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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M St., N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Communication, CC Docket No. 92-77

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL

On March 30, 1995, Genevieve Morelli, Jim Smith and Danny Adams, representing the Competitive Telecommunications Association; Marie Breslin, representing Bell Atlantic; Whit Jordan, representing BellSouth, Mike Crumling, representing US West; Frank Simone, representing AT&T, and Bob Aldrich, representing the American Public Communications Council, met with Karen Brinkmann, advisor to Chairman Hundt, to discuss the above-referenced docket.

During the meeting, the industry representatives discussed their proposal for a rate ceiling for domestic operator services as an alternative to adoption and implementation of Billed Party Preference. The specifics of this rate ceiling plan are detailed in the accompanying written materials, which were distributed during the meeting.

Please address any questions concerning these materials to the undersigned.

Sincerely,

Genevieve Morelli

cc: Karen Brinkmann

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RATE CEILING ALTERNATIVE TO BILLED PARTY PREFERENCE

Overview

The proposal for a "billed party preference" system for operator assisted long distance calling has been under consideration by the FCC, in one form or another, for almost nine years. During that time the Commission has received comments on at least three separate occasions. The record compiled in this process makes clear that billed party preference is not in the public interest for several reasons, including:

* BPP would cost nearly $2 billion to implement,

* BPP would take at least 3 years to become operational,

* BPP would affect the routing of less than 20 percent of operator assisted calls, and

* BPP would create new problems in many instances, such as mass consumer confusion in switching to a new system of dialing and presubscription, the creation of serious fraud control issues, and harm to the competitive workings of the marketplace.

In addition to these shortcomings, since the original proposal of BPP in 1986, legislation has been passed and implemented governing the offering of operator services. These regulations have created numerous consumer safeguards, such as mandatory call branding, mandatory payphone signage, unblocking of access codes and rate quotes on request.[1/] In addition, millions of dollars have been spent on consumer education in recent years, resulting in dial-around levels exceeding 50 percent in many cases.

In short, BPP has been overtaken by events. It is now a hugely expensive solution to a small and diminishing problem. To

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[1/] See, e.g., 47 C.F.R. §§ 64.703-05.

the extent that further FCC attention to the operator services marketplace is needed, a simple rate ceiling approach will address any lingering concerns.

The unblocking of access codes, coupled with the branding of calls and the vast sums spent on consumer education, leave rates as the only remaining area of concern. In a statistically small number of cases, callers who choose not to dial around the presubscribed OSP are charged excessive rates. The simple FCC enactment of a rate ceiling above which OSPs may not charge without submitting comprehensive cost justifications would ensure that consumers pay only just and reasonable charges without necessitating the expenditure of billions of dollars. As explained below, this rate ceiling alternative provides a solution to the lingering problem in the operator services marketplace which is far less costly, less regulatory and more quickly implemented than BPP.

BPP Is Not Cost-Justified

The record compiled in this docket convincingly shows that any benefits of BPP are far outweighed by its costs. The direct LEC expenses are nearly $1.7 billion.[2/] The additional costs to interexchange carriers and aggregators are measured in the hundreds of millions of dollars.[3/] Some studies estimate even higher costs.[4/] Moreover, monies spent on unnecessary BPP investments may detract from more important infrastructure investment.

In return for this investment, the record shows that only 19 percent of calls would be routed to a carrier other than the one they would have reached under the existing system.[5/] In fact,

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[2/] See AT&T Reply Comments at 5 and Attachment B (September 14, 1994).

[3/] See, e.g., AT&T Comments at 21-22 (August 1, 1994).

[4/] Strategic Policy Research, Quantifying the Costs of Billed Party Preference (Sept. 1994), submitted by American Public Communications Council (September 14, 1994).

