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

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In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77

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REPLY COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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Dated: September 14, 1994

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SUMMARY

The record in this proceeding clearly demonstrates that implementation of Billed Party Preference (BPP) would further the public interest because it will result in consumer choice, which event will far outweigh implementation costs.

BPP will guarantee that operator service calls are handled by the billed party's chosen carrier by simply dialing 0+. Also, BPP will eliminate the price gouging and blocking abuses that currently afflict the operator services market. OSPs will be required to refocus their competitive efforts on consumers rather than premise owners to whom commission payments are made, and this is as it should be. Finally, BPP should lead to effective competition in the operator services market segment because competitors of AT&T will be able to achieve 0+ equal access with AT&T.

With regards to costs, no convincing showing has been made that the Commission's analysis is incorrect. On balance, then, the public interest benefits clearly outweigh the costs.

Accordingly, the Commission should order the implementation of BPP as promptly as possible.

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REPLY COMMENTS

MCI Telecommunications Corporation (MCI) hereby replies to the comments submitted in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding concerning billed party preference (BPP). The comments demonstrate that the Commission's tentative conclusion that the benefits of BPP outweigh its costs is correct and, therefore, implementation of BPP would serve the public interest.

I. BPP WILL BENEFIT CONSUMERS

The comments overwhelmingly demonstrate that BPP will benefit consumers because it will enable them to access their carrier-of-choice by simply dialing "O+". Thus, BPP would bring to consumers the ease of "O+" dialing, with the security that they will not be surprised by exorbitant charges from an unknown operator service provider (OSP) and that their calls will not be blocked at aggregator locations.

Some commenters argue that these benefits are not important to consumers and that the Telephone Operator

Consumer Services Improvement Act (TOCSIA) sufficiently protects consumers. These claims, however, must be dismissed as self-serving, unsupported statements. The position that should be accorded deference on this issue is reflected in the filings of consumers -- and consumers clearly want BPP. From the National Association of State Utility Consumer Advocates (NASUCA), representing the consumer advocates of 37 states and the District of Columbia, to Daniel Rooks, a private citizen commenting on his own behalf, consumers support BPP because it will end the current abuses in the operator services market, bring competition to this market, and deliver 0+ access to them. The state commission commenters, even those opposing BPP on cost grounds, recognize that BPP will benefit consumers.

A. Consumers Want 0+ Access

Consumers would benefit from BPP because they no longer would have to dial special access codes to reach their carrier. As demonstrated by Sprint, access codes are an inferior means of access to 0+.¹ In addition, the burden of dialing access codes is significant. For example, NASUCA cites a study by Commercial Travelers Association which estimates that a business traveler can waste up to 6 hours per year attempting to reach a preferred carrier.² This is

¹ Sprint Comments at 3, n.5.

² NASUCA Comments at 2.

likely to worsen when access codes are lengthened.³ Moreover, the comments demonstrate that consumers prefer the easiest access method possible, which is 0+ dialing.⁴ Even BPP opponents recognize that consumers prefer 0+ dialing. Thus, Bell Atlantic states that it "will be promoting the ease of 0+ dialing through an advertising campaign" to "win back" operator service business lost to access code dialing.⁵

Opponents of BPP argue that access code dialing is not a problem for consumers and, in support of this position, state that use of access codes is increasing.⁶ However, consumers use access codes as a defensive measure to prevent being ripped-off, not because they "like" dialing access codes.⁷

B. BPP Should End Operator Service Abuses

It is also clear from the comments that, in spite of the efforts of this Commission and state commissions,

³ Missouri Commission Comments at 2.

⁴See, Comments of Sprint at 10-11; Ameritech at 6; Southwestern Bell Telephone at 5, n.8.

⁵ Bell Atlantic Comments at 9. This marketing campaign is designed to exploit Bell Atlantic's ability to offer 0+ dialing; yet Bell Atlantic is unwilling to open 0+ dialing to potential competitors.

⁶ See, Comments of BellSouth at 3.

