DONELAN, CLEARY, WOOD & MASER, P. C.
ATTORNEYS AND COUNSELORS AT LAW
SUITE 850
1275 K STREET, N. W.
WASHINGTON, D. C. 20005-4078
TELEPHONE: (202) 371-9500
TELECOPIER: (202) 371-0900

RECEIVED
SEP 14 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 14, 1994

DOCKET FILE COPY ORIGINAL

Mr. William A. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: CC Docket No. 92-77 Billed Party Preference for 0+ InterLATA Calls

Dear Mr. Caton:

Transmitted herewith for filing on behalf of Oncor Communications, Inc. are an original and four copies of its reply comments in the above-captioned matter. If there are any quesitons, please communicate directly with the undersigned.

Sincerely,

Mitchell F. Brecher
Counsel for Oncor Communications, Inc.

enclosure

No. of Copies rec'd 0+4
List ABCDE

RECEIVED

SEP 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

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

REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

ONCOR COMMUNICATIONS, INC.

Mitchell F. Brecher
DONELAN, CLEARY, WOOD & MASER, P.C.
1275 K Street, NW
Suite 850
Washington, DC 20005-4078
(202) 371-9500

September 14, 1994

TABLE OF CONTENTS

		Page
TABLE OF CONTENTS		i
SUMMARY		ii
INTRODUCTION		1
I.	INITIAL COMMENTS IN RESPONSE TO THE FURTHER NOTICE CONFIRM THAT THE COMMISSION'S BILLED PARTY REFERENCE IMPLEMENTATION COST ESTIMATE IS SIGNIFICANTLY UNDERSTATED	3
II.	UNDER PRINCIPLES OF COST CAUSATION, ONLY USERS OF BPP SHOULD BE REQUIRED TO PAY FOR IT IF THE COMMISSION MANDATES ITS IMPLEMENTATION	6
III.	BPP WILL NOT BE APPLICABLE TO ALL 0+ CALLS, INCLUDING ALL INTRASTATE AND INTRALATA CALLS. THEREFORE, IT WILL NOT BE A SOLUTION TO ANYTHING	9
IV.	BY THE TIME BPP COULD BE EVEN PARTIALLY IMPLEMENTED, WHATEVER PROBLEMS BPP WAS INTENDED TO SOLVE WILL HAVE LONG SINCE DISSIPATED	12
V.	BPP WOULD ELIMINATE AN IMPORTANT REVENUE PRODUCING OPPORTUNITY FOR AGGREGATORS, INCLUDING MANY NON-COMMERCIAL AND GOVERNMENTAL ENTITIES	16
VI.	MANDATORY RATE CEILINGS WOULD NOT BE AN APPROPRIATE ALTERNATIVE TO BPP	17
VII.	IF BPP IS TO BE IMPLEMENTED, IT MUST INCLUDE 14 DIGIT SCREENING AND FULL BALLOTING	21
CONCLUSION		24

SUMMARY

The record established by the comments filed in response to the Further Notice of Proposed Rulemaking demonstrate overwhelmingly that the costs of billed party preference (BPP) -- to the extent that they can even be quantified -- will greatly exceed any conceivable benefits not otherwise available through less costly means, that, irrespective of cost, BPP cannot be implemented in a manner which ensures ubiquitous and uniform treatment of operator-assisted calls, that there is little need for BPP in light of the relative ease with which consumers can reach their preferred carrier from any telephone, and consumers' willingness to do so as shown by the growth of access code-based services over the past several years.

The comments indicate that the costs of BPP implementation will be considerably higher than previous estimates submitted in this proceeding and that they will approach -- or possibly even exceed -- $2 billion. Moreover, most LEC cost estimates exclude such important items as 14 digit screening, full balloting, and the applicability of BPP to commercial credit card calls.

There are many reasons why the Commission should not require BPP. One of the most compelling reasons is a recognition by many commenters, including most BPP proponents, that neither carriers nor consumers value the service and its attendant "benefits" sufficiently to be willing to pay for it. Commenters have advocated cost recovery means whereby the costs of BPP would be paid for, not by users of BPP-based services, but by others, e.g., all users of operator-assisted services, including those that access their chosen carrier by means of access codes, or all end users through increases in their monthly subscriber line charges. Since there is general recognition that BPP will not "pay its own way," the Commission should not force BPP and its costs upon consumers who apparently are unwilling to pay for it.

The Commission's earlier assumption that the states would follow the FCC's lead and require BPP is thoroughly contradicted by the comments. Several state utility commissions and the National Association of Regulatory Utility Commissioners oppose any effort by the

Commission to force BPP and its costs on the states. Even if some states were to require some version of BPP, there is no basis for concluding that those states would require BPP to be implemented for intrastate calls in the same manner as the FCC would require for interstate calls. There is general consensus that BPP would affect the separation of costs used to provide it and would require the convening of a Federal-State Joint Board to address the resulting Jurisdictional Separations issues.

Irrespective of cost, BPP will not and cannot be implemented ubiquitously and will not result in operator-assisted calls being handled in a nationally uniform manner. In its initial comments, Oncor provided no less than 10 categories of calls which might not or would not be subject to BPP. Other parties' comments confirmed that BPP will not be applicable to many types of calls, and that a system of BPP with so many exceptions will, in the words of the Commission "increase rather decrease confusion about operator service dialing rules."

