

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**SUPPLEMENTAL COMMENTS OF  
CLEARTEL COMMUNICATIONS, INC., INTERNATIONAL PACIFIC, INC.  
AND TELTRUST COMMUNICATIONS SERVICES, INC.**

Cleartel Communications, Inc., International Pacific, Inc. and Teltrust Communications Services, Inc. (hereafter "Cleartel/IPI/Teltrust"), by their undersigned counsel, hereby submit comments in response to the Commission's Report and Order and Request for Supplemental Comment ("Order") in the above-referenced proceeding.<sup>1/</sup>

Cleartel/IPI/Teltrust urge the Commission promptly to assure the implementation of "methods for compensating operator service providers ["OSPs"] who receive 0+ dialed proprietary card calls and transfer those calls to the proprietary card issuers for completion."<sup>2/</sup> Such compensation should be prescribed wherever an IXC issues or has issued proprietary calling cards with instructions to use 0+ dialing. Cleartel/IPI/Teltrust submit that there is a clear and substantial justification and need for OSPs to be compensated

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<sup>1/</sup> FCC 92-465 (released Nov. 6, 1992); See also Order Deferring Supplemental Comment Date, CC Docket No. 92-77, DA 92-1637 (released Dec. 2, 1992).

<sup>2/</sup> Order at ¶ 2. The Commission has already begun the process of facilitating industry dialogue and gathering information on mechanisms available for compensating OSPs for 0+ call transfer service on 0+ proprietary card calls. Specifically, a public forum on these matters was held on December 8, 1992, with the Common Carrier Bureau. See Public Notice, DA 92-1634 (released Dec. 1, 1992).

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where they receive 0+ proprietary card calls and transfer those callers to the issuing IXC. The Commission should immediately ratify that principle. Moreover, it must clearly define the types of transfers which should be compensated.

## **I. INTRODUCTION**

In the first phase of this proceeding, the Commission examined well-documented OSP industry problems created by AT&T's distribution of 0+ proprietary calling cards ("CIID" cards). Based on its review of the substantial record, the Commission has correctly found that the 0+ dialing instructions issued by AT&T with its CIID cards and in its advertising have created major consumer and competitive difficulties requiring an immediate solution.<sup>3/</sup> Indeed, the competitive damage being felt in the operator services market as a result of AT&T's intentional marketing practices has been before the Commission on repeated occasions since AT&T commenced issuing the cards in early 1991<sup>4/</sup>, during which time AT&T has continued to issue the cards with misleading and anti-competitive dialing instructions. The time for redress is long since overdue.

The Commission has now concluded that AT&T's dialing instructions -- which direct CIID cardholders to dial 0+ without first ascertaining whether AT&T is the presubscribed

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<sup>3/</sup> In a related matter, the Commission has strongly admonished AT&T by Direction Letter for its CIID card marketing practices. See Letter from Donna R. Searcy, Secretary, to Robert E. Allen, Chairman and Chief Executive Officer, AT&T, FCC 92-490 (released Nov. 16, 1992).

<sup>4/</sup> In the Order, the Commission stated that "AT&T began issuing proprietary cards using the card issuer identifier (CIID) numbering format February, 1991," specifically as a replacement for "AT&T's former Bell System 'joint use cards.'" See Order at ¶ 4.

carrier for the line -- are inherently confusing to customers, and must be modified and improved. Moreover, the Commission has recognized that, as a direct result of AT&T's 0+ dialing instructions, other OSP competitors receiving the 0+ dialed calls into their networks immediately incur currently unrecoverable processing costs, including local access and other network charges, operator and equipment expenses, and, in some instances, validation fees.<sup>5/</sup>

The Commission has declined to adopt its proposed rule mandating that 0+ is a "public domain " access method to resolve this situation, which would have required AT&T either to share billing and validation information for the CIID cards if used with 0+ access, or to restrict use of the cards to access code dialing (i.e., 10XXX, 800, 950).<sup>6/</sup> Rather, the Commission has taken a two-stage corrective approach. First, the Commission has ordered AT&T "to change its current practices" and conduct a "strict consumer education program."<sup>7/</sup> Specifically, AT&T must:

- educate its cardholders to check payphone signage and to use 0+ access only at phones identified as presubscribed to AT&T;
- provide clear and accurate access code dialing instructions on every proprietary card issued; and
- make its 800 access code number easier to use.<sup>8/</sup>

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<sup>5/</sup> See id. at ¶ 25, n.45 and ¶ 55.

<sup>6/</sup> See id. at ¶¶ 44-49.

<sup>7/</sup> See id. at ¶¶ 1, 2.

<sup>8/</sup> See id. at ¶ 57.

