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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

JOINT COMMENTS OF
CLEARTEL COMMUNICATIONS, INC. AND COM SYSTEMS, INC.

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SUMMARY

It is imperative that the Commission -- rather than a single interexchange carrier ("IXC") -- establish regulatory policy for the competitive interstate interexchange operator services market. A rule is therefore urgently needed to resolve major consumer and competitive problems resulting from the issuance of tens of millions of calling cards with 0+ dialing instructions in a "proprietary" billing format by the dominant IXC in the market -- AT&T.

Joint Commenters urge the Commission to adopt the rule proposed in the Notice which would require IXCs issuing calling cards usable with 0+ access to share with other IXCs billing and validation data for such cards. The rule would provide IXCs with the choice of either making validation and billing available to other IXCs whose networks are reached as a result of 0+ dialing instructions or retaining the card's proprietary nature by assuring that cardholders dial a proprietary access method (i.e., 800, 950, 10XXX) -- a method consistent with how all IXCs (except AT&T) currently issue proprietary calling cards to their customers.

The options posed by the proposed rule will both serve to return the use of 0+ dialing to the public domain by putting a halt to the consumer misunderstandings and competitive harm fostered by AT&T's current strategy. Joint Commenters believe, however, that the alternative of making validation and billing

information available to other IXCs would be preferable to consumers, who would not be required to re-learn how to use their cards. As demonstrated herein, AT&T's previously stated objections to this proposal can be easily addressed and resolved by the Commission. Provision of validation and billing information can be provided quickly and at minimal cost in a manner which maintains the confidentiality of the customer information of all parties.

AT&T's only other objection to providing validation and billing information to other IXCs centers on the fact that it has informed its subscribers that, by using the card, they will be guaranteed service at AT&T's rates. To the extent that AT&T has created rate expectations through issuance of its CIID cards, it has done so in the face of the policies of Congress and the Commission which have all been aimed at providing consumers with notice of the carrier serving a particular location, the fact that the serving carrier's rates are available, and that access to other carriers is available. Nevertheless, if the Commission believes that it must now accommodate AT&T-created cardholders expectations, it could do so by requiring IXCs, as a condition of obtaining the billing and validation information for an IXC card usable with 0+ access, to bill calls charged to the CIID cards at a rate consistent with those expectations. Joint Commenters submit that this rate could be based on the card-issuing IXC's MTS rate and calling card charges, plus an added, easily ascertainable and quantifiable amount reflecting the incremental

costs to other IXCs for obtaining data from AT&T in order to carry and bill the call.

If AT&T determines to reject the validation and billing alternative so that the cards are proprietary, it <u>must</u> be required to take several steps to ensure that cardholders are adequately reeducated to understand that the cards may no longer be used on a 0+ basis. Specifically,

- AT&T must be required to re-issue its cards with new and correct dialing instructions and provide other information to consumers, including that the cards will no longer be usable with 0+ after a certain date and that non-proprietary 0+ access calling cards are available to customers from their respective LECs;

- After a date certain established by the Commission, AT&T must also stop accepting 0+ dialed calls using its proprietary card; and

- AT&T must stop making its proprietary card available for billing by LECs and other IXCs, including Airfone.

As detailed herein, Joint Commenters firmly believe that if the proposed rule is adopted, it will resolve an enormous competitive dilemma created by AT&T's attempt to usurp for itself 0+ dialing, and re-monopolize the interstate operator services market.

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JOINT COMMENTS OF
CLEARTEL COMMUNICATIONS, INC. AND COM SYSTEMS, INC.

Cleartel Communications, Inc. and Com Systems, Inc. ("Joint Commenters"), by their counsel, hereby submit their comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1/] In particular, Joint Commenters respond to the Commission's request for expedited comments on a proposed rule which would preclude the use of calling cards on a 0+ basis by giving interexchange carriers ("IXCs") a choice of either sharing with other IXCs billing and validation data for any calling card used with 0+ access or restricting the use of proprietary cards to access code dialing.[2/]

[1/] FCC 92-169 (released May 8, 1992) ("Notice"). The Notice establishes two pleading cycles for different phases of the proceeding. The instant comments are filed in response to the issues addressed in Section III.C of the Notice regarding proprietary calling cards and 0+ access.

[2/] Cleartel and Com Systems are both IXCs providing, among other things, interstate operator services. Although the two companies have no corporate affiliation, they share similar concerns with respect to the issues in this proceeding, and are filing jointly to conserve their resources and those of the Commission.

