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January 11, 1993

By Hand Delivery

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Washington, DC 20554

Re: CC Docket No. 92-77, Phase I  
*In the Matter of Billed Party Preference for 0+ InterLATA Calls*

Dear Ms. Searcy:

Transmitted herewith for filing on behalf of PhoneTel Technologies, Inc. are an original and five (5) copies of its petition for reconsideration of the Commission's Report and Order and Request for Supplemental Comment issued in this proceeding.

If there are any questions, please communicate directly with the undersigned.

Sincerely yours,



Mitchell F. Brecher

Enclosure

8604-000

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

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In the Matter of

Billed Party Preference  
for 0+ InterLATA Calls

CC Docket No. 92-77  
Phase I

PETITION FOR RECONSIDERATION  
OF PHONETEL TECHNOLOGIES, INC.

PHONETEL TECHNOLOGIES, INC.

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January 11, 1993

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PETITION FOR RECONSIDERATION  
OF PHONETEL TECHNOLOGIES, INC.

PhoneTel Technologies, Inc. ("PhoneTel"), by its attorneys, hereby petitions for reconsideration of the Commission's Report and Order and Request for Supplemental Comment issued in this proceeding.<sup>1</sup> In support thereof, PhoneTel states as follows:

INTRODUCTION

In its CIID Card Decision, the Commission considered, but declined to adopt, a proposal which would have significantly promoted opportunities for full and fair competition in an important part of the interexchange telecommunications marketplace -- the operator-assisted calling (often called the "0+") services market. That proposal, often referred to as "0+ Public Domain," would have required issuers of telephone calling cards for which "proprietary" status was claimed, either to limit those cards' use to a proprietary dialing arrangement (i.e., by dialing the card issuing carrier's access code), or to permit nondiscriminatory access to the card validation data base to other service providers if the card issuing carrier wished to permit the card to be usable by callers on a 0+ dialing basis.<sup>2</sup>

<sup>1</sup> Billed Party Preference for 0+ InterLATA Calls, FCC 92-465, released November 6, 1992 (hereinafter, "CIID Card Decision").

<sup>2</sup> That proposal was set forth in the Commission's notice of proposed rulemaking in this proceeding. Billed Party Preference for 0+ InterLATA Calls, 7 FCC Rcd 3027 (1992).

This proposal had become necessary because of an active campaign by the dominant operator service provider -- the American Telephone and Telegraph Company (AT&T) -- to perpetuate its domination of that market segment by issuance of many millions of "replacement" calling cards in the Card Issuer Identifier (CIID) format. As the Commission recognized in its CIID Card Decision, the anticompetitive consequences of AT&T's CIID card program did not result only from the distribution of those cards (approximately twenty-five million) itself. Rather, they were caused by other factors including, for example, the fact that AT&T chose to share access to its data base with many other carriers (e.g., every local exchange carrier and several interexchange carriers, including GTE Airfone and Alascom) while denying access to that data base to virtually all of its other IXC competitors; AT&T's confusing and misleading information accompanying the distribution of those twenty-five million cards; and, finally, its directions to those millions of card holders to use their CIID cards on a 0+ basis from any telephone, including those public telephones not presubscribed to AT&T.

PhoneTel, a Cleveland, Ohio-headquartered interexchange carrier (IXC) which provides operator-assisted services from public telephones, has been damaged by the proliferation of AT&T CIID cards. As an increasing number of unsuspecting consumers have abandoned their line number-based or Regional Accounting Office-based calling cards in response to AT&T's confusing and misleading directions to destroy those cards, PhoneTel has become unable to complete calls attempted by those consumers from public telephones where PhoneTel is the presubscribed carrier. Moreover, PhoneTel incurs unavoidable costs on every CIID card call which reaches its network despite its inability to complete those calls. In June 1992, PhoneTel, submitted comments in this proceeding urging the Commission to adopt either its 0+ Public Domain or similar proposals which would have prevented the continued misuse of 0+ dialing which had resulted from AT&T's CIID card program. PhoneTel now finds it necessary to petition the Commission for reconsideration of the CIID Card Decision since the Commission's customer education alternative adopted in lieu of its 0+ Public Domain proposal will not resolve the competitive and public interest inequities occasioned by AT&T's CIID card distribution practices

and usage instructions, and because the Commission ignored critical facts and arguments entered into the record of this proceeding.

