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

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In the Matter of)
)
Billed Party Preference) CC Docket No. 92-77
for 0+ InterLATA Calls)

DISPATCHED BY

NOTICE OF PROPOSED RULEMAKING

Adopted: April 9, 1992 Released: May 8, 1992

Comment Date: Separate comment dates for separate issues (see para. 54)
Reply Comment Date: Separate reply dates for separate issues (see para. 54)

By the Commission: Commissioner Barrett issuing a statement.

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I. Introduction

1. We initiate this rulemaking proceeding to consider the merits of an automated "billed party preference" routing methodology for 0+ interLATA payphone traffic and for other types of operator-assisted interLATA traffic. Under "billed party preference," interexchange calls dialed from equal access areas on a 0+ basis (i.e., "0" plus an interexchange number, with no access code preceding the "0") would be routed to the operator service provider (OSP) preselected by the party being billed for the call.[1] Currently, such calls are routed to the OSP preselected by the owner of the telephone or by the owner of the premises on which the telephone is located. We tentatively conclude that, in concept, billed party preference routing of all 0+ interLATA calls is in the public interest. We seek further comment on the costs and benefits of billed party preference and how such a system should be implemented.

2. We also seek comment, under a separate, expedited pleading cycle, on proposals to address alleged competitive inequities arising from AT&T's issuance of a proprietary calling card. In particular, we seek comment on whether, prior to the implementation of billed party preference, we should prohibit OSPs from accepting 0+ calls that are made with proprietary calling cards.

II. Background

3. Prior to 1989, the Bell Operating Companies (BOCs) routed all 0+ interLATA payphone traffic to AT&T. On January 29, 1988, the Department of Justice (DOJ) filed a motion with the United States District Court for the District of Columbia claiming, inter alia, that this practice violated the equal access provisions of the Modification of Final Judgment (MFJ).[2] In response to this motion, the BOCs and various IXCs submitted proposed equal access plans for BOC payphones. On October 14, 1988, the Court ruled that "a system which permits the billed party to select the interexchange carrier of his choice simply by dialing 0+ most perfectly comports with the language and purposes of the decree." Noting, however, that the Line Identification Data Base (LIDB) necessary for implementation of billed party preference had not yet been completed, the Court ordered the BOCs to implement an interim system of equal access. Specifically, the Court ordered the BOCs to permit those who own the premises on which BOC payphones are located to presubscribe the 0+ interLATA traffic originating from these payphones to an OSP. It also

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[1] We use the term OSP to describe both network-based interexchange carriers (IXCs) that provide operator services, and IXCs that offer their own operator service functionalities while procuring transmission capabilities from other carriers. An access code is a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

[2] United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), affirmed sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

stated that it "expects that the Regional Companies will continue expeditiously to perfect the LIDB system which, when placed into service, will permit full compliance with the decree."[3] Finally, it stated that it "will revisit this issue at a future date to determine what further arrangements and orders, if any, are necessary," but commented that action by this Commission might render future Court action unnecessary.[4]

4. On December 23, 1988, the Court ordered GTE as well to implement a presubscription program for its payphones. Paralleling its earlier order, however, the Court stated that "this solution does not fully satisfy the requirements of the GTE decree," and the Court "instructed" GTE "to work towards implementation of technology that will allow the actual customer to select the interexchange carrier of his choice using 0+ dialing."[5]

5. Pursuant to these Court decisions, BOC and GTE payphones have been presubscribed to an OSP chosen by the owner of the premises on which such payphones are located. In addition, other types of public phones, such as competitively provided payphones, and public phones in hotels, motels, and other aggregator locations,[6] are currently presubscribed to an OSP chosen by the payphone provider or premises owner. OSPs generally compete for presubscription contracts by offering commissions on 0+ calls made from phones presubscribed to them.

6. When a telephone line, including a public phone line, is presubscribed to a particular carrier, all 0+ interLATA calls originating

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[3] United States v. Western Electric Co., Inc., 698 F. Supp. 348, 367 (D.D.C. 1988).

[4] Id.

[5] United States v. GTE Corp., C.A. No. 83-1298, slip op. (D.D.C. Dec. 23, 1988) at 4-5.

[6] Under the Communications Act, as amended, an "aggregator," is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." See 47 U.S.C. § 226(a)(2); 47 C.F.R. § 64.708(b). Examples of aggregators include hotels and motels, pay telephone owners, hospitals, universities, and prisons. Currently pending before the Commission is a petition filed by the Association of College and University Telecommunications Administrators, the American Council on Education, and the National Association of College and University Business Officers seeking clarification that colleges and universities are "aggregators" only with respect to pay telephones located on college and university campuses. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Petition for Clarification, filed February 6, 1992.

from that line are routed to that carrier.[7] If a caller wishes to use a different carrier, the caller must dial the access code of the preferred carrier. In some cases, premises owners or payphone providers have blocked access code dialing, thereby preventing the caller from reaching its OSP of choice. This blocking of access codes has not only generated considerable public confusion about the dialing requirements from public phones, but has also frustrated consumers, who have been prevented from using their preferred OSP, or in some cases, prevented from completing their call at all. These practices, coupled with widespread consumer dissatisfaction with the rates and practices of many OSPs, has resulted in a significant number of consumer complaints both at this Commission and at state commissions around the country.