The record also indicates that BPP cannot be implemented by 1997, as presumed by the Commission. Rather, it will take at least 3 to 4 years following a Commission order for the service to be implemented. Therefore, it is unrealistic to expect that BPP could be even partially implemented before 1998-99 at the earliest. Accordingly, in assessing the need for BPP and its relative costs and benefits, the Commission should look, not at current conditions, but at conditions that are likely to exist in 1998-1999 and beyond. By that time, there will be no exceptions to the Commission's unblocking rules. Based upon current rates of dial around calling from public phones as reported by several LECs, it is likely that the dial around rate could exceed 80 percent. In addition, the proliferation of mobile calling services, including cellular and Personal Communications Service, will reduce the use of operator-assisted calling from public locations, rendering BPP and its $2 billion implementation costs, even less used and less necessary.

The comments also indicate that the Commission's stated intent to eliminate aggregator commission payments may have undesirable consequences. It appears that about twenty percent

of commissions are paid to governmental and quasi governmental organizations which would seek to offset the loss of commission revenues with new taxes and user fees. Also, educational, health care, and other non-commercial groups (e.g., the American Council on Education) indicated that elimination of commissions would impede the ability of those organizations to provide important communications services to their communities.

Although several commenters have supported rate caps or "industry benchmarks" as an alternative to BPP, Oncor does not believe that such measures are appropriate or necessary, and that such approaches are legally questionable and are inconsistent with Commission policy. Rate regulation based on carrier costs of service was abandoned by the Commission for non-dominant carriers nearly fifteen years ago. Based upon the Commission's long-embraced principles of market power, smaller interexchange carriers and resellers, including operator service providers, are considered to be non-dominant. There is no reason for the Commission either to depart from its dominant/non-dominant carrier dichotomy or from its conclusion that operator service providers (except for AT&T and the LECs) are non-dominant. The Telephone Operator Consumer Services Improvement Act (TOCSIA) and the Commission's operator service rules, combined with market forces, adequately protect the public against abusive practices. Rather than requiring BPP or reimposing a form of cost of service rate regulation on many non-dominant carriers, the Commission should effectively enforce TOCSIA and its rules.

The record does not support a Commission ruling that BPP be implemented. If, however, the Commission disregards that record and orders BPP, it must require that it be implemented in a manner likely to promote competition, without improperly rewarding incumbent carriers or handicapping new entrants. Therefore, any system of BPP must include 14 digit screening and full balloting and allocation. Finally, the Commission should promptly address the issues concerning the validation of calling cards issued in the Card Issuer Identifier (CIID) format. Those important public interest issues remain pending on reconsideration in another phase of this proceeding.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Oncor Communications, Inc. (Oncor), by its attorneys, hereby submits its reply comments on the Commission's Further Notice of Proposed Rulemaking[1] and states as follows:

INTRODUCTION

Oncor was among the many parties filing comments in response to the Further Notice. Notwithstanding the Commission's "tentative conclusion" set forth in the Further Notice that the benefits of billed party preference ("BPP") would outweigh its costs, and that implementation of billed party preference within certain specified parameters might serve the public interest,[2] the record established by the comments submitted demonstrates overwhelmingly that the costs of BPP -- to the extent those costs can even be quantified at this time -- would greatly exceed any conceivable benefits. That record also demonstrates that, irrespective of cost, BPP cannot be implemented within the parameters identified in the Further Notice, and that there is little, if any, need for BPP in light of the relative ease with which all consumers may access their preferred carriers from telephones anywhere, and consumers' demonstrated willingness to do so as evidenced by the dramatic growth in access code-based (sometimes called "dial around) operator-assisted calling services.[3]

---

1 Billed Party Preference for 0+ InterLATA Calls (*Further Notice of Proposed Rulemaking*), FCC 94-117, released June 6, 1994 ("Further Notice").

2 *Id. at* ¶ 2.

3 Examples of such dial around services which have enjoyed marketplace success include AT&T's 1-800-OPERATOR, and MCI's 1-800-COLLECT services.

Whatever support might have existed for BPP appears to have long since evaporated. Its earliest proponent before the Commission -- Bell Atlantic -- now unqualifiedly opposes its implementation. Most of the other commenting local exchange carriers (LECs), including their primary industry association, the United States Telephone Association (USTA), oppose it as being extremely costly and unworkable. Among the Bell Operating Companies (BOCs), only three -- Ameritech, Southwestern Bell, and Pacific Bell -- support BPP at all, and their "support" is so qualified and so conditional as to barely constitute support. The entirety of the interexchange industry -- with the predictable and self-serving exceptions of MCI and Sprint who apparently view BPP as a low cost means for capturing 0+ market share from AT&T without having to actively market those services -- also opposes BPP. Moreover, state regulators, led by the National Association of Regulatory Utility Commissioners (NARUC), but also including several individual state public service commissions which submitted comments, strenuously object to any effort by the Commission to foist BPP and its costs upon the states.

As noted by numerous commenters representing all manner of interests, passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA)[4] and promulgation of rules governing branding, rate information, mandatory signage, and, most importantly, access to all carriers via access code dialing arrangements from all aggregator locations, has enabled consumers to easily reach their preferred carriers from any public telephone, and has significantly reduced, if not eliminated, instances of consumers being overcharged by carriers which whom they are unfamiliar. Accordingly, Oncor respectfully submits that the record established by the initial comments in response to the Further Notice compels the Commission to terminate this proceeding (or at least this phase of the proceeding),[5] and to abandon its billed party preference proposal as being unduly expensive, unworkable, and unnecessary to achieve

---

4 47 U.S.C. § 226.

