use of newly developed voice recognition technology for more efficient processing of collect and bill-to-third number calls will be severely limited.[65] The use of voice PINS to increase efficiency and reduce fraud on calling card calls would be threatened.[66] Important applications for increasingly popular "0+" voicemail and message forwarding services will be eliminated.[67] Personal speed dialing and "0+" access to information databases would be similarly imperiled.[68] Billing innovations such as AT&T's "0+ sub-account billing options" would be adversely impacted.[69] Even the use of commercial credit cards to charge "0+" calls would be ended.[70]

These are important service innovations that will be lost due to the implementation of billed party preference. The loss of these present and future service enhancements must be weighed against the paltry benefits afforded by the proposed billed party preference system.

---

[65] Id. at 15-16.

[66] Id. at 16.

[67] Consolidated Communications Operator Services Comments at 5; AMNEX Comments at 8.

[68] AMNEX Comments at 8.

[69] AT&T Comments at 16.

[70] AT&T Comments at 17; Pacific Companies Comments at 16.

IV. BILLED PARTY PREFERENCE WOULD DO IRREPARABLE HARM TO CALL AGGREGATORS.

Both the availability and variety of public telephone services have increased dramatically under the premises owner presubscription system. Commission payments from operator service providers have played a key role in this proliferation, both by motivating many premises owners to make public phones available, and by enabling them to offer a wider variety of innovative services to users of telephone service at their locations. For example, voice mail and two line telephones are increasingly common hotel amenities. Billed party preference, however, would eliminate the commission system, thereby removing an important revenue source on which call aggregators have come to rely as the financial support for these new systems. The inevitable result would be substantial harm to aggregators and significantly reduced availability of public telephones and services.

A. The Continued Existence of The Private Payphone Industry Would Be Threatened.

The system of commission payments to owners of customer-owned-coin-operated telephones ("COCOTS") has played a critical role in the development of the competitive payphone industry. For most COCOTs, revenue generated from local calls does not cover the cost of terminating local calls, let

alone the cost of providing the payphone itself. COCOT owners therefore rely on commission payments for operator service calls to recover the installation and maintenance costs associated with providing a public payphone. As explained by the Independent Payphone Association of New York, this revenue source is vital:

> 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. . . . 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.[71]

Elimination of "0+" commissions paid to COCOT owners would threaten the viability of COCOTs as an alternative to LEC payphones. As the California Payphone Association noted, billed party preference would substantially diminish the ability of competitive payphone providers to pay commissions to location owners, but would not cause a corresponding loss of revenue for the LECs.[72] Accordingly, LECs could continue to pay commissions to premises owners and thereby gain a significant advantage in competing with competitive payphone providers for individual locations.[73] This would lead to a substantial lessening of competition in the payphone market.

---

[71] Independent Payphone Association of New York Comments at 3.

[72] California Payphone Association Comments at 4.

[73] Id.

B. Other Call Aggregators Would Lose an Important Source of Revenue That Enables Them To Provide Telephone Services Responsive to their Customers' Needs.

For a large number of aggregators -- such as airports, hotels, universities, and convenience stores -- telephone services are provided as an adjunct to the primary services offered by the aggregator. These aggregators generally rely on commission payments to offset the cost of providing access to telephone service or for other purposes which benefit the user of the telephone. For example, universities rely on commission payments to maintain low rates for student telephones, to offset costs of advanced services such as voice mail or telephone registration, and to enable satellite campuses to interconnect with the main campus.[74] Similarly, commission payments help hotels to offset the cost of PBXs, sophisticated in-room telephones, and of in-room data and fax ports.[75] Also, for many inmate facilities, revenues from commission payments are targeted for inmate educational or recreational activities.[76] Put simply, commissions provide

---

[74] See, e.g., MIT Information Systems Comments at 3; Montana State University Office of Systems and Computing Services Comments at 2; South Carolina Division of Information Resource Management (DIRM) Comments at 7.

[75] American Hotel and Motel Association (AHMA) Comments at 7-8.

[76] South Carolina DIRM Comments at 7; Commonwealth of Pennsylvania Comments at 1.

benefits to consumers in addition to rightfully compensating premises owners for the use of their locations.