7. In 1988, the Common Carrier Bureau took the first step towards addressing this situation when it found in a formal complaint proceeding that access code blocking was an unjust and unreasonable practice in violation of section 201(b) of the Communications Act, except if necessary to prevent fraud. The Bureau also required the defendant OSPs to take certain steps to ensure that sufficient information, including the identity of the presubscribed OSP, is available to callers using phones for which those OSPs had presubscription contracts.[8] Shortly thereafter, we initiated a rulemaking proceeding to consider general rules regarding access code blocking, consumer information, and other related areas.[9]

8. In October 1990, Congress enacted the Telephone Operator Consumer Services Improvement Act (TOCSIA), which, inter alia, directed us to require within a reasonable time: (a) the unblocking of equal access 10XXX codes at all aggregator locations; and/or (b) establishment by all OSPs of an 800 or 950 access number.[10] Pursuant to this legislation, we initiated a new rulemaking proceeding and adopted rules requiring payphone providers to unblock equal access (10XXX) codes by March 1992. We also required other aggregators to unblock 10XXX access in various time frames extending over approximately a six-year period, depending upon the type and capabilities of their equipment and the costs they would incur in unblocking. In addition,

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[7] We use the term "public telephone" to describe telephones made available by aggregators to the public.

[8] Telecommunications Research & Action Center v. Central Corp. 4 FCC Rcd 2157 (Com. Car. Bur. 1989), application for review pending.

[9] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Notice of Proposed Rulemaking, 5 FCC Rcd 4630 (1990); Further Notice of Proposed Rulemaking, 6 FCC Rcd 120 (1990); Report and Order, 6 FCC Rcd 2744 (1991).

[10] This legislation is codified at 47 U.S.C. § 226.

we required OSPs to provide 950 or 1-800 access by March 1992.[11] As a result of these actions, callers should be able to reach their OSP of choice from any pay telephone or other aggregator location, provided that they remember their carrier's access code and are willing and able to dial it.

A. Billed Party Preference

9. On April 13, 1989, Bell Atlantic filed a petition for rulemaking proposing a new equal access plan for all pay telephones in equal access areas.[12] This plan, which it terms "billed party preference," would fundamentally change the routing of 0+ calls. Currently, 0+ calls are sent directly to the OSP presubscribed to the originating line. Under billed party preference, as proposed by Bell Atlantic and others, 0+ calls would be sent instead to the OSP chosen by the party paying for the call.[13] For example, a collect call would be routed to the called party's OSP. A calling card call would be routed to the IXC that issued the calling card or, if the caller uses a LEC calling card, to the OSP predesignated by the LEC cardholder. A call billed to a third number would be routed to the OSP presubscribed to the third number. In each case, LECs would perform the necessary carrier identification functions at their operator service switch (OSS).[14] Thus, unlike the situation today, in which 0+ interLATA calls are sent directly to the IXC, each 0+ call would be sent first to the LEC OSS for carrier identification functions, and then to the appropriate OSP.[15]

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[11] See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736 (1991).

[12] Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan From Pay Telephones, RM-6723, April 13, 1989. Comments were filed on Bell Atlantic's petition on May 26, 1989. Replies were filed on June 23, 1989. On October 9, 1991, the Common Carrier Bureau invited interested parties to update the record with supplemental comments. Supplemental comments were filed November 22, 1991. Supplemental replies were filed December 23, 1991.

[13] Under current industry plans, this OSP could be, but would not have to be, the carrier that the billed party has chosen for its 1+ traffic. See US Sprint Comments at note 12; SWBT Supp. Comments at 13; United Supp. Reply at 5; ex parte letter from Fred Konrad, Director-Federal Relations, Ameritech, to Donna R. Searcy, Secretary, FCC, January 28, 1992 at 4 and Attachment B ("Ameritech/MCI ex parte letter). Thus, unlike today, where a single presubscription choice is made for each telephone line, under billed party preference, a separate 0+ and 1+ designation would be possible. In addition, callers could, in effect, choose multiple 0+ OSPs by carrying and using multiple calling cards.

[14] SWBT Supp. Comments at 4; Ameritech/MCI ex parte letter at 2.

[15] Id.

10. Under current industry plans, LECs would implement billed party preference by loading into the LIDB system they have developed a primary and secondary OSP choice for each telephone line.[16] This information would be used for carrier identification purposes on 0+ interLATA collect and third number calls, as well as calls billed to LEC calling cards, which would continue to be either line-number based or in the Revenue Accounting Office (RAO) format.[17] For such calls, LECs would launch a query from the OSS to a LIDB via common channel signaling (SS7) to identify the OSP predesignated for the billed line.

