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

In the Matter of )  
Policies and Rules ) CC Docket No. 93-292  
Concerning Toll Fraud )

AT&T'S REPLY

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Mark C. Rosenblum  
Robert J. McKee  
Richard H. Rubin

Room 3254A2  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
(908)221-4481

Attorneys for American  
Telephone and Telegraph  
Company

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## SUMMARY

The comments demonstrate that there is widespread concern in the industry and among customers about the impacts of telecommunications fraud. The commenters all agree that customer education is an important element in preventing such fraud, and they generally support customer education and warning programs such as those recommended by AT&T. The commenters also generally agree that the Commission should play an increasing role in industry efforts to prevent fraud, and they unanimously support the adoption of stronger laws to prosecute offenders and to help reduce the occurrence of telecommunications fraud.

Most commenters support the adoption of rules that assign financial responsibility for fraud based upon an entity's ability to control access to the public network. Apart from claims by PBX users that they are not always "in control" of the use of their equipment, there is broad support in the comments for making PBX users responsible for fraudulent calls coming from their equipment, unless they can show, through credible evidence, that another party violated an established duty and that such violation caused the fraud loss.

Most PPOs, LECs and IXC's attempt to disclaim responsibility for payphone fraud, or to ignore the issue of liability altogether. This approach is both unwarranted and inconsistent with the industry solution needed to resolve fraud problems. AT&T's comments suggest a reasonable and

equitable set of rules that will encourage all carriers to take appropriate steps to prevent fraud and will fairly assign liability when fraud occurs.

Cellular carriers make a number of reasonable requests for additional rules that will make it harder to commit cellular fraud, easier to identify fraud perpetrators, and will also provide law enforcement authorities with appropriate tools to prosecute such crimes. These carriers do not, however, present a compelling case for holding IXCs and their customers responsible for fraudulent calls generated by cellular phones with counterfeit identifiers, because all such calls enter the public network through facilities controlled by the cellular carriers themselves.

AT&T also supports the requests of LIDB operators for additional information, so that their fraud detection systems can be improved. When the LECs receive such information, however, they should be responsible for implementing it promptly and for assuming liability for fraudulent use of their calling cards.

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AT&T'S REPLY

Pursuant to the Commission's December 2, 1993, Notice of Proposed Rulemaking ("NPRM"), American Telephone and Telegraph Company ("AT&T) hereby replies to the comments regarding the Commission's tentative conclusions concerning telecommunications fraud.<sup>1</sup>

INTRODUCTION

The NPRM drew comments from a wide cross-section of customers, carriers (including LECs, IXC's, cellular carriers and PPOs), manufacturers and others.<sup>2</sup> All of these parties validate the Commission's concern that telecommunications fraud is a significant problem that burdens the industry and its customers with substantial costs. The comments also confirm AT&T's view that customer

<sup>1</sup> Because of the many forms of fraud that plague the entire industry and all of its customers, AT&T agrees with U S West (p. 1 n.2) that the problem should be referred to as "telecommunications" fraud, rather than "toll" fraud.

<sup>2</sup> A list of commenters and the abbreviations used to refer to each is appended as Attachment A.

education, industry coordination, and better law enforcement are essential in the fight to prevent such fraud.

Virtually all of the comments agree that any rules in this area should establish appropriate incentives for all parties to detect and prevent telecommunications fraud. Unfortunately, the comments also recognize that even the best efforts at prevention will not eliminate fraud completely. As existing technologies continue to develop and new technologies are introduced, dishonest individuals will seek new ways to take advantage of telecommunications suppliers and their customers. Thus, the comments generally support, in theory, rules that assign financial responsibility for fraud based upon the ability of various parties to control access to the point where the fraud occurred.

AT&T's comments offered a set of general principles which can be applied to disputes over responsibility for all types of telecommunications fraud. Application of these principles will provide appropriate economic incentives to the parties who are in the best position to prevent fraud, and they will also assign liability fairly in cases where fraud occurs.

AT&T does not, however, advocate a system based on "comparative negligence,"<sup>3</sup> because application of such a

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<sup>3</sup> See, e.g., FMC, p. 2; ICA, p. 10; Planned Parenthood, p. 6.

standard would lead to interminable litigation and generate high administrative costs. Rather, AT&T recommends that the Commission establish fraud rules which are based upon the principle of duty to the public, because the ultimate victims of general fraud losses are ordinary customers and ratepayers, who are themselves blameless. Therefore, AT&T proposes a series of rebuttable presumptions which identify the party who should be financially responsible for various types of telecommunications fraud if the actual perpetrator -- the real person "at fault" -- cannot be located. The party presumed to be responsible then bears the burden of proof to demonstrate that it should not be liable for some or all of the fraud losses.

