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AUG 1 1994

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

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

**COMMENTS**

INTELLICALL COMPANIES

Judith St. Ledger-Roty
John W. Hunter
REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Its Attorneys

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Summary

In the Intellicall Companies' view, the FCC embraced the concept of billed party preference primarily to cure perceived imperfections in the marketplace which have temporarily allowed some OSPs to charge high rates for their services, and only secondarily to assure that consumers have convenient dialing methods to reach their preferred carrier when making a 0+ call. The Commission does not need to, nor should it, order that billions of dollars be spent in billed party preference implementation to achieve these results.

The Commission has the authority to regulate the rates of OSPs, either directly or indirectly through the regulation of commissions, and should, after years of equivocation, finally exercise that authority. Both consumers and OSPs who charge reasonable rates are entitled to this measure of protection from the Commission, now.

Further, it is not necessary to spend billions of dollars to assure the second result. Consumers wishing to dial a carrier other than the presubscribed carrier have readily adopted 10XXX- and 1-800 calling patterns, made extremely popular by the carriers through effective marketing. The unblocking of 800 and 950 dialing conventions that led to their wide consumer acceptance was ordered by the Commission only three and one-half years ago.

Adoption of billed party preference requirements at this time in the process is simply unnecessary and counterproductive. It would result in unjustified expenditures by OSPs and local

exchange carriers ("LECs") that ultimately will be passed on to the customers. See, § IV(A), infra. Furthermore, the enormous economic burdens placed on the OSP industry as a result of billed party preference will result in a number of OSPs not being able to survive and the level of competition diminishing, not escalating as MCI and Sprint would have the Commission believe.

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**COMMENTS**

Intellicall, Inc. and Intellicall Operator Services, Inc., (collectively the "Intellicall Companies"), through their attorneys, hereby offer their comments on the Further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

As set forth below, the Intellicall Companies have concluded that, for too long, neither the industry nor the Commission have been willing to admit to and address the core problem that billed party preference is intended to solve, that is, that the rates some Operator Service Providers ("OSPs") charge are perceived to be, and in some cases are, unreasonably high. Simply put, rather than spend billions, or even hundreds of millions of dollars on implementation of billed party preference, the Intellicall Companies urge the Commission to adopt rate caps or zones of reasonableness for OSP rates, and to prosecute those who violate them. This approach will cure the perceived problem now -- not years from now -- for comparatively nominal costs, preserving the competitive opportunity for small businesses to participate in

the operator-assisted telecommunications marketplace, and the benefits of a competitive marketplace for consumers.

## STATEMENT OF INTEREST

Intellicall is the leading provider of equipment to the Customer Owned Pay Telephone Service ("COPTS") industry. It has manufactured over 170,000 "smart" pay telephones for use in 46 states and provides various ancillary services to its customers, including access to suppliers of billing, collection and validation services necessary to the conduct of its customers' business.

Specifically, Intellicall pay telephones utilize "store and forward" technology that obtains billing information from customers for non-sent paid calls which is then stored in the phone. The pay telephones contain computer chips that use tone and voice prompts to instruct the caller to input credit information or collect call billing options. The micro-circuitry records the billing information and subsequently downloads the information upon command to COPTS providers. The provider then uses various tables to rate the calls and forwards its records through one or more billing clearinghouses to local exchange carriers ("LECs") for billing and collection. [1/]

Intellicall Operator Services ("IOS"), a wholly-owned subsidiary of Intellicall, provides network based operator

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1/ Through this set based technology, pay telephone providers are able to offer both operator services and enhanced services to consumers in competition with the LECs and traditional network based providers of operator services. This competition has resulted in direct benefits to consumers and competitors alike.

services throughout the country. Its services are offered from pay telephones, hotels, hospitals and other locations serving the transient marketplace. It also offers its services, in conjunction with highly specialized pay telephones manufactured by Intellicall, in the confinement institution marketplace.

The implementation of billed party preference will limit Intellicall's ability to sell smart phones to the payphone industry, and limit IOS' ability to offer operator services from aggregator locations. As such, the Intellicall Companie are vitally interested in the outcome of this proceeding.