11. A LIDB query would not be necessary on calls made with IXC calling cards. Under current industry plans for billed party preference, IXC calling cards would have to be in either the CIID or the 891 format.[18] When an IXC calling card was used, LECs would either identify the OSP at the OSS itself by reading the first six digits of the card number, or they would query the issuing IXC's data base for routing instructions.[19]

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[16] The LIDB would contain a secondary OSP choice for calls originating in areas where the primary OSP was unavailable. This would enable customers to select a small, regional OSP as their primary OSP without losing the ability to originate 0+ calls in areas that their primary OSP did not serve. In addition, billed party preference could be designed to permit a separate OSP designation for international calls. SWBT Supp. Comments at 12-13; MCI/Ameritech ex parte letter at 4.

[17] A line number-based calling card is a card with a fourteen-digit account number, the first ten digits of which is the subscriber's telephone number. An RAO card is also a fourteen-digit card that is in a special billing number format in which a ten-digit billing number replaces the ten-digit telephone number.

[18] A calling card in the 891 format is a calling card, up to nineteen digits in length, that is consistent with the international standard developed by the Consultative Committee for International Telephone and Telegraph. Pursuant to this standard, these cards begin with "891" to show that the card has been issued in the North American Numbering Plan area. The three digits immediately following the "891" identify the card issuer. A "Card Issuer Identifier" (CIID) card is a fourteen-digit non-line number based card, the first six digits of which identify the card issuer.

[19] Under current industry plans, the LECs would assign only one primary OSP to each telephone line and rely on a ten-digit LIDB screening for carrier identification purposes. Thus, LECs will look only at the line number of a line-number based calling card, and not the Personal Identification Number (PIN). If the LECs performed a fourteen-digit LIDB screening, instead of a ten-digit screening, LECs could look at the PIN number of a line number-based card, as well as the line number, which would enable customers to maintain multiple line-number based cards, with different OSPs for each. It would also enable OSPs that currently issue their own line number-based calling cards to continue using such cards in a billed party preference environment. Under current industry plans, OSPs wishing to issue their own

12. Billed party preference would not change the routing of 1+ traffic or of calls initiated with an access code. The former would continue to be routed to the carrier presubscribed to the originating line, and the latter would be routed directly to the IXC associated with the dialed access code. In addition, 00- calls (where the caller dials "0" twice) would continue to be routed to the operator service of the IXC presubscribed to the originating line.

III. Discussion

A. Benefits and Costs of Billed Party Preference

13. We tentatively conclude that, in concept, a nationwide system of billed party preference for all 0+ interLATA calls is in the public interest. It appears that billed party preference could benefit the users of operator services by implementing the billed party's choice of carrier without complicated dialing requirements on "0" calls and by redirecting the focus of OSP competition for public phone traffic towards the end user and away from the recipient of 0+ commissions. At the same time, we have relatively little information before us about the costs of this system and how these costs might vary with the scope of billed party preference.[20] Therefore, we seek comment on our proposal to mandate implementation of billed party preference. We discuss these issues in more detail below.

14. During the last several years, there have been significant changes in the operator services industry. One of the consequences of these changes is that making an operator service call, particularly from a public phone, has become more complex and confusing to many consumers. Consumers have not only been confused by the division of responsibilities between the

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calling cards would have to use either a CIID or an 891 card. We seek comment on whether it would be feasible or desirable for LECs to perform a fourteen-digit carrier identification screening in LIDB, thereby permitting OSPs to retain line-number based calling cards after billed party preference is implemented. We also seek comment on whether potential fraud problems associated with identifying more than one Personal Identification Number (PIN) with each telephone line outweigh the benefits of permitting OSPs to retain their own line number-based calling cards.

[20] While Bell Atlantic proposes billed party preference for 0+ interLATA payphone traffic only, other parties urge broader applications of billed party preference. See, e.g., Sprint Comments at 1 (urging that billed party preference routing apply to all 0+ interLATA calls); Telecommunications Research and Action Center Comments at 1 (FCC should consider applying billed party preference to all 0+ interexchange calls); SNET Comments at 3 and Connecticut Office of Consumer Counsel Reply at 4 (FCC should consider extending deployment of billed party preference to all aggregator locations); SWBT Supp. Comments at 8-9 (urging billed party preference routing for all 0+ and 0- interLATA calls); Ameritech/MCI ex parte letter at 1-2 (describing billed party preference as a service for 0+ and 0- interLATA calls).

local and long-distance telephone companies, but also frustrated and confused by call blocking, their mistaken assumptions as to which carrier will handle their call when they use a particular calling card, and by the need to use access codes, and to know when to use them.

15. Last year, we took steps to address the problems caused by call blocking. We also attempted to minimize customer confusion by requiring OSPs to take steps to identify themselves to callers through branding and posting.[21] These measures will ensure that any caller is able to reach his/her carrier of choice. In order to do so, however, callers must be willing and able to dial a carrier access code, when necessary.[22] Callers will be able to dial on a 0+ basis only if they are willing to route their call to the OSP presubscribed to the originating line and only if that OSP can accept the billing mechanism (e.g. calling card) used by the caller.

16. Billed party preference could make operator services more "user-friendly." Under billed party preference, callers would be able to make all of their operator-assisted calls on a 0+ basis, and they could do so with the knowledge that their call would be automatically handled by the OSP with which the billed party wishes to do business. At the same time, billed party preference would preserve all of the options that callers currently have with regard to OSP choice. Callers would be free to use one OSP for all of their 0+ calls, or they could vary the OSP simply by varying the calling card they chose to use for a particular call. In addition, any caller would be able to "dial-around" billed party preference by dialing an OSP access code.