Aggregators indicated in their comments that without this revenue source they either would have to cut back on the range of services offered or would have to raise rates elsewhere -- such as through higher rental rates or dormitory fees -- in order to recover these costs.[77] For many locations, if telephone service does not cover its costs, the aggregator will convert some or all of the resources devoted to telephone service to other revenue generating uses. For example, the Greater Orlando Aviation Authority indicated that a loss of commission revenue "would dictate the installation of only a minimum number of pay telephones at the airport to conserve space and resources for other revenue producing services. If the airport did otherwise, it would effectively have to raise rates across all services in order to subsidize making pay telephones widely available."[78] Some other aggregators would eliminate payphones entirely.[79]

---

[77] See, e.g., Harvard University Office of Information Technology Comments at 1; Montana State University Comments at 2; AHMA Comments at 8.

[78] Greater Orlando Aviation Authority Comments at 11-12. Similar views were expressed by the Sacramento Metropolitan Airport, the Salt Lake City Airport Authority, and the Southeast Chapter of the American Association of Airport Executives.

[79] See National Association of Truck Stop Operators Comments at 5 (elimination of commission payments will be a disincentive to provide payphones).

The simple fact is that the space occupied by a pay telephone is valuable to premises owners. It can be put to a variety of business uses, including the provision of public telephone services. A rational premises owner will not select a use where no return on his investment is foreseeable. Billed party preference would eliminate the possibility of a reasonable return for many aggregators. Understandably, therefore, nearly all aggregators commenting in this proceeding opposed the billed party preference proposal and indicated that if billed party preference were implemented, they would cut back on services now available to consumers.

C. Correctional Facilities Would Face Increased Security Risks.

As with other call aggregators, prisons and jails rely on the presubscription system to provide a critical source of revenue, which correctional facilities frequently use to fund educational or recreational activities for inmates.[80] In addition, however, correctional institutions have specialized requirements that are addressed by presubscription, but which would not be accommodated under billed party preference. Correctional institutions require IXCs and equipment that can block access to certain numbers, restrict access to certain inmates and provide detailed call reports, in order to

---

[80] E.g., Commonwealth of Pennsylvania Comments at 1.

curtail or prevent toll fraud, harassing phone calls and other criminal activity.[81] Inmate access to live operators frequently poses additional problems.[82] These needs are accommodated under presubscription through the facility's selection of an IXC which can restrict access in the ways described and the use of specialized CPE. Under billed party preference, however, correctional facilities would not be able to control which IXC inmates contact and thus would be unable to control the fraud and abuses described above.[83]

V. BILLED PARTY PREFERENCE WILL REDUCE, NOT INCREASE, THE LEVEL OF COMPETITIVE ACTIVITY IN THE OPERATOR SERVICES MARKET.

One of the Commission's major motivations in proposing to adopt a system of billed party preference was a desire to increase competition in the "0+" market. Billed party preference in actuality, however, would be counterproductive in this regard. The initial comments demonstrate convincingly that competition would be reduced if billed party preference is implemented.

The "0+" market today is hotly competitive. The numerous comments filed in themselves reflect the fact that a

---

[81] E.g., South Carolina Jail Administrators Association Comments at 3-5.

[82] Comments of the Inmate Calling Providers Task Force at 10-11.

[83] South Carolina Jail Administrators Association Comments at 5-6.

large number of widely differing firms compete vigorously with one another in the provision of interstate operator services. They include established "1+" IXCs, network based "0+" only operator service providers, operators of store-and-forward technologies, pay phone owners and the like. This expanding list of "0+" service providers compete aggressively with one another by offering an ever burgeoning array of rate structures and service options.

Billed party preference would change all that. Perhaps most disturbing, by relegating all initial operator call processing to the LEC OSS, billed party preference creates a new LEC bottleneck. Services which today are provided by competitive IXCs and operator service providers are transferred to monopolies -- by definition a severe reduction in competition in "0+" services. AHMA properly derided this plan to "reconcentrate monopolistic power at the LEC level,"[84] and ATC and LDDS correctly observe that billed party preference merely "creates another monopoly service for the ... LECs."[85]

Moreover, as the initial comments herein further demonstrate, few IXCs would be able to participate in the "0+" market under a billed party preference system. Currently IXCs contract with individual premises owners for permission to provide services to particular locations. IXCs

---

[84] AHMA Comments at 9.