[5/] Frost & Sullivan, Inc., Report on Applicability and Costs of Billed Party Preference: A Market Impact Report

(continued...)

nearly as many calls will actually be disrupted by being forced to deal with two operators in order to place a call. Moreover, the study which determined that 19 percent would be affected was conducted before the extensive advertising campaigns for 800-COLLECT and 800-CALLATT. Largely due to those successful marketing efforts, dial-around calling has now increased to 55-66%[6] in many areas. This reduces even further the number of calls which will be affected by BPP.

The record thus shows that an objective cost-benefit analysis of BPP must conclude that the negatives far outweigh the benefits.

BPP Is Years Away

The record of this proceeding also shows that BPP will take several years to implement. It would require massive database changes as well as modifications to the nationwide SS7 network. The LECs have uniformly agreed that this effort could not be completed for years. Even the LECs which support BPP, of which only a few remain, agree that it could not be in place promptly.[7] Thus, any benefits from BPP are not only expensive to achieve, they would not be realized for a very long time, at which time cellular and PCS technology would further erode the proportion of calls

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(...continued)
(October 1993), submitted by the Competitive Telecommunications Association, November 22, 1993.

[6] The record shows that dial around calling already is between 55 and 66 percent today. See NYNEX Comments at 4 (66%); Teleport Comments at 6-7 (60%); APCC Comments at 22 (60%); Bell Atlantic Comments at 8 (55%). Even Ameritech and Sprint, both proponents of BPP, report dial around calling to be at 55% and 44% respectively. See Ameritech Comments at 8, Sprint ex parte, December 23, 1994.

[7] Ameritech Comments at 18 (August 1, 1994) (implementation will require "at least 3 years from the time of an FCC order to deploy"); GTE Comments at 25 (August 1, 1994) (implementation will require a minimum of 3 years); Southwestern Bell Comments at 13 (August 1, 1994) (BPP cannot be deployed in less than 3 years).

subject to BPP.[8]

BPP Is Broadly Opposed

The great majority of the interested members of the telecommunications industry recognize the facts outlined above and oppose BPP. This group includes many disparate industry segments. For example, BPP is now opposed by:

* Four of the seven regional Bell Companies
* The major competitive access providers
* AT&T
* CompTel, the industry association representing competitive 1+ interexchange carriers and operator services providers[9]
* More than a dozen third tier IXCs
* The American Public Communications Council, the payphone industry association
* The National Telephone Cooperative Association
* Time-Warner, a major cable television firm
* A majority of commenting state public utility commissions
* Dozens of aggregators and their trade associations

On the other hand, the active industry supporters of BPP have now dwindled to only a handful of entities: three RBOCs, GTE, MCI and Sprint. Even these supporters retain major caveats regarding BPP implementation.

While a listing of supporters and detractors of BPP does not

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[8] NYNEX Comments at 7-8 (August 1, 1994); Bell Atlantic Comments at 11 (August 1, 1994).

[9] The Operator Service Providers of America (OSPA) was incorporated into CompTel in 1991.

of itself indicate where the public interest lies, the breadth of the opposition to BPP across all relevant industry sectors lends great credibility to the evidence that it is not supported by any reasonable analysis.

Rates: The Only Remaining Concern

It is clear that most of the issues which originally prompted support for BPP, such as blocking, the absence of call branding, a dearth of consumer understanding, and little publicity for the availability of access code calling, have been resolved. These problems no longer provide a basis for adoption of BPP. The only lingering concern is that, in a limited number of cases, callers choosing to use 0+ dialing are charged rates which are excessive. This concern is the principal remaining factor which generates complaints to the Commission about operator services. A rate ceiling will resolve this problem promptly and without the necessity of mandating billions of dollars in unnecessary investment.

A Rate Ceiling Will Be Effective

The Communications Act gives the FCC the authority to ensure that the rates charged by common carriers are just and reasonable.[10/] In fulfilling this responsibility, the Commission is empowered to require information in support of proposed rates and may conduct investigations into rates where warranted.[11/] Thus, the Commission may identify a rate level which it deems presumptively lawful and may require any tariffs with charges above that level to be accompanied by cost support information explaining the basis for a claim that the charges are not unjust and unreasonable.[12/] The

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[10/] 47 U.S.C. §§ 201(b); 205(a).