17. Opponents of billed party preference, including AT&T and certain other OSPs, argue that these benefits are insubstantial.[23] They argue that on most interLATA "0" calls, the caller is the billed party, so that even today, the billed party generally gets to choose the carrier on interLATA operator service calls by, at most, dialing access codes.[24] They argue, further, that because AT&T is for many calls both the presubscribed carrier and the billed party's IXC choice, even today, 0+ dialing often results in selection of the billed party's IXC choice.

18. It appears that, for a significant portion of all operator-assisted interLATA calls, AT&T is both the billed party's IXC choice and the

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[21] See para. 8 supra.

[22] Callers can make the decision always to dial access codes, in which case, they need not concern themselves with the identity of the presubscribed OSP, or they can attempt to ascertain on a call-by-call basis whether an access code is necessary in order to reach their preferred OSP.

[23] See, e.g., CompTel/ITI Supplemental Comments at 9; AT&T Supp. Comments at 3; Cleartel/U.S. Long Distance Supp. Comments at 10.

[24] According to AT&T, the caller is the billed party on 80% of operator assisted interstate calls. AT&T Supp. Comments at 3.

presubscribed OSP.[25] In these cases, the caller does not have to dial an access code to reach his/her carrier of choice. Nevertheless, if the caller wants to be assured of reaching his/her carrier all the time, the caller still has to dial access codes all the time or determine in each instance whether an access code is necessary, and use that access code if it is necessary. Under billed party preference, callers would not have to concern themselves with these matters: they could dial on a 0+ basis wherever billed party preference was available, and they would automatically reach the billed party's carrier. Billed party preference would thus be simpler for callers. On the other hand, since billed party preference could apparently not be deployed for at least a few years, callers will have had that much more time to adjust to and become more comfortable with access code dialing. We seek comment and evidence on consumer attitudes towards and acceptance of access code dialing and how those attitudes are likely to change during the period prior to when billed party preference could be deployed.

19. Another apparent advantage of billed party preference is that it would focus competition in operator services towards end users. As noted, OSPs currently compete for 0+ traffic by obtaining presubscription contracts for public phones. They compete for such contracts by offering commission payments to payphone providers and other aggregators on 0+ calls. Consequently, the success of an OSP in the marketplace is directly related to the amount of commissions it offers. In some cases, OSPs have been willing to pay substantial commissions, the costs of which apparently are passed on to consumers through higher operator service rates, in order to win presubscripton contracts.[26] Billed party preference would redirect the competitive efforts of OSPs towards providing better services and lower prices to end users, as opposed to paying higher commissions.

20. In addition, billed party preference might increase parity in the operator services marketplace. A presubscription system for public phones tends to favor the OSP -- in this case AT&T -- with the largest number of customers. That OSP can pay a lower commission rate than other OSPs, yet still offer higher overall commission payments because of the larger amount of commissionable traffic that it carries. Moreover, if AT&T increasingly migrates customers to proprietary calling cards that other OSPs cannot validate, the disparity between the relative amounts of commissionable traffic that AT&T and other OSPs can handle may grow larger.

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[25] According to CompTel and ITI, AT&T's share of public phone presubscriptions is about 75%. CompTel/ITI Supp. Comments at 3. Assuming that public phones presubscribed to AT&T originate proportionally the same amount of traffic as other public phones, then AT&T is the presubscribed OSP on roughly 3/4 of operator services calls. Assuming, further, that AT&T is the desired IXC roughly 2/3 of the time (which is slightly more than its market share of switched interstate minutes), then roughly half (3/4 x 2/3) of operator-assisted calls would involve an AT&T customer on an AT&T line.

[26] See generally Interim Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, November 14, 1991.

Consequently, aggregators will face growing incentives to presubscribe their public phones to the AT&T, thereby increasing its advantage with respect to 0+ calling.

21. Billed party preference could eliminate this disparity. It would give every IXC the same opportunity to offer interested customers 0+ dialing, regardless of the size of its customer base and regardless of whether other IXCs use proprietary calling cards.

22. On the other hand, some OSPs argue that billed party preference would reduce operator services competition. They argue that in order to participate in billed party preference, an OSP would have to enter the 1+ market, offer nationwide service, and issue calling cards. They claim that these are nearly insurmountable barriers for small OSPs and that billed party preference would thus effectively eliminate the separate operator services market that has developed in recent years, turning it into a mirror image of the 1+ market.[27]

23. Proponents of billed party preference claim that billed party preference would not require an OSP to offer 1+ service in order to be designated as an end user's 0+ carrier. They state that the 0+ presubscription would be unbundled from the 1+ choice, so that users could choose different carriers for their 0+ and 1+ traffic.[28] They argue, further, that billed party preference would not require an OSP to offer nationwide service, since billed party preference has been designed to accommodate at least two OSP designations for interLATA calling: a primary carrier and a secondary carrier.[29] Thus, they claim, small OSPs would be able to designate an alternative carrier on behalf of their customer for any areas in which they might lack originating capability. Moreover, it would appear that while a calling card could enhance an OSP's position in the marketplace, any OSP could become the customer-designated OSP for LEC-issued calling cards. Thus, OSPs that did not wish to issue their own calling cards could instruct their customers to reach them with a LEC card. Indeed, ifIXCs increasingly move towards proprietary calling cards, small OSPs without their own calling cards would likely be limited largely to LEC calling card traffic anyway, even under the existing presubscription system.

