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JUN 17 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

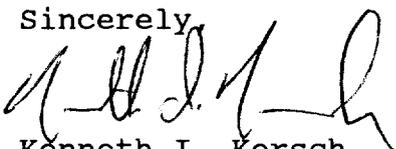
Re: CC Docket No. 92-77
Billed Party Preference
for 0+ InterLATA Calls

Dear Ms. Searcy:

Enclosed please find an original and four copies of the Reply Comments of NYCOM Information Services ("NYCOM") which are being filed in the above-referenced matter.

Also enclosed is a duplicate copy which I would appreciate your date stamping and returning to me in the envelope provided.

Thank you for your consideration.

Sincerely,

Kenneth I. Kersch

Enclosures

cc: FCC Commissioners
Legal Advisors to FCC Commissioners

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JUN 17 1992

Federal Communications Commission
Office of the Secretary

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

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

REPLY COMMENTS

NYCOM Information Services, Inc. ("NYCOM")¹, by its attorney, hereby files these Reply Comments in response to comments filed in the above-captioned docket concerning access to validation and billing information for AT&T's CIID Cards.²

The facts are incontrovertible that AT&T knowingly and intentionally engaged in deceptive advertising and marketing practices which have seriously damaged, and continue to damage, the competitive operator services marketplace. AT&T is successfully moving to remonopolize the operator services market. These practices must be halted and their effects immediately reversed if the Commission is to reach its long term goal of focusing competition in the operator services marketplace on the end user and not the traffic aggregator.

To accomplish this, the Commission should require AT&T to make CIID card validation available to all IXCs who wish to accept it,

¹ NYCOM is a telecommunications holding company whose activities are concentrated in the public communications sector. NYCOM's services are provided through wholly-owned subsidiaries which offer telecommunications network services, information and interactive audiotex services and provide public pay telephones. NYCOM was one of the COMPTEL members who joined in filing of the Emergency Motion which led to the instant expedited rulemaking, and also participated in the Docket 91-115 proceeding below.

² Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, FCC 92-169, released May 8, 1992 (hereinafter, the Notice").

and provide the billing telephone number translation necessary to allow the billing of such calls through the LECs or a third party billing agent. In tandem with this requirement, the Commission should prohibit IXCs, including AT&T, from paying commissions on proprietary card traffic. This will lessen AT&T's ability to leverage its market power and monopoly-created card base to its competitive advantage, and maintain some level of competition in the operator services marketplace as the Commission considers the next step.

Consumers will benefit from this arrangement as well; the familiar 0+ dialing pattern will continue to be useful on a universal basis, consistent with the expectations (falsely) created by AT&T. For those customers who wish to assure that their calls are carried over the network of a specific carrier, branding and signage, as well as the ability to use a 10XXX, 950 or 800 access number from any telephone, will ensure they are able to do so. To the extent that the Commission believes that corrective efforts cannot overcome the misimpression created by AT&T concerning the rates at which CIID cards will be billed, NYCOM points to the suggestion of Cleartel and Com Systems³ that these expectations could be accommodated 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 those expectations. If the Commission determines

³ Joint Comments of Cleartel Communications and Com Systems, Inc., at 11-13 (hereinafter, "Joint Commenters").

it must establish such a rate limit, it should be based on the card issuing IXC's daytime MTS rates at a specified point in time, plus an amount to represent additional billing and validation costs. However, rather than have the amount of this increment vary by carrier as suggested by the Joint Commenters, NYCOM suggests that the Commission establish a set amount, for example \$.50. This would ensure uniformity among carrier's rates and provide certainty for consumers. At the same time, this increment would properly recognize that competitive OSPs currently pay more for essential bottleneck services than AT&T, and would allow them to recover at least a portion of those higher, uncontrollable, costs of doing business.⁴

The Comments filed in response to the Notice confirm that, rather than competing on the merits of its service and its service offerings, AT&T is attempting to leverage its historic monopoly position -- manifested by its unique ability to issue a calling card to every single U.S. telephone number -- to achieve its own competitive ends. The record, both here and below in response to the COMPTEL Emergency Petition, leaves no doubt that AT&T in fact engaged in a deceptive, "misinformation" campaign in connection with the marketing of its CIID cards and that this campaign substantially damaged the rest of the participants in the

⁴ While this may mean that NYCOM or other carriers transmit the calls at or below cost, NYCOM believes that this is preferable to the current situation where use of the card creates costs which can never be recovered.

marketplace (both LEC and IXC).⁵ As such, AT&T has engaged in unreasonable practices in violation of the Act.