**STATEMENT OF POSITION**

In the Intellicall Companies' view, the FCC embraced the concept of billed party preference primarily to cure perceived imperfections in the marketplace which have temporarily allowed some OSPs to charge high rates for their services, and only secondarily to assure that consumers have convenient dialing methods to reach their preferred carrier when making a O+ call. The Commission does not need to, nor should it, order that billions of dollars be spent in billed party preference implementation to achieve these results.

The Commission has the authority to regulate the rates of OSPs, either directly or indirectly through the regulation of commissions, and should, after years of equivocation, finally exercise that authority. Both consumers and OSPs who charge reasonable rates are entitled to this measure of protection from the Commission, now.

Further, it is not necessary to spend billions of dollars to assure the second result. Consumers wishing to dial a carrier other than the presubscribed carrier have readily adopted 10XXX- and 1-800 calling patterns, made extremely popular by the carriers through effective marketing. The unblocking of 800 and 950 dialing conventions that led to their wide consumer acceptance was ordered by the Commission only three and one-half years ago. [2/]

Adoption of billed party preference requirements at this time in the process is simply unnecessary and counterproductive. It would result in unjustified expenditures by OSPs and local exchange carriers ("LECs") [3/] that ultimately will be passed on

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2/ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 90-313, 6 FCC Rcd 4736 (1991) ("Access and Compensation Order"). That action carried out the statutory mandate of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") of permitting callers at pay phones to use access codes to reach their preferred long-distance carrier. The industry is nearing the conclusion of the lengthy and complex process of implementing the TOCSIA regulatory framework that ensures customer choice. This process required aggregators to make 10XXX dialing at pay phones and other transient locations available.

3/ Among the costs that the Commission anticipated would be incurred by the LECs in implementing billed party preference were those for end office software, modifications to operator switches, trunk terminations and rearrangements. These costs, estimated by the Commission at $890 million (Further NPRM at ¶¶ 22, 26), would be recovered by the LECs in OSP tariffs. This means that the OSPs would directly reimburse the LECs for upgrading their networks. Such a result is ludicrous and would be a byproduct of the Commission's ill-fated billed party preference proposal. The situation becomes all the more absurd when the possibility of enactment of the pending litigation before Congress that would allow the BOCs to enter the interstate long distance market. The convergence of enactment of MFJ relief legislation and

Continued on following page

to the customers. See, § IV(A), infra. Furthermore, the enormous economic burdens placed on the OSP industry as a result of billed party preference will result in a number of OSPs not being able to survive and the level of competition diminishing, not escalating as MCI and Sprint would have the Commission believe.

## I. THE COMMISSION SHOULD REGULATE OSP RATES.

### A. Rate Regulation, Federal and State.

There can be no doubt that the Commission's consideration of BPP is a reaction to the rates charged by some OSPs. The Commission makes clear its position, when it expressly disavows the need of consumers to pick their secondary carrier. According to the Commission, "if customers were billed only by their primary carrier and at that carrier's rates, it is not apparent that customers need to be afforded the opportunity to choose their own secondary carrier." Notice at 30, n.95. In a nutshell, this statement reveals that the Commission thinks the only relevant issue is rates -- not transmission quality, not service options -- just rates. [4/] And the Commission can affect the rates that OSPs

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Continued from previous page
implementation of billed party preference would result in the OSP industry directly upgrading the BOCs' networks that would be used to provide long distance service.

4/ Of course, a primary carrier would not have rates for the service provided by the secondary carriers. If it did, that would mean that it would be providing the service, and thus carrying the call without need for a secondary carrier.

charge, in a trice merely by indicating its intent to oversee and prosecute those who charge unreasonable rates. [5/]

The FCC has ample authority to regulate the rates of OSPs. Intellicall suggested to the Commission that it regulate rates "by example" years ago, but the Commission was then apparently philosophically opposed to rate regulation and, therefore, declined to exercise its authority. This Commission should not be so reluctant. It should exercise that authority both to establish zones of reasonableness, or rate caps, and then to enforce those rates or rate caps.