AT&T also disagrees with the commenters<sup>4</sup> who suggest that the appropriate measure of financial responsibility should be a carrier's costs, rather than its tariffed rates. Such a system would be hopelessly complex to administer. Most carriers' rates are not cost-based. Therefore, determination of the "cost" portion of such rates would create enormous complexities and place substantial strains on a dispute resolution system. Moreover, the principal reason for opposing the use of tariffed rates is the assumption that a carrier should not "profit" from

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<sup>4</sup> See, e.g., BellSouth, pp. 6-7; Bell Atlantic, p., 3; TCA, pp. 9-10.

fraud.<sup>5</sup> In cases of fraudulent calling, however, there is no clear way to determine whether a carrier makes any profit at all on its tariffed rates, because the extraordinary expenses for fraud investigation, together with the collection expense and bad debt associated with fraud, add significantly to the carrier's costs.

I. THE COMMISSION CAN TAKE EFFECTIVE STEPS TO HELP REDUCE TELECOMMUNICATIONS FRAUD.

A. Customer Education Is a Critical Element in the Effort to Reduce Telecommunications Fraud.

The commenters generally agree with AT&T (pp. 3-4) that customer education is an effective means of reducing telecommunications fraud.<sup>6</sup> The materials submitted by carriers and manufacturers show that there is a plentiful supply of customer information already available for those who request it. Several LECs, including GTE, Pacific and U S West, have each attached to their comments lengthy education packages. Many others, including all of the other RBOCs, note that they have, or plan to introduce, customer education programs. Similarly, AT&T, MCI and Sprint all attach samples of their own customer education materials,

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<sup>5</sup> See TCA, p. 10.

<sup>6</sup> E.g., Ameritech, p. 2; NDUG, p. 1; PaPUC, p. 4; Sprint, p. 3; BellSouth, Exhibit 1 ("TFPC Position Paper"), pp. 3-4.

and Northern Telecom and Ericsson describe educational programs that are available to their equipment customers.

All of these entities are ready, willing and able to provide customers with any kind of information they need to assist in fraud prevention. Thus, the critical step in getting customers involved in fraud prevention is not the creation or availability of educational materials. Rather, it is convincing customers to ask for, review and act on such information. The bill insert program suggested by AT&T (pp. 4-5) and others<sup>7</sup> is an effective way to inform customers that this information is available. In addition, the liability rules AT&T proposes will provide an effective incentive for customers, particularly PBX users, to obtain such materials and to implement the procedures needed to detect and prevent fraud.

AT&T also agrees in general with the commenters who support the Commission's proposal (NPRM ¶ 40) to amend Part 68 of its Rules to require manufacturers of PBXs and similar equipment to warn their customers about the possibilities of telecommunications fraud.<sup>8</sup> AT&T opposes, however, suggestions that the warnings appear on outer packaging or in bills of sale,<sup>9</sup> because such warnings are

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<sup>7</sup> See also, Flex, p. 1; MCI, p. 4.

<sup>8</sup> E.g., CMA, p. 9; NDUG, p. 2; Stop and Shop, p. 1.

<sup>9</sup> See e.g., Ad Hoc, p. 6.

not likely to be seen by the persons who need to have them.<sup>10</sup>

AT&T also supports Northern Telecom's (p. 7) and NATA's (p. 13) request that the warning requirement should be implemented on a going-forward basis only. In addition, any such requirement should give manufacturers a reasonable lead time to comply with the new rule.<sup>11</sup> The suggestion by UTC (p. 7) and others<sup>12</sup> that the Part 68 requirement should apply to previously installed equipment is both impracticable and unnecessary. Older equipment may have been moved, upgraded, resold or discarded without the knowledge of the manufacturer.<sup>13</sup> Manufacturers could, however (and likely would for customer relations purposes), respond to the requests for information about older equipment that will be generated by the bill insert program described above, as well as by other industry efforts to inform customers about telecommunications fraud.

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<sup>10</sup> See AT&T, pp. 7-8.

