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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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

REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY

ROBERT M. LYNCH  
RICHARD C. HARTGROVE  
J. PAUL WALTERS, JR.

One Bell Center  
Room 3520  
St. Louis, Missouri 63101  
(314) 235-2507

ATTORNEYS FOR  
SOUTHWESTERN BELL TELEPHONE COMPANY

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## SUMMARY\*

SWBT continues to support BPP, though each additional month of Commission delay makes introduction more problematic. SWBT's continuing support is conditioned upon (1) issuance of a BPP implementation order by May, 1995, (2) implementation consistent with the SWBT, GTE, Pacific Bell and MCI joint ex-parte filing of December 23, 1993, (3) full cost recovery in the BPP rate structure, and (4) insurance of sufficient demand for BPP to allow appropriate cost recovery.

Access code dialing is not a viable alternative to BPP. Many payphones do not allow access code dialing at all, even though such is required by Commission Rules. Moreover, there is absolutely nothing in the record to indicate that consumers either enjoy or understand the fundamentals of access code dialing. Confusion will only increase when 10XXX codes are replaced by 101XXXX access codes.

BPP will not stifle interexchange or local competition. Interexchange competition will be encouraged by opening payphones and aggregator phones to all carriers on the basis of service merits. Teleport's claim that BPP will injure local competition is nothing more than a plea for regulatory favoritism, as is the incredible suggestion of MFS that, if BPP is implemented, all LEC LIDBs should be placed under the control of a third party.

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\* All abbreviations used herein are referenced within the text.

Regulation is not a substitute for BPP, because the virtues of competition are lost, and the vices of governmental control are magnified. The Commission's goal of streamlined regulation is ignored, and more bureaucracy is created. Also, the "rate regulation approach" focuses solely on OSP charges and ignores the major issue in this docket, namely that the current system does not allow the billed party to automatically choose who it will pay for services rendered, and often prevents consumers from accessing their carrier of choice.

The objections of penal institutions and law enforcement agencies to BPP are two-fold: (1) BPP will encourage fraudulent calling, and (2) BPP will lessen or eliminate the commissions from OSPs. The first point demonstrates a basic misunderstanding. Penal institutions and law enforcement officials will lose no control whatever over inmate calling. Commissions payments will likely decrease or disappear entirely under BPP, but this is a plus rather than a minus, since rates for the billed parties will decrease.

BPP should apply to calls dialed 0+, 0- and 10XXX+0. This will add to the demand for BPP and produce optimum consumer control of prices and services. The Commission has concluded that BPP is in the public interest but has expressed concern that access code dialing might handicap the service. Application of BPP to 10XXX+0 calls will have the same effect upon BPP that elimination of 800 NXX service had upon 800 Data Base.

SWBT opposes 14-digit screening for BPP, which would add approximately \$8-16 million to BPP implementation costs and a minimum \$1.5 million in additional annual recurring expenses. Plus, fraud would increase significantly with 14-digit screening. SWBT has developed an alternative for IXCs wanting market presence on 0+ TLN cards in a BPP environment. Under this plan, a SWBT card customer would be sent a replacement card also containing a hard imprint of the name and logo of the customer's preferred IXC. Unlike 14-digit screening, SWBT's proposal would reduce the number of cards in circulation, thereby reducing the chances for fraud. The additional exorbitant cost of 14-digit screening would also be avoided.

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**REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY**

A typical consumer recently placed a toll call from a payphone at a gasoline station in Lander, Wyoming. The phone's information card indicated presubscription to a company which the consumer had never heard of, so the consumer, having some knowledge of the industry, attempted to reach his preferred Interexchange Carrier (IXC) by dialing an access code, which, it turned out, was blocked. That the blocking was illegal helped the consumer not a whit.

The consumer was faced with two unpalatable choices. He could, on the one hand, forgo the call and look for another phone. Time was of the essence, however, and Lander, though beautiful, is short on payphones. So the consumer chose the second option and dialed 0+. When the consumer's bill arrived later that month, he discovered a fifteen dollar charge for a three minute call.