The Commission's authority extends to direct rate regulation, see, e.g., 47 U.S.C. § 226(h)(1) and (2), or indirect rate regulation through oversight of commission payments. See 47 U.S.C. § 226(h)(4). [6/]

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5/ The fact that some OSPs have charged excessive rates, however, should not blind the Commission to the phenomenal benefits operator services competition has brought to the consuming public. From 1986, when there was only one carrier offering operator services and then only the equivalent of "black rotary dial phone" services, to today, we have seen an array of services. These include multilingual operators, conference calling from transient locations, multiple billing options, automated collect calling services, to name a few.

The fact that some OSPs have changed excessive rates also should not blind the Commission to the fact that others charge reasonable rates, and have done so even though paying higher service costs incurred because the LECs traditionally discriminated in favor of AT&T in the provision of validation and billing and collection services.

6/ The Commission's establishment of compensation to pay phone owners is the effective equivalent of regulation of commissions. Both are paid to premise owners as compensation for their role in the origination and handling of OSP calls.

State public utility commissions have led the way in establishing zones of reasonableness on rate caps for OSP rates. Numerous states have determined that OSPs' rates, below a certain level, are lawful and required carriers who desire to charge rates in excess of those levels to justify their reasonableness. 7/ Others have set maximum rates based on AT&T's rates, the highest rate charged by any 1+ IXC, e.g. AT&T daytime rate + a specified surcharge (Florida, South Carolina); AT&T daytime rates (New York); AT&T rates (Colorado, Indiana, Minnesota, Tennessee); or rates only a prescribed percentage higher than the dominant IXC (Pennsylvania).

Rate regulation of this sort both establishes the maximum rate, and has the effect of putting downward pressure on commissions. The OSP receives only a fixed amount for each call, which has to be split between the OSP and the aggregator. The OSP and the aggregator will thus be forced to negotiate a commission derived from a fixed sum, and have no ability to charge more in order to increase the aggregator's profit.

### B. Rate Regulation Would Benefit Consumers and the OSP Marketplace Immediately; BPP Benefits, if any, Are Years Away.

A serious indication by this Commission of a willingness to oversee and, as necessary, regulate OSP rates would bring concrete benefits to consumers immediately. For example, if the FCC were to impose a rate cap now, consumers would experience the

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7/ It is Intellicall's understanding that OSPs rarely, if ever, attempt to justify rates higher than the ceiling set.

direct benefit of reduction in the rates of carriers whose rates now exceed that cap. The implementation of billed party preference, on the other hand, offers only the possibility of long term rate rationality, and at extraordinary costs.

The Notice (at 36, ¶ 83) suggests that a consensus of commenters have indicated that "BPP could be implemented one year after the necessary software is available from vendors or within three years of a Commission order mandating it." The Intellicall Companies did not read a consensus of the comments to suggest that BPP is achievable within the next three years. Nor do the Intellicall Companies think those conclusions are accurate.

It is obvious from even the most vigorous supporters of billed party preference that substantial technological and standards work has yet to begin, let alone is accomplishable for deployment in the next several years. See Ex Parte of MCI, GTE, PacBell and SWBT, dated December 23, 1993. To name a few:

> (1) Extended SS7 versions need to obtain standardization support, and be adopted as standards by T1S1. See id. at 1.
>
> (2) IXCs and LECs will need to negotiate cooperative agreements to address service and billing issues. Id.
>
> (3) All equal access end offices will have to be modified to change the routing of calls from that associated with the presubscribed line to that associated with call routing to the LEC OSS. Id at 2.
>
> (4) There will need to be a resolution of a number of technical issues related to conflicting number formats, the development and implementaion of a LIDB-like

database capability for validation of these calls. Id. at 3.

(5) Operator transfer tariffs of the LECs will need to be replaced or modified. Id. at 3.

(6) Vendor development will be needed in order to develop technology for central offices not equipped to split the ranking of 0+ and 1+ calls as alternatives to OSS7. Id. at 3.