<sup>11</sup> See AT&T, pp. 7-8; Ericsson, p. 9.

<sup>12</sup> E.g., Planned Parenthood, p. 10.

<sup>13</sup> Indeed, manufacturers who sold equipment through unaffiliated dealers may never have known who purchased or used their equipment.

B. The Commission Should Play an Active Role in Industry Fraud-Reduction Activities.

The commenters also generally agree that the Commission should take an active role in the efforts to reduce telecommunications fraud. There are, however, several points of view on how this should be accomplished. Some commenters<sup>14</sup> favor the creation of a new Federal Advisory Committee ("FAC") to address these issues, while others,<sup>15</sup> including AT&T (pp. 35-36), suggest that the Commission should act within the context of existing fraud prevention organizations.

The principal reasons given by FAC supporters are that existing fraud organizations do not have a broad enough participation, and that deliberations in such groups are too closed.<sup>16</sup> AT&T believes that the first concern can be resolved by inviting additional participation at selected meetings of existing fraud prevention groups. At such meetings, all points of view could be aired and Commission representatives could participate both as contributors and as mediators. On the other hand, secrecy is vital when parties are discussing telecommunications fraud and the means to prevent it. The meetings of a FAC, if established

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<sup>14</sup> E.g., APCC, p. 3; BellSouth, p. 2; ICA, p. 5; NATA, p. 9; Vanguard, p. 3.

<sup>15</sup> E.g., Ameritech, p. 1; Sprint, p. 3 n.1; TFS, p. 3.

<sup>16</sup> E.g., APCC, pp. 3-4; NATA, p. 10.

under government auspices, could not be assured the same degree of privacy as the meetings of private associations. Therefore, AT&T strongly recommends that any discussions that might reveal information on methods of committing telecommunications fraud, or of preventing such fraud, should be conducted in private bodies.

Through its involvement in industry committees, the Commission could also participate in efforts to develop legislation that would increase the ability of government authorities -- at all levels -- to root out and punish the individuals who knowingly make fraudulent calls over the public network. In particular, AT&T joins the many other parties who urge the Commission to assist in developing federal statutes that will clearly define telecommunications fraud as a crime,<sup>17</sup> and will prohibit the unauthorized manufacture, sale, possession or use of devices whose principal purpose is to commit telecommunications fraud.<sup>18</sup> AT&T also supports the adoption of clearer rules on the sharing of customer information needed to investigate cases of possible fraud.<sup>19</sup>

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<sup>17</sup> E.g., Bell Atlantic, pp. 1-2; CTIA, p. 9; MCI, p. 18; NDUG, p. 2; Sprint, p. 2;

<sup>18</sup> In addition, as Flex (p. 3) suggests, operation or use of electronic bulletin boards and voice mail to share information that can be used to commit fraud should also be unlawful.

<sup>19</sup> E.g., CTIA, pp. 11-12; GTE, p. 31; MCI, p. 20; McCaw, pp. 18-19.

II. THE COSTS OF PBX FRAUD SHOULD IN MOST CASES BE BORNE BY PBX USERS, BECAUSE THEY ARE UNIQUELY IN CONTROL OF THE EQUIPMENT USED TO COMMIT SUCH FRAUD.

The comments confirm AT&T's position (p. 10) that the PBX user is generally in the best position to detect and prevent PBX fraud. The Toll Fraud Prevention Committee ("TFPC") Position Paper referenced by several commenters specifically notes (p. 1) that the CPE user "has the primary and paramount care, custody and control of the CPE."<sup>20</sup> This fact is also recognized by numerous other commenters.<sup>21</sup>

Many PBX users assert that they are not completely "in control" with respect to fraudulent use of their equipment.<sup>22</sup> Nevertheless, these commenters cannot rebut the essential fact that they alone decide what equipment and services to buy; who should install, operate and maintain that equipment; and what capabilities of the CPE they will implement. Moreover, there can be no dispute that customers also have the ability to monitor all calls coming out of their CPE and are the only parties who can authoritatively

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<sup>20</sup> This paper is specifically endorsed by BellSouth, p. 5; GTE, p. 4 n.2; NTCA, p. 1; NYNEX, pp. 17-18; and SNET, p. 4. AT&T also endorses the positions in this paper, but notes that the paper does not address issues of liability for the costs of fraud.