5 As Oncor and others noted in their initial comments, important issues regarding validation of calling cards issued in the Card Issuer Identifier (CIID) format remain before the Commission on reconsideration in another phase of this docket. See, e.g., Oncor comments at 17-20. Oncor again urges the Commission to act on those issues at the earliest possible time.

any public interest objectives, not otherwise achievable through far more efficient, practicable means. Because the record compiled heretofore is so comprehensive, Oncor will limit these reply comments to responding to certain specific matters raised in certain of the initial comments.

I. INITIAL COMMENTS IN RESPONSE TO THE FURTHER NOTICE CONFIRM THAT THE COMMISSION'S BILLED PARTY PREFERENCE IMPLEMENTATION COST ESTIMATE IS SIGNIFICANTLY UNDERSTATED

Based upon documents submitted more than two years ago, the Commission estimated that BPP would cost about $1.1 million to implement and an additional $60 million per year in recurring costs.[6] Recognizing that its estimate was based upon stale and imprecise data, the Commission, in the Further Notice, invited parties to comment upon that estimate and to submit updated cost information. The initial comments of the LECs -- the entities which would incur the costs of implementing BPP -- indicate that the anticipated cost of BPP, while still uncertain, will certainty be considerably higher than their earlier cost projections, and confirm that the Commission's admittedly imprecise and out-of-date estimate is far too low.

Oncor expected that the likely cost of implementing billed party preference would be significantly greater than that estimated by the Commission, and could be as high as two billion dollars. At least one major LEC, NYNEX, agrees with Oncor that BPP could cost two billion dollars or more.[7] Nearly all commenting LECs indicated that they expected their own billed party preference implementation costs to be higher -- considerably higher -- than their earlier projections.[8] For many LECs, the costs of BPP would constitute a wholly disproportionate share of their overall revenues. For example, Cincinnati Bell, a major independent LEC, states that its BPP implementation and first year maintenance costs would equal thirty percent of its 1993 total

---

6 Further Notice, *supra*, at ¶ 20.

7 NYNEX comments at 2.

8 See, e.g., comments of NYNEX at 8, GTE at 8, BellSouth at 13-15, Cincinnati Bell at 2-5, Southern New England Telephone Company at 5-7, and Bell Atlantic at 11-12.

net income, and would comprise eighty-nine percent of its entire 1993 interstate operating revenue![9]

The only LECs which claim that their BPP costs will be lower than those originally forecast are several -- but not all -- of the LECs which favor BPP implementation. Even among LEC BPP proponents there is recognition that BPP costs will be higher than those originally anticipated.[10] Incredibly, Pacific Bell, perhaps the most vocal BPP supporter among the LECs, has not even bothered to provide current cost estimates in its initial comments. USTA estimates that the BPP implementation costs for the smaller, independent LECs (i.e. excluding GTE, Sprint, Cincinnati Bell, SNET, and Rochester) will be at least $328.9 million -- $113.38 million more than its 1992 estimate.[11]

Although the weight of the LEC comments clearly demonstrate that BPP implementation costs will be higher than those previously estimated in earlier filings in this proceeding, there are a few exceptions to that trend. Sprint, whose long distance interests desperately want the Commission to implement BPP for strategic reasons, irrespective of costs, claims that its current BPP implementation cost estimates for its LECs are forty-six percent lower than its 1992 estimates. Given the significantly higher BPP cost estimates submitted by virtually all other LECs (especially those without long distance affiliates urging BPP implementation), Sprint's asserted forty-six percent reduction in projected BPP costs is indeed remarkable. Interestingly, that estimate is based upon BPP implementation with 10 digit screening, despite the fact that Sprint's support of BPP is expressly conditioned on 14 digit screening! Although Sprint states that the additional cost of 14 digit screening would be "quite modest,"[12] it has not provided any estimation of those "modest" costs. Moreover, that assertion is contradicted by the comments of other LECs which have represented that the additional costs of 14 digit screening would be

---

9 Cincinnati Bell comments at 2.

10 See, e.g., comments of Ameritech at 10. Based upon updated vendor pricing, Ameritech's predicted BPP network costs have been increased by $37 million.

11 USTA comments at 4.

12 Sprint comments at 8.

significant.[13] In addition, Sprint's "reduced" cost estimates include no balloting costs, despite the fact that balloting would be an essential component of BPP, and do not include deployment of OSS7 signaling at end offices. Stated simply, in a transparent effort to get its projected BPP costs as low as possible, Sprint has proposed to implement it in the cheapest way imaginable, irrespective whether that approach will achieve any of the objectives sought by the Commission. Further, its cost estimates deviate so much from the remainder of the LEC industry -- BOC and independent -- as to be *prima facie* doubtful.

Sprint is not the only commenting LEC whose BPP cost estimates exclude such important cost components as 14 digit screening and full balloting procedures. As described more fully in Section VII of these reply comments, if BPP is to be implemented, those are critical features, without which BPP would erode opportunities for competition in the operator service portion of the interexchange services market by improperly protecting incumbent carriers and issuers of line number-based calling cards from competition by new market entrants, including so-called "third tier OSPs." Therefore, any Commission evaluation of the anticipated costs of BPP must include the costs of 14 digit screening and full balloting.

LEC cost estimates vary widely. While the majority of LECs indicate that their BPP costs will be higher than those predicted in 1992, these estimates are still imprecise. As several commenting LECs have noted, certain equipment and software needed for BPP remain under development and firm prices are not yet available. Neither is it known whether vendor discounts will be available or, if available, what the magnitude of those discounts might be. It appears, however, based upon the most current information submitted in this proceeding, that the cost of BPP will be between $1.1 billion, as estimated by the Commission in the Further Notice, and $2

---

13 For example, GTE states that 14 digit screening will increase its implementation costs by $5.1 million and its recurring costs by $250,000 annually. GTE comments at 9. NYNEX states that the software costs to accommodate 14 digit screening will be at least $12.3 million for the BOCs alone, and the hardware costs, an estimated $800,000 per year. NYNEX comments at 9-10. Southwestern Bell claims that 14 digit screening would add approximately $8 million to $16 million to its BPP implementation costs, and would add at least $1.5 million in annual recurring expenses. Southwestern Bell comments at 9.

billion, based upon the revised estimates. That is a wide range of cost, and no one really knows where, within that range, the total BPP implementation costs will be, nor can it be ascertained that the ultimate BPP costs will not exceed the upper end of that range.