24. In fact, it appears that billed party preference has the potential to be procompetitive, not anticompetitive. Today, an OSP may receive "0" traffic because the caller chooses to use that OSP, but in many cases it does so because the OSP is presubscribed to the originating line and the caller is unwilling or unable to dial an access code. Under billed party preference, only the former consideration would govern. We seek

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[27] See, e.g., CNS Supp. Comments at 8; Cleartel/U.S. Long Distance Supp. Comments at 12-15; Americall Systems of Louisville/First Phone of New England Supp. Comments at 5-6.

[28] See note 13, supra.

[29] See note 16 supra.

comment on the effect the various designs of billed party preference would have on operator services competition.

25. Notwithstanding that billed party preference would appear to offer a number of public interest benefits, we need more information before we can mandate implementation of billed party preference and determine exactly how this service should be structured. First and foremost, we request additional information about the costs of a billed party preference system, and how those costs are affected by the scope of billed party preference.[30] The cost data provided thus far vary considerably. For example, Bell Atlantic estimates that a billed party preference system for 0+ interLATA payphone traffic would cost the seven BOCs and GTE more than $150 million.[31] Southwestern Bell, which has proposed that billed party preference apply to all 0+ and 0- interLATA traffic, estimates that it could implement such a system for approximately $50 million.[32] In contrast, Pactel projects a cost in excess of $200 million for that kind of system, just for Pacific Bell's traffic.[33] And AT&T claims that billed party preference for AT&T's 0+ traffic could cost in excess of $560 million.[34] None of these estimates is substantiated in detail. Therefore, we seek further information and comment on the estimated total costs of implementing and operating a billed party preference system for: (a) interLATA payphone traffic alone; (b) all interLATA public phone traffic, including traffic from hotel rooms and other aggregator locations; (c) all interLATA 0+ traffic from any phone; and (d) all interLATA 0+ and 0- traffic from any phone. Parties should include detailed explanations of the bases for these estimates and the assumptions that underly them. In addition, parties should address how these costs are likely to affect operator service rates paid by consumers.

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[30] It would appear that billed party preference would qualify as a "new" service under LEC price caps. See Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6824-25 (1990).

[31] Bell Atlantic Supp. Comments at 2.

[32] SWBT Supp. Comments at 4. 0- calling occurs when the caller dials "0" and waits for a LEC operator to answer. Currently, if the LEC operator determines that the caller wishes to make an interLATA call, and the LEC offers call transfer service, the LEC operator will provide the caller with a choice of OSPs among those that subscribe to the call transfer service and then transfer the call to the OSP chosen by the caller. If the LEC does not offer call transfer service, the LEC operator will inform the caller that the LEC cannot handle the call. If billed party preference were extended to such calls, the LEC operator would instead obtain from the caller the information necessary to determine the billed party's carrier and route the call accordingly.

[33] Pactel Supp. Reply at 4.

[34] AT&T Supp. Comments at 3.

26. Second, concerns have been raised as to whether billed party preference would require callers to provide certain information about their call (such as the calling card number) twice: first to the LEC so that the LEC may identify the OSP that will receive the call, and then again to the OSP so that the OSP can process and bill for the call. It appears that if LECs deploy common channel signaling (SS7) between their OSSs and OSP points of presence, they would be able to pass on the information provided to them for carrier identification purposes to the OSP, thus obviating the need for the caller to repeat that information to the OSP.[35] Moreover, if LECs deploy Automated Alternate Billing Services (AABS), LECs would be able to identify collect and third number calls on an automated basis, thus eliminating the need for the caller to speak with two operators.[36] We seek comment on: (a) the extent to which callers would have to provide the same information twice or speak with two operators in a billed party preference system; (b) the extent to which this problem would be alleviated by LEC deployment of SS7 and AABS; (c) the cost of deploying these capabilities and how those costs may vary from LEC to LEC; (d) the extent to which independent LECs will either implement SS7 and AABS or otherwise be able to eliminate the "double operator system problem" in their regions; (e) the time it would take to deploy the necessary technology to eliminate this problem; (f) the availability and cost of any OSP technology required for OSPs to receive the necessary information from the LECs; and (g) the possible availability and cost of customer premises equipment that could perform these functions by storing the necessary processing and billing information and then transmitting it to the OSP at the caller's prompting.

27. Third, we seek comment on the impact billed party preference would have on access times for operator service calls. According to some LECs, billed party preference could increase access times on 0+ calls by up to four seconds per call, but implementation of SS7 and AABS would eliminate this increase.[37] We seek comment on these representations, as well as on the significance of any increase in access time, given that: (a) callers would save time in not having to dial access codes; and (b) callers would be receiving instructions from the LEC during the call set-up period, which could reduce the incidence of call abandonment.