A rule is urgently needed to govern IXC calling cards used with 0+ access to resolve major consumer and competitive problems in the interexchange operator services market resulting from deployment of tens of millions of such cards on a "proprietary" basis by the dominant IXC in the market -- AT&T. Joint Commenters strongly support the rule proposed in the Notice. The rule would further the twin goals at the heart of the Commission's public interest mandate -- the advancement of consumer choice and convenience at all locations, and the encouragement of competition from numerous IXCs providing these services to the public.

DISCUSSION

I. STATEMENT OF INTEREST

Joint Commenters provide operator assisted services on a presubscribed basis at aggregator locations such as pay telephones, hotels, and universities. At these locations, callers access service by dialing "0+." Accordingly, Joint Commenters have a vital interest in this proceeding since they are unable to process and bill certain AT&T calling card calls entering their network on a 0+ dialed basis. Joint Commenters are therefore subject to extreme competitive detriments, described by numerous parties in CC Docket 91-115, which AT&T's current 0+ calling card strategy imposes upon competitors at the expense of consumer convenience and choice in the 0+ market.[3/]

[3/] These competitive impacts are well-documented and quantified in the record herein. See, e.g., Joint Comments on Emergency Motion for an Interim Order of Zero Plus Dialing, Inc., OAN

(continued...)

II. IT IS IMPERATIVE THAT THE COMMISSION, NOT A SINGLE IXC, ESTABLISH REGULATORY POLICY FOR IXC CALLING CARDS USED WITH 0+ DIALING

The Notice requests expedited comments on whether the Commission "should require IXCs to share with other IXCs billing and validation data for any calling card usable with 0+ access."[4] Although this proposal would apply to any such IXC calling card, only one IXC has issued cards usable with 0+ access to date. Specifically, the proposed rules are directly necessitated by AT&T's issuance of Card Issuer Identifier ("CIID") format calling cards. AT&T instructs customers to dial 0+ when using these cards and refuses to permit validation and billing by IXCs whose networks are accessed by that dialing pattern.

AT&T has claimed that its CIID card program is designed to ensure cardholders that their calls will be carried by AT&T and billed at AT&T's rates.[5] It is clear, however, that AT&T's CIID calling card strategy is also calculated to give AT&T a massive competitive advantage in obtaining presubscription

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[3] (...continued)
Services, Inc., and Resurgens Communications Group, Inc., CC Docket No. 91-115 (filed Feb. 10, 1992) (incorporated in the record herein, Notice at para. 40, n.41); Letter from George Vasilakos, President and Chief Operating Officer, Com Systems, to Hon. Alfred Sikes (filed March 3, 1992) in CC Docket No. 91-115.

[4] Notice at para. 36.

[5] See AT&T Comments on CompTel Motion (filed Feb. 10, 1992) at 10, 19-20; AT&T Reply Comments on CompTel Motion (filed Mar. 11, 1992) at 2-3.

arrangements with call aggregators at the expense of consumer choice and convenience.

Specifically, at aggregator locations not served by AT&T, 0+ dialing by a CIID cardholder connects the caller to network of the presubscribed carrier, not AT&T. When this network connection is made, the presubscribed carrier immediately incurs access charges and other costs for which it can derive no compensation because of AT&T's refusal to provide the billing and validation data for the cards. After being turned away by the presubscribed carrier, the cardholder -- already confused and frustrated -- is then instructed by AT&T to use AT&T's 10XXX access code.[6]

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[6] Pursuant to the Commission's implementation schedule for unblocking 10XXX access, the 10XXX access method may be unavailable at that location. See 47 C.F.R. § 64.704(c), and Order, CC Docket No. 91-35, FCC 92-101 (released Mar. 13, 1992) (granting stay of 10XXX unblocking requirement in Section 64.704(c) for all aggregators subject thereto). In this case, the cardholder must then make a third attempt to reach AT&T via 800 access. Successful connection rests, however, upon the CIID cardholder realizing that AT&T's customer service number provided on the back of the CIID card has been jury-rigged by AT&T into an "access number."

AT&T's use of a customer service number is not true network access, however, and therefore appears to be inconsistent with the intent of Section 64.704(d) of the Commission's rules requiring that "[a]ll providers of operator services shall establish an '800' or '950' access code number." 47 C.F.R. § 64.704(d). Indeed, the legislative history of the Telephone Operator Consumer Services Improvement Act of 1990 specifically states that "[w]hat is most important is that consumers of operator services be permitted to reach their carriers of choice quickly whether through an '800' or '950' number or through the '10XXX' access code." See Sen. Rep. No. 101-439 at 22 (emphasis added). AT&T's customer service "access" is neither "quick," nor comparable to the 800 and 950 access in place by other IXCs which provides immediate network access instead of customer service

(continued...)