Before the Commission can responsibly require BPP implementation, it must know with more certainty than it can possibly have based on the record before it what the real costs will be. Stated simply, it would not serve the public interest for the Commission to mandate that LECs incur some unknown amount of money, possibly in multiple billions of dollars, to implement BPP, without knowing with reasonable certainty what that amount will be. The Commission also must be prepared to determine who should bear those untold billions of dollars in costs, and who will bear the risk of the ultimate BPP costs exceeding even those high costs already projected in this proceeding. Given the magnitude of the anticipated costs of BPP, the indefiniteness of the BPP cost estimates provided to the Commission, and the considerable risk to someone that those estimates may be lower than the actual costs ultimately to be incurred, BPP should not be required unless the Commission can conclude with certitude that BPP will produce public interest benefits in excess of those costs, and that those public interest benefits are not otherwise attainable by more affordable, more reasonable means. For the reasons already discussed in Oncor's initial comments as well as those of many other parties, and for reasons addressed elsewhere in these reply comments, the record in this proceeding will support no such conclusion.

II. UNDER PRINCIPLES OF COST CAUSATION, ONLY USERS OF BPP SHOULD BE REQUIRED TO PAY FOR IT IF THE COMMISSION MANDATES ITS IMPLEMENTATION

The initial comments provide many reasons why the Commission should not require implementation of BPP. One of the most persuasive arguments against BPP is a broad recognition among the commenting parties, including BPP supporters, that no one really wants the service badly enough to be willing to pay for it, and that, in order to ensure cost recovery by the LECs of their implementation costs (which may be as high as two billion dollars or more),

the Commission should mandate cost recovery mechanisms that would have the costs of BPP paid by non-users of the service. Such a cost recovery mechanism is intellectually dishonest and is in total contravention of the Commission's time-honored principle that costs should be recovered from the cost causers.[14]

If BPP is in the public interest and if the benefits of BPP would outweigh its costs, it should not be difficult for BPP to "pay its own way." However, it is apparent that the commenters -- especially the LECs and the handful of other BPP supporters who addressed cost recovery -- do not believe that there would be sufficient demand for BPP to cover its costs from charges on those who would use it. For example, MCI, a longtime proponent of cost-based rates, has departed from its historic views on cost causation by advocating that BPP costs be recovered by a "broad-based charge on all carriers using switched access."[15] In other words, MCI wants interexchange carriers -- and ultimately their customers -- to pay for BPP, irrespective whether those carriers and their customers use BPP. MCI, which would utilize BPP, if implemented, would have its 0+ customers' rates subsidized by rates paid by customers of other carriers who access their preferred carriers by means other than BPP (e.g., access code dialing). If the Commission concludes that it is necessary to have BPP costs recovered in a manner which forces MCI's competitors to subsidize the rates charged by MCI to its customers, then BPP should not be required.

Another BPP proponent -- Ameritech, also candidly states that consumers "are not typically interested in paying a premium to dial fewer digits."[16] Ameritech is correct. Nothing in the record of this proceeding indicates that consumers are willing to pay more to have their 0+ calls routed to the carriers of their choice. The record does indicate that it could cost the

---

14 See, e.g., MTS and WATS Market Structure (*Third Report and Order*), 93 FCC2d 241 (1983), *aff'd. sub nom.* National Association of Regulatory Utility Commissioners v. F.C.C., 737 F.2d 1095 (D.C. Cir. 1984). See also Ameritech Operating Companies (*Revisions to Tariff FCC No. 2),* 8 FCC Rcd. 4589 (1993), Iowa Network Access Division (*Petition for Waiver of Part 69 of the Commission's Rules*), 4 FCC Rcd. 5581 (1989).

15 MCI comments at 4.

16 Ameritech comments at 8.

telephone industry $2 billion to give consumers that capability. If, as Ameritech and others have stated, consumers do not value the "benefits" of BPP sufficiently to be willing to pay for those benefits, then BPP must either be abandoned as an idea or be paid for by others. Ultimately, consumers will pay for BPP if it is implemented. The only question is, which consumers? Most advocates of BPP, including MCI and those few LECs who continue to favor BPP, have indicated that BPP should be paid for by consumers of services which do not use BPP, because they realize that those consumers who do use BPP, if given a choice, will not be willing to pay for BPP.[17]

In addition to MCI, non-user-assessed cost recovery proposals were offered by most commenting LECs. Pacific Bell, another leading supporter of BPP, suggests that BPP cost recovery should be "guaranteed" either by all persons making operator-assisted calls (including those who use access code dialing-based services), or by charges on the general body of ratepayers (including those who never make operator-assisted calls, or, for that matter, any long distance calls).[18] NYNEX also would look to non-users of BPP to underwrite its BPP costs (which NYNEX anticipates to be as high as $ 2 billion -- see section I, above).[19] NYNEX would recover the BPP costs through a surcharge on the End User Common Line Charge.[20] Not only would recovery of BPP costs in that manner be inappropriate, it would be totally inconsistent with the theoretical premise upon which the Commission established subscriber line charges more than a decade ago. Subscriber line charges were embraced by the Commission based upon principles of cost causation. Those charges are intended to have the interstate portion of non-traffic sensitive (NTS) costs of local exchange plant (i.e., the customers' local loop costs) recovered from the "cost causative" end users whose requests to LECs for telephone service

---

17 The only consumer advocacy group commenting in response to the Further Notice did not address either BPP costs or cost recovery. See comments of the National Association of State Utility Consumer Advocates.