(7) To minimize industry costs, the interface between LEC end offices that subtend OSSs owned by other LECs needs to be developed and standardized. Id. at 3.

(8) Automated Alternative Billing Services (AABS) needs to be installed on all of the LECs', existing systems; and modified and expanded in order to support billed party preference functions and increased capacity. Id. at 4.

(9) Default options need to be developed. Id. at 4.

(10) LEC and IXC databases will need to be made to comply with signalling standards and formats specified for LIDB. Id. at 5.

(11) LEC shared use and other programs which allow IXCs to issue line number cards will need to be supported through new interfaces, and procedures based on LEC/IXC discussions. Id. at 6-7.

(12) Resolve disagreements over BPP failure to presently store non-RAO cards on carrier associated PINs in LIDB.

(13) New service arrangements, service order and customer record systems will need to be designed and implemented by all LECs. Id. at 7.

(14) IXCs will similarly have to develop service order and implementation procedures. Id.

(15) Special arrangements will need to be made in Hawaii to allow end users to specify a different international carrier from domestic carrier. Id.

(16) Signalling will need to be expanded to pass forward to the IXC all information made available to the LEC. All signalling will have to be accomplished in the SS7 protocol in order to keep overall call processing time within acceptable limits. Id. at 8.

(17) LEC networks will have to be designed to backhaul the calls back to originating office from the OSS (id.), so that the calls are routed and rated properly. Id.

The above list includes only the obvious things to be accomplished. As always with major, highly sophisticated technical developments such as the sort envisioned here, there will be technical requirements that are not contemplated, and some that will be far more difficult than projected. Furthermore, the need for standardization of all the interfaces and designs, while critical, adds a layer of time simply by virtue of the need to allow adequate comment and participation by all affected parties. Likewise, there remains substantial vendor development for key aspects of billed party preference. There are no assurances that the vendor development can be accomplished at all, let alone in the manner contemplated by the Commission or wthin any reasonable cost estimates. The length of time for billed party preference to be fully implemented is a critical factor that must be considered by the Commission in determining

whether to prescribe such a complex and costly program, particularly when rate regulation is an alternative and is available immediately.

Given the above, the Intellicall companies submit that all those predictions are far too short and unreasonably optimistic. The Commission only need look at 800 number portability, a comparably simple network modification, to see that the proposed time lines are ludicrously short. That situation, unlike billed party preference, involved universal support of the parties involved, which virtually removed the possibility of legal challenges to any aspect of the plan, thereby avoiding procedural delays. It also meant that the responsible parties were not inclined to take steps that would slow actual implementation of the system.

A brief synopsis of the history of 800 number portability should be instructive to the Commission in fully considering the complexity of implementing an extensive program such as billed party preference. This is necessary so that a realistic estimate of the time required can be made and factored into the Commissions final decision. The major decisions in the 800 Service Access proceeding are as follows:

> January 23, 1986 -- The Commission initiated a proceeding on a BOC data base plan for a uniform nationwide system of 800 access, including 800 number portability.
>
> February 18, 1988 -- The Commission sought additional comments on various issues.
>
> April 21, 1989 -- In a Report and Order, the Commission concluded that the LECs could implement

the data base plan if they continue to offer traditional 800 service through NXX codes.

September 4, 1991 -- The Commission modified the time standard for EOC and GTE implementation of the system until March 1, 1993. The Commission also sought comment on rate structure and pricing issues for 800 data base access.

July 28, 1992 -- In response to requests for partial waiver of the access time standards, the Commission granted waivers to several LECs.

November 20, 1992 -- The Commission extended the deadline for implementation of the 800 data base system until May 1, 1993.

January 29, 1993 - The Commission adopted a Second Report and Order for rate structure and pricing rules.

January 29, 1993 -- The Commission required the independent telephone companies to implement 800 data base access by May 1,, 1993, but on a less rigorous standard.

May 1, 1993 -- The LECs began offering 800 data base services under tariff.

July 19, 1993 -- The Commission ordered an investigation of certain aspects of the LECs' 800 data base tariffs.