<sup>21</sup> E.g., CompTel, p. 2; LinkUSA, p. 3; MCI, p. 6; NYNEX, p. 17; Pacific, p. 11; RTC, p. 2; SBC, p. 4; Teleport, p. 5; TFS, p. 4; USTA, p. 3; U S West, p. 37; WilTel, p. 2.

<sup>22</sup> See, e.g., NDUG, p. 1.

determine whether fraud has occurred. In fact, contrary to some commenters' claims,<sup>23</sup> virtually every known type of remote access PBX fraud (other than compromise of the customer's own security codes) can be prevented if the customer is fully aware of the operation of its own equipment and takes available precautions to limit its exposure.

PBX users typically employ remote access features because they provide convenience and because they allow the customer to obtain service at a lower price than by using other calling methods, such as calling cards. PBX users who seek these advantages should not pass on to other customers the costs of fraud (and fraud prevention) associated with their decision to permit remote access calling through their equipment. As a result, contrary to the assumption of Metro-North (p. 2), there should be no specific "minimum requirements" that will automatically allow PBX users to avoid liability for fraudulent calls placed through their equipment.

Nevertheless, there are actions the telecommunications industry should take to respond to the needs of its PBX customers. PBX users suggest that equipment manufacturers and carriers should be required to

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<sup>23</sup> See id ("It is impossible to secure our systems 100% from fraud") (emphasis in original).

provide warnings and other information to assist them in preventing fraud.<sup>24</sup> AT&T (pp. 3-8) and many industry commenters<sup>25</sup> agree that certain kinds of warnings and other information would be helpful to customers. Such warnings could reasonably be required by the Commission, on a prospective basis, because information is the first and best tool in fraud prevention.<sup>26</sup> The Commission should specifically reject, however, NATA's argument (p. 8) that "[i]t is unrealistic to expect . . . business users . . . to take the time to educate themselves about fraud. . . ." No one who operates equipment that creates the potential for abuse of the network should be permitted to disregard information about fraud, or to escape responsibility for its actions.

Many PBX users also argue that carriers should be ordered to provide monitoring services to assist them in detecting fraud.<sup>27</sup> Several other commenters, however, note

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<sup>24</sup> E.g., API, p. iii; Stop and Shop, p. 1; Himont, p. 1; NDUG, pp. 1-2.

<sup>25</sup> E.g., MCI, pp. 4-5; TFS, pp. 5-6; Northern Telecom, p. 7; NATA, p. 10. See also Section I.A above.

<sup>26</sup> Notwithstanding the pleas of some commenters (e.g. FMC, pp. 1-2), who seek to use this proceeding to invalidate prior Commission actions, any substantive requirements the Commission adopts in this rulemaking proceeding should only be prospectively applied (see 5 U.S.C. § 553(d)).

<sup>27</sup> E.g. API, p. iii; Metro-North, p. 2; NDUG, p. 1-2; UTC, p. 5.

that mandatory monitoring services could be costly for some carriers,<sup>28</sup> while still others suggest that the marketplace should determine when and whether such services should be offered.<sup>29</sup> Considering that market forces have already led some IXCs (including AT&T) to offer monitoring services, AT&T believes that a market-based approach is appropriate for all IXCs.<sup>30</sup> AT&T also recommends that the Commission should consider whether LEC monitoring services for PBX traffic would be more effective than IXC monitoring services.<sup>31</sup> Fraudulent calls placed through a single PBX may be carried by numerous IXCs but will only pass through one LEC. In all events, however, carrier monitoring will not provide customers with any information they could not

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<sup>28</sup> E.g., CompTel, p. 6; Flex, p. 2; Teleport, p. 6; TFS, pp. 7.

<sup>29</sup> E.g., BellSouth, pp. 5-6; RTC, p. 6; U S West, p. 49; WilTel, pp. 4-5. MCI (p. 9) notes that because several IXCs already provide monitoring services, an order requiring all carriers to provide such services would reduce, rather than enhance, customer choice.

<sup>30</sup> In all events, customer requests for specific blocking services based upon customer-identified criteria (see CMA, p. 6) are unlikely to be of general interest and should only be offered if there is appropriate market demand and willingness to pay.