⁷ See, Comments of Ameritech at 8; Southwestern Bell Telephone at 5; and AT&T at 9.

operator service abuses continue. Studies conducted by the Texas and Indiana Commissions show that the blocking of access to alternative carriers is still rampant.⁸ Even when access code dialing is available, calls are being intercepted and the consumer is being urged to dial "O+", thus inconveniencing the consumer and delaying call completion.⁹

Price gouging also continues to plague consumers. A Missouri Commission survey shows significant differences in operator service surcharges and concludes that consumers could save money in a BPP environment.¹⁰ The Idaho Commission states that the number of operator service complaints about billing and rates have more than tripled since 1989.¹¹ The Florida Commission states that "overcharges amounting to \$2,049,815 have been identified in eleven docketed proceedings..." concerning OSPs' practices.¹² Recently, the District of Columbia canceled an operator services contract involving more than 1,100

⁸ NASUCA Comments at 4.

⁹ MCI has experienced this problem first-hand on a number of occasions recently. Instead of complaining to the Commission, however, MCI has tried to convince the aggregator to stop this practice because the number-one priority is to ensure that MCI customers have quick and efficient access to the MCI network.

¹⁰ Missouri Commission Comments at 3.

¹¹ Idaho Commission Comments at 3.

¹² Florida Commission Reply Comments at 2.

payphones because the OSP had been charging "up to five times as much..." as the previous carrier.¹³ And, the Michigan Attorney General has threatened action against at least eight OSPs for charging excessive rates -- up to 800 percent more than "normal" operator service rates.¹⁴

C. BPP Will Promote Consumer-Oriented Competition

It is clear that no amount of regulation or consumer education concerning access codes will prevent abuse because the current system creates the wrong incentives. Quite simply, OSPs compete to win business by becoming the presubscribed carrier by paying-off premise owners with "commissions" for certain traffic. Naturally, OSPs want to recover those commission payments, and some do so by charging outrageously high rates to consumers. And, aggregators want to maximize their commission payments and some do so by blocking access to alternative OSPs. These "incentives" will not be overcome by rate regulation because such regulation will not reach the core problem.

Consumers recognize that the only way to stop the abuses is to change the incentives by redirecting OSPs' competitive efforts toward consumers through the

¹³ The Washington Post, September 7, 1994, D1.

¹⁴ Knight-Ridder/Tribune Business News, August 17, 1994.

implementation of BPP.¹⁵ Thus, NASUCA supports BPP as the best way to "discipline the operator services marketplace, and finally deliver to consumers the promised benefits of competition in this market."¹⁶ And, the Public Utility Law Project of New York, Inc. (PULP) states that the consumer-oriented competition which will follow from the implementation of BPP, "can be expected to bring down rates, halt abuses and improve service quality" in connection with the provision of operator services.¹⁷

Some opponents contend that BPP would reduce competition in the operator services and payphone markets. For example, some argue that small OSPs that do not offer 1+ service would be at a disadvantage in a BPP environment.¹⁸ Teleport Communication Group, Inc. (TCG) states that it would lose calls (and revenue) if BPP is implemented because it is unlikely to be the presubscribed choice of consumers.¹⁹ And, the Competitive Telecommunications Association (CompTel) argues that BPP will hurt regional carriers because it will require OSPs to have national

¹⁵ Comments of Citizens United for Rehabilitation of Errants at 1-3, 12, 13; Public Utility Law Project of New York, Inc. at 4, 8, 9; and NASUCA at 6.

¹⁶ NASUCA Comments at 1.

¹⁷ PULP Comments at 14.

¹⁸ Comments of Iowa Network Services, Inc. at 23.

¹⁹ TCG Comments at 9.

network coverage and engage in mass marketing, whereas today OSPs can market to a limited number of premise owners.²⁰

In effect, these commenters state that they either cannot or do not want to compete to win the consumer's business and, therefore, they ask the Commission to protect them from competition. In a competitive market, however, consumers should determine the winners and losers, not the Commission. Moreover, it is the Commission's duty to protect consumers, not competitors. Therefore, the Commission should summarily reject these arguments as contrary to the public interest.