October 13, 1993 -- The Commission issued an order clarifying that 800 number portability applies to resale long distance carriers, as well as facilities-based long distance carriers.

January 31, 1994 -- The Commission required the LECs to disclose cost support materials in connection with the investigation of the 800 access tariffs.

This chronology demonstrates the nine-year implementation period of 800 number portability and the complexity of related issues that had to be resolved in connection with that program. For reasons stated above, the implementation of billed party preference will take far longer than 800 number portability.

This must be weighed in conjunction with the substantial costs incurred by the OSPs, IXCs and LECs. Furthermore, these factors of time and costs must be balanced with the alternative of rate regulation that is immediately available to the Commission. The scales are heavily weighted in favor of immediate rate regulation.

## II. BILLED PARTY PREFERENCE IS NOT THE PANACEA THE COMMISSION SUGGESTS.

In tentatively adopting billed party preference, the FCC states that it would "facilitate access to the network." According to the Commission, "callers would no longer need to use access codes, they would no longer find their OSP cards rejected at certain pay phones, and their calls would automatically be carried by the billed party rather than that chosen by the premises' owner." Intellicall believes that each of the goals underlying this statement, set forth above, have been achieved or are achievable without spending hundreds of millions of dollars or billions of dollars on billed party preference.

### A. Network Access By Transient Users Has Been Achieved.

The first benefit cited by the Commission -- that consumers would no longer need to dial access codes -- deserves close examination, as it is not at all clear that the elimination of access code dialing confers tangible benefits on consumers. Furthermore, there is no indication in the record that consumers

would want to pay the $.30-$.60 or more associated with that alleged benefit.

Simply put, consumers have readily accepted access code dialing. The proof of this lies in the resounding success of the panoply of 10XXX and 800 services available to consumers today, which were not even thought about a few short years ago. Making a virtue out of necessity, AT&T introduced 800 service offerings (e.g., 1-800-CALL ATT), which now generates millions of dollars in revenue. MCI has similarly successfully marketed 1-800 services (e.g., 1-800 COLLECT) to consumers. [8/] To state the obvious, these services would not have enjoyed their wild success if consumers were opposed to access code dialing.

MCI's "Calling Card User Study" [9/] does not yield a different result. The study apparently asked users whether they would prefer 0+ dialing to dialing access codes, and a significant number responded positively. However, the study apparently did not ask whether they would prefer 0+ dialing if they had to pay an additional $.30 or more cents on every call, merely to save dialing a few additional digits. It did not indicate that two operators would be required in some instances; it did not indicate that call set up times would be longer; it did not indicate that 0+ dialing would work only for interLATA,

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8/ See "The Marketers' Call," Washington Post, June 26, 1994 at H1.

9/ MCI Calling Card User Summary Executive Summary was submitted in an Ex Parte dated February 14, 1994.

and perhaps only interstate calls, and perhaps only in RBOC territories at first.

It simply did not put the questions in context. One might as well have asked the same group whether they would prefer not to work. It is likely that the answer would be a resounding "yes." If put in the context of having no food to eat, however, because there would be no monies to buy food in the absence of employment, the answer would be quite different. Given the general nature of its questions, and their total lack of context, one simply cannot extrapolate from the study any conclusions about consumer preference for billed party preference implementation.

The Notice also seeks comment on the extent to which consumers will be confused if 10XXX access codes are replaced with 101XXXX access codes. Undoubtedly, there will be some confusion for those consumers using 10XXX access, although Intellicall suggests it will likely be minimal and short lived. The Intellicall companies assume that the long distance carriers will be successful in choosing access code numbers and devising advertising strategies to announce them which are equal to those they deploy today (e.g., 1 800-CALL ATT, and 1 800 COLLECT), all of which are readily understandable and readily dialable.