Billed Party Preference (BPP) will put a stop to such anti-consumer, anti-competitive practices, the protestations of certain premises owners and Operator Service Providers (OSPs) notwithstanding. These parties oppose BPP because they profit handsomely from the current environment in which unreasonable charges finance substantial commission payments. Of course, a

premises owner currently receiving monthly commission payments will object to a system which will reduce or do away entirely with those payments. Of course, an OSP receiving five dollars a minute (or more) in toll charges will object to a system that will reduce those charges substantially if the OSP is to remain competitive. The only surprise in this docket would have been if OSPs and premises owners had supported BPP.

Southwestern Bell Telephone Company (SWBT) continues to support BPP, though each additional month of Commission delay makes introduction more problematic. SWBT's continuing support for BPP is conditioned upon (1) issuance of a BPP implementation order by May, 1995, (2) implementation consistent with the SWBT, GTE, Pacific Bell and MCI joint ex-parte filing of December 23, 1993, (3) full cost recovery in the BPP rate structure, and (4) insurance of sufficient demand for BPP to allow appropriate cost recovery. If the Commission will take these actions, consumer complaints will decline; competition will be based on service and price attributes, rather than on commission payments; and fifteen dollar charges for three minute phone calls will, quite rapidly, vanish.

I. ACCESS DIALING IS NOT A VIABLE ALTERNATIVE TO BPP.

One of the primary arguments advanced by some OSPs and premises owners is that, because access dialing has become so prevalent, BPP is no longer necessary. The Comments of Intellicall are representative:

"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. . . . To state the obvious, these services would not have enjoyed their wild success if consumers were opposed to access code dialing."<sup>1</sup>

Unfortunately, access dialing is not quite a "wild success." Many payphones, as in the preceding example, do not allow access code dialing at all, even though such is required by Commission Rules.<sup>2</sup> An August, 1993, press release from the Public Utility Commission of Texas states:

"Nearly four of every ten privately-owned pay telephones tested in a recent survey violated state rules by failing to allow the user to access the long-distance company of their choice, a Public Utility Commission staff survey has found. Further, many of the telephones surveyed did not have adequate instructions posted for customers' use, nor did they allow access to a local operator when requested."

The Texas PUC survey was conducted in Austin, the state capital, where one would expect Texas payphone compliance to be highest!

Moreover, there is absolutely nothing in the record to indicate that consumers either enjoy or understand the fundamentals of access code dialing. On the contrary:

"For a person making numerous long distance phone calls, these extra numbers are a nightmare. If you are in a hotel or behind a PBX it can be almost impossible to place Dial Around calls. . . . I have tried to explain to each of my 6 children, how to bypass the 'payphone rip-off' by using 10XXX, 800 and 950 numbers. In each case I was left with sort of a blank stare & disbelief that it takes dialing that many numbers just to use a

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<sup>1</sup> Intellicall at 14.

<sup>2</sup> 47 C.F.R. 64.704.

payphone for long distance calls charged to my Bell South calling card number."<sup>3</sup>

The record demonstrates that consumers do not prefer access code dialing to 0+. They do so simply to protect themselves, or because they have been instructed to do so. Consumers desire convenience, competitive prices, and quality service. BPP will provide all of these, unlike today's system.

Moreover, access code dialing promotions have not decreased consumer complaints. Complaints measured by the Commission have actually increased since passage of TOCSIA.<sup>4</sup> Other regulatory agencies also cite increases in consumer complaints and failings of TOCSIA.<sup>5</sup> Clearly, access code dialing promotions do not provide the market solutions anticipated.

The current confusion generated by access code dialing will only be exacerbated when 10XXX codes are replaced by 101XXXX access codes. Thus, only parties with vested interests in the current system--OSPs and premises owners--can claim that access code dialing is a "wild success."

## II. BPP WILL NOT STIFLE INTEREXCHANGE OR LOCAL COMPETITION.

One would expect BPP to encourage IXC competition by opening payphone and aggregator markets to all carriers on the basis of service merits. Of course, encouraging competition will

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<sup>3</sup> Comments of Daniel J. Rooks at 8.