Private payphone owners and aggregators also argue that BPP will lead to reduced payphone competition because of lost commission payments. For example, the American Public Communication Council (APCC) states that commission payments often make the difference in determining whether a payphone is profitable and that commissions from one location subsidize the placement of phones at other locations.²¹ Thus, APCC concludes that a decline in commissions would lead to fewer payphones and less maintenance for the remaining payphones.²² Similarly, CompTel contends that the payphone revenues received for local calls are not

²⁰ CompTel Comments at 15.

²¹ APCC Comments at 19.

²² Id., See, also, Comments of Polar Communications Corp. and Digital Technologies, Inc. at 9.

sufficient to cover the cost of terminating such calls and, therefore, commission payments are needed to make up the difference.²³ National Tele-Save, Inc., (NTS) and Capital Network System, Inc. (CNS) also argue that the implementation of BPP would violate the 5th Amendment because the Commission would be interfering with the commission arrangements between aggregators and OSPs and the investment-backed expectations of these parties.²⁴

These arguments should be summarily rejected because they erroneously confuse the public interest with the financial interest of aggregators. As an initial matter, the presubscription process, which created the commission payment opportunity for aggregators, was implemented by the District Court as an interim measure until true equal access could be developed for the O+ market.²⁵ Accordingly, the argument that a Commission decision implementing BPP would amount to an unconstitutional taking of property, or is otherwise unfair or inequitable, must be rejected because aggregators should reasonably have anticipated that the presubscription process and resulting commission payments were only a temporary benefit.

Moreover, the Commission cannot impede the development

²³ CompTel Comments at 18.

²⁴ See, Comments of NTS at 7-8; and CNS at 19 and 21.

²⁵ United States v. Western Elec. Co., 698 F.Supp. 348 (D.D.C. 1988).

of a truly competitive operator service market in order to guarantee profits to aggregators. To do so clearly would be contrary to the public interest in promoting the development of new technologies and competition. Finally, the Commission must reject the argument that the current commission system should be preserved to allow for the subsidization of other services because that argument is entirely inconsistent with the Commission's cost recovery policies and with the principles of competition.²⁶

D. The Alternatives Do Not Provide the Benefits

The opponents of BPP argue that there are less costly alternatives that the Commission should mandate to address the current failings of the operator services market. For example, the opponents argue that price gouging can be addressed by the Commission's setting rate caps for operator services; and that the Commission can ensure that calls are not blocked from aggregator locations by implementing O+ public domain and by requiring LECs to provide billing and collection services on a non-discriminatory basis to OSPs. These alternatives, however, will not solve the current problems or provide the consumer benefits of BPP.

As an initial matter, rate regulation will increase the Commission's administrative costs because the Commission

²⁶ There is no justification for requiring interstate operator services to subsidize intrastate services or unprofitable payphones.

will have to conduct rate proceedings. Such a result would be contrary to the Commission's policy of reducing regulation by promoting the establishment of effective competition. Moreover, as demonstrated by the Colorado Commission's experience, any rate cap imposed by the Commission will likely result in a court appeal -- thus, further adding to the Commission's regulatory burden and costs.

In addition, as stated by NASUCA, the sheer number of OSPs makes effective rate regulation unlikely. The proof of this is that the over \$2 million in overcharges in Florida occurred "[d]espite implementation of [its] rate cap...."²⁷ Rate regulation also would not work to the benefit of consumers because, according to certain OSPs, their costs are higher than those of MCI, AT&T and Sprint and, therefore, they would be entitled to charge higher rates under a rate regulation regime. Thus, consumers still would be faced with the prospect of being charged rates higher than their preferred carrier's rates -- but, those rates would be sanctioned by the Commission. Moreover, to avoid those rates, consumers still would have to dial access codes which, as discussed herein, is not the preferred access method and is not always possible due to blocking.

In addition, although O+ public domain would help to alleviate AT&T's unearned competitive advantage in the

²⁷ Florida Reply Comments at 2.

operator services market, it would not guarantee that consumers could access their preferred carrier. Thus, O+ public domain would not provide the consumer benefits of BPP and, therefore, cannot be considered a "substitute" for BPP.