28. Fourth, we seek comment on the impact billed party preference might have on competition in the provision of payphones. Competitive payphone providers have found a niche for themselves in the marketplace

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[35] LECs could pass this information to an OSP without SS7, but that would significantly increase access time. LECs state that with SS7, they could pass relevant call information to the OSP without adversely affecting access time. See Ameritech/MCI ex parte letter at 6.

[36] Without AABS, LECs must use a live operator to identify collect and third number calls. Callers might then have to address a second live operator -- the OSP's -- to obtain call acceptance.

[37] See. e.g., Bell Atlantic petition at 5-6; SWBT Supp. Comments at 11-12.

largely by paying to premises owners commissions on 0+ and coin traffic originating from each payphone. Competitive payphone providers fund these commissions with coin deposits and with 0+ commissions that they receive from the presubscribed OSP for 0+ traffic. Billed party preference would effectively eliminate OSP commissions on 0+ traffic. On the other hand, we are currently considering a mechanism to compensate competitive payphone providers for access code calls.[38] This or some other mechanism might be applied to all operator-assisted calls and therefore provide competitive payphone providers a different means of compensation for their role in originating such calls. In addition, billed party preference would not affect coin revenues or the ability of a competitive payphone provider to pay a commission thereon. We seek comment on the effect billed party preference would have on competition in the provision of payphones and the public interest ramifications of any such impact, given the other benefits and costs of billed party preference.[39]

29. Fifth, we seek comment on whether some or all of the benefits of billed party preference might be obtainable through alternative, less costly technologies rather than the billed party preference system that has been described in this Notice. Parties suggesting such alternative mechanisms should describe in detail the costs and benefits of these mechanisms in relation to billed party preference.

B. Issues Relating to Implementation of Billed Party Preference

30. We also seek comment on how billed party preference should be implemented if we decide that it is in the public interest. Commenters should address the following issues, as well as any other relevant issues relating to the implementation of billed party preference.

31. First, we seek comment on whether, if we conclude that billed party preference for certain operator-assisted calls is in the public interest, we should: (a) require all LECs to implement this system for such calls, and (b) amend Part 68 of our rules to preclude traffic aggregators and payphone providers from using automatic dialing mechanisms to program their phones to dial around billed party preference on such calls. We tentatively conclude that both would be required to implement a billed party preference system. As discussed above, a principal benefit of billed party preference

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[38] In our 1991 operator services order, we concluded that competitive payphone providers should be compensated for originating access code calls and we issued a Further Notice of Proposed Rulemaking to consider how a compensation mechanism should be structured and how much compensation should be paid. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, supra, 6 FCC Rcd at 4745-48.

[39] In addressing this issue, commenters should also address the impact billed party preference could have on "smart payphones" (that is, payphones in which call processing functions are performed within the payphone itself) and how any such impact should affect our public interest assessment of billed party preference.

is that it could simplify operator assisted dialing requirements. This would only be true, however, if dialing requirements were uniform around the country. Otherwise, callers would have no way of knowing which carrier would receive their call if they dialed on a 0+ basis -- or, they would have to ascertain at each phone whether billed party preference routing would be followed. Such a situation would undermine the benefits offered by billed party preference. We also seek comment on when billed party preference could be implemented by all LECs.

32. Second, we request comment on the types of calls for which billed party preference should be implemented. In particular, we seek comment on whether billed party preference should apply to: (a) interLATA 0+ payphone traffic only; (b) all interLATA 0+ public phone traffic; (c) all interLATA 0+ traffic; or (d) all interLATA 0+ and 0- traffic. While Bell Atlantic initially proposed billed party preference for 0+ interLATA payphone traffic only, it would seem that all 0+ calls ideally should be handled by the billed party's carrier. Moreover, a uniform dialing plan for all 0+ calls would be more readily accepted and understood by consumers than a patchwork of different plans for different types of phones. We seek comment on these observations and on any other factors that bear on the appropriate scope of a billed party preference system. In addition, we seek comment on whether billed party preference could be applied to calls originating from non-equal access areas, and if so, in what manner.

33. Third, we ask for comment on the process by which a 0+ carrier should be assigned to each telephone line. One possibility would be for each LEC to send a ballot to its subscribers explaining their right to choose a 0+ carrier and setting forth their choices. Customers that did not send in their ballots would be defaulted to their 1+ carrier. Another possibility would be for each LEC simply to notify customers of their right to presubscribe to a 0+ carrier different from their 1+ carrie. Such unbundling would be implemented upon customer request. We seek comment on these and any other proposals for determining 0+ presubscriptions.

34. Fourth, we seek comment on how commercial credit cards and foreign-issued calling cards would be handled in a billed party preference environment. We also seek comment on how LECs would handle calls billed to users in foreign countries.