Secondly, any confusion that does result from additional digits must be compared with the confusion callers may experience in billed party preference implementation. The first asks callers to dial two extra digits; the latter asks consumers to select a carrier, fill out a ballot sheet, and change the way

they have routinely dialed all of their operator assisted calls. It introduces both LEC and IXC presence on every call. Despite its name, it will also introduce multiple IXCs in the carriage of calls (e.g., where the selected IXC doesn't have a point of presence in the originating LATA), with perhaps multiple carrier names appearing on bills. Under even the best of circumstances, billed party preference is by far the more confusing of the two choices presented by the Commission.

### B. Guaranteed Routing To The Customer's Preferred Carrier Has Been Largely Achieved.

The Notice suggests the importance to consumers of "guaranteed routing to the customer's preferred carrier," citing instances (1) where calling cards are rejected by an OSP because it cannot validate a proprietary card, and (2) the premise that callers, on average, could save money if calls were not handled by carriers other than AT&T, MCI and Sprint.

Guaranteed routing to one's preferred carrier is available today. This Commission has already found that aggregators have complied with TOCSIA's unblocking requirements. Thus, consumers in transient locations can dial their preferred carrier if other than the carrier to whom the line is presubscribed. 10/

It is true that in some instances OSPs must decline to handle calls attempted to be billed to proprietary calling cards, such as

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10/ Intellicall is aware of the Texas Public Utility Commission survey, submitted February 3, 1994, that showed that some 25% or more of phones did not have each access code unblocked. However, this Commission should also be aware that the Texas payphone industry response to that finding was a substantial education campaign, and vigorous industry self-enforcement.

AT&T's CIID card. But that phenomena is easily corrected. AT&T need only be required to inform callers that its proprietary cards can be accepted only by AT&T, and that to assure with 100% certainty that their calls using the CIID card are processed, they must dial access codes. 11/

## III. COMMISSIONS PAID BY OSPs ARE EFFICIENT MEANS OF ACQUIRING SHELF SPACE; THE ALTERNATIVE IS SUBSTANTIAL ADVERTISING AND CUSTOMER ACQUISITION COSTS WHICH MUST BE INCLUDED IN THE COMMISSION'S COST ESTIMATES.

The Notice, at ¶ 12, suggests that billed party preference implementation will cause OSPs to "refocus their competitive efforts on end users rather than on commission payments" to aggregators, it concludes that billed party preference "would almost certainly eliminate commissions and thus significantly reduce OSP costs, thereby offsetting a substantial portion of the costs of billed party preference itself." Id. The Commission's statement correctly recognizes that there is competition among OSPs for "shelf space," but apparently perceives no value in this competition. Nor does it apparently recognize that, in the vigorously competitive market for calls placed from transient locations, OSPs will either provide quality service at reasonable rates to end users, or they will not long survive. Lastly, the Commission's conclusion that the elimination of OSP commissions

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11/ As has been stated by numerous OSPs before this Commission, the OSPs don't want to decline these calls. They have no choice given their lack of validation and billing data associated with the proprietary cards. Consumers dialed "0" to reach AT&T because of AT&T's massive advertising campaign to dial "0" for AT&T. AT&T has apparently rethought that campaign, now giving consumers accurate information on 1-800 and 10XXX dialing methods.

will offset a substantial portion of the costs of billed party preference may be true in some cosmic sense, but the monies that are not paid in commissions will not be available to offset the costs of billed party preferences, and the Commission should not delude itself into thinking otherwise.

**A. Overview.**

In calculating the "cost savings" under BPP, the FCC has assumed that $340 million in monies currently paid in commissions would be saved. This premise is simply wrong. [12/] The monies paid in commissions, and more, will be required to be spent by OSPs in marketing and customer acquisition costs, as well as in compensation to the site owner through some form of premises compensation plan this Commission will be required to implement. [13/] Previously, the payment of commissions achieved, to a significant degree, both of these results.

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12/ An underlying premise of the FCC's order is that commissions are inherently bad, and that it must implement billed party preference in order to eliminate them. The premise is incorrect.