### I. PROPRIETARY STATUS SHOULD NOT BE ACCORDED TO NONPROPRIETARY CARDS

In deciding not to adopt its own 0+ Public Domain proposal over AT&T's objection, the Commission appears to have been swayed by AT&T's argument that consumers desire a proprietary AT&T calling card so that they can be "assured of receiving AT&T service and rates."<sup>3</sup> Whatever the merits of this position, the facts do not support according proprietary treatment to AT&T's CIID cards. As the Commission itself recognizes, use of an AT&T CIID card does not ensure consumers either "AT&T service" or "AT&T rates." CIID cards are not, in fact, proprietary to AT&T. They are usable to charge calls, including long distance calls, using the services of the nation's more than 1,400 local exchange carriers (LECs).<sup>4</sup> They are also acceptable by certain IXC's with whom AT&T has entered into agreements to allow access to its CIID card data base. Examples of IXC's permitted to validate AT&T CIID cards include GTE Airfone and Alascom.<sup>5</sup>

As stated by the Commission, CIID cards are not proprietary to AT&T, but rather are usable with the services of any other carrier -- either a LEC or an IXC -- with whom AT&T has chosen "to enter into a business relationship"<sup>6</sup>. Those carriers with whom AT&T has entered into business relationships do not provide AT&T service and usually do not charge AT&T rates. Indeed, many of the carriers allowed to access AT&T's CIID card data bases in connection with their own services, charge rates that are higher, often considerably higher, than the rates charged by AT&T for comparable services. The only difference between those companies which are allowed access to AT&T's so-called "proprietary" calling card data base and the many other

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<sup>3</sup> CIID Card Decision, *supra*, at ¶ 13.

<sup>4</sup> Many of the LECs which are allowed access to AT&T's CIID card data base pursuant to Mutual Honoring Agreements between those LECs and AT&T provide long distance services as well as local exchange services. Often those LECs provide interLATA services as well as intraLATA toll services.

<sup>5</sup> CIID Card Decision, *supra*, at ¶ 47 n. 80.

<sup>6</sup> *Id.* at ¶ 47.

carriers, including PhoneTel, which are denied access to that data base, is that, doing business with certain LECs and IXCs fits within AT&T's strategic objectives while doing business with other carriers does not advance those business objectives. Who AT&T chooses to do business with has no relevance to consumers' expectations about either services or service pricing.

As PhoneTel noted in its initial comments, IXCs should be permitted to issue proprietary calling cards to its customers and those cards should be accorded proprietary status, provided, however, that those so-called "proprietary" cards are truly proprietary. That is, such cards should be limited to the services of the card-issuing carrier and they should be usable only with dialing codes that are proprietary to that carrier. AT&T's CIID cards are neither. They are accepted by hundreds of carriers which have no affiliation with AT&T except for the card honoring agreements which permit them to access the CIID card data base, and they are usable from phones on a 0+ basis. By abandoning its 0+ Public Domain proposal, the Commission is sanctioning claims to proprietary treatment for calling cards that are, in reality, far from proprietary.

Moreover, bestowing proprietary status on non-proprietary calling cards as is done by the CIID Card Decision is not necessary to ensure that consumer service or rate expectations are fulfilled. As PhoneTel, among other parties, noted in its comments, the provisions of the Telephone Operator Consumer Services Improvement Act of 1990<sup>7</sup> and the Commission's operator service rules<sup>8</sup> (specifically, the signage and branding requirements) require that consumers are to be fully apprised of the identity of the carrier whenever they place a call from a public telephone or aggregator location.<sup>9</sup> Compliance with those requirements -- not AT&T's proliferation of millions of less than proprietary CIID calling cards with 0+ access capability -- will ensure that consumers are able to reach their preferred carriers, irrespective which carrier's logo happens to be on the calling cards they choose to use.

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7 47 U.S.C. § 226 (1991).