[11/] Id. § 203(a).

[12/] Id. § 204(a). In fact, the Commission took essentially these same steps in late 1991 in addressing similar rate issues. There the tariffs of more than two dozen operator services providers were cited as exceeding the industry average for a sample call. Those carriers were directed to submit justification for their rates and to include additional warnings

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Commission also may require that such tariffs be filed on 90 days notice and it may suspend them for another five months if it deems necessary.

Exercise of the Commission's rate review powers in this way need not be administratively burdensome or time-consuming. Any operator service provider seeking to exceed the rate ceiling could be designated for an expedited paper hearing to review the proffered cost justification. Unlike the traditional approach reflected by the uniform system of accounts, the Commission could mandate very simple cost categories. For example, companies could be required to provide costs in the following seven groups: (1) access costs, (2) billing and collection costs, (3) network costs, (4) operator and call processing costs, (5) general and administrative costs, (6) cost of capital, and (7) commissions, surcharges and similar fees. These costs would be provided both on a per minute basis and, where appropriate, on an annualized basis. The subcategories and calculations underlying these submissions, including the minutes of traffic and call attempts, also would be required. This information would permit the Commission to examine the company's underlying cost structure, its return on capital and

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(...continued)
in their call
branding until the inquiry was completed. The Commission could exercise similar powers in aid of the rate ceilings proposed here.

Despite the fact that 26 carriers were originally subject to the possibility of a rate hearing in this manner, no such hearings were conducted. This is because the mere designation of the investigations caused virtually all the carriers to reduce their rates to or below the benchmark level. As a result, the Commission was not required to expend its resources on rate investigations.

This Commission action in 1991 did not resolve the rate issue permanently for several reasons. First, the enforcement focus was placed narrowly on a single sample call -- an eight minute coast-to-coast daytime live operator collect call. Other types of calls were not examined. Second, the Commission ceased reviewing the rates even for the one type of call originally examined. Both of these shortcomings are easily remedied.

its level of commissions and surcharges for reasonableness in a simple and prompt manner.

A Workable Rate Ceiling

A workable rate ceiling has many public benefits. It ensures that consumers are charged just and reasonable rates, it can be implemented quickly and with relatively minimal expense, and it avoids the many competitive, technical and cost recovery problems created by BPP. And as long as it is set at a fair and reasonable level, it avoids significant regulatory involvement in the competitive marketplace. Lengthy new regulations on the schedule, manner and specifications for BPP then become completely unnecessary.

A fair rate ceiling should strike a proper balance between the interests of consumers in obtaining reasonable rates and aggregators' rights to recover their costs of making equipment available for public use. The ceiling should also allow for competitors to set rates based on the marketplace so that competition can work effectively. It should not be based on the rate levels or cost structure of any particular carrier, dominant or otherwise.

To identify the appropriate level for a rate ceiling, a representative sampling of complaints to the FCC about operator service charges was examined. A rate schedule was devised which would ensure that all charges would be below those which prompted virtually all complaints in the sample.[13/] Finally, the structure of the rate ceiling should be as simple as possible to permit it to be easily understood and enforced.

Taking all these factors into account, the proposed rate ceiling below was devised. This proposal would adopt a benchmark rate on a simple per minute basis, without regard to time-of-day, distance, automated or live, calling card or collect, or any of the other complicating factors which might make monitoring and enforcement costly or burdensome. The signatories to this proposal all support Commission adoption of this rate ceiling as an alternative to BPP. This table represents a proposed set of

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[13/] The resulting table also is consistent with the Commission's previous industry average approach to choosing a benchmark rate.

maximum charges to end users, including all surcharges, premises imposed fees and other charges.