Thus, BPP will bring enormous benefits to consumers by guaranteeing that operator service calls are handled by the billed party's preferred carrier, without the need to rely on service access codes; by promoting competition in the operator services market, because competitors of AT&T would be able to offer and use the same O+ access as AT&T; and by eliminating the current abuses in the operator services market by requiring OSPs to refocus their competitive efforts on consumers.

II. THE COMMISSION'S COST/BENEFIT ANALYSIS IS NOT FLAWED

A number of commenters argue that the Commission has made several errors in its cost/benefit analysis by understating the costs and overstating both the savings and the rate reductions that would result from BPP. However, as discussed below, these commenters are wrong.

A. LEC Cost Estimates Are Too High

The LECs' updated cost estimates for implementing BPP are too high.²⁸ As a threshold matter, it should be noted

²⁸ Only Pacific and US West failed to provide an updated cost estimate.

that the carriers either provided little detail of their revised cost estimates,²⁹ or have insufficiently explained the assumptions they made in developing their new estimates.³⁰ For example, additional operator expense would be a substantial component of recurring costs; however, none of the LECs details how many additional operator-handled calls it expects as a result of BPP and how this additional volume translates into expense. In addition, Sprint indicates that it will actually save money on operators as it achieves efficiencies due to BPP.³¹ Accordingly, the LECs' position is highly questionable.

In addition, the LECs include costs that would only be partially attributable to BPP. For example, the LECs generally assign all the costs of OSS7 to BPP. However, both Ameritech and Southwestern Bell Telephone note that OSS7 also can be used for certain CLASS services.³² Thus, it is wrong to attribute all these expenses to BPP.

In any event, LECs overstate the cost of implementing OSS7 because they assume that it will be implemented at

²⁹ See, e.g., Bell Atlantic Comments.

³⁰ See, e.g., Comments of Ameritech, BellSouth, and NYNEX.

³¹ The automated handling of intraLATA operator assisted calls made possible by AABS will free up sufficient positions in the operator centers to achieve this result. Sprint at 30.

³² Comments of Ameritech at 9; Southwestern Bell Telephone at 7.

every end office in order to accommodate BPP. This expense is significant, representing 50% to 60% of the one-time expenses of BPP for NYNEX,³³ Southwestern Bell Telephone,³⁴ and BellSouth,³⁵ and \$272 million of the \$329 million estimate by USTA for the smaller telephone companies.³⁶ However, both Sprint and GTE note that BPP could be implemented without implementing OSS7 below the operator switches.³⁷ Thus, the costs claimed by the LECs for OSS7 implementation appear to be substantially overstated.

NYNEX argues that the Commission failed to factor inflation into its estimates of the costs of BPP.³⁸ However, NYNEX fails to take into account the fact that the Commission has already found that the local exchange industry is one of the more productive sectors of the economy and, accordingly, adopted a 3.3% productivity factor in its price cap regulation of LECs. Thus, any increase in costs due to inflation would be offset by the greater productivity of the LECs.

³³ NYNEX Comments at Attachment C-1

³⁴ Southwestern Bell Telephone Comments at Attachment A.

³⁵ BellSouth Comments at Appendix A.

³⁶ USTA Comments at 4. USTA's estimate also includes the full cost of implementing SS7 in 914 end offices, even though SS7 could be used to provide other services.

³⁷ Comments of GTE at 8 and Attachment A; Sprint at 28, n. 33.

³⁸ NYNEX Comments at 9.

B. The Commission's Computed Savings Are Not Overstated

Several parties claim that the Commission's estimate of savings due to reduced commissions as a result of BPP is overstated because the Commission understated the amount of non-commissioned dial-around calls that will be made and overstated the growth in operator services calls. NYNEX, for instance, claims that a study it performed of payphones in its service area shows that 80%, rather than the Commission's assumed 50%, of operator-assisted calls will be dial-around calls by 1997.³⁹ NYNEX states it developed this estimate based on an analysis it performed of 75,000 operator service calls from 459 payphones in its territory. However, NYNEX does not explain its method of selecting the phones or calls it surveyed, so it is unclear whether these phones or calls are representative of NYNEX's territory, let alone the entire country. Accordingly, this study appears to be flawed and should be approached with skepticism.