<sup>31</sup> See, e.g. NDUG, p. 2. Furthermore, the TFPC Position Paper (p. 1) notes that local number "hacking" (i.e. LEC provided access) is a common form of unauthorized access to PBX equipment. In addition, AT&T supports TCA's request (pp. 3-4) that LECs should be ordered to provide international call blocking services to all customers, not just aggregators.

already obtain from real-time observation of the use of their own equipment.<sup>32</sup>

Even if the Commission adopted some or all of the above proposals, however, customers will remain uniquely in control of the calls routed through their own equipment. Thus, even though there are substantial reasons to provide PBX users with additional information about fraud, there is no reason to give them a "free pass" to escape liability for fraudulent calls placed through their equipment. Such a rule change would create perverse economic incentives for customers to ignore the education efforts they acknowledge are critical, and it would not aid in the ultimate fight to reduce fraud.<sup>33</sup> It would also punish innocent customers by shifting the risk of loss from the individual PBX user, who benefited from the use of the CPE and had an opportunity to prevent the fraud, to the general customer base. As Teleport (p. 5) correctly states, "[o]utside toll fraud

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<sup>32</sup> CMA's assertion (p. 5) that "carriers alone" possess contemporaneous information about traffic patterns and call volumes is simply not true. PBX users have the ability to do real-time monitoring of usage across all carriers.

<sup>33</sup> All arbitrary formulas to assign financial responsibility, or to place a "cap" on customer liability (e.g., NDUG, p. 2 (no fraud liability should continue for more than one day); API, pp. 8-9 (customer liability capped after four hours or \$500 if not notified by carrier); Stop and Shop, Attachment A, p. 1 (forgiveness of charges for three billing cycles)) likewise fail to provide appropriate incentives for PBX users to prevent fraud (see AT&T, p. 17).

cannot occur without a PBX owner affirmatively allowing outgoing calling capabilities."<sup>34</sup> Thus, there should be no change in the general rule that a customer should, in the absence of reasonable proof to the contrary, be liable for all calls coming out of its PBX.<sup>35</sup>

There may, however, be particular cases in which a customer can show that another party's acts or omissions directly contributed to the occurrence of fraud. For

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<sup>34</sup> See also Satchell, p. 6 ("fraud control starts, stops, and resides in the customer's control"). FMC (pp. 1-2), which is currently in litigation with AT&T, inappropriately and incorrectly seeks a reversal of the Commission's decision that unauthorized calls placed through a PBX "originate" at the customer's premises (see Chartways Technologies, Inc. v. AT&T Communications, Memorandum Opinion and Order, FCC 93-394, released August 19, 1993). Remote access calls through PBXs are made up of two separate calls, one of which commences at the remote location, and the other of which commences at the PBX. Two separate bills are rendered for such calls, one by the carrier connecting the remote location with the PBX (typically a LEC or an 800 service provider), and one by the IXC handling the fraudulent call coming out of the PBX. Thus, the latter calls clearly originate at the PBX.

<sup>35</sup> Similar liability principles should apply to fraud that occurs through the use of Centrex-type services (see AT&T, p. 17 n.21; ACUTA, p. 2). In such cases, assuming the customer properly follows all of the instructions of the LEC tariff and does not compromise the security codes, the responsibility for IXC fraud should fall upon the LEC, which is in control of all of the equipment used to provide the service (see SBC, p. 5 ("The only liability apportionment which might be considered for LECs would involve fraud occurring within or upon CPE/PBX equipment controlled by LECs. This is the only area in which LECs have any ability at all to effect [sic] fraud")).

example, AT&T acknowledges that manufacturers should program their equipment so that customers must take an affirmative action to implement DISA capabilities.<sup>36</sup> AT&T also agrees that carriers should be responsible for fraud losses resulting from the infiltration of their premises or equipment.<sup>37</sup> Therefore, AT&T has created a fraud resolution process that enables customers with legitimate disputes to resolve their grievances through mediation and negotiation.<sup>38</sup>

As AT&T describes (p. 9-10), its experience with this process has been remarkably successful. Moreover, the voluntary nature of the process allows all parties to participate, and it avoids the additional complexities that could arise if the Commission sought to impose jurisdiction over equipment manufacturers, vendors, or installers in the context of individual customer disputes.<sup>39</sup> AT&T suggests

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<sup>36</sup> See NPRM, ¶ 40. See also NDUG, p. 1.

<sup>37</sup> See CMA, p. 6 n.12.

<sup>38</sup> The existence of dispute resolution process should not provide customers with a legal excuse for an intransigent refusal to pay bills (see Flex, p. 2). Therefore, a "legitimate dispute" is one in which the customer offers reasonable evidence that another party should be responsible for some or all of the fraud.