35. Fifth, we seek comment on the process by which a secondary OSP might be assigned to each telephone line. Several LECs and MCI have proposed that the primary OSP should choose a secondary OSP that would handle traffic originating in areas in which the primary OSP was not available. This proposal, however, would not permit a primary OSP to choose more than one secondary OSP for its traffic. We seek comment on whether primary OSPs could and should be able to designate different secondary OSPs for different regions of the country, thereby enabling regional OSPs to establish partnership arrangements with one another. We also seek comment on whether, instead of allowing primary OSPs to designate the secondary OSPs for their customers, it would be technically and administratively feasible to permit each end user to choose its own secondary OSP or OSPs.

C. Proprietary Calling Cards and 0+ Access

36. In addition to seeking comment on billed party preference, we also seek comment, under a special expedited pleading cycle, on whether, prior to the implementation of billed party preference, we should require IXCs to share with other IXCs billing and validation data for any calling card usable with 0+ access. AT&T has recently begun issuing new calling cards in the so-called card issuer identification (CIID) format.[40] These calling cards are proprietary, in that AT&T does not provide other OSPs with the data needed to validate them. Consequently, AT&T is the only IXC that can accept calls made with these cards.

37. AT&T contends that there are public interest benefits to its proprietary CIID card. It argues that many consumers assume that if they use an AT&T calling card, they necessarily receive service from AT&T. AT&T claims that even if another OSP identifies itself to the customer before carrying the call, customers using an AT&T card do not always realize that they are not receiving AT&T service and rates. The proprietary CIID card, according to AT&T, enables AT&T customers to ensure that they are receiving service from AT&T, and to do so without the burden of dialing access codes. Noting the large number of consumer complaints about the rates and practices of some other OSPs, AT&T claims that there are important public benefits to the convenient protection afforded by the proprietary CIID card.

38. AT&T argues further that many of its competitors have issued proprietary calling cards that AT&T cannot validate. It thus claims that it would be unfair to deny AT&T the ability to offer a proprietary calling card.

39. On the other hand, some of AT&T's competitors allege that AT&T's CIID card confers on AT&T a significant and unfair advantage in competing for public phone presubscriptions. In particular, they claim that the inability of OSPs other than AT&T to accept the large number of calls made with this card, coupled with AT&T's efforts to educate CIID cardholders to dial 10288 to avoid the presubscribed OSP when that OSP is not AT&T, substantially decreases the amount of 0+ traffic that OSPs other than AT&T can handle. Consequently, they state, the dissemination of this card by AT&T gives aggregators and premises owners strong incentives to presubscribe their phones to AT&T.

40. According to some OSPs, AT&T uses this advantage in its

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[40] Under the Plan of Reorganization implementing the MFJ, AT&T and the BOCs were permitted to continue sharing, on an interim basis, the Billing Validation Application (BVA) data base used by the Bell System to validate operator service calls. To facilitate shared use of the BVA, AT&T and the BOCs issued joint calling cards. The BOCs have implemented LIDB and AT&T has issued CIID cards in order to terminate these sharing arrangements.

marketing efforts to aggregators and premises owners.[41] These OSPs state that AT&T informs aggregators and premises owners that presubscribing to another OSP results in the loss not only of substantial commission revenues, but also customer goodwill, because large numbers of AT&T cardholders become frustrated and angry -- and blame the aggregator -- when their CIID card is rejected by the presubscribed OSP.[42] These OSPs claim that the advantage AT&T thereby derives in competing for public phone presubscriptions gives AT&T a corresponding advantage in attracting consumers who prefer the convenience of 0+ dialing.

41. It appears that deployment of billed party preference at public phones would eliminate any advantage AT&T derives from its CIID card, since billed party preference would replace presubscription as the basis for routing 0+ traffic. Nevertheless, even if billed party preference proves to be in the public interest, it appears that it could not be implemented for some time.

42. Some of AT&T's competitors urge us to take steps in the interim to deny AT&T the ability to derive any competitive advantage from its proprietary calling card. They propose that we do this by requiring all IXCs to share with other IXCs the billing and validation data for any calling card that could be used with 0+ access. Under this proposal, IXCs would be prohibited, pending deployment of billed party preference, from accepting proprietary calling cards on 0+ calls. Thus, for example, AT&T would have the choice of either sharing billing and validation data for its CIID card (in which case callers could continue to use the card with 0+ access), or restricting the use of the card to access code calling.

43. We now seek comment on this proposal to restrict the use of proprietary calling cards on 0+ calling. In particular, we seek comment on the public interest costs and benefits of this proposal, and on how, specifically, it would be implemented and would work. For example, we seek comment on: (1) how and by whom the choice between a proprietary access code card and a nonproprietary 0+ card should be made; (2) how IXCs would distinguish and screen proprietary and nonproprietary card calls; (3)

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[41] See Emergency Motion For An Interim Order Requiring AT&T To Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing or Existing Cards Pending a Final Decision In This Docket, filed by CompTel in CC Docket 91-115, December 20, 1991 at 7-8. In a Report and Order and Request for Supplemental Comment adopted April 9, 1992 in that docket we noted that the relief sought by CompTel was beyond the scope of that proceeding, and that this motion and pleadings filed in response to it would be included as part of the record of this proceeding . See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, FCC 92- , adopted April 9, 1992 at _____. We now incorporate these filings into this record.