Second, the Commission has sought further comment on methods for compensating operator service providers who continue to receive 0+ dialed proprietary card calls and who wish to accommodate cardholders by transferring those calls to the card issuer for completion.<sup>2/</sup> This proposal recognizes that the corrective education requirements imposed on AT&T will not immediately eliminate the use of 0+ dialing by CIID cardholders resulting from AT&T's 0+ dialing instructions for the CIID cards. Of course, compensation on a going-forward basis would not compensate OSPs of the costs of AT&T's actions to date. Nor would it recover goodwill lost with consumers and call aggregators where CIID cardholders have experienced 0+ access problems at phones not presubscribed to AT&T, and have believed mistakenly that the access problems were caused by the presubscribed carrier, not AT&T's own 0+ dialing instructions. Such a compensation mechanism, however, would mitigate the ongoing effects of AT&T's actions by permitting OSPs to recover some of the unrecoverable costs imposed by CIID cardholder use of the 0+ dialing method at locations they serve.

ClearTel/IPI/Teltrust further submit that this compensation mandate should be applied to any carrier which has issued or may issue in the future a proprietary calling card with instructions to dial 0+ to use the card. Only in this way can the Commission prevent such 0+ proprietary cards from creating consumer confusion and competitive disruption in the 0+ market.

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<sup>2/</sup> Id. at ¶ 64.

**II. OSPS SHOULD BE COMPENSATED FOR TRANSFERRING 0+ DIALED PROPRIETARY CARD CALLS TO THE ISSUING CARRIER**

The Commission's decision to require AT&T to re-educate its cardholders, to improve its dialing instructions and make its 800 access code easier to use should help to resolve the significant consumer confusion AT&T's CIID card dialing instructions have created. Cleartel/IPI/Teltrust submit that the Commission should supplement these requirements with approved methods of compensating AT&T's OSP competitors presubscribed to telephones for 0+ traffic where such OSPs receive 0+ dialed CIID calls, and accommodate AT&T subscribers by transferring those calls to AT&T for completion.

The record in this proceeding has established that AT&T's OSP competitors incur significant costs when a 0+ dialed CIID card call is placed to their networks from a telephone presubscribed to the OSP for 0+ traffic. Specifically, the Commission's Order noted that AT&T's 0+ dialing instructions for the CIID cards have created an "immediate competitive problem" which "cannot be eliminated unilaterally by AT&T's competitors."<sup>10/</sup> As the Order points out, AT&T has forced its competitors "to devote their facilities to uncompletable and therefore unbillable CIID card calls," the processing costs of which cannot be recovered by the OSP.<sup>11/</sup>

To date, no fair and equitable mechanism exists for enabling OSPs to recover any of the processing costs associated with AT&T 0+ dialed CIID card calls. In response to rising consumer frustration and complaints about the inability to complete 0+ dialed CIID

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<sup>10/</sup> Id. at ¶ 25.

<sup>11/</sup> Id.

card calls at their presubscribed telephones, however, many OSPs have developed and implemented policies for sending such calls to AT&T's network -- despite that AT&T has not compensated them for the costs involved with such transfers.

Cleartel/IPI/Teltrust strongly support Commission adoption of mechanisms enabling OSPs to be compensated for performing such transfer service. In transferring the 0+ dialed CIID card calls to AT&T, OSPs clearly perform a beneficial service to AT&T and promote the Commission's pro-consumer objectives. Such transfer service provides a direct remedy to the consumer problems that AT&T's own dialing instructions created, enabling AT&T to carry CIID calls at minimal burden to AT&T cardholders. In these circumstances, fairness clearly mandates that AT&T's competitors be compensated for the costs of performing this function.<sup>12/</sup> The Commission has begun the process of a "negotiated rulemaking" among interested parties to develop the appropriate mechanism for such compensation. Cleartel/IPI/Teltrust have participated in that process and hope that it will yield a compensation methodology acceptable to all parties and the Commission. Pending further discussions, Cleartel/IPI/Teltrust believe it would be premature to address the

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<sup>12/</sup> Cleartel/IPI/Teltrust note that the Commission has ordered compensation where "considerations of equity" so require. For example, in CC Docket No. 91-35, the Commission concluded that equity required it to order compensation to payphone owners for the use of their equipment for access code calls, for which the payphone provider was not otherwise guaranteed any revenue. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 6 F.C.C. Rcd. 4736, 4745 (1991). To redress AT&T's intentional imposition of damages upon its 0+ competitors, considerations of equity also mandate compensation for OSPs that transfer 0+ dialed CIID calls to AT&T.

appropriate mechanisms for compensation, and whether it should be provided pursuant to tariff or contract.