<sup>4</sup> In the Matter of Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, ftnt. 31, released June 6, 1994 (FNPRM).

<sup>5</sup> Id.

cause certain companies to lose their captive markets. This is what the Competitive Telecommunications Association complains of when stating: "In the current presubscription environment, where the choice of IXC lies with the aggregators, small OSPs are able to market their services to a limited number of buyers, each of which delivers a substantial volume of traffic."<sup>6</sup> Comptel then goes on to argue that BPP will require national network coverage and major advertising and thus will discriminate against small, regional carriers.

To put the matter mildly, it is an open question whether small, regional IXCs will be unable to compete in a BPP environment. SWBT believes BPP will actually enable competition for small, regional IXCs. For the sake of argument, however, we will assume that Comptel is correct. The result of such reasoning, then, is that closed markets must remain closed to protect certain carriers. With such arrangements, consumers must always "beware."

For example, assume that a certain state requires all individuals driving through that state to drop-off at its borders automobiles rented in other states and rent new cars from companies operating only in that state. Any challenge to such a Byzantine practice can be met with the "Comptel Argument": "If you allow automobiles rented outside the state to pass through the state unimpeded, you will be favoring national carriers with big advertising budgets and discriminating against small, start-up businesses."

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<sup>6</sup> Competitive Communications Association at 15.

Thus does Comptel promote discrimination in the name of competition. In any open market, some will succeed, others will fail. That is, after all, the whole point of competition. If everyone wins, or if everyone loses, there is no competition. Implementation of BPP will be the equivalent of opening the state borders to all rental car traffic. Those companies who presently survive from captive markets and commission payments will have to compete for end-user customers to remain competitive.

Even Teleport Communication Group, self-proclaimed defender of competition, sees gremlins in BPP, though Teleport believes that local (rather than interexchange) competition will be impeded:

"That is because as a new, small entrant in the marketplace, TCG is unlikely to be the presubscribed choice of the patrons of the payphones it services, and will be required to pass off these calls to other carriers for completion--even though its modern digital switching and network facilities are without equal, and its prices are less than or equal to the prices charged by the major participants in the marketplace. Many of those calls would likely be handed off to the local telephone company, enriching the dominant carrier at the expense of its new competitor."<sup>7</sup>

If nothing else, this docket has flushed Teleport and its allies out of the brush. If Teleport's facilities are "without equal," and if its rates are "less than or equal to" other carriers', Teleport will have no trouble at all competing in an open market. But Teleport does not want an open market. Teleport wants to maintain a captive clientele, leaving it free to pursue

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<sup>7</sup> Teleport at 9.

additional regulatory strategies which will further tie the hands of the existing local exchange carrier.

Not to be outdone, MFS incredibly suggests that, if BPP is implemented, control of all Line Information Data Bases (LIDBs) should be transferred to "a neutral third party administrator."<sup>8</sup> MFS believes this is necessary because, in a BPP environment, all 0+ traffic must be routed through a LEC (Local Exchange Carrier) LIDB.<sup>9</sup> This suggestion demonstrates not only the state of mind of allegedly competitive companies which really want to maintain captive markets, but also the lengths to which such companies will go to hamstring potential competition. It apparently has never occurred to MFS to maintain its own LIDB, which would be a small obligation indeed to a company with such financial backing. The "MFS approach" would be the equivalent of requiring automobile rental companies to turn over control of their fleet to "a neutral third party administrator," as the price for operating within a state which had previously prohibited their presence. Apart from the Commission's complete lack of authority to appropriate the property rights of carriers, there is the small matter of public interest. Whose interest would be served by a confiscation of all LEC LIDBs?

### III. REGULATION IS NOT A SUBSTITUTE FOR BPP.

The problem of unreasonably high OSP charges can be solved, some parties maintain, by regulation. Bell Atlantic, for

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<sup>8</sup> MFS at 9.