[85] ATC Comments at 7.

need only arrange originating access in the localities where they have customers, and can terminate traffic worldwide by reselling the outbound services of other IXCs as required. This makes "0+" services a perfect application for the limited networks of third tier and regional IXCs.

By contrast, under billed party preference end users would preselect an IXC to complete their "0+" calls from wherever the end user travels in the United States. Consequently, any IXC desirous of providing "0+" services under billed party preference must obtain nationwide originating facilities at great difficulty and expense. Thus, for example, a regional IXC would need to establish a point of presence and obtain FGD access facilities in the Coeur D' Alene, Idaho LATA even if it expected to receive only one call per year there. The many regional IXCs which submitted comments herein uniformly agreed that it simply is not feasible for them to establish such a universal nationwide originating network.[86]

Anticipating this problem, the Commission suggested in the Notice that regional IXCs could either enter into some sort of partnership arrangement with national IXCs or ask their "0+" customers to designate a "secondary OSP" to handle their calls in areas where their preferred OSP does not

---

[86] See, e.g., ATC and LDDS Comments at 5; Opticom Comments at 16-17; RCI Comments at 4-5; ClearTel Joint Comments at 20-21.

provide service.[87] However, many of the affected regional carriers rejected both options as highly unrealistic. Given the technical complexity of the proposal and limited traffic involved, there is no assurance that a "partnership" arrangement can be negotiated with any national carrier on an economic basis.[88] And the use of a back-up "secondary" OSP simply ignores market realities. As One Call explained:

> ... consumers will not choose a small regional OSP as their primary OSP precisely because the regional OSP cannot originate 0+ calls nationwide. Consumers of 0+ services, like most people, want what is easiest for them to use. Instead of selecting an unwieldy herd of OSPs to cover 0+ services in different regions, consumers will naturally choose the large OSP operating nationwide as their <u>only</u> OSP. While the Commission pretends that primary/secondary OSP selection will yield competitive results, the reality is that BPP will devastate smaller OSPs.[89]

For these reasons, CompTel agrees with the conclusion of ATC and LDDS that "the Commission's plan could have the undesirable effect of creating a three firm market for interexchange operator services, because even the large regional carriers would be foreclosed from meaningful participation."[90]

---

[87] <u>Notice</u> at ¶ 23.

[88] <u>See, e.g.</u>, AMNEX Comments at 11-13; International Telecharge Comments at 9; Cleartel Comments at 21.

[89] One Call Comments at 17 (emphasis in original).

[90] ATC Comments at 5.

Indeed, presumably billed party preference even would eliminate the use of newly developed store-and-forward technology which enables users to provide operator functionality in the phone itself. This innovative technology has enabled many thousands of pay phone owners, hotels, motels, correctional institutions, etc., to provide "set-based" competition to IXCs and LECs alike. But, according to Intellicall, billed party preference is the "functional equivalent of a ban on using smart CPE."[91] Intellicall explains that "[s]ince BPP requires 0+ calls to be routed to a LEC for processing, that system destroys any rationale for building call processing functions into CPE," and, "[f]or the same reason, BPP reduces the incentive to build enhanced services capabilities such as voice messaging into CPE."[92]

The net result is that billed party preference will do incredible damage to an increasingly successful "0+" market structure. Literally hundreds of network-based and CPE-based providers of OSP services will be replaced by monopoly LECs and a few large, national IXCs. Such a consequence certainly is not the pro-competitive outcome envisioned by the Commission. Indeed, it is hard to imagine a more anti-competitive proposal.

---

[91] Intellicall Comments at 9.

[92] Id. See also Comtel Computer Comments at 6-7; Airports Association Council Comments at 9.

VI. SUPPORT FOR BILLED PARTY PREFERENCE IS LIMITED TO PARTIES WHICH WILL BENEFIT FINANCIALLY, OR HAVE NOT INVESTIGATED THE COST OR TECHNICAL PROBLEMS ASSOCIATED WITH IT.

The overwhelming majority of commenters herein strongly opposed the adoption of any system of billed party preference. Other commenters took no position. Only a handful supported the proposal, and their support is in most cases obviously self-serving or ill-informed.