Several parties question the Commission's assumed 4.3% growth rate of operator handled calls,⁴⁰ citing the imminence of PCS or their own estimates of demand growth. However, none of these parties explains how they arrived at their forecasted growth rates. On the other hand, the

³⁹ NYNEX Comments at 5.

⁴⁰ See, e.g., Comments of AT&T at 6; Bell Atlantic at 10; BellSouth at 18; CompTel at 10; NYNEX at 7.

Commission's 4.3% growth rate is certainly less than the growth rate in overall switched access minutes, which grew by 5.8% between 1992 and 1993. Also, it is not certain when PCS will be implemented, or the extent to which it will make inroads into the operator services market. Given these uncertainties, the Commission's 4.3% growth rate is reasonable.

In addition, MCI's experiences suggest that the Commission's estimate of cost savings could be understated because the trend in the marketplace is for aggregators to demand ever higher commission payments and on more types of calls.

C. The Commission Did Not Overstate The Rate Reduction

A number of parties claim that the Commission overstated the rate reductions that would result from BPP and that OSPs will not be able to lower their rates to the level of AT&T, MCI, and Sprint because either the OSPs lack the economies of scale of these IXCs or they otherwise incur higher costs in providing service.⁴¹ Several parties also contend that rates will not be reduced if BPP were to be implemented because any savings from reduced commission payments would be offset by increases in OSP advertising

⁴¹ See, e.g., Comments of BellSouth at 7; NYNEX at 7.

expenses.⁴²

With the implementation of BPP, OSPs will have to compete for business based on many factors, including price and service. Therefore, it is reasonable to assume that, in the long run, OSPs will have to reduce their rates to compete with AT&T, MCI, and Sprint, and to find ways to reduce their costs.⁴³

Other commenters claim that the Commission was incorrect in its assumption that states will also adopt BPP and, therefore, the Commission's estimate of rate reductions that will follow BPP are overstated.⁴⁴ MCI agrees with Sprint's conclusion that, if the Commission adopts BPP, the states will, in all likelihood, adopt it because it is pro-consumer and the necessary investment will already have been made.⁴⁵ Therefore, the Commission's assumption is reasonable.

⁴² See, Comments of AT&T at 16-17; Bell Atlantic at 5; BellSouth at 8; and NYNEX at 6.

⁴³ One of the expected benefits of competition, after all, is to force competitors to become efficient providers of service. Inefficient service providers may not survive -- and that is how it should be -- as competition cannot guarantee the continued existence of all competitors.

⁴⁴ See, e.g., Comments of AT&T at 23; NYNEX at 5 and 7.

⁴⁵ Sprint Comments at 26.

D. Cost Recovery

Parties proposed various methods of recovering the costs of BPP. Many commenters urge that these costs be recovered from calls that use BPP.⁴⁶ Others propose that the costs be recovered from OSPs based on relative share of operator handled calls.⁴⁷ Others support the recovery mechanism advocated by MCI, namely, recovery of BPP set-up costs through a broad-based charge on switched access rates and recovery of on-going BPP-specific costs through a per-message charge.⁴⁸

BPP represents the continuation of the structural changes to the telecommunications industry that began with 1+ presubscription and equal access. Accordingly, BPP start-up costs should be recovered in the same manner as the costs of equal access were recovered -- through a broad-based charge on switched access rates. In addition, the on-going costs of BPP, primarily increased operator expense and LIDB-related expense associated with storing information concerning a consumer's 0+ preferred carrier, should be recovered in a per-message charge.

Some commenters contend that BPP costs should be

⁴⁶ Comments of APCC at 42; AT&T at 28; Cincinnati Bell Telephone at 6; and Comptel at 50.