<sup>9</sup>Id. at 4.

example, suggests that "the Commission can achieve most of the economic benefits of billed party preference by prescribing a rate cap for presubscribed calls from aggregator locations."<sup>10</sup> Intellicall asserts that "the Commission can affect the rates the OSPs charge in a trice merely by indicating its intent to oversee and prosecute those who charge unreasonable rates."<sup>11</sup>

These regulatory substitutes, the antitheses of open markets, are the equivalent of requiring all drivers in the example discussed above to drop-off rental cars at a state's borders and rent new vehicles, while regulating the rates charged by those intrastate operations. The market remains closed, and prices are regulated. The virtues of competition are lost, and the vices of governmental control are magnified. The Commission's goal of streamlined regulation is ignored, and more bureaucracy is created.

Also, the "rate regulation approach" focuses solely on OSP charges and ignores the major public interest issues in this docket, namely that the current system does not allow the billed party to automatically choose who it will pay for services rendered, and often prevents consumers who will be the billed party from accessing their carrier of choice. This has led to a market in which OSPs and other service providers have captive clientele and little, if any, reason to provide service at competitive rates. Regulating rates will not change these circumstances at all, and will not allow the consumer in Lander, Wyoming, to access his preferred interexchange carrier.

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<sup>10</sup> Bell Atlantic at 15.

<sup>11</sup> Intellicall at 6.

Other substitutes for BPP have also been discussed by Commentors, including rate benchmarking, consumer education, set/fixed commission payments, required transfer to OSP requested by caller, and implementation of "0+ Public Domain." Each of these proposals falls pathetically short of producing the marketplace benefits of BPP. Even if one or more of these proposals were combined into a "BPP substitute cocktail," the result would not come close to providing the pro-consumer/pro-competition benefits of BPP. The Commission must choose between burdensome, inadequate, partial solutions, and those that provide convenience, quality and competitive services.

We have reached the Orwellian moment in which OSPs (beneficiaries of divestiture and nascent competition) now employ the regulatory process to maintain closed markets. Absent BPP, those markets will remain closed.

IV. BPP SHOULD APPLY TO ALL TELEPHONES, INCLUDING INMATE PHONES.

Everyone participating in this docket has no doubt been impressed by the sheer volume of paper filed by various penal institutions and law enforcement agencies. If issues were decided by volume or weight, these forces would win.

Their objections to BPP are two-fold: (1) BPP will encourage fraudulent calling, and (2) BPP will lessen or eliminate commission payments from OSPs. The first point demonstrates a basic misunderstanding of how BPP will operate. Call screening and monitoring will still exist under BPP. Penal institutions and law enforcement officials will lose no control whatever over inmate

calling privileges. The only change will be that the billed party will choose the IXC. As the Public Utility Law Project of New York (PULP) points out:

"There are numerous mechanisms by which correctional institutions can continue to prevent telephone fraud and abuse after the implementation of BPP. In New York State the Department of Corrections allows inmates to place calls to only those numbers contained on a small preapproved list and these limits are imposed using customer premises equipment which is not inconsistent with BPP."<sup>12</sup>

Citizens United for the Rehabilitation of Errants (CARE) points out that BPP will, in fact, improve fraud prevention capabilities:

". . . by providing LECs and IXCs with total visibility into all traffic billed to a particular line number, BPP exposes fraudulent activity completely to a single carrier, rather than several who are unable to obtain an aggregate picture of suspicious activity on a line."<sup>13</sup>

Even AT&T, an opponent of BPP, sees no reason to exempt inmates phones from BPP.<sup>14</sup> Certainly, AT&T's comments are based on an assessment of its ability to monitor and control fraud in a BPP environment. MCI also supports application of BPP to inmate calls.<sup>15</sup>

Truthfully, complaints about application of BPP to inmate phones are caused exclusively by the specter of loss of large commission payments. Telephone commission payments to the New York

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<sup>12</sup> Public Utility Law Project of New York at 12.

<sup>13</sup> Citizens United for the Rehabilitation of Errants at 9.

<sup>14</sup> AT&T at 26-27.

<sup>15</sup> MCI Ex Parte, November 24, 1993.