18 Pacific Bell comments at 1-2.

19 As the Competitive Telecommunications Association (CompTel) noted, LECs' costs of BPP would include more than their direct costs. They would also include overhead loadings, and their rate of return. See CompTel comments at 5.

20 NYNEX comments at 14.

causes the LECs to incur those costs, rather than from other interstate ratepayers through toll rates which include those NTS costs.[21] In contrast, inclusion of BPP costs in the EUCL would result in those ratepayers who have not caused LECs to incur BPP costs to bear responsibility for payment of those costs. Other LECs also advocate guaranteed cost recovery from non-users of BPP.[22]

III. BPP WILL NOT BE APPLICABLE TO ALL 0+ CALLS, INCLUDING ALL INTRASTATE AND INTRALATA CALLS. THEREFORE, IT WILL NOT BE A SOLUTION TO ANYTHING

As Oncor discussed in its initial comments, the Commission's tentative conclusion in the Further Notice about the benefits of BPP is expressly conditioned upon a circumstance which is beyond the Commission's authority to require and which is not achievable at any price -- that BPP should become a ubiquitous and uniform means for 0+ calling.[23] Oncor identified no fewer than ten categories of operator-assisted long distance calls that might not, or could not, be subject to a Commission-mandated system of BPP.[24] The initial comments of other parties corroborate Oncor's view that BPP, if mandated by the Commission, will not be implemented in a manner which ensures that all 0+ calls will be handled in the same way. This is so for numerous reasons.

Notwithstanding the Commission's stated hope in the Further Notice that the states would follow the Commission's lead and require BPP for intrastate calls, whether any, some, or all of the states would require BPP, under what conditions, and with respect to what types of calls, is undeterminable, and remains within the jurisdictional authority of the states themselves. What is

---

21 MTS and WATS Market Structure, *supra*.

22 See, e.g., Comments of BellSouth, Bell Atlantic, and GTE.

23 See Oncor comments at 24-31, Further Notice, *supra*, at ¶¶ 4, 37, 39.

24 Those categories include: 1) interstate intraLATA calls; 2) intrastate interLATA calls; 3) intrastate intraLATA calls; 4) calls charged to international calling cards; 5) calls charged to commercial credit cards; 6) calls charged to IXC calling cards issued in a non-CIID-based format; 7) calls made by persons whose preferred carrier is not a national carrier; 8) calls from prison phones; 9) calls from areas served by many independent LECs and calls from other non-equal access areas; and 10) calls from telephones connected to toll networks by alternative access providers.

known is that states commenting directly on the BPP proposal,[25] and indirectly, through NARUC,[26] do not favor BPP, and vehemently oppose any effort by the Commission to preempt the states or otherwise influence whether or how BPP would be implemented for intrastate calling.[27] Therefore, whether or not BPP should be made applicable to intrastate operator-assisted calling at all, or whether or not it should be made applicable to intraLATA calling, as well as interLATA calling within the states, are matters for the state commissions to determine, and, based upon the initial comments, it appears unlikely that many states will mandate BPP with all of its attendant costs, for intrastate calling.

Based upon the initial comments, BPP does not appear to be implementable in the near term for many of the nation's independent LECs, i.e. those LECs that have not yet been required to implement equal access and that have not done so. The USTA has indicated that smaller LECs should not be required to implement BPP where it is uneconomical for them to do so.[28] Similarly, the National Telephone Cooperative Association, which represents the interests of member-owned LECs -- which almost always serve smaller, rural service areas -- points out that the unit cost of BPP for many of its members' service systems will be enormous, and recommends that end offices serving fewer than 10,000 access lines be exempt from any BPP implementation requirement.[29] Given the Commission's historic unwillingness to impose burdensome equal access and other network upgrade obligations on independent LECs,

known is that states commenting directly on the BPP proposal,[25] and indirectly, through NARUC,[26] do not favor BPP, and vehemently oppose any effort by the Commission to preempt the states or otherwise influence whether or how BPP would be implemented for intrastate calling.[27] Therefore, whether or not BPP should be made applicable to intrastate operator-assisted calling at all, or whether or not it should be made applicable to intraLATA calling, as well as interLATA calling within the states, are matters for the state commissions to determine, and, based upon the initial comments, it appears unlikely that many states will mandate BPP with all of its attendant costs, for intrastate calling.

Based upon the initial comments, BPP does not appear to be implementable in the near term for many of the nation's independent LECs, i.e. those LECs that have not yet been required to implement equal access and that have not done so. The USTA has indicated that smaller LECs should not be required to implement BPP where it is uneconomical for them to do so.[28] Similarly, the National Telephone Cooperative Association, which represents the interests of member-owned LECs -- which almost always serve smaller, rural service areas -- points out that the unit cost of BPP for many of its members' service systems will be enormous, and recommends that end offices serving fewer than 10,000 access lines be exempt from any BPP implementation requirement.[29] Given the Commission's historic unwillingness to impose burdensome equal access and other network upgrade obligations on independent LECs,

---

25 See, e.g., comments of Virginia Corporation Commission, comments of the Colorado Public Utilities Commission, and reply comments of the Pennsylvania Public Utility Commission.

