

ROLAND, FOGEL, KOBLENZ & CARR
ATTORNEYS AT LAW
1 COLUMBIA PLACE
ALBANY, NEW YORK 12207

RECEIVED

JUL - 7 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

KEITH J. ROLAND
USHER FOGEL
MARK L. KOBLENZ
MURRAY S. CARR*
EMILIO A. F. PETROCCIONE
MATTHEW A. ROSENBAUM

(518) 434-8112

(518) 462-4242

TELECOPIER (518) 434-3232

EDMUND A. KOBLENZ
1908-1972
A. ABBA KOBLENZ
1922-1979

GEORGE A. ROLAND*
COUNSEL

*ALSO ADMITTED TO FLORIDA BAR

ORIGINAL
FILE

July 6, 1992

RECEIVED

ORIG
FILE

JUL 7 1992

FCC MAIL BRANCH

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

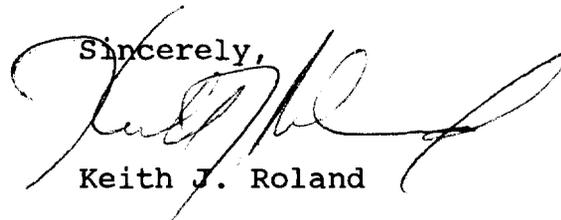
Re: CC Docket 92-77 - Billed
Party Preference

Dear Secretary Searcy:

Enclosed please find an original and nine copies of the Comments of the Independent Payphone Association of New York, Inc. (IPANY) in this proceeding. These Comments, which address the issue of Billed Party Preference, are submitted in response to the "Notice of Proposed Rulemaking" released on May 8, 1992.

A copy is being forwarded to the Commission's duplication contractor.

Sincerely,



Keith J. Roland

KJR:tla
Enclosures

No. of Copies rec'd
List A B C D E

0 + 9

RECEIVED

JUL - 7 1992

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Billed Party Preference)
for 0+ InterLATA Calls)

CC Docket No. 92-77

RECEIVED
JUL 7 1992

FCC MAIL BRANCH

INITIAL COMMENTS OF THE
INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.

Keith J. Roland
Roland, Fogel, Koblenz & Carr
One Columbia Place
Albany, New York 12207
(518) 434-8112

Dated: Albany, New York
July 6, 1992

SUMMARY OF COMMENTS

The Independent Payphone Association of New York, Inc. (IPANY) represents owners and operators of non-LEC pay telephones in New York State. Its comments herein show that the establishment of Billed Party Preference will subject consumers, COCOTs and telephone companies to massive costs without comparable benefits; will significantly undermine the viability of the competitive payphone business; and be contrary to the public interest.

RECEIVED
JUL 7 1992

COCOTs cannot remain economically viable solely on revenues from coin calls. Instead, COCOTs must receive commissions from Interexchange Carriers and Operator Service Providers to remain in business. However, under a system of Billed Party Preference, IXCs and OSPs will not offer commissions to COCOTs for 0+ or 0- traffic, and the absence of such commissions will lead to the elimination of large portions of the COCOT industry.

FCC MAIL BRANCH

The elimination of COCOTs in the marketplace will result in a loss of public pay telephone service in inner-city neighborhoods and other areas where service is needed the most.

The Commission's goal in proposing Billed Party Preference is to allow callers to reach and utilize the services of the Operator Service Provider of their choice. However, that goal can be achieved through use of the existing carrier access code dialing program, and no need exists to expend massive

amounts of money to achieve a goal already attainable under existing regulatory rules.

The Commission can assure the success of the carrier access program by increasing compensation due to COCOTs from OSPs to proper levels, and by requiring LECs and AT&T to implement valid and effective fraud prevention measures. Upon achieving those goals, no reason exists why the carrier access code system will not be adequate to assure that consumers are able to use their carrier of choice.

Billed Party Preference will render "smart" pay phones, which have been installed by COCOT operators at great expense, to be unusable, thus destroying significant investment made by entrepreneurs in good faith reliance upon the Commission's regulatory programs.

Finally, abandonment of the carrier access system, which has already caused COCOTs and other aggregators to expend significant sums of money in retrofitting equipment, will set an extremely dangerous precedent that will discourage innovation and investment in the future.