Department of Corrections, for example, totaled \$11 million in the year ended March, 1993.<sup>16</sup> With this kind of money at stake, it is little wonder that the Commission has been deluged with paper. Mere loss of revenue, however, is not the salient issue. The Commission must answer the following: (1) who pays, and (2) is the funding mechanism good public policy?

Commission payments to correctional facilities are financed by OSP rates. OSP rates, in the case of inmate calling, are paid by inmates' family and friends, who have no control at all over the process. The current system, with its large commission payments, constitutes a de facto tax upon a particularly powerless segment of society. As PULP states: "Since many families of prisoners are indigent, the imposition of this special tax on those least able to pay is particularly poor, if not perverse, public policy."<sup>17</sup>

Moreover, if BPP is implemented for inmate calling systems and the perverse de facto tax eliminated, there is no likelihood at all that penal institutions will have difficulty finding vendors. Fifty-seven percent of all intraLATA collect calls handled by Bell Atlantic originate from inmate facilities.<sup>18</sup> Inmate collect calls represent forty percent of all collect calls handled through Pacific Bell's network.<sup>19</sup> This kind of traffic

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<sup>16</sup> PULP at 12.

<sup>17</sup> PULP at 13.

<sup>18</sup> Bell Atlantic ex parte of August 17, 1993.

<sup>19</sup> Pacific Bell ex parte of July 6, 1993.

volume ensures that inmate calling, with or without commission payments, will always be fertile soil for those willing to compete.

V. BPP SHOULD APPLY TO 0+, 0- AND 10XXX+0 CALLS.

The type of calls to which BPP should apply and from which BPP costs should be recovered is a key issue in this proceeding.<sup>20</sup> SWBT submits that BPP should apply to calls dialed 0+, 0- and 10XXX+0, because the universe of calls for application and cost recovery most affects the viability of BPP. This will ensure that the public interest reasons for implementation of BPP will be realized, that sufficient demand for BPP will occur and that optimum consumer control of prices and services will result.

The Commission has concluded that BPP in the public interest but has expressed concern that certain forces might seriously handicap BPP through promotion of access code dialing.<sup>21</sup> This concern can be partially alleviated by requiring BPP carrier identification on 10XXX+0 calls, as well as on 0+ and 0- calls.

The Commission expressed similar concerns and reached similar conclusions in the 800 Data Base proceeding. There the issue involved dual operation of 800 Data Base and 800 NXX service. Since the Commission believed 800 Data Base to be in the public interest, 800 NXX service was eliminated, thus ensuring the public interest benefits and viability of 800 Data Base.

BPP is similarly in the public interest and its benefits and viability are similarly threatened by 10XXX+0 and other access

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<sup>20</sup> FNPRM at 22.

<sup>21</sup> Id.

code dialing arrangements, which could be used to bypass the carrier preferences of the billed party. Because some customers are accustomed to dialing 10XXX+0, however, there is no reason to institute confusing blocking mechanisms. BPP can perform the carrier identification function on calls dialed 10XXX+0 as easily as for calls dialed 0+ and 0-.

Application of BPP to 10XXX+0 calls has the added benefit of assuring the carrier preference of the billed party for such calls. The majority of calling card calls placed with use of 10XXX+0 dialing will likely be routed to the cardholder's preferred carrier, because the cardholder will likely be the billed party and will use the XXX code of his preferred carrier. The same cannot be assumed for collect and third number calls, however. Fifty percent of the validation queries to SWBT's LIDB are for collect and third number calls. Some portion, perhaps as high as one-half, of those calls are placed on an access code basis and without knowledge of the preferred carrier of the collect or third number. Thus, expanding BPP to include 10XXX+0 dialed calls will produce the additional benefit of assuring preference of the billed party on an even greater number of calls.

Applying BPP to 10XXX+0 calls will remove an unnecessary and conflicting "loop hole" that could diminish the demand for BPP, and will allow appropriate cost recovery at reasonable rates--even lower than those previously estimated by SWBT and others. More customers will be benefitted with decreased financial impact upon individual calls, and responsibility for BPP cost recovery will be placed upon the cost-causer. Additionally, with BPP applied to

10XXX+0, it will not be possible for those with captive or dominant markets to stymie the development of BPP.