<sup>39</sup> See NATA, p. 8 ("[I]t is not clear to what extent the Commission has legal authority to determine the liability of equipment manufacturers and vendors vis-à-vis their customers"). See also Planned Parenthood, p. 12; API, p. 8 n.6. Consequently, AT&T (p. 15-16) recommended only that the Commission consider a voluntary mediation program to resolve PBX fraud disputes.

that its market-based approach can serve as a model for the resolution of similar disputes involving other parties.

API submits an additional proposal that should clearly be rejected. API (pp. 17-19) suggests that billed to third number calls should not be allowed unless customers specifically agree to permit such calls in advance. Such a major change would require carriers to notify and solicit responses from all of their customers. It could also require substantial changes in the operations of the LIDBs, and IXCs' interactions with LIDBs, and would unnecessarily foreclose a significant calling option for consumers.

III. AT&T'S PROPOSED DIVISION OF RESPONSIBILITIES FOR PAYPHONE FRAUD STRIKES AN APPROPRIATE BALANCE AMONG ALL CARRIERS.

AT&T's comments (pp. 18-29) propose a reasonable series of rules that balance the responsibilities of PPOs, LECs and IXCs<sup>40</sup> with respect to payphone fraud. AT&T's proposal is fully consistent with the Commission's view (NPRM ¶ 31) that "carriers should, as a general matter, be held responsible for the services they offer." AT&T's approach is echoed by a few commenters. Unfortunately, however, most PPOs seek the shortest route to a safe haven, most LECs seek protection from their tariffed limitations of liability, and most IXCs ignore any discussion of their own

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<sup>40</sup> IXCs include alternate operator services ("AOS") companies.

responsibility for payphone fraud. None of these positions is appropriate.

Rather than focus upon effective ways to prevent payphone fraud, the PPO commenters embrace the Florida PSC rules in an effort to assure themselves the easiest road to protection from any fraud liability.<sup>41</sup> However, as the Pennsylvania PUC recognizes (p. 11), in addition to the FPSC rules, "any federal policy should also require payphone providers to take such other reasonable measures as are available to prevent payphone fraud" (emphasis added). Moreover, many commenters, including several PPOs, recognize that the FPSC's rules are incomplete and do not cover all types of payphone fraud, particularly international fraud.<sup>42</sup>

GTE, which has significant LEC operations in Florida, notes (p.11) that "the FPSC's policy has been effective only in reducing the number of complaints filed by private payphone owners regarding fraud -- the amount of fraud has not decreased" (emphasis added). AT&T's experience in Florida shows similar results. The comments of the FPTA (p. 7) and the FPSC (p. 3) confirm that those entities measure the "success" of the FPSC's rules solely

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<sup>41</sup> See e.g., APCC, p. 10 ("Payphone providers' obligations must be clearly and precisely defined so that IPP providers will understand precisely what measures they must take to avoid liability").

<sup>42</sup> See, e.g., APCC, p. 16; NJPA, p. 2.

upon the basis of the number of complaints filed. Indeed, FPTA (p. 3) expressly acknowledges that the FPSC rules "will not solve the toll fraud problem."

Thus, GTE (p. 12) correctly states that any Commission proposal on payphone fraud "should define the responsibilities of all participants . . . includ[ing] the use of all reasonable preventative measures."<sup>43</sup> AT&T's comments present such a proposal, which assigns liability appropriately for each different type of fraud involving payphones, regardless of who operates the phone.<sup>44</sup> Such rules would override any contrary provisions in carriers' tariffs.<sup>45</sup> Thus, they obviate any need for the parties to

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<sup>43</sup> GTE (p. 12) also concurs with AT&T's position (p. 18 n.22) that the financial status of an entity has no bearing upon its responsibility to take reasonable actions to prevent, and to be financially responsible for, fraud.

<sup>44</sup> AT&T agrees with APCC (p. 8) and other PPOs that the rules regarding payphone fraud should apply equally to all payphones, including those operated by PPOs, LECs and AT&T itself (see AT&T, p. 22 n.30). These rules should also apply to phones operated by competitive access providers (see Teleport, p. 1 n.2). Contrary to APCC's (p. 7) and IPANY's (p. 14) claims, however, AT&T has in fact made millions of dollars in fraud claims against LECs who have failed properly to protect their payphones from fraud. In addition, IPANY's recommendation (p. 20) that LEC payphones should be placed in fully separated subsidiaries is already the subject of other proceedings. This ongoing debate between payphone providers should not be permitted to impede action on the critical fraud issues involved here.