As many commentators warn, a dominant carrier with a proprietary 0+ card will remonopolize the operator assisted long distance business.⁶ By issuing new cards to its predivestiture customer base,⁷ AT&T is able to simultaneously drive up its competitors' costs, reduce their revenues and inconvenience and frustrate consumers. Customers are led to believe that this new card will ensure that they reach the AT&T network. However, no matter what AT&T implies, these cards (like all CIID cards) are still billing cards and not routing cards. They exist only to allow the caller to charge the call to a phone number other than the one from which

⁵ See, e.g., Comments of Bell Atlantic at 2; Comments of Southwestern Bell at 4; Comments of USTA at 2; Comments of the Ameritech Operating Companies at 2. The record below is replete with specific instances of active misinformation where AT&T misled residential and business customers to AT&T's benefit and the BOC's detriment. See, e.g., Comments filed in Docket 91-115 by Pacific Bell and Nevada Bell at 2; Bell Atlantic at 1-3; SouthWestern Bell Telephone Company at 6-8; MCI at 2; Zero Plus Dialing, Inc., OAN Services, Inc., and Resurgens Communications Group, Inc. at 8-9; American Public Communications Council at 7-13.

⁶ Bell South at 3; Sprint Communications Co. at 2-3; Pacific Bell and Nevada Bell at 4; MCI at 3.

⁷ AT&T continues to mischaracterize the extent of its investment in creating both its calling cards and customer base. AT&T claims full domain over a customer base which it has described as substantial, private and newly created. AT&T Comments at 4; See also, AT&T Comments in response to the COMPTEL Emergency Motion, at 2-3, 5, 9, and 14. In fact, the bulk of AT&T's CIID customer base was created with ratepayers' monopoly-garnered money during the predivestiture era and simply duplicated by AT&T at the time of divestiture. Thus, AT&T's card base can hardly be considered the result of its own marketing efforts or business acumen, and is not properly equated to the truly proprietary cardholder databases developed by MCI, Sprint and other IXCs issuing their own cards without the benefit of 100 years of monopoly.

the call originates. Because they are accessed on a 0+ basis, card holders dialing 0+ will reach the presubscribed carrier and not necessarily AT&T. The result is customer confusion and irritation, re-agitating a marketplace only just now becoming aware of competition and the new obligations it imposes on consumers to affirmatively exercise their choice of service provider. Moreover, it threatens to undo the consumer information requirements of TOCSIA and the Commission's operator service rules as well as the implementation of equal access for LEC-owned public payphones.

Beyond customer confusion, AT&T's issuance of proprietary 0+ cards imposes unnecessary and substantial additional costs on carriers who receive these "misdirected" 0+ calls, in the form of switch holding time, operator time, access costs and validation costs.⁸ These costs cannot be recovered from the cost causer and will only lead to higher rates for those calls which are completed (*i.e.*, are revenue producing), further exacerbating the existing competitive inequities.

Finally, by allowing LECs to validate and bill its CIID cards for intraLATA calls and one IXC for interLATA calls (AirFone)⁹ but

⁸ It is ironic that while many of the commenting local exchange carriers oppose the 0+ in the public domain concept on the basis that will result in the loss of intraLATA toll revenues for them and will increase their operating costs they fail to acknowledge the legitimacy of the identical concerns expressed by the IXCs. See, e.g., NYNEX at 2-3; GTE at 6; Bell Atlantic at 3. There is no basis for the distinction suggested by these parties. No carrier, whether a LEC or IXC, should be expected to absorb additional operating when those costs are imposed by and operate only to the benefit of a competitor.

⁹ See, e.g., Comments of ATC, Americall and First Phone at 3.

refusing to offer similar arrangements to other carriers, AT&T is discriminating in favor of some competitors to the detriment of the others. This constitutes discrimination and an undue preference under the Act and cannot be allowed to stand.

The Commission's commitment to ensuring a system of consumer choice can only be realized if it acts now to confirm that the 0+ key belongs in the public domain. If allowed to go unchecked, AT&T's scheme to capture and use the 0+ key to tie-up its competitors's facilities will result in the remonopolization of the "0+" marketplace before meaningful competition has been able to develop.

The initial comments herein show that providing AT&T with a choice of supplying validation and billing information or foregoing 0+ access is technically infeasible at this time because existing technical arrangements do not permit IXCs to distinguish between traffic entering their networks on a 0+ versus 10XXX 0+ basis.¹⁰ Since the Commission has already decided that 10XXX access is the preferred access method and required its unblocking, the alternative of mandating the use of 950 or 800 access exclusively is also unavailable. Therefore, the Commission cannot and should not give AT&T a choice; it should simply order AT&T to make billing and validation available to all IXCs. This is the only way to prevent destruction of competition for operator services while the Commission completes the portion of the instant docket looking

¹⁰ GTE at 2-3; AT&T at 8-9; SouthWestern Bell at 6-7; NYNEX at 2-3; Ameritech Operating Companies at 3.

towards implementation of billed party preference.