Accordingly, a system of Billed Party Preference should not be adopted.

RECEIVED

JUL - 7 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**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

RECEIVED

JUL 7 1992

FCC MAIL BRANCH

**INITIAL COMMENTS OF THE
INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.**

I. PRELIMINARY STATEMENT

The Independent Payphone Association of New York, Inc. (IPANY) represents owners and operators of non-LEC pay telephones in New York State. These facilities, commonly known as COCOTs, compete with the pay telephones owned and operated by Local Exchange Companies.

In its "Notice of Proposed Rulemaking" in CC Docket 92-77, released on May 8, 1992, 7 FCC Rcd. 3027, the Commission has called for comments on a number of issues involved in the provision of Billed Party Preference (BPP). Included therein, at paragraph 28, was a request for comments "on the impact Billed Party Preference might have on competition in the provision of payphones."

In response, IPANY will show below that the establishment of Billed Party Preference will subject consumers, COCOTs, and telephone companies to massive costs without comparable benefits; will significantly undermine the viability of the competitive payphone business; and will be contrary to the public interest. Accordingly, a Billed Party Preference system should not be adopted or implemented by this Commission.

II. ARGUMENT

IPANY members, and other operators of COCOTs, have two principal sources of revenue: coin receipts, associated primarily with local calls, and commissions from interexchange carriers and operator service providers which carry presubscribed "0+" or "0-" traffic.¹

Cash receipts from local calling, by themselves, do not generate sufficient revenues to allow COCOTs to remain in business. This is particularly true in New York, where in 1991 COCOTs experienced increases of approximately 12% in fixed line costs and 31% in local calling usage costs imposed by Local Exchange Carriers. Despite those major cost increases, on top of

¹ In some situations, interexchange carriers may be prepared to pay commissions on directly dialed "1+" calls completed from a COCOT. However, because of the great likelihood of fraud on "1+" calls, most COCOTs restrict toll calls to those made on an operator assisted basis, i.e., calls placed through use of credit cards, collect, or third party billing. Absent the caller's use of a particular carrier's "10XXX", "950" or 1-800 access code, calls are forwarded to, and completed by, the long distance carrier chosen by the COCOT owner.

increases in the COCOT's own costs for labor, supplies, administration and taxes, the Public Service Commission in New York has refused to amend its rule which restricts COCOTs (and all other public telephones) from charging in excess of \$.25 for a five minute local call.

Since the provision of local calling generates minimal margins, the only revenue stream available to COCOTs which permits them to remain economically viable consists of commissions from presubscribed IXCs and OSPs.

However, under a Billed Party Preference system, OSPs would not be seeking designations as presubscribed carriers for traffic from COCOTs, and would not have any reason to pay commissions to COCOT owners.

Absent a stream of revenues from such commissions, COCOTs simply cannot remain in business, and the result will be the loss to the general public of numerous public telephone installations which would not otherwise be available. And, of course, COCOT owners will have the significant investment they made, in reliance upon the Commission's presubscription program, wiped out.²

This loss of payphone installations will have a significant impact on the general public. One of the most

² As a general rule, the cost of installing a new private pay telephone will be in the range of \$2,500 - \$3,500. COCOT owners have also incurred capital costs for start-up losses and for conversions necessary to comply with the Commission's various regulatory programs, including the unblocking of 10XXX access.

readily noticeable benefits of the COCOT industry has been the installation of public telephones in areas which the local exchange carriers refuse to serve. Over the past several years, LECs in many areas of the country - and particularly in New York - have been involved in a specific program to reduce the number of pay telephones in areas of marginal economic benefit - which often means inner city areas. Whole neighborhoods have been abandoned by the LECs, causing great hardship to the businesses and residents who are most in need of public telephone service.

Because they can provide service more efficiently than LECs, COCOTs have been able to place public telephones in the areas being abandoned by the LECs.³ In many cases these phones serve as veritable lifelines, providing the only available method of summoning emergency assistance. COCOTs also provide better service in these areas than the LEC phones they replace, since, unlike the LEC's, COCOT owners must provide speedy repair and maintenance because they cannot afford the loss of revenues associated with an out-of-service phone.