As numerous parties have told the Commission already, AT&T's customers are likely to blame the aggregator and the presubscribed carrier for their inability to make calls conveniently and efficiently under such circumstances. Rising complaints at aggregator locations, and AT&T marketing materials touting its advantage, inevitably lead location owners to favor AT&T presubscription services to avoid these problems, to the detriment of continued operator services competition.

The added costs to AT&T's competitors, and the consumer confusion and frustration engendered by AT&T's dialing instructions, will continue to escalate unless the Commission steps in to establish rules resolving the problems raised by IXC proprietary calling cards usable with 0+ access.[7] If the Commission does not act to correct the existing problem and prevent future attempts to usurp the 0+ dialing method, the Commission will have effectively acceded AT&T's use of its market power to halt the progress of competition in the operator services market.

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[6] (...continued)
access. AT&T's wholly inferior solution calls into serious question AT&T's purported concern about consumer convenience. Significantly, AT&T not only instructs its customers to dial 0+ in the first instance at all locations, but to the best of Joint Comments' knowledge, AT&T has never affirmatively informed its customers that 800 access is now an available alternative.

[7] See Pacific Telesis Group Ex Parte Notice, CC Docket No. 91-115 (filed Feb. 28, 1992), Attachment at 1 ("The CIID Card allows [IXC] card issuers to participate in the 0+ calling card market. Today, there are no rules for these [IXC] 'Joint Use' cards. It is this element that has triggered potentially major market problems.")

III. THE COMMISSION SHOULD MANDATE SHARING OF BILLING AND VALIDATION DATA FOR IXC CALLING CARDS USABLE WITH 0+ ACCESS

To halt AT&T's manipulation of the 0+ market at the expense of its own CIID card customers and its IXC competitors, Joint Commenters strongly support adoption of a rule requiring any IXC issuing a calling card usable with 0+ access to share billing and validation data for such cards with other IXCs. The established record in this proceeding already overwhelmingly supports the adoption of this rule.[8/]

Under the Commission's proposal, AT&T could choose whether to share billing and validation information for its CIID cards with other IXCs, in which case the cards could still be used on a 0+ basis by its customers at all aggregator locations, or to restrict the use of the CIID cards to access code dialing.[9/] The rule thereby recognizes the compelling public interest reasons why 0+ dialing should remain in the "public domain" and equally available to all IXCs. Contrary to AT&T's claims, however, the rule would not deprive AT&T of the ability to choose to issue a proprietary calling card.[10/] It would simply require AT&T to use a truly proprietary access methodology (i.e., 10XXX, 800 or 950) for its proprietary card, just as all other IXCs issuing proprietary cards do.

[8/] As noted above, the Commission has expressly incorporated into the record the CompTel Emergency Motion For Interim Relief in CC Docket 91-115 and responsive pleadings filed by numerous parties. Notice at n.41.

[9/] Notice at para. 42.

[10/] See id. at para. 38.

Of course, the choice provided to AT&T is not one that it relishes, given the fact that both options contradict the literature and advertising accompanying the distribution of AT&T's replacement calling cards. Indeed, it is very clear from the record that AT&T customers have been led to believe that use of the new card is just as universal and convenient as LEC calling cards used on a 0+ basis -- an expectation that is simply untrue.[11] Nevertheless, the Commission must immediately halt these deliberately created misunderstandings and return the use of 0+ dialing to the public domain.

A. The Validation and Billing Alternative Would Entail Minimal Consumer Confusion and Expense To AT&T

Joint Commenters submit that the options posed by the Commission will both accomplish the desired remedy. It seems clear, however, that the alternative of making validation and billing for the cards available to other IXCs would impose far less potential for subscriber confusion and inconvenience than requiring that access codes be dialed on all CIID card calls, since the former would not require subscribers to re-learn how to use the card. Joint Commenters also submit that the validation

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[11] In this regard, AT&T's representations to the Commission that "customers are well trained by all carriers on how to use their proprietary cards," and that "AT&T CIID Card customers reach competitive carriers because of the blocking of AT&T's access code," are remarkable for their inaccuracy. See AT&T Ex Parte Presentation in CC Docket No. 91-115 (filed Dec. 2, 1991) (emphasis added). It is true that AT&T's competitors train their subscribers well as to how to access their card using an access code. AT&T's advertising, on the other hand, teaches cardholders to use a 0+ code which automatically reaches another carrier in locations not presubscribed to AT&T.

and billing option could be implemented with virtually no cost to AT&T, and minimal costs to its competitors.