8 47 C.F.R. §§ 64.703 - 64.708.

9 See, e.g., comments of PhoneTel at 6-7.

## II. THE CIID CARD DECISION IGNORES THE IMPORTANCE TO CONSUMERS OF RELIABLE TELECOMMUNICATIONS SERVICE FROM ANY LOCATION

0+ proprietary calling cards limit consumers to the services of the card-issuing carrier and its business partners, irrespective of the availability of those carriers' networks. Unless callers have in their possession other calling cards that can be used with the services of other carriers, they are unable to charge calls using the services of other carriers, even if the card-issuing carrier's services should become unavailable for any reason. Of course, those cardholders who have acted in accordance with AT&T's instructions to destroy their old cards for their "own protection" would not have in their possession other calling cards, including the line number-based or Regional Accounting Office number-based cards previously issued to them which would enable them to place calls when the card issuing carrier's services become unavailable. PhoneTel respects the critical importance to the public interest of the availability of reliable telecommunications services and, for that reason, devoted several pages of its comments to the need for consumers to be able to access alternative carriers in the event of network outages.<sup>10</sup> There, PhoneTel noted that certain telecommunications carriers, including AT&T, had experienced recent network outages and service disruptions, and that consumers must be able to reach other carriers when their preferred carrier's service becomes unavailable for any reason, even if the only calling card in their possession is an AT&T CIID card.

In the CIID Card Decision, the Commission identified this concern about network reliability.<sup>11</sup> Unfortunately, despite its recognition of this concern, the Commission proceeded to completely ignore it in its discussion of the public interest benefits of 0+ Public Domain. Given the Commission's constant expressions of concern about the need for network reliability and protections for the public against service disruptions (e.g., its formation of a Network Reliability Council), the Commission's failure even to consider the effect of proprietary calling cards on

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<sup>10</sup> Comments of PhoneTel at 7-8.

<sup>11</sup> CIID Card Decision, *supra*, at ¶ 36.

dependable communications service is unexplained and unexplainable. For that reason, PhoneTel urges the Commission, in its reconsideration of its CIID Card Decision, to address the risks to the public of a CIID card calling base of twenty-five million or more consumers unable to place operator-assisted calling card calls using any carrier's network when the card-issuing carrier's network becomes unavailable for any reason.

**III. THE CUSTOMER EDUCATION APPROACH ADOPTED INSTEAD  
OF 0+ PUBLIC DOMAIN WILL NOT REMEDY THE CONSUMER  
INCONVENIENCE OR COMPETITIVE IMBALANCE WHICH HAS  
RESULTED FROM AT&T CIID CARD PRACTICES**

Instead of 0+ Public Domain, the Commission has directed AT&T, the perpetrator of the conduct which has frustrated consumers and disadvantaged competitors, to implement a three step plan ostensibly to somehow ameliorate the adverse impacts of its CIID card distribution and dialing instruction strategy. AT&T has been required to do the following:

- i. Educate its cardholders to check payphone signage and to use 0+ access only at phones identified as presubscribed to AT&T;
- ii. Provide clear and accurate access code dialing instructions on every proprietary card; and
- iii. Make its 800 access code number easier to use.<sup>12</sup>

This remedy is wholly inadequate to redress the consumer inconvenience and competitive damage which has resulted from AT&T's CIID card distribution and marketing practices, including its irresponsible card usage dialing instructions. Ten days following release of the CIID Card Decision, the Commission admonished AT&T for the confusing and misleading statements contained in its CIID card promotional materials and stated its "expectation" that AT&T take remedial steps to ensure that those millions of consumers who had been deceived by those materials receive correct information about the continued validity of existing calling cards,

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<sup>12</sup> Id. at ¶ 65.

including nonproprietary cards containing card numbers shared with the LECs.<sup>13</sup> Unfortunately, the remedy ordered in the CIID Card Decision will not result in fulfillment of the Commission's "expectation" set forth in the admonishment letter.