The Commission appears to recognize the importance of revenues from OSPs to maintain the viability of COCOTs, and suggests that the loss of commissions from OSPs will be offset by the compensation received under the Commission's "Dial Around Compensation Plan". See CC Docket 91-35, Report and Order and

³ The New York City Office of Energy and Telecommunications has indicated that in many inner city areas in New York, COCOTs represent about 40% of phones available for public use.

Further Notice of Proposed Rulemaking, "Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation", August 9, 1991, 6 FCC Rcd. 4736 at 4745-48.

Unfortunately, the \$6 per month per payphone compensation adopted on May 8, 1992,⁴ is wholly inadequate, and will not produce the revenues necessary for the continued operation of these pay telephones. Thus, absent the continuation of commissions, the private payphone industry will be unable to continue providing service to those segments of the population who are most dependent upon it.

While the theory of adopting Billed Party Preference may be appealing, the minimal impact it will have on improving consumer "choice" is far outweighed by the massive costs and deterioration of service, as well as customer confusion, which will result from its implementation.

The likelihood that the private payphone industry will be driven out of existence, with the loss of critically needed public telephones in areas where they are desperately needed, is only one of the drawbacks to the implementation of a Billed Party Preference system.⁵

⁴ See Second Order and Report, CC Docket 91-35, FCC 92-170, May 8, 1992, 7 FCC Rcd 3251.

⁵ Among the other serious consequences will be elimination of the entire AOS industry, whose competition forced the dominant IXC and the LECs to offer improved services to the public such as voice messaging and multi-lingual services. In addition, under BPP the public will be unable to charge calls to commercial credit cards, which is becoming an increasingly popular option.

As the Commission acknowledges, the estimated costs of implementing Billed Party Preference vary widely. Even if the most conservative numbers are accepted - which IPANY doubts are accurate - the costs to the communications industry will be hundreds of millions - if not billions - of dollars nationwide. Those costs will, of course, have to be absorbed eventually by the public, either through increased charges for local and long distance calls, or in the form of increased monopoly access rates.

Were great benefits to flow from introduction of Billed Party Preference, and were practical alternatives not already available, the costs might be worth incurring. That, however, is simply not the case.

The Commission's stated goal in considering Billed Party Preference is to enable callers who consciously seek to use the services of a particular OSP to be able to do so. IPANY submits that goal can be achieved - and is already well on the way to being achieved - without forcing the entire industry to incur huge and oppressive costs.

Callers who seek to utilize the services of a particular OSP now have available the means to reach their chosen carrier. Under the Telephone Operator Consumer Services Improvement Act (TOCSIA), and the rules promulgated by the Commission thereunder, callers are able to reach their OSP of choice through use of their carrier's 10XXX, 950 or 800 access code. As customers continue to gain experience in that means of

access - aided significantly by AT&T's massive advertising campaign urging its customers to dial "10-ATT-0" - consumers who desire to reach a particular carrier will be able to do so. And, as disincentives to the "unblocking" of access codes - particularly "10XXX" - are implemented, the number of instances where a consumer is prevented from reaching his carrier of choice will become negligible. What this all means is that consumer choice is now being satisfied under existing rules, and the expenditure of massive amounts of money will have little purpose or benefit.⁶

There are, of course, several problems today with requiring aggregators to unblock 10XXX code dialing. These exist because current use of "10XXX" access encourages massive fraud, and prevents COCOT owners from receiving just and adequate compensation for the use of their equipment. However, these disincentives can easily be removed by this Commission, thus assuring full use of 10XXX dialing and avoiding the need to

⁶ The Commission's Notice of Proposed Rulemaking herein, at footnote 25, suggests that roughly half of operator assisted calls already involve an AT&T customer on an AT&T line. The remaining AT&T customers are being well educated on how to dial AT&T's 10XXX code. The notice also indicates 80% of operator assisted calls are paid for by the caller (see footnote 24). Of the remaining 20% (who presumably accept charges on a collect or third party basis), 2/3 are likely to be AT&T customers, and half will already have the call completed by AT&T. That leaves only 10% of customers who might possibly be assisted by Billed Party Preference - a segment of the market far too small to justify the massive expenditures required to implement a program with so many drawbacks.