The Commission has the jurisdiction necessary to require AT&T to provide validation and billing for its CIID cards. As Bell South properly notes, "AT&T's provision of billing and validation services through its CIID Card is subject to the full panoply of Title II regulation and accordingly should be tarified as a general offering pursuant to Sections 201 et. seq. of the Communications Act".¹¹ The Commission's decision in Docket 91-115¹² establishes validation services as common carrier communications services under Title II of the Act; it also clarifies that billing and collection is incidental to the transmission of wire communications and thus is properly considered a communications service under Section 3(a) of the Act. As such, the Commission can direct AT&T to provide these services, under tariff in the case of validation service and on a detariffed basis in the case of billing and collection service.¹³

The comments of COMPTTEL, ZPDI and others¹⁴ demonstrate that both validation and billing for CIID cards can be provided in a

¹¹ Bell South at 1-2 (citations omitted). See also, COMPTTEL at 6-7.

¹² Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No, 91-115, FCC 92-168, released May 8, 1992 at ¶ 19 and note 50.

¹³ NYCOM continues to believe that, at least with respect to 0+ calls, billing and collection services are essential, bottleneck facilities which should be regulated. However, even under the current regulatory regime, the Commission has the authority to require that they be provided in the first instance.

¹⁴ ZPDI at 10-12; Comptel at 13-14; ATC at 7-8.

timely manner, using facilities and relationships already in place throughout the industry and at minimal additional cost. Accordingly, there are no technical impediments to the validation and billing of CIID card calls or the prompt (30-60 day) implementation of a Commission order that they be provided.

AT&T's seizure of the 0+ prefix should be reversed through corrective action as many parties have suggested.¹⁵ At a minimum, AT&T should be required to cease providing billing and validation information to LECs and AirFone unless it also provides the same information, on identical terms and conditions, to other IXCs.¹⁶ However, the far better solution from the consumers point of view is simply to require the provision of such data so that 0+ can truly be in the public domain -- consistent with the Commission's overall objectives in this docket.

Although AT&T should not be allowed to profit from the false expectations it created, NYCOM recognizes that, no matter how egregious AT&T's practices may be, the Commission must ultimately be concerned with the expectations AT&T has created in the minds of

¹⁵ See, e.g., Joint Commenters at 13; Americall at 8; ZPDI at 9; USLD at 8-9.

¹⁶ This discrimination is even more disturbing when considered in light of the concerns expressed by several LECs that 0+ in the public domain will result in the loss of substantial intraLATA revenues. See, GTE at 6; Bell Atlantic at 3; NYNEX at 2. These concerns highlight the former Bell System partners' continued reliance on the pre-divestiture revenue sharing arrangements, as well as the extension of this "sharing" even in the face of the introduction of LIDB and the expiration of the shared BVA and SNFAs. This economic relationship is present with no other IXC and demonstrates the ongoing and significant connection between the LECs and AT&T's CIID card -- a relationship sufficient to trigger common carrier obligations on the part of both AT&T and the LECs.

consumers and the ability of remedial measures such as reissuance and retraction of dialing instructions to effectively reverse these expectations. Accordingly, if the Commission determines that no corrective action can be effective, we would acquiesce in the notion that billing and validation of the CIID card be conditioned on the IXC's willingness to bill at rates consistent with consumer expectations. However, the Commission should not adopt rate caps lightly and must couple any such decision with the prohibition on commission payments suggested by Sprint.¹⁷

While not altering AT&T's "ease of access advantage", a prohibition on commission payments would prevent AT&T from leveraging this convenience and its large base of monopoly customers to increase its market share and remonopolize the market.¹⁸ It would also allow all IXCs to compete on equal terms for aggregator traffic based on the quality of their service and commissions on non-proprietary cards, thus bringing the Commission one step closer to the end user competition it desires and preserving the status quo until the issues surrounding billed party preference are resolved.

If it is determined that a rate limitation is necessary, the Commission should set that limit AT&T daytime rates¹⁹ plus an

¹⁷ Sprint at 6.

¹⁸ Id. at 15.

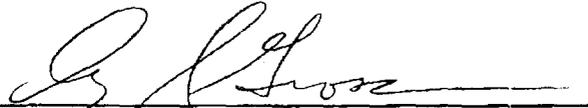
¹⁹ While AT&T's peak traffic load occurs during the day, most OSPs experience peak traffic during the evening hours. Due to these differing peak traffic hours, the logic behind time of day discounts (to encourage use of the network during off-peak periods)
(continued...)

increment which recognizes the higher costs competitors pay for essential services such as billing and collection. While these costs vary from carrier to carrier and depend on the LEC, NYCOM believes that an increment of \$.50 will allow OSPs to recover actual operating costs and earn a minimal return. The de minimis amount of this increment should not have a significantly negative impact on consumer expectations.

For the reasons set forth above, the Commission should order AT&T to provide validation and billing for its monopoly created CIID card database. In addition, carriers should be prohibited from paying commissions on proprietary cards. This will serve to truly return the use of 0+ dialing to the public domain and reduce the discriminatory effect of AT&T's conduct. If necessary, rate limitations as described above could be adopted for carriers who choose to accept CIID cards on their network.

Respectfully submitted,

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By: 

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Dated: June 17, 1992

¹⁹(...continued)
is inapplicable. OSPs should be allowed to charge peak rates during their peak traffic hours. This is consistent with the rules adopted by many states.