AT&T's earlier comments and presentations to the Commission have raised essentially three objections to this validation and billing alternative: (1) that it would threaten the confidentiality of AT&T's customer information; (2) that it is inconsistent with equal access principles; and (3) that AT&T's subscribers have an expectation (planted firmly by AT&T's marketing) that they will be charged AT&T rates for calls billed to the AT&T card.[12/] All three issues are a smoke screen raised by AT&T to obscure the fact that validation and billing can be provided to other carriers with minimal effort. Moreover, if the Commission determines that it must accommodate the rate expectations created by AT&T through the CIID program, there is a mechanism available to the Commission for doing so.

1. Provision of Validation and Billing Information Can Maintain the Confidentiality of Customer Information

To date, Joint Commenters have not seen any comments raising significant issues as to the availability of technical means to accomplish both validation and the provision of billing translation information which would enable other IXCs to validate and bill calls billed to AT&T cards. A specific proposal for a means to implement such procedures, in a manner which ensures the

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[12/] See AT&T Comments and AT&T Reply Comments in response to the CompTel Emergency Motion; see also AT&T Ex Parte Notice in CC Docket No. 91-115 (filed December 2, 1991).

confidentiality of AT&T customer data and IXC proprietary information is being submitted in comments filed concurrently in this proceeding by Zero Plus Dialing, Inc. ("ZPDI"). Rather than repeat that proposal here, Joint Commenters refer the Commission to the ZPDI comments.

2. The Proposed Rule Is Consistent With Equal Access Principles

Adoption of the proposed rule is also consistent with equal access principles, established in directives of the U.S. District Court overseeing the Modification of Final Judgment (the "Decree Court") and Commission decisions. Contrary to AT&T's arguments, AT&T's massive distribution of CIID cards instructing callers always to dial 0+ first interferes with the smooth operation of the Commission's and the Decree Court's current equal access requirements in the aggregator market, which designate the location owner as the entity responsible for selecting the carrier to which 0+ traffic will be directed. The Commission's policies and rules regarding operator services acknowledge that selection, and are aimed at providing the consumer with the knowledge and the choice as to whether to use the preselected 0+ carrier or to affirmatively dial around that carrier with an access code. AT&T's efforts, however, are contrary to that pattern. Through its CIID card program, AT&T is clearly attempting to usurp the right of aggregators to make an affirmative carrier selection for 0+ access for their telephones. Moreover, AT&T patently disregards that it no longer has an

absolute monopoly on 0+ traffic, and instructs callers to ignore the notices mandated by the Commission by dialing 0+ in the first instance to reach AT&T.

AT&T's references to the Decree Court's "approval" of the CIID plan is equally disingenuous.[13] The serious policy concerns raised in this proceeding are within the Commission's sole jurisdiction. Indeed, the Court has recently confirmed that these "very genuine" policy issues are properly before the Commission "pursuant to the Communications Act" and deal with the regulation of IXCs, not the Regional Bell Operating Companies.[14] AT&T's concerns about negating the CIID card plan as approved by the Court must therefore be seen as yet another AT&T red herring.

3. If the Commission Is Concerned That the Rate Expectations Created By AT&T Cannot Be Reversed, It May Impose a Rate Limitation Consistent With Those Expectations

AT&T has argued that its CIID cardholders expect that calls charged to the CIID cards will be billed at AT&T rates, and that it is issuing CIID cards to protect subscribers from being charged higher rates by other IXCs.[15] If such expectations exist, it is AT&T that created them. All of the policies of the Congress and the Commission have been aimed at providing

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[13] See AT&T Reply Comments at 7.

[14] See United States v. Western Elec. Co., Civil Action No. 82-0192, Memorandum and Order, slip op. at 4 (D.D.C. Feb. 28, 1992).