<sup>45</sup> See APCC, p. 24; FPTA, p. 8.

dwell on issues of tariff construction, particularly debates over the meaning of the term "customer".<sup>46</sup>

With respect to domestic operator services calls, AT&T proposes a modified form of the FPSC's rules. Unlike most IXC commenters, who shun any discussion of IXC liability for payphone fraud,<sup>47</sup> AT&T agrees that IXCs should have a duty to accept and use screening data that could prevent such fraud. Thus, AT&T proposes that an IXC's failure to use OLS data, when it has been timely ordered by the payphone provider and properly transmitted by a LEC, should render the IXC liable for fraudulent calls charged to the payphone line, provided the payphone owner has taken all other reasonable steps to prevent fraud.<sup>48</sup> Such actions are described in Appendix C to AT&T's Comments.<sup>49</sup> The most important of these actions include: (i) verification that LEC screening services have been properly provisioned, are not diminished in capacity through actions of the payphone

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<sup>46</sup> See AT&T, p. 19.

<sup>47</sup> See MCI, pp. 9-12; Sprint, pp. 11-12; CompTel, pp. 6-7.

<sup>48</sup> An IXC's failure to perform a LIDB query for BNS on domestic collect and billed to third number calls should similarly render that IXC liable for any fraud associated with such calls.

<sup>49</sup> The activities described in AT&T's comments are based upon current technology. The introduction of new technology could require additional or different actions by payphone owners.

provider and continue to be effective over time;<sup>50</sup> (ii) retention and production of appropriate records; (iii) filing of timely written claims of challenged charges; and (iv) cooperation with other carriers in investigating and prosecuting claims against fraud perpetrators.

When timely ordered and verified LEC screening services are not properly provisioned, or are otherwise not delivered to the IXC, the LEC should be directly liable for the resulting fraud losses. A few LECs, such as BellSouth (p. 6), Bell Atlantic (p. 3) and GTE (pp. i, 11), acknowledge that others, including IXCs, have a right to rely upon a LEC's provisioning of such services,<sup>51</sup> and a right to reimbursement for LEC errors. Most LECs, however, insist that they should be allowed to continue to avoid any financial responsibility (in the absence of gross negligence), based upon the limitations of liability in their tariffs.<sup>52</sup> This position is both unreasonable and contrary to the public interest.

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<sup>50</sup> APCC (p. 11) acknowledges the reasonableness of periodic testing of payphones, but suggests a testing schedule that is too infrequent to provide effective assistance in fraud prevention.

<sup>51</sup> See also GTE, p. 12; SNET, p. 10 (carriers should provide "error free" services in connection with cellular fraud).

<sup>52</sup> See, e.g., U S West, pp. 30-35; NTCA, p.3; NYNEX, pp. 9-17; RTC, p. 8.

The fraud protection services the Commission has ordered LECs to provide are the most important means of protecting against payphone fraud.<sup>53</sup> However, the Commission's purpose in requiring such services could be thwarted if the LECs have no financial responsibility for them and no incentives to make them effective.<sup>54</sup> Given the special purpose of these requirements specific to the problem of fraud, a rule mandating LEC responsibility for fraud losses would not implicate, much less be contrary to, the "general principles of limitations of liability," as some LECs claim.

Nor should such liability lead to any significant increase in rates for LEC screening services. LECs would have no liability unless they fail to deliver signaling services that are supposed to be automatically transmitted by their equipment, provided that they process service orders timely and correctly.<sup>55</sup> In addition, the number of such errors will be substantially reduced if payphone providers are required promptly to verify (and periodically

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<sup>53</sup> AT&T, pp. 28-29. See also APCC, p. 9; IPANY, p. 1. Prompt federal tariffing of these services, as well as international direct-dial blocking service, is also important (see, e.g., AT&T, p. 24 n.25; APCC, p. 18 n.6).

<sup>54</sup> See APCC, p. 7; IPANY, p. 15.

<sup>55</sup> Service order entry mistakes appear to be among the most common source of errors (see U S West, pp. 43-44). The costs necessary to improve the processing of such orders would not likely be significant.