VI. 14-DIGIT SCREENING IS NOT NECESSARY FOR BPP.

Just as there are no banana plantations in St. Louis, there will be no BPP in hostile climates. For example, BPP cannot survive 14-digit screening.

Certain IXCs want 14-digit screening to have market presence (i.e., name identity) on Telephone Line Number (TLN) cards. Others wish to extend 0+ dialing to their access code-based proprietary cards by changing the technical basis of routing decisions. These carriers would base routing on examination of the line record and card PIN (14 digits) rather than on six-digits to determine the appropriate LIDB for identification of the 0+ carrier of the cardholder.

SWBT estimates that 14-digit screening would add approximately \$8-16 million to BPP implementation costs and a minimum \$1.5 million in additional annual recurring expenses. Plus, fraud would increase significantly with 14-digit screening. GTE, Ameritech and others have identified additional flaws with the 14-digit screening concept. SWBT concurs with the collective concerns expressed by those companies.

The range of costs for 14-digit screening, dependent on the number of card issuers and PINs assumed, shows that incremental costs are not linear for each additional card issuer assumed. Thus, the Commission must answer two key questions before requiring implementation of 14-digit screening. (1) How many card issuers

per line account should LIDB be developed to accommodate? If the number is too small, customers will be forced to disconnect one issuer's card for another. This presents barriers to market entry. If the number is too large, on the other hand, fraud will soar and capacity will be wasted. (2) How many PINs per card issuer should LIDB be developed to accommodate? SWBT has assumed that it would be required to extend to each card issuer the same set of technical capabilities and vertical features that it implements for itself. In other words, if SWBT cards can have 20 PINs per account, then all card issuers would have 20 PINs. If SWBT can provide for itself a different set of capabilities than other card issuers, the Commission should so state.

SWBT has developed an alternative for IXCs wanting market presence on 0+ TLN cards in a BPP environment. Under this plan, a SWBT card customer would be sent a replacement card also containing a hard imprint of the name and logo of the customer's preferred IXC. The BPP carrier identification process would route 0+ interLATA calls using this type card to the IXC chosen by the cardholder. Unlike 14-digit screening and other shared card proposals, SWBT's proposal would reduce the number of cards in circulation, thereby reducing the chances for fraud. The additional exorbitant cost of 14-digit screening would also be avoided.

The Commission has not provided sufficient definitions of 14-digit screening to permit development of reasonable direct and indirect costs. Regardless, the Commission should reject 14-digit screening in favor of SWBT's alternative. Otherwise, needless

direct and indirect costs will result, without meeting consumer needs, and the survival of BPP will be threatened.

VII. CONCLUSION.

Billed Party Preference will open several markets that have mutated into closed private markets. BPP will thus benefit consumers and competition. For BPP to be viable, however, it must encompass the four characteristics listed in SWBT's Comments and in the beginning of this brief:

1. The Commission must order implementation of BPP not later than May, 1995.

2. The Commission must order implementation of BPP as described by SWBT, GTE, Pacific Bell and MCI in their joint ex-parte filing of December 23, 1993.

3. The Commission must stipulate in its near-term orders that all costs incurred for BPP implementation are to be included in the rate structure for BPP, including Operator Service System 7 (OSS7) costs.

4. The Commission must address possible actions by some which would decrease the demand for and the viability of BPP.

In its Reply to the NPRM Phase of this docket, SWBT stated: "The Commission must decide if it intends to maintain its goal of enacting rules for the OSP industry that will foster a marketplace environment in which OSPs compete based on the merits of their services, rather than on commission payments which OSPs provide to traffic aggregators who deliver a captive clientele."<sup>22</sup>

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<sup>22</sup> SWBT Reply at 15, August 27, 1992.