develop a whole new Billed Party Preference system.⁷

The Commission's determination that COCOT owners are entitled to compensation for the use of their equipment is a significant step in eliminating the first disincentive. However, the actual level of compensation mandated must reflect both the costs to a COCOT owner of installing and maintaining its equipment, and the value received by OSPs which receive and complete calls from those installations. The \$6 sum specified by the Commission on an interim basis simply does not meet that test, and in no way reflects the value to the OSPs of receiving calls on which they generate significant revenues.⁸

The best determinant of the value of receiving calls from COCOTs has already been determined by the marketplace: it is the level of commission, on a per-call basis, which OSPs are today willing to pay COCOT owners for the right to receive and process calls. That level must be continued under any compensation plan implemented by this Commission.

Once a proper level of compensation is established, the first disincentive to full operation and implementation of the

⁷ Furthermore, AT&T has now made available an "800" number to its customers, further increasing their ability to reach their carrier of choice.

⁸ Nor does it cover a reasonable share of COCOTs' cost in maintaining an instrument which can be used by the OSPs to generate revenues for themselves. These costs include, in addition to capital carrying charges on the \$2,500 - \$3,500 investment, costs for maintenance, collection, vandalism, fraud, general overheads, salaries, taxes, and the purchase of connecting lines and service from the Local Exchange Carriers.

existing "access code" method of effectuating consumer choice will be eliminated.⁹

The second disincentive, which is of equal importance, is the persistent fraud which flows from unlimited use of the "10XXX" codes.

This Commission is more than familiar with the massive amounts of fraud which have been perpetrated on COCOT owners. Seven members of IPANY alone are the subject of collection suits in the Federal District Court for the Southern District of New York in which AT&T is demanding millions of dollars for fraudulent calls placed from COCOTs.

Continuation of this fraud can be avoided through the provisioning of reasonable screening and blocking services by the local exchange carriers and by AT&T. Indeed, had the blocking and screening services which IPANY members purchased from New York Telephone worked as they were represented, and had AT&T itself adopted fraud control measures readily available to it, the massive fraud problem would never have existed.¹⁰ Rather

⁹ Of course, in the event Billed Party Preference is implemented, COCOTs will still need to receive the same level of compensation for use of their equipment.

¹⁰ IPANY currently has pending before this Commission a complaint against both New York Telephone and AT&T based upon their inadequate service, and unjust and unreasonable practices, which have lead to the occurrence of this fraud. See, Formal Complaint of Independent Payphone Association of New York, Inc., et al. v. AT&T, (File No. E-91-47) and against New York Telephone (File No. E-91-48). Similar showings have been made in the pending complaint of United Artists Payphone Corporation against New York Telephone and AT&T (File Nos. E-90-181 and E-90-182).

than spending hundreds of millions of dollars on implementing a Billed Party Preference system, such resources should be directed at installing LEC blocking and screening services which actually work. Similarly, the \$560 million estimated by AT&T as its cost of implementing BPP (Notice of Proposed Rulemaking, para. 25) would be far better spent on correcting existing deficiencies in AT&T's validation system, training its employees to recognize and honor restrictive screening codes, and installing a verification system for incoming international calls.¹¹

Upon the elimination of fraud, and the establishment of proper levels of compensation to COCOT owners - both of which can be effectuated by this Commission - the existing access code arrangements will become universally available, and customers desiring to reach a specific OSP will have no difficulty in doing so. Under these circumstances, no reason exists to spend massive amounts of money to achieve the results already possible.

Most parties recognize that the implementation of a working BPP program will take at least three years to accomplish. In that time, callers will continue to gain experience in use of the carrier access codes, and in a short period of time reaching a particular carrier of choice will be routine and commonplace. Customers who care to choose a particular carrier will know how

¹¹ Unlike domestic calls, where validation is theoretically in place, collect calls placed from overseas locations by foreign operators are not validated or screened. Despite the relatively minor cost involved, AT&T has made little effort to implement such validation.

to do so, and will have available the means to effectuate that choice. Under these circumstances, no reason exists why a whole new system should be introduced to achieve a goal that can and will be achieved under existing programs.