[42] AT&T's competitors allege, further, that they incur local access charges, validation fees, and live operator holding time when they are forced to turn away calls made with a proprietary AT&T calling card. Id. at 5.

whether carriers should be obligated merely to instruct proprietary cardholders to dial access codes, or whether they should also be required to reject 0+ calls by customers using proprietary calling cards; (4) what information would have to be made available to enable OSPs to carry and bill for nonproprietary 0+ calls; (5) the impact the above-described proposal would have on consumers; and (6) the impact this proposal might have on the costs and benefits of billed party preference or the timeliness with which it could be implemented. We also invite parties to discuss alternative proposals for addressing alleged competitive inequities resulting from AT&T's issuance and dissemination of a proprietary calling card, including the costs and benefits of such proposals. Parties advocating that we take any particular action in this area should address the jurisdictional basis for the action that party proposes.

IV. Procedural Matters

A. Ex Parte

44. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

B. Initial Regulatory Flexibility Analysis

45. Reason for Action: The Commission is issuing this Notice of Proposed Rulemaking to consider the possible implementation of billed party preference by local exchange carriers. We tentatively conclude that billed party preference, in concept, will better serve the public interest than current access arrangements for operator-assisted calls. We also seek comment on whether, prior to implementation of billed party preference, we should prohibit operator service providers from accepting 0+ calls that are made with proprietary calling cards.

46. Objectives: The objective of this Notice of Proposed Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

47. Legal Basis: This Notice of Proposed Rulemaking is adopted pursuant to Sections 1, 4, 201-205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 220, and 403.

48. Description, potential impact, and number of small entities affected: Adopting rules on billed party preference may directly affect entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

49. Reporting, recordkeeping and other compliance requirements:

None.

50. Federal rules which overlap, duplicate or conflict with the Commission's proposal: None.

51. Any significant alternatives minimizing the impact on small entities consistent with stated objective: The proceeding solicits comments on a variety of alternatives.

52. Comments are solicited: Written comments are requested on this Regulatory Flexibility Analysis for the billed party preference proposal. These comments must be filed in accordance with the deadlines set for comments on the Commission's billed party preference proposal in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis.

53. We certify that the Regulatory Flexibility Act of 1980 does not apply to rules that would prohibit operator service providers from accepting 0+ calls made with proprietary calling cards because if such rules are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Carriers providing interstate transmission lines for telecommunications services that would be affected by such rules generally are large corporations or affiliates of such corporations. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq.

C. Notice and Comment Provision

54. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on whether the Commission should restrict the use of proprietary calling cards on 0+ calling on or before **June 2, 1992** and reply comments on or before **June 17, 1992**. Interested parties may file comments on the Commisson's billed party preference proposal on or before **July 7, 1992** and reply comments on or before **August 6, 1992**. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. For further information, contact Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

V. Ordering Clauses

55. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4,

201-205, 218, and 403 of the Communications Act as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 220, and 403, a NOTICE OF PROPOSED RULEMAKING IS HEREBY PROVIDED as explained herein.

56. IT IS FURTHER ORDERED that, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments on the proposal for restricting the use of proprietary calling cards on 0+ calling SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554, on or before June 2, 1992 and reply comments SHALL BE FILED with the Secretary on or before June 17, 1992.

57. IT IS FURTHER ORDERED that, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments on the billed party preference proposal SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554, on or before July 7, 1992 and reply comments SHALL BE FILED with the Secretary on or before August 6, 1992.

58. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by Bell Atlantic IS GRANTED to the extent indicated herein, and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

April 9, 1992

SEPARATE STATEMENT OF
COMMISSIONER ANDREW C. BARRETT

Re: Billed Party Preference for 0+ InterLATA Calls
CC Docket No. 92-77

I strongly support this timely inquiry into the merits of a billed party preference plan. Under billed party preference, the call would be routed to the operator service preselected by the party being billed for the call. This concept would apply for 0+ interLATA pay phone traffic and other types of operator-assisted interLATA traffic.

In concept, I do believe that billed party preference could make operator services more "user friendly" by implementing the billed party's choice of carrier without complicated dialing requirements on "0" calls. Under billed party preference, callers would be able to make all of their operator-assisted calls without dialing access codes. They would also be assured that their call would be automatically handled by the OSP with which the billed party wishes to do business.

However, we clearly need specific analysis to fully address the merits of such a proposal. As a beginning point, I would strongly encourage parties to clearly define the term "billed party preference". This definition should be accompanied by a precise description of the efforts needed to implement the described plan. More importantly, I fully expect parties to provide accompanying cost/benefit information in sufficient detail so that we can fully evaluate each proposal's respective merits. I am also interested in knowing whether billed party preference could cause any technical degradation of the quality of operator services from the caller's standpoint. In addition we need to understand what implications, if any, billed party preference might have on competition in the provision of operator services and the provision of payphones.

In conclusion I am supportive of the proposed rulemaking to consider the merits of billed party preference. Conceptually at least, it would appear that billed party preference is in the public interest. However, we definitely need specific information and comments on the costs and benefits of such a system. I look forward to reviewing the parties comments on this issue.