The chief advocates of billed party preference for a number of years have been two RBOCs -- Ameritech and Bell Atlantic. Both companies previously filed petitions with the Commission seeking its adoption,[93] and, not surprisingly, they reiterated their support in their initial comments. The desire of these RBOCs for billed party preference is understandable since the system would simultaneously cripple their COCOT competitors and enable them to collect a hefty new service fee on every "0+" call. It is interesting, however, that neither company used this opportunity to make a detailed proposal,[94] and one admitted that the system could not be deployed until 1996 "at the earliest."[95] Even more

---

[93] Petition of the Ameritech Companies for Rulemaking on Dial "0" Exchange Access Traffic, RM-6113 (August 7, 1987); Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan from Pay Telephones, RM-6723 (April 13, 1989).

[94] See Bell Atlantic Comments at 2-3, 8; Ameritech Comments at 6.

[95] Bell Atlantic Comments at 2.

surprising is the fact that at least two more RBOCs -- BellSouth and NYNEX -- flatly disagree and oppose the adoption of billed party preference.[96] And the support of at least two more RBOCs -- US West and Southwestern Bell -- is lukewarm at best.[97]

The other chief carrier proponents of billed party preference are MCI and Sprint. MCI's support is attributable in large part to its desire to find a way to combat the anticompetitive effect of AT&T's proprietary "0+" CIID card program.[98] CompTel shares MCI's outrage over the AT&T proprietary card program, but believes strongly that the problem can be solved much more quickly and effectively by adopting a "0+ in the public domain" concept.[99] Sprint's

---

[96] BellSouth Comments at 7 ("the introduction of BPP at this time would [not] provide new competitive stimulus to the market"); NYNEX Comments at ii ("the cost of billed party preference outweighs the benefits to the public").

[97] See US West Comments at iii ("absent these four essential elements, billed party preference will result in the needless expenditure of huge sums while at the same time exacerbating what confusion end users may experience today"); Southwestern Bell Comments at 4-5 (support is contingent upon satisfaction of numerous requirements and concerns).

[98] See MCI Comments at 2-4.

[99] See, e.g., CompTel Emergency Motion for an Interim Order Requiring AT&T to Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing of Existing Cards, CC Docket 91-115 (Dec. 20, 1991); Comments of the Competitive Telecommunications Association on Proprietary Calling Cards and 0+ Access, CC Docket 92-77 (June 2, 1992). The "0+ in the public domain" proposal would require IXCs to permit access to validation data for IXC-issued cards usable on a 0+ basis, and to restrict proprietary cards to access code dialing.

views likely are motivated by a desire to easily convert its existing 8.9 percent share[100] of the "1+" market into an equal portion of the "0+" market without having to market its "0+" services aggressively. This suspicion is bolstered by Sprint's opposition to a "0+" balloting procedure and its support of a "1+" carrier default mechanism.[101]

Billed party preference also draws some limited support from state PUCs. State regulators from five Great Lakes states filed in support of the proposal.[102] However, it appears that none of these PUCs have conducted proceedings of their own to investigate the desirability or viability of the proposal.[103] Two other PUCs -- Florida and Pennsylvania -- were more cautious, withholding their full support until the myriad cost and technical issues are addressed.[104] CompTel believes that it is significant that the remaining 44 state PUCs were silent on the subject, and that NARUC expressly declined to take a position on the matter at its 1992 summer

---

[100] Long Distance Market Shares: First Quarter, 1992, at Table 6, Industry Analysis Division, FCC (June 1992).

[101] Sprint Comments at 31-33.

[102] See Comments of the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Public Utilities Commission of Ohio and the Public Service Commission of Wisconsin; Comments of the Michigan Public Service Commission.

[103] CompTel observes that each of these states are served by Ameritech, one of the two principal proponents of billed party preference.