### **III. THE DEFINITION OF COMPENSABLE TRANSFER SERVICE SHOULD INCLUDE THREE SPECIFIC TRANSFER METHODS**

As discussed above, substantial consumer frustration has led many OSPs to transfer 0+ CIID calls to AT&T despite the current absence of a compensation mechanism. OSPs have tailored handling of such CIID calls according to the particular capabilities of their network facilities and equipment. In general, transfer services can be performed through three methods: (1) provision of verbal dialing instructions to the caller to hang up and redial an access code to reach AT&T ("dialing instructions");<sup>13/</sup> (2) if technically feasible in the originating equipment, re-origination of the call at the telephone equipment (re-origination"); and (3) transfer of the call from the OSP's switch to the card issuing IXC's switch, including identifying information to ensure that the call can be billed with the correct originating location so that "call splashing" does not occur ("forwarding").<sup>14/</sup>

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<sup>13/</sup> These transfers would normally occur when a caller reaches the OSP network, inserts a proprietary calling card number, and is instructed to hang up and reach the card-issuing IXC by dialing that IXC's access code. In these instances, the OSP would have access to the caller's calling card number for later verification by the issuing IXC. In other instances, however, a proprietary cardholder might ask to be transferred to the issuing IXC before inserting the card number. In these instances, the OSP performs a valuable function for the caller and the issuing IXC, for which it incurs a cost. The Commission may also wish to consider a compensation mechanism for these types of transfers, since it is clearly in the consumer's interest to receive proper dialing instructions after having relied on a 0+ dialing instruction by the issuing IXC.

<sup>14/</sup> Both § 226 of the Communications Act and the Commission's Rules prohibit call splashing "unless the consumer requests to be transferred to another provider of operator  
(continued...)

Cleartel/IPI/Teltrust submit that the Commission should define OSP transfer service to include all three types of transfer, and that OSPs should be compensated where they perform transfers according to any of these methods. Given differences in carrier network facilities and the telephone equipment used to initiate operator service calls, and the interest in assuring that the transfer is accomplished in the manner least disruptive and time-consuming to callers, it is critical that OSPs maintain flexibility in how they transfer calls. Provided that the parties agree or the Commission approves the amount of compensation to be paid, the definition of transfer service should permit such OSPs to choose which of the three specific methods to employ for transfer of the 0+ CIID calls, and avoid further disruption to their call processing methods.

All three of the transfer methods detailed below can be verified by the transferee IXC through the submission of OSP invoices to the card-issuing transferee IXC. For each authorized transfer method, calling card numbers and other basic date and originating location information would be captured and submitted to the card-issuing IXC on monthly OSP compensation invoices.

Using the "dialing instruction" method, the OSP, after ascertaining that a proprietary card number has been offered for billing a 0+ call, provides the proprietary cardholder with dialing instructions to reach the IXC issuing the card. OSPs using this method perform a

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<sup>14</sup>(...continued)

services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred." 47 U.S.C. § 226(b)(1)(H). See also 47 C.F.R. § 64.705(a)(3)(1991).

valuable service to the card issuer by directing the caller to follow that IXC's dialing instructions. In the case of AT&T CIID cards, this method serves the public interest by promoting the Commission's goal that AT&T cardholders receive proper re-education on how to reach AT&T's network. Clearly, this service warrants compensation to the OSP assisting the IXC's proprietary card customer in this process.

The "re-origination" method is possible where the originating telephone equipment can accept a certain "re-origination tone" from the OSP and re-dial the call so that it reaches the card-issuing IXC. Cleartel/IPI/Teltrust submit that it is critical that the Commission authorize compensation for such re-origination where technically feasible, because this practice clearly serves the public interest in providing consumers with the ability to reach their card-issuing carrier with a minimum of inconvenience and delay. However, reorigination should be optional, since in certain locations the features of the particular phone equipment used or state and local regulations may affect whether reorigination can be used effectively.

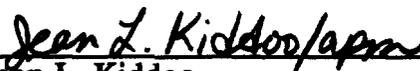
The "forwarding" method of transfer is a network-based solution which also merits compensation to OSPs. In many ways, it is the most "consumer-friendly" of the three options, since it is the least time-consuming and burdensome. Forwarding could be accomplished simply by OSP establishment of an inter-machine trunk from the OSP switch to the card-issuing IXC switch, through which calls could be forwarded with identifying information necessary to avoid splashing. At this time, however, AT&T has represented that transfer with ANI from the OSP's switch to AT&T's switch is not available nationwide due to limitations in the AT&T switches to accept the call information. At such time that

AT&T's switches permit this method to be used reliably, Cleartel/IPI/Teltrust believe that OSPs clearly should receive compensation for performing the forwarding transfer method.

**IV. CONCLUSION**

Cleartel/IPI/Teltrust appreciate this opportunity to assist the Commission in the expeditious development of OSP compensation methods for transfers of 0+ proprietary card calls. A transfer service as defined in these comments should be implemented forthwith to redress the longstanding and substantial consumer and competitive problems that AT&T's CIID card dialing instructions created.

Respectfully submitted,

  
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