One problem with the directive to AT&T to provide clear and accurate dialing instructions on every proprietary card is that it is simply too little too late. The damage has been done. Twenty-five million cards already are in the hands of consumers who have been told incorrectly that their existing cards no longer are usable and should be destroyed. Those consumers also have been instructed to dial 0+ from any telephone, including those telephones presubscribed to carriers other than AT&T, and that, if they do not hear AT&T, then and only then, to hang up -- after having caused another carrier the expense and disruption of receiving that call and directing the caller to AT&T. Even if AT&T modifies the dialing instructions on all new CIID cards, its embedded base of twenty-five million cards already is in circulation. Sending separate instructions to existing cardholders which contradict those on the cards themselves will only further confuse those millions of customers who already have been misled by AT&T's card distribution shenanigans. Neither would distribution of stickers to be affixed to the existing cards be likely to modify cardholder dialing behavior. It is doubtful whether many consumers would bother to place stickers on the back of their existing cards. Indeed, it is questionable whether such materials would even be perused by the majority of cardholders, let alone attached to their cards.

If the Commission's objective is to modify the dialing behavior of previously-misinformed CIID card holders without adopting 0+ Public Domain, the most appropriate approach would be to require the card issuer to recall all of the cards containing the confusing and incorrect information, and to replace every one of those cards with new cards containing clear and accurate instructions about the use of 0+ dialing. For that reason, PhoneTel urges the Commission on reconsideration to require a recall of all CIID calls containing confusing or misleading access information.

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<sup>13</sup> Letter to Mr. Robert E. Allen, Chairman and Chief Executive Officer, AT&T, from Donna R. Searcy, Secretary, By Direction of the Commission, FCC 92-490, released November 16, 1992.

Neither is instructing callers to check signage at payphones likely to significantly mitigate the frequency of improperly dialed CIID card calls. That remedy assumes first, that signage will always be posted and correct, and, second, that such instructions will produce modifications to the dialing processes currently used by millions of callers. The impact of such instructions of dialing behavior is, at best, speculative. Finally, it is difficult to understand how making 800 access easier to use will reduce 0+ dialing of CIID card calls. AT&T's reluctance even to make available an 800 access number is well-documented. It took promulgation of a Commission rule for AT&T even to provide an 800 number for consumers to use to access its network, and, when it finally made the number available under a Commission directive, it failed to provide dialing instructions on how to use it and required callers first to negotiate a menu of other service options.<sup>14</sup> Given AT&T's consistent resistance to 800 access as a means for its customers use its service from phones presubscribed to other carriers, it is difficult to imagine AT&T now implementing and promoting 800 access in a manner likely to be widely used by consumers.

## CONCLUSION

For all of the reasons contained in this petition for reconsideration as well as those set forth in PhoneTel's comments in this proceeding, PhoneTel respectfully urges the Commission to reconsider its decision not to adopt either the Commission's 0+ Public Domain proposal or a similar plan which would prevent issuers of so-called "proprietary" calling cards from denying access to their card validation data bases unless the cards were truly proprietary. In order for a calling card to merit proprietary status, it must be limited to charging calls to the services of the card issuer, and its use must be limited to a proprietary dialing arrangement rather than 0+ dialing which is in the public domain and is not proprietary. In addition, PhoneTel respectfully urges the Commission to modify its "customer education" requirement by directing AT&T to recall all of its CIID cards issued with confusing and misleading dialing instructions and to issue replacement

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<sup>14</sup> CIID Card Decision, *supra*, at ¶ 5.

cards containing proper instructions on the face of the cards.

PHONETEL TECHNOLOGIES, INC.

A handwritten signature in cursive script, reading "Mitchell F. Brecher", is written over a horizontal line.

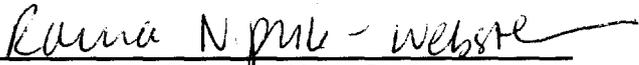
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January 11, 1993

CERTIFICATE OF SERVICE

I, Raina N. Price-Webster, do hereby certify that a copy of the attached petition for reconsideration of the Commission's Report and Order and Request for Supplemental Comment for LDDS Communications, Inc., which was filed with the Federal Communications Commission on January 11, 1993, has been served via first-class mail, postage pre-paid to the recipients on the attached pages.

  
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