[104] See Comments of the Pennsylvania PUC at 1; Comment of the Florida PSC at 2.

meetings until the cost and associated issues can be aired.[105]

Moreover, it must be observed that other state agencies or instrumentalities from at least 13 jurisdictions filed in opposition to billed party preference, understandably bemoaning their prospective loss of commission revenue.[106]

Finally, the Commission's billed party preference proposal drew support from state government consumer advocates in Indiana and Pennsylvania.[107] While CompTel certainly does not belittle the views of these two agencies, it believes that it is noteworthy that no other consumer organization filed in support of billed party preference. CompTel believes this absence is indicative of the fact that billed party preference simply is not the panacea for

---

[105] NARUC, Resolution Regarding Billed Party Preference, adopted July 29, 1992, reprinted in NARUC Bulletin, No. 32-1992, p. 5 (August 10, 1992). NARUC reserved judgment on billed party preference "until there is a more concrete determination of the costs and the specifics of implementation at this time [sic]." Id. at 6.

[106] The various governmental instrumentalities opposing billed party preference include the Commonwealth of Pennsylvania, the Georgia Department of Administrative Services, the Illinois Department of Central Management Services, the South Carolina Division of Information Management, the Tennessee Department of Finance and the City of New York Department of Telecommunications. In addition, approximately 15 airport authorities and 7 prison administration authorities oppose the proposal. See Section IV. B., infra.

[107] See Comments of the Indiana Office of Utility Consumer Counselor and the Pennsylvania Office of Consumer Advocate.

consumer ills which the Commission apparently believes that it is.[108]

VII. IF BILLED PARTY PREFERENCE NEVERTHELESS IS ADOPTED BY THE COMMISSION, A SEPARATE 0+ BALLOT PROCESS IS ESSENTIAL.

If the Commission decides to mandate billed party preference despite its enormous costs, it must require the LECs to conduct a separate ballot for consumers to select their preferred 0+ carrier. Billed party preference would represent a fundamental change in the composition of an IXC's immediate customer base. An IXC's base of premises owner customers -- in many cases developed through years of effort -- would have to be replaced completely under the proposed billed party preference system. Fairness dictates that the Commission must provide these companies an opportunity to replenish their customer base.

A separate 0+ ballot is essential to this process. A separate ballot would help negate the substantial advantage that current "1+" carriers would have in the selection of a preferred carrier, and, in many cases might provide the only meaningful opportunity for IXCs which currently lack a substantial "1+" customer base to market their services directly to consumers on a wide scale. Thus, balloting would

---

[108] Messagephone, Inc. also supported the adoption of a billed party preference. See Messagephone, Inc. Comments. But its comments amount to little more than a sales presentation touting a proposed alternative technology which it ostensibly has developed.

promote competition in an operator services market in transition to billed party preference.

The RBOCs generally favor "defaulting" a customer to his or her existing "1+" carrier, largely because they perceive balloting as too costly.[109] The RBOCs' concern for the cost of balloting is, in the context of their comments, puzzling. Even if one accepts the highest estimate provided by an RBOC, $19 million,[110] as the average cost for all RBOCs, a ballot would cost a total of $133 million. The RBOCs supporting billed party preference cannot contend that over $2 billion dollars should be spent to develop and deploy billed party preference, yet object to the comparatively small additional expense that would be necessary to provide existing providers of operator services a fair opportunity to compete in the new environment. CompTel urges the Commission, if it mandates the billed party preference proposal, to order the LECs to conduct a separate ballot for customers to select a preferred "0+" carrier.

---

[109] See Ameritech Comments at 9; Bell Atlantic Comments at 3-4; BellSouth Comments at 18; NYNEX Comments at 11-12; Pacific Bell Comments at 14; Southwestern Bell Comments at 20; US West Comments at 18.

[110] NYNEX Comments at 11.

CONCLUSION

As explained above, billed party preference cannot withstand scrutiny. It is extraordinarily expensive, unworkable, a long time coming and will substantially reduce competition in the "0+" market. Moreover, the perceived incremental benefits of billed party preference pale in comparison with the problems which it presents. For much too long, the mere fact that the Commission has entertained the notion of mandating such a system has hung like a dark cloud over the heads of scores of providers of operator services, threatening their very existence and drying up sources of capital badly needed to expand and improve their services. CompTel respectfully urges the Commission to decline to require implementation of billed party preference, and instead focus its efforts on the creation of fair and

effective competition under a system of premises owner presubscription and dialing party preference.

Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

By: _____

Richard E. Wiley
Brad E. Mutschelknaus
Steven A. Augustino
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Genevieve Morelli
Vice President and
General Counsel
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
Suite 220
1140 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 296-6650

Its Attorneys

August 27, 1992