[15] See AT&T Comments on CompTel Motion at 10.

consumers with notice of the carrier serving a particular location, the fact that the serving carrier's rates are available, and that access to another preferred carrier can be obtained through use of an access code. In other words, they have been aimed at disabusing consumers of any such misapprehension. Indeed, apparently recognizing that consumer notice and choice was being mandated for that purpose, Congress amended Section 226 of the Communications Act to remove a provision that would have required carriers accepting another IXC's calling card to bill the call at that other carrier's rate unless it was providing a service unavailable from the other carrier or the consumer expressly consented to a higher rate.[16]

To the extent, however, that AT&T has now created a misleading impression in the minds of its subscribers concerning the CIID card which the FCC believes cannot be overcome by corrective efforts by AT&T and the notices mandated by the Commission's existing rules, the FCC could accommodate these expectations by requiring IXCs, as a condition of obtaining the billing and validation information for an IXC card usable with 0+ access, to bill calls charged to the card at a rate consistent with the cardholder's expectations.[17] To the extent it

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[16] Pub. L. 101-555, amending 47 U.S.C. § 226(4)(b)(1990) to strike former § 226(4)(b)(1)(J).

[17] Significantly, when it initially enacted a similar provision, Congress did not propose that other carriers be wholly prevented from carrying calls billed to such cards, as AT&T (continued...)

determines to establish such a rate limit, the rate should be based on the card-issuing IXC's MTS rate and calling card charges, plus an easily ascertainable and quantifiable amount to reflect the incremental costs incurred by other IXCs for obtaining the billing and validation information from the card-issuing IXC necessary for carrying and billing the call.[18] In the case of AT&T's CIID cards, the Commission should establish a date at which the applicable AT&T rate would be determined to ensure that AT&T could not anticompetitively establish rate levels to be used as a cap by other IXCs for such CIID card calls.[19] The addition of an objectively determined incremental amount, based on the additional charges incurred by IXCs to validate and bill CIID card calls, is reasonable and necessary to allow other carriers to be compensated for the cost of receiving the billing and validation information from AT&T -- a charge which AT&T does not incur and is therefore not within the AT&T rate.

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[17] (...continued)
argues here with respect to its CIID cards. See n.16 and related text, supra. See also Comments of MCI Telecommunications Corporation in CC Docket No. 91-35 (filed April 12, 1991) at 3-4.

[18] Adoption of this condition would not constitute a rate "prescription" by the Commission, since carriers would have the alternative of using other billing methods to process the call at another rate. Carriers would simply agree to this rate limitation as a condition of receiving the billing and validation from the IXC issuing the card.

[19] For example, AT&T's rate according to which a rate limitation would be established could be AT&T's MTS rate in effect as of January 1, 1992.

Such a rate limitation to accommodate consumer expectations addresses fully AT&T's purported concern about the rates charged to its customers. By adoption of such a limitation, other IXCs would be placed in the position of having to make accommodations for expectations created by AT&T in the face of all the Commission's other efforts. This approach would address consumer concerns, mitigate the damage currently being caused by the 0+ dialing of unbillable calls into their networks, and avoid the wholesale loss of aggregator presubscription arrangements by AT&T's competitors.

B. If AT&T Chooses To Restrict Use Of Its CIID Cards To Access Code Calling, Then It Must Be Required to Issue New Cards With Correct Dialing Instructions

Upon adoption of the proposed rule, Joint Commenters firmly submit that if AT&T chooses not to share billing and validation data for its CIID cards, it must re-issue its calling cards with clear and accurate dialing instructions to its cardholders. To further ensure that AT&T's cardholders learn to use access codes and, in fact, use them in the marketplace, AT&T must also be required to reject 0+ calls made by customers using proprietary calling cards. Unless these requirements are fulfilled, there is no guarantee that the rule will be implemented effectively, if at all.

Mere notice of new dialing requirements sent by AT&T to customers would be completely insufficient. The essence of correct, efficient dialing instructions for calling cards lies in ensuring that they appear on the calling card itself -- the

instrument the consumer utilizes when making calls at transient locations. Consumers are not likely to remember the new dialing instructions if mere notices are mailed to cardholders.

Similarly, if the Commission's rule and AT&T's choice is to have any impact or meaning, AT&T must also be required affirmatively to reject 0+ calls made using proprietary calling cards. Absent such a requirement, the very same issues with respect to consumer confusion and uncompensated operating costs of AT&T's competitors will persist in the market, and this segment of the instant rulemaking will have been a waste of effort.

CONCLUSION

It is imperative that the proposed rules be adopted immediately to resolve major consumer and competitive harm resulting from AT&T's CIID card strategy and marketing. The options posed to AT&T by the rule will both serve to return the use of 0+ dialing to the public domain. For the reasons set

forth herein, Joint Commenters urge the Commission to adopt the proposed rule.

Respectfully submitted,

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I hereby certify that on this 2nd day of June 1992, copies of Comments of Cleartel Communications, Inc. and Com Systems, Inc. were served by hand delivery upon the following:

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