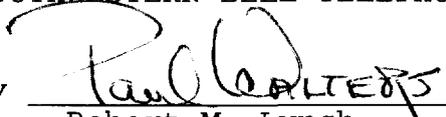
Such is still the case. The Commission must decide if closed, captive, dominated and regulated markets are in the best interests of consumers, or if the public interest is better served by open and competitive markets.

If the Commission chooses open markets, then billed parties will receive service from their preferred carriers, and phone calls from Lander, Wyoming, will not cost five dollars per minute.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By

  
\_\_\_\_\_  
Robert M. Lynch  
Richard C. Hartgrove  
J. Paul Walters, Jr.

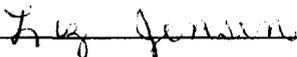
Attorneys for  
Southwestern Bell Telephone Company

One Bell Center, Room 3520  
St. Louis, Missouri 63101  
(314) 235-2507

September 14, 1994

CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing Reply of Southwestern Bell Telephone Company, in Docket 92-77, has been served this 14th day of September, 1994 to the Parties of Record.

  
\_\_\_\_\_  
Liz Jensen

September 14, 1994

William E. Weisman  
Weisman Enterprises, Inc.  
2626 W. Lake Street  
Minneapolis, MN 55416-4405

Henry Walker  
Tennessee Public Service  
Commission  
460 James Robertson Parkway  
Nashville, TN 37219

Jo Ann Goddard  
Directory-Fed. Regulatory  
Pacific Bell  
Nevada Bell  
1275 Pennsylvania Ave., N.W.  
Suite 400  
Washington, D.C. 20004

Trudi Renwick, Ph.D.  
Economic Policy Analyst  
Public Utility Law Project  
of New York, Inc.  
39 Columbia Street  
Albany, New York 12207-2717

Helen A. Shockey  
BellSouth Corporation  
4300 Southern Bell Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Anne U. MacClintock  
VP-Regulatory Affairs & Public Polic  
Southern New England Telephone  
Company  
227 Church Street  
New Haven, CT 06506

Leon M. Kestenbaum  
H. Richard Juhnke  
US Sprint Communications Company  
1850 M Street, N.W.  
Suite 1110  
Washington, D.C. 20036

John T. Lenahan  
Frank M. Panek  
Larry A. Peck  
Ameritech Operating Companies  
2000 West Ameritech Center Dr.  
Room 4H86  
Hoffman Estates, IL 60196-1025

Debra W. Schiro  
Florida Public Service Commission  
1010 East Gaines Street  
Tallahassee, FL 32399-0861

Gregory Casey  
International Telecharge, Inc.  
6707 Democracy Blvd.  
Bethesda, MD 20817

Randall B. Lowe  
Sherry F. Bellamy  
Suzanne M. Tetreault  
Metromedia Long Distance, Inc.  
Jones, Day, Reavis & Pogue  
1450 G. Street, N.W.  
Washington, D.C. 20005

Paul Rodgers  
National Association of Regulatory  
Utility Commissioners  
1102 ICC Building  
P.O. Box 684  
Washington, D.C. 20044

W. Dewey Clower  
Howard N. Menaker  
National Association of Truck Stop  
Operators  
1199 North Fairfax Street  
Suite 801  
Alexandria, VA 22314

Joseph P. Markoski  
Ann J. La France  
National Data Corporation  
Squire, Sanders & Dempsey  
1201 Pennsylvania Ave., N.W.  
P.O. Box 407  
Washington, D.C. 20044

Andrew D. Lipman  
Russell M. Blau  
Zero Plus Dialing, Inc.  
Swidler & Berlin, Chartered  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Richard E. Wiley  
Danny E. Adams  
Jane A. Fisher  
Operator Service Providers of  
America  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Josephine S. Trubek  
Gregg C. Sayre  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646-0700

David Wagenhauser  
Telecommunications Research and  
Action Center (TRAC)  
P.O. Box 12038  
Washington, D.C. 20005

Randall S. Coleman  
Lawrence E. Sarjeant  
U S West  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

Linda Kent  
Associate General Counsel  
USTA  
1401 H Street, N.W., Ste. 600  
Washington, D.C. 20005-2136