' payphones, AT&T was required to pay Plaintiff independent payphone service providers for each and every completed AT&T access code call and toll free call placed from Plaintiff independent payphone service providers' payphones.

34. Where AT&T is required to pay Plaintiff independent payphone service providers for each completed AT&T access code call and toll free call from Plaintiff independent payphone service providers payphones, AT&T has failed, and continues to fail, to:

- a. accurately track the number of completed AT&T access code calls and toll free calls that AT&T carries from each payphone; and
- b. compensate Plaintiff independent payphone service providers for each completed AT&T access code call and toll free call from Plaintiff independent payphone service providers' payphones.

35. AT&T's continuing failure to fully and fairly compensate Plaintiff independent payphone service providers for completed intrastate and interstate AT&T access code and toll free calls which originated from a Plaintiff independent payphone service provider's payphone violates Section 276 of the Act and the rules, regulations, and orders issued by the FCC.

36. AT&T's continuing failure to fully and fairly compensate Plaintiff independent payphone service providers for each and every completed intrastate and interstate AT&T access code call and toll free call which originated from a Plaintiff independent payphone service provider's payphone is an unjust and unreasonable practice prohibited by 47 U.S.C. § 201(b).

37. The Plaintiff independent payphone service providers have performed all conditions precedent necessary to receive the compensation AT&T is required to pay pursuant to Section 276 of the Act and the rules, regulations, and orders issued by the FCC.

38. As a result of AT&T's continuing failure to pay Plaintiff independent payphone service providers for the total number of compensable calls for which AT&T is required to pay pursuant to the Act and FCC rules, regulations, and orders, Plaintiff independent payphone service providers have been damaged in an amount to be determined. Such damages are due and payable to Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, CfL, and Siouxland.

39. Further, AT&T has failed to make its compensation payments to the Plaintiff independent payphone service providers by the required due dates and owes Plaintiffs interest on the late payments. Such interest is due and payable to Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, CfL, and Siouxland.

40. Section 206 of the Act provides that in any case where a common carrier omits to do any act required of it, the common carrier "shall be liable to the person or persons injured

thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." 47 U.S.C. § 206. Section 207 of the Act gives Plaintiffs the right to sue in court to recover damages.

41. AT&T is liable to Plaintiffs for the full amount of damages sustained as a result of AT&T's violation of the Act and the FCC rules, regulations, and orders, together with interest, reasonable attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Enter judgment in favor of Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, Cfl, and Siouxland and against AT&T on Count I;
- b. Order AT&T, at its own expense, to provide Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, Cfl, and Siouxland an accounting prepared by an accounting firm of Plaintiffs' choice, of all compensable calls that AT&T has carried since October 7, 1997, from each and every payphone owned by the Plaintiffs or by a Plaintiff independent payphone service provider which has assigned its claim for such compensation to the Plaintiffs;
- c. Award damages to each of the Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, Cfl, and Siouxland respectively, in an amount equal to \$.238 for each and every compensable call carried by AT&T from October 7, 1997 to April 20, 1999, \$.24 for each and every compensable call carried by AT&T from April 21, 1999 through September 26, 2004, and \$.494 for each and every compensable call carried by AT&T from September 27,

2004 to the present, from each and every payphone owned by the Plaintiffs or by a Plaintiff independent payphone service provider which has assigned its claim for such compensation to the Plaintiffs, and for which AT&T has not yet paid Plaintiff independent payphone service providers according to the Act and the rules, regulations, and orders of the FCC;

d. Award Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, CfL, and Siouxland 11.25% simple interest on all required quarterly payments due Plaintiffs, and not timely paid, from the first day of the calendar quarter following submission to AT&T of the list of telephone numbers, or ANIs, of Plaintiff independent payphone service providers' payphones until actual payment;

e. Award Plaintiffs APCCS, Data Net Systems, Pacific, Intera, Davel, Peoples, CfL, and Siouxland their costs of this action, including reasonable attorneys' fees as provided by law; and

f. Grant such other and further relief as the Court deems just and proper.

COUNT II

(BREACH OF PEOPLES' CONTRACT)

42. Plaintiff Peoples incorporates herein paragraphs 1 through 41 by reference.

43. On or about October 24, 1997, Plaintiff Peoples entered into a contract with Defendant AT&T which included a requirement that AT&T will pay Peoples the prevailing mandated FCC per-call compensation rate on all calls from the payphones covered by the contract, specifically including access code and toll free calls, on a quarterly basis.

44. The contract requires AT&T to compensate Peoples for each actual AT&T access code call and toll free call from payphones covered by the contract.

45. AT&T has failed, and continues to fail, to:

- a. accurately track the number of AT&T access code calls and toll free calls that AT&T carries from each payphone covered by the contract; and
- b. compensate Peoples at the prevailing mandated FCC per-call compensation rate for each AT&T access code call and toll free call from the payphones covered by the contract.

46. In violation of the October 24, 1997 contract, AT&T has failed, and continues to fail, to fully and fairly compensate Peoples for each and every actual AT&T interstate and intrastate access code and toll free call on the payphones covered in the contract.

47. Peoples has performed all conditions precedent for Peoples to comply with the October 24, 1997 contract.

48. As a result of AT&T's breach of the October 24, 1997 contract, Peoples has been damaged through AT&T's failure to pay Peoples for the total number of access code and toll free calls at the rate that AT&T is required to pay Peoples pursuant to the contract.

49. Further, AT&T failed to make its payments to Peoples for each and every actual AT&T interstate access code and toll free call on the payphones covered in the contract by the required due dates and owes Peoples interest on the late payments.

50. The contract provides that AT&T shall indemnify Peoples for attorneys' fees and expenses incurred as a result of AT&T's breach of the obligations under the contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Peoples respectfully requests that the Court:

- a. Enter judgment in favor of Plaintiff Peoples and against Defendant AT&T on Count II;
- b. Order AT&T, at its own expense, to provide Peoples an accounting

prepared by an accounting firm of Peoples' choice, of all access code and toll free calls that AT&T has carried since October 24, 1997, from each and every payphone covered by the October 24, 1997 contract;

c. Award damages to Peoples in an amount equal to the respective prevailing mandated FCC per-call compensation rate on all calls covered by the October 24, 1997 contract for which AT&T is required to pay Peoples, to the extent that AT&T has not yet paid Peoples;

d. Award Peoples 11.25% per year simple rate of interest on all required quarterly payments due Peoples, and not timely paid, from the first day of the calendar quarter following submission to AT&T of the list of telephone numbers, or ANIs, of the payphones covered under the October 24, 1997 contract until actual payment;

e. Award Peoples its attorneys' fees and expenses incurred as a result of AT&T's breach of the obligations under the contract; and

f. Grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby request trial by jury for all issues so triable thereby.

Date: May 7, 2010

Respectfully submitted,

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