26 See comments of NARUC.

27 In addition to noting correctly that the Commission lacks authority to force its version -- or any version -- of BPP upon the states, virtually all parties addressing the issue stated correctly that any Commission order requiring BPP would impact the allocation of costs between the interstate and intrastate jurisdictions, and would necessitate the convening of a Federal-State Joint Board pursuant to Section 410 of the Communications Act (47 U.S.C. § 410) to study the resulting separations changes. See, e.g., comments of NYNEX, NARUC, the Virginia Corporation Commission.

28 USTA comments at 10. USTA also noted that ordering smaller independent LECs to implement BPP could serve as a major disincentive to those LECs to upgrade their networks to provide equal access in the future because of the additional costs that BPP would incur on those LECs. USTA comments at 2.

29 Comments of the National Telephone Cooperative Association (NTCA) at 3-4.

especially smaller LECs, it seems unlikely that the Commission would disregard those considerations in requiring BPP. Thus, BPP would not be available for operator-assisted calls from many smaller, rural areas served by independent LECs for many years -- if ever.[30]

Another category of operator-assisted calling not likely to be subject to BPP is calls from prisons, jails and other inmate phones. In response to the Further Notice's request for comments about the applicability of BPP to inmate phones,[31] the Commission received literally hundreds of comments -- many informal -- from state and local governmental agencies, including many law enforcement offices, correctional institutions, and sheriffs' offices throughout the United States. Those hundreds of comments unanimously oppose application of BPP to inmate phones. The bases for that opposition include public safety concerns, fraud prevention and control, and loss of revenue to those institutions used to offset the expense of making telephone service available to inmate populations, and to support other correctional programs. Based upon this extensive record of well-reasoned opposition, it seems most improbable that BPP, if required by the Commission, would be extended to inmate phones. Thus, inmate calling is one more category of calls which will not be subject to BPP.

Still another category of calls not likely to become subject to BPP, irrespective of cost and irrespective how it is implemented, is calls charged to international calling cards. In its initial comments, Oncor included calls charged to international calling cards among the many classes of operator-assisted calls which would not be subject to BPP.[32] The initial comments reflected no disagreement with that limitation. In fact, MCI, an otherwise enthusiastic supporter of BPP, in part, on the basis that BPP would ". . . bring the benefits of equal access for operator services calls to consumers . . ." says that BPP should not apply to foreign-issued calling card

---

30 The impact of excluding such LEC service areas from BPP could be significant. Many frequently-visited resort and vacation areas are served by independent LECs. Thus, the volume of operator-assisted calling from those locations may be considerable notwithstanding the relatively small numbers of access lines served by those LECs.

31 Further Notice, *supra*, at ¶¶ 42-45.

32 Oncor comments at 27.

calls or to operator-assisted calls billed to foreign telephone numbers. Apparently, in MCI's view, the "benefits of equal access for operator services" should not be available to those consumers who happen to use international calling cards.[33]

In short, the initial comments confirm that BPP will not any time soon become a nationally uniform and ubiquitous means for the handling of operator-assisted calls. Because there will be numerous exceptions to any BPP requirement, BPP, irrespective of its billions of dollars in implementation and maintenance costs, never will be more than an inconsistent and incomplete approach which, in the words of the Commission, will "increase rather than decrease confusion about operator service dialing rules."[34]

IV. BY THE TIME BPP COULD BE EVEN PARTIALLY IMPLEMENTED, WHATEVER PROBLEMS BPP WAS INTENDED TO SOLVE WILL HAVE LONG SINCE DISSIPATED

Underlying the Commission's "tentative conclusion" about the benefits of BPP is the notion that BPP should be made available as soon as possible, and that BPP would be implemented by June 1997. Based upon the comments received to date, it is apparent that ubiquitous implementation of BPP by June 1997 will not happen, and cannot happen. First, as explained in the preceding section of these reply comments and elsewhere, many categories of operator-assisted calling may never be subject to BPP. Moreover, even partial BPP implementation by June 1997 is facially unrealistic. Assuming that the Commission were to adopt and release an order by year end 1994 requiring that BPP be implemented and

---

33 See comments of MCI at 6 n. 10. MCI's ready willingness to exempt this important category of operator-assisted calls from the overall implementation of BPP which it supports is curious. It might be explained by MCI's impending alliance with British Telecom, one of the world's leading international service providers, and the issuer of calling cards used by its customers to charge numerous operator-assisted calls in the United States. Perhaps MCI anticipates becoming the "presubscribed" carrier for calls charged to BT calling cards and telephone number accounts. Of course, realization of that anticipated benefit would be frustrated if BPP were applied to international calling card calls, and BT calling card customers, rather than the BT/MCI alliance, were able to select the carrier to complete U.S. operator-assisted calls charged to those cards.

34 Further Notice, *supra* at ¶ 37.

promulgating rules and regulations governing that implementation, an assumption that is itself improbable,[35] that would afford the LEC industry and its vendors only two and one-half years to complete the Herculean task of developing the necessary systems and implementing BPP.

Commenting LECs indicate that two and one-half years following a Commission order is a wholly inadequate period for them to implement BPP and that it would take considerably longer to complete the tasks necessary to make BPP even a partial reality. GTE, for example, estimates that it will take three to four years following Commission action for it to implement BPP.[36] Of that total, eighteen months are allocated to vendor development of as yet undeveloped software -- a matter outside the control of GTE or any other LEC. The BOCs' implementation estimates are no more aggressive. Ameritech, Bell Atlantic, BellSouth, and NYNEX each estimate that BPP implementation will take at least three years -- possibly longer.[37] It appears that these time projections do not include implementation of BPP with 14 digit screening, nor do they provide sufficient time for customer notification and balloting -- all necessary preconditions if BPP is to have any pro-competitive benefits.