A prime goal of regulatory policy should be to develop a particular plan; insure its implementation; and avoid reversals of policy and the uncertainty, inefficiency and wasted resources such reversals entail. This Commission has promoted - and required - the use of access codes as a means to insure that callers can utilize their carrier of choice. As part of that program, the Commission has issued directives requiring COCOTs, hotels, motels, hospitals and other aggregators to incur significant expense in modifying existing equipment - or in purchasing expensive new equipment. To now abandon the access code system, thus wasting the significant monies which have been spent by aggregators in conforming with the Commission's rules, in order to march in a wholly different direction, is unfair, wasteful, and makes no regulatory sense.

What is needed instead is a policy which increases competitiveness in both the operator service market and in the provision of public pay telephones, a result which can and should be achieved through use of the existing access code arrangements under a system where fraud is eliminated and proper compensation is paid to aggregators.

POINT B: A BILLED PARTY PREFERENCE SYSTEM WILL
ELIMINATE USE OF "SMART" PAY TELEPHONES

In footnote 39, the Commission asks commentators to address the impact which BPP will have on "smart payphones" in which call processing functions are performed within the payphone itself.

"Smart" payphones can perform a number of functions, including the internal rating of coin calls and the handling of operator assisted calls, without the actual use of an OSP or a live operator. By use of "store and forward" technology, the credit card information utilized by the caller is stored inside the phone, with the call being converted from a 0+ to a 1+ call.¹² The conversion from a 0+ call to a 1+ call is transparent to the caller.

For this system to work, the outgoing call must be routed by the COCOT owner to its presubscribed long distance carrier, which bills the COCOT for the underlying transmission. However, under BPP, the 0+ call, as dialed by the caller, cannot be converted to a 1+ call, and cannot be routed to the interexchange carrier chosen by the COCOT operator. Instead, the call will have to be forwarded in 0+ format to the OSP chosen by the caller.

The conversion of 0+ calls to 1+ calls allows the COCOT owner to maximize the efficient use of his equipment and the

¹² In some applications, the store and forward technology can also, through the use of prompts, facilitate the completion of a collect or billed to third party call.

telephone network; avoids the need for costly live operators; and results in lower overall costs in completing the call. These costs can be passed on to the consumer in the form of lower toll rates.

If Billed Party Preference is implemented, the significant investment which has been made by COCOT owners in this store and forward technology will be completely lost. Not only will that loss have an immediate and devastating impact on COCOT owners, and the customers they service, but it will also set an extremely serious precedent that will discourage innovation, technological development, and investment in the future. In an environment of abrupt regulatory reversals, investors will be extremely reluctant to fund the development and implementation of state of the art, efficient systems (such as store and forward). Thus, while the Commission may view this proceeding as dealing with Billed Party Preference alone, it must be aware of the negative impact its policy will have on the development of other new and improved services in the future.

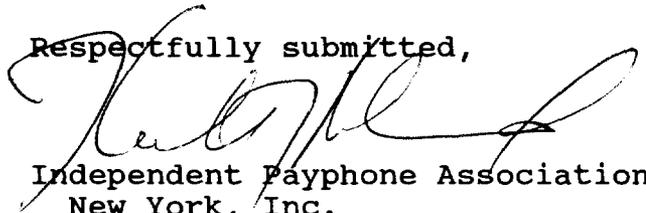
III. CONCLUSION

As shown herein, Billed Party Preference will destroy the economic viability of the COCOT industry, thus eliminating the vital public telephone service which serves as a lifeline in many areas of the country. The costs of implementing Billed Party Preference far outweigh the minimal benefits it will

generate. Indeed, far from advancing the public interest, Billed Party Preference will destroy the entire competitive private pay phone industry, result in reduced service to the general public, and stifle further investment and innovation in telecommunications technology.

Billed Party Preference should not be implemented.

Respectfully submitted,



Independent Payphone Association of
New York, Inc.

By: Keith J. Roland

Its Attorney

Roland, Fogel, Koblenz & Carr

One Columbia Place

Albany, New York 12207

(518) 434-8112

Dated: Albany, New York
July 6, 1992