⁴⁷ Comments of Bell Atlantic at 19; GTE at 15; NYNEX at 15. NYNEX also advocated a surcharge on the end user common line charge.

⁴⁸ Comments of BellSouth at 20; Pacific Bell and Nevada Bell at 2; Sprint at 43.

directly assigned to the interstate jurisdiction in states which do not mandate BPP.⁴⁹ This is necessary, they claim, because separations will assign roughly 75% of the costs of BPP to the state jurisdiction. Therefore, if the states do not mandate BPP, these costs will not be recovered. MCI opposes direct assignment of BPP costs to the interstate jurisdiction. There are few costs the companies have identified that will be incurred strictly in connection with the provision of BPP. For example, costs for switch upgrades, trunking, and database computers affect the entire network. No commenter has demonstrated that the current separations rules under-assign such costs to the interstate jurisdiction.

In view of the above, no commenter has provided convincing evidence that the Commission's cost/benefit analysis is not reasonable, or that the costs of BPP outweigh its benefits.

III. BPP IMPLEMENTATION ISSUES

The comments generally support the Commission's tentative conclusion that BPP should apply to all interLATA O+ and O- calls and that it should be available in independent LEC territories. This comprehensive coverage will allow consumers to select one interLATA carrier for all

⁴⁹ Comments of Anchorage Telephone Utility at 4; NYNEX at 15; Southern New England Telephone at 8.

calls billed to their home line, both 1+ and 0+, if they choose, or they can select a carrier for their 1+ calls and a different carrier for their 0+ calls. Access lines in both equal access and non-equal access areas should be subject to BPP. Moreover, to ensure that the billed party's carrier handles a call, payphone providers and aggregators must be prohibited from using blocking or other mechanisms to circumvent or frustrate the billed party's carrier-of-choice.

The comments also support MCI's position that, in order to participate in BPP, commercial credit card companies should comply with the intent of BPP by insuring that the end user is allowed to select his or her 0+ carrier. This means that the credit card company should not be allowed to make the carrier selection for the customer. Commercial credit card companies also should be required to use a standard telecommunications industry numbering format so that the LECs and the IXCs can identify the card issuer. Furthermore, these entities should develop a LIDB-like database for validating the commercial calling card number and identifying the end user's preferred carrier, and the database should be accessible through industry standard interfaces. Adequate fraud controls also would have to be developed.

The comments, and MCI, support the Commission's tentative conclusion that subscribers should be notified of

their right to choose a 0+ carrier through a limited "ballot-type" procedure, where LECs provide notices and ballots either through a separate mailing or a bill insert. The comments, and MCI, also support the Commission's tentative conclusion that customers who do not respond to the notice should be defaulted to their 1+ carrier. This appears to be a logical and fair result because any failure to respond may be surmised to be, in effect, a selection of the 1+ carrier, where the consumer had competitive alternatives available when it chose its interexchange carrier.

The comments also demonstrate that 14-digit screening is necessary to have multiple line-number based cards.⁵⁰ In addition, the comments demonstrate that 14-digit screening would not significantly increase the cost of BPP.⁵¹ Accordingly, MCI urges the Commission to require 14-digit screening.

⁵⁰ Comments of Sprint at 52; AT&T at 29-30; and CompTel at 49-50.

⁵¹ Comments of Southwestern Bell Telephone at Attachments A and B.

IV. Conclusion

Based on the foregoing, MCI urges the Commission to order the implementation of BPP as promptly as possible in accordance with the positions expressed herein and in MCI's comments.

Respectfully submitted,

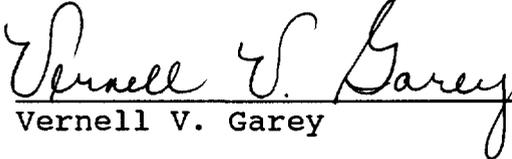
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CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that on this 14th day of September 1994, copies of the foregoing "REPLY COMMENTS" in CC Docket No. 92-77 were served by first-class mail, postage prepaid, unless otherwise indicated, upon the parties on the attached list.



Vernell V. Garey

*--HAND DELIVERED