If BPP could be implemented in three to four years following a Commission order in this proceeding (and that assumes rapid development of the necessary software by vendors who do not appear to have done much, if any, development work to date[38]), and if the Commission were to adopt and release a final decision in this proceeding by mid-year 1995, then BPP

---

35 It seems improbable that the Commission will complete this proceeding and issue the text of a report and order by year end 1994. That is only three and one-half months following the deadline for submission of reply comments. The initial comments alone totaled more than 1,400 pages, and it is expected that the reply comments also will be numerous and voluminous. The issues before the Commission and contentious and complex. In order to issue a report and order by December 31, 1994, the Commission and its staff would have to have completed review and analysis of this lengthy record, prepared a report and order, and the Commission have voted to adopt it by early December. Adherence to this very ambitious schedule will be even more difficult in light of the many other important and complex matters pending before the Commission which also must be considered during the next several months.

36 GTE comments at 25.

37 See, e.g., comments of Ameritech at 18, Bell Atlantic at 23-24, BellSouth at 22-23, and NYNEX at 18.

38 Comments of Ameritech at 18 (" . . . Ameritech's vendors have advised that no switch development work has been done to date.")

implementation could not be achieved until mid-1998 to mid-1999 at the earliest -- four to five years from the present. Therefore, in considering the public interest benefits of BPP and weighing those benefits against the anticipated costs of BPP, the Commission must consider the need for BPP and benefits to be realized from BPP, not today, but for mid-1998 to mid-1999 and beyond.

In the initial comments, many parties addressed the current ability of callers to reach their preferred carriers via access codes from telephones, including those at aggregator locations. Under the Commission's rules, all pay telephones and most other aggregator telephones currently must allow access code dialing using all access codes, including 10XXX codes.[39] The only currently-applicable exception to the mandatory unblocking requirements involves those relatively few non-pay telephones provided by aggregators which cannot be modified or replaced as necessary to accommodate 10XXX access at a cost of less than $15.00 per line.[40] Irrespective of replacement or modification cost, those phones will be subject to mandatory unblocking effective April 17, 1997.[41] Thus, under the Commission's rules, access to all carriers via access code methods chosen by each carrier will be ubiquitously available by April 1997 -- more than one year before BPP could be even partially implemented under even the most aggressive schedules.

Before the Commission can responsibly require that BPP with its $1.1 billion to $2 billion price tag be required, it must consider, what will be the frequency of customers being denied the ability to reach their chosen carriers and being charged excessive rates for operator-assisted long distance calls, not now, but in 1998, 1999, and beyond. The initial comments submitted in this proceeding indicate that the problems of customer inability to reach their

---

39 47 C.F.R. § 64.704.

40 The Commission's rules guarantee callers even from those phones access to their chosen carrier. Such telephones must allow access to 1-800 and 950 access codes (§ 64.704(a)), and all operator service providers must have established either a 1-800 access number or a 950 access number (§ 64.704(d)).

41 47 C.F.R. § 64.704(c)(5).

chosen carriers, and of excessive rates, are fast disappearing, and should be virtually eliminated long before 1998-1999. In its initial comments, Oncor indicated that consumer use of "dial around" calling was gaining wide acceptance, that Oncor itself has seen an increase in dial around calling from telephones presubscribed to it at a rate of fifteen percent to twenty-five percent per year,[42] and that, if present growth trends in dial around calling continue, by 1997, the dial around rate from aggregator phones served by Oncor could conceivably be as high as seventy-five to eighty percent, or greater.[43] Based upon comments of others, it now appears that Oncor's dial around projections may be too low. One major LEC, with access to calling data from thousands of its pay phones served by many IXCs on a presubscribed basis, states that its studies indicate that during April and May 1994, sixty-six percent of all operator service calls from its public telephones were made on a dial around basis,[44] and that, by 1997 (prior to BPP implementation under any realistic time frame), at least eighty percent of operator service calls will be made using 1-800 access alone.[45] Thus, it appears that the Commission's, as well as Oncor's, estimates of the current level of dial around calling may be too low, and that its projections of that level by 1997 may also be too low. If dial around calling continues to grow as anticipated, there should be little use of 0+ dialing from public phones by 1998-99, except by those callers who prefer the convenience of 0+ dialing and are willing to pay more for it, and by those callers who prefer to use the presubscribed carriers' services.[46]

---

42 Comments of Oncor at 14.

43 *Id.* at 21.

44 NYNEX comments at 4. Similarly, Bell Atlantic studies indicate that more than fifty-five percent of operator service calls from its pay phones are made on a dial around basis. Bell Atlantic comments at 8.

45 *Id.* at 5.

46 Customer acceptance of access code-based services as indicated by the dial around statistics noted in these reply comments is not the only reason why 0+ calling from public telephones will continue to decline. The sharp growth in mobile services, including cellular service, already enables many callers to avoid using public telephones entirely. As NYNEX and others noted in their comments, the trend toward mobile services, in lieu of public landline telephone services, will be accelerated in the next several years following the development of Personal Communications Service (PCS). PCS will be widely available before BPP implementation could be completed.