13/ In order to implement billed party preference, the Commission will have to substantially expand its present plan to apply to all entities which make their telephones available for operator-assisted calls. Under billed party preference, hotels, hospitals, colleges and universities, and a whole panoply of other institutions would be entitled to compensation for their role in call origination and handling. This compensation, in the form of commissions, is paid today and, in order for these entities' major contribution to continue, must be paid in a compensable amount, in whatever form, under billed party preference. Yet, this is a cost to OSPs for which the Commission has failed to account.

B. **Marketing And Customer Acquisition Costs.**

IOS has no first-hand knowledge of the costs of implementing billed party preference to the BOCs, or the non-BOC LECs. [14/] It does know, however, about the cost billed party preference will cause it and its counterparts to incur, and that these costs are enormous. [15/] A key component of these costs, which the Commission has totally overlooked, are the additional advertising and customer acquisition costs, which it, as well as other OSPs, will have to incur in order to attract customers if commission payments are eliminated.

Today, IOS and its counterparts negotiate with aggregators for the opportunity to service customers through 0-/or 0+ dialing. Compensation for this "shelf space" is paid to the aggregator in the form of commissions. The payment of commissions has been and continues to be an efficient way for small businesses, such as IOS, to achieve the shelf space necessary to offer operator services from transient locations. The payment of a commission to the aggregator assures the OSP that it has the opportunity -- and only the opportunity -- to

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14/ By any rational estimate, it is likely to be a billions of dollars.

15/ Intellicall Operator Services, a certified OSP, will incur these expenses enumerated below directly. Intellicall, in its role as manufacturer of smart phones, will feel the impact of these expenses indirectly, as its customers who purchase phones will have less money to do so.

sell operator services to end users placing operator-assisted calls. 16/

The end users who place toll calls from transient locations come from all walks of life, and from all over the United States and the world. In a given day, or month, end users from New York, New York, Chicago, Illinois, Oxford, Mississippi, Little Rock, Arkansas, and Spokane, Washington, or similarly geographically dispersed locations are likely to use, for example, a pay telephone at the corner of 18th & M Streets, N.W., Washington, D.C. serving the transient public. Similarly, it is likely that plumbers, doctors, salespeople, students, among others, are users of that same pay telephone. The one place these people come together is at the situs of the phones from which operator-handled calls are placed. The situs of the phones is thus an appropriate place to introduce these potential users to the services offered by one or more OSPs. In fact, for smaller OSPs, it is by far the most economically efficient way to reach these potential customers.

Billed party preference eliminates the opportunity for OSPs to offer their services to customers in this manner. Rather, it would require all customers to make their carrier choice,

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16/ As of 1992, the FCC had concluded that over 90% of the telephones complied with TOCSIA consumer protection requirements. According to the FCC, these requirements were "effective in providing consumers the opportunity to reach the carrier of choice through access codes and thereby avoid the high rates charged by some OSPs." The Commission also recognizes that AT&T's present advantages permit it to pay lower commissions on a per call basis, because its total call volumes are higher than all other OSPs.

presumably through balloting, well before they approached the "store" to make a purchase. Thus, in order to obtain customers, OSPs would have to be part of the "pre-selection" process.

In the context of the operator services marketplace, participation by OSPs in the "preselection" process would be prohibitively expensive, and Intellicall believes likely to cost the OSPs, collectively, far in excess of what they presently pay in commissions to reach the same number of potential customers. For example, in order to have an opportunity to serve all of these same people from the pay telephone at 18th & M Streets, N.W., IOS would have to devise advertising to reach each of these population segments. In essence, it would have to engage in a nationwide advertising campaign, at a cost equal to or greater than it presently incurs in commission payments. See footnote 22. AT&T and MCI, respectively, paid billions or millions of dollars in long distance advertising. Single one-page advertisements in papers like the New York Times run well in excess of $100,000. When this is multiplied by the vast numbers of ads, telephone solicitations and the like that would have to be done, repeatedly, in the months preceding presubscription, one can see that the costs are easily tens of millions of dollars or more for each OSP.

Furthermore, IOS and its competitors would have to participate in the balloting of virtually every community in order to "preestablish" the relationship that would permit it to offer calls from transient locations. This would be necessary in order to establish a relationship with each of the people, such