V. BPP WOULD ELIMINATE AN IMPORTANT REVENUE PRODUCING OPPORTUNITY FOR AGGREGATORS, INCLUDING MANY NON-COMMERCIAL AND GOVERNMENTAL ENTITIES

Underlying the Commission's "tentative conclusion" in the Further Notice that BPP would reduce operator-assisted calling rates by eliminating commissions paid to aggregators is the false notion that any system which allows commission payments to aggregators is inherently evil and should be eliminated -- even if it costs $ 2 billion to eliminate it. The initial comments paint a very different picture of aggregators and commissions. This is so for several reasons.

First, there is considerable doubt whether commission payments cause consumers to pay unavoidably high rates. As several commenters have noted, payment of commissions to aggregators is a marketing cost for interexchange carriers. If commission payments were eliminated, whether by BPP or by regulatory fiat, carriers would have to resort to other marketing strategies to compete for business. Such marketing alternatives as mass mailings, print and electronic media advertising are economically prohibitive for all but the largest national carriers.[47] Second, as Oncor and others noted, the vast majority of commission payments are made by the largest IXCs and the major LECs, including the BOCs. Unless the Commission can conclude that BPP would cause those carriers to significantly reduce their rates, it seems unlikely that BPP, despite its multibillion dollar cost, would have any significant impact on operator-assisted calling rates paid by consumers.

There is still another reason why the Commission should be mindful of tampering with the current structure of commission payments. The initial comments demonstrate that many recipients of OSP commission payments are non-profit, educational, governmental and quasi-governmental entitities who rely upon OSP commission income to help fund important public

---

47 It is no coincidence that two of the three largest national carriers -- MCI and Sprint --are leading the campaign for BPP. Those companies, unlike the hundreds of smaller, many regionally-based IXCs and OSPs, have the economic wherewithal to mass market their services. For those hundreds of other carriers, marketing through aggregators is an efficient means for introducing substantial segments of the calling public to their companies and services.

interest activities. AT&T, by far the largest payer of commission payments to aggregators, indicates that not less than twenty percent of those payments are made to governmental or quasi-governmental agencies which would recover their lost commission revenue through increased taxes or user fees.[48] The American Council on Education, on behalf of many of the nation's colleges and universities, states that BPP would impose significant costs on higher education institutions which they cannot afford, and would force those institutions to cut back on such important communications services for their college communities as voice mail and touch-tone dialing -- services that are made economically affordable by receipt of commission revenues.[49]

Another category of public aggregator which would be harmed by BPP is public airports. The Airports Council International -- North America (ACI-NA), on behalf of the many local, regional and state-operated commercial airports, also opposes BPP. ACI-NA points out that federal law requires airports to operate as self-sufficiently as possible, and that revenues generated from public telephones is an important means for enabling airports to comply with that federal mandate.[50] So long as consumers can readily access their preferred carrier from any public phone, there is no reason to deny colleges and universities, airports, hospitals and other public and governmental entities an important source of income.

VI. MANDATORY RATE CEILINGS WOULD NOT BE AN APPROPRIATE ALTERNATIVE TO BPP

Recognizing that the real costs of BPP would greatly exceed the value of any conceivable benefits, and that BPP would not serve the public interest, several commenting parties, including Oncor, responded to the Further Notice's invitation to propose alternatives to make operator

---

48 AT&T comments at 14.

49 Comments of the American Council on Education at 3. See also comments of Colorado State University which indicate that revenue losses to that university resulting from BPP would cause increases in the rates for other services which would be applicable to the entire college community, and which would raise the cost of education at that state-supported public university.

50 Comments of ACI-NA at 2-3. Individual airport authorities commenting in a manner consistent with ACI-NA include the Salt Lake City Airport Authority, the Port of Oakland, and the cities of Austin, Texas, San Jose, California, Seattle, Washington, and Boise, Idaho, all of whom operate commercial airports.

services more "user friendly" and to make operator service prices subject to more effective competition.[51] Oncor explained that the best means for making it easy for consumers to exercise informed choice of service providers would be for the Commission to allocate sufficient resources to enforce the provisions of TOCSIA and the Commission's operator service rules. TOCSIA and the rules, if effectively enforced, provide a comprehensive framework for development of operator service competition and for providing consumers with user friendly choices of services and service providers. In addition, Oncor urged the Commission to end the continued advantages enjoyed by AT&T -- by any measure, the dominant OSP, through its Card Issuer Identifier (CIID) calling cards issued by it, and the "proprietary" status improperly accorded to those cards by the Commission.[52]

Other commenters proposed different alternatives. Several parties suggested variations of rate caps or other approaches for active Commission oversight of OSP rates. Whether described as "rate caps"[53] or as "industry benchmarks,"[54] Oncor does not believe that such active Commission regulation of IXC rates is either necessary or appropriate. Notwithstanding the legal arguments put forth by CompTel and others that the Commission lawfully could establish maximum OSP rate levels or at least presumptions of lawfulness, those approaches are legally questionable. Whether or not the Commission lawfully could institute a system of rate caps based on dominant carrier rates, weighted averages of all -- or even several -- carriers' rates, Oncor believes that it would be unwise for the Commission to attempt to do so.

Such direct oversight of the rates of OSPs would be plainly contrary to the Commission's nearly fifteen year old policy of streamlined rate regulation for nondominant carriers. The Commission's dominant/non-dominant carrier dichotomy was first articulated in 1980.[55] In the

---

51 Further Notice, *supra* at ¶ 38.

52 Oncor comments at 17-19. See also comments of Bellsouth at 17-19.

53 See, e.g., comments of NYNEX, comments of AT&T.

54 Comments of CompTel at 39-45.

55 Policy and Rules Concerning Rates for Competitive Common Carriers and Facilities Authorizations Therefor (*First Report and Order*), 85 FCC2d 1 (1980) ("Competitive Common Carrier Proceeding").