MAXIMUM CHARGES

Collect, Calling Card, Third Party			Person-to-Person
1 Minute	=	$3.75	$4.75
2 Minutes	=	$4.25	$5.25
3 Minutes	=	$4.75	$5.75
4 Minutes	=	$5.25	$6.25
5 Minutes	=	$5.50	$6.50
6 Minutes	=	$5.95	$6.95
7 Minutes	=	$6.20	$7.20
8 Minutes	=	$6.65	$7.65
9 Minutes	=	$7.00	$8.00

(Tenth and Each Additional Minute=$0.35/min.)

Monitoring Made Simple

In order to simplify enforcement even further, the Commission may direct the LECs to provide it periodically with information concerning calls exceeding the rate ceiling which are submitted to the LECs for billing. An examination of the Commission's complaints makes clear that the vast majority of operator services calls which generate complaints are LEC billed. Thus, by monitoring calls in this fashion, the Commission can be assured that it is obtaining full and complete information on the operator services rates being charged.

It is proposed that the FCC require that LECs who bill for providers of operator services supply the agency with a quarterly report showing a summary of the calls reviewed for the report period which exceed the rates contained in the rate ceiling chart. This summary report would list the operator service provider, total calls for the period, the number of calls reviewed, the number of calls exceeding the rate ceiling, and the percentage of calls reviewed exceeding the rate ceiling. From this summary report the FCC could determine if action concerning particular OSPs was called for. Should the FCC determine that action is needed concerning a particular OSP, a more detailed call by call report for that OSP could be provided by the LEC for those calls that exceeded the rate ceiling. The FCC would then need only to contact the operator

service provider to determine if the report was accurate and to seek explanation or justification for the rate charged. If necessary, a hearing could be initiated.

Four LECs -- Bell Atlantic, BellSouth, NYNEX and US West -- have examined the feasibility of this auditing and reporting approach and believe it can be implemented promptly and relatively inexpensively. They recommend that specific auditing procedures be developed locally by each LEC after billing has occurred. The quarterly audit could be based on a review of all messages or rely on a statistical sampling for each operator service provider. Each LEC would file the report with the Commission within three weeks after the end of the quarter being audited.

The reports would identify either the operator service provider or the billing clearinghouse, if any. Copies of two suggested report forms are attached. The information on which the reports are based would be retained by each LEC for 90-120 days after billing.

While the costs of this approach are minimal for the LECs, there would be some minor expenses involved. The Commission should ensure that the LECs are permitted to recover these costs.

Conclusion

A workable rate ceiling provides an alternative to BPP that will provide full protection of the public interest without mandating the expenditure of billions of dollars or delaying resolution of the issue for many years. It also avoids the many other problems which BPP would create.

The group which is proposing and endorsing this rate ceiling alternative is a diverse collection of companies. It is not often that so many disparate, competing interests can be found to agree on an important policy issue. We urge the Commission to give this approach serious consideration, and to abandon BPP once and for all.

Respectfully submitted,

BELL ATLANTIC

By: Marie Breslin

The Competitive Telecommunications Association

By: Genevieve Morelli

BellSouth Telecommunications

By: W W Jordan

American Public Communications Council

By: Lawrence R Sidman

NYNEX

By: Suzanne Lee

MFS Communications Company, Inc.

By: Cindy Z Schonhaut (BM)

US WEST

By: M Crowley

Teleport Communications Group

By: Mary Lee (BM)

ILLUSTRATIVE REPORT

OPERATOR SERVICE PROVIDER
RATE CAP SAMPLING REPORT

COMPANY _____
REPORT AREA _____
REPORT PERIOD _____

CARRIER	TOTAL CALLS FOR PERIOD	# OF CALLS SAMPLED	# OF CALLS IN SAMPLE EXCEEDING CAP	% OF SAMPLE CALLS EXCEEDING CAP

ILLUSTRATIVE REPORT

MESSAGE BILLING DETAIL FOR CALLS EXCEEDING CAP

CARRIER A

BILLING TEL.#	DATE	PLACE & TEL. # WHERE ORIG.	PLACE & TEL. # WHERE TERM.	TIME OF DAY	RATE	MINUTES	AMOUNT
					e.g.		
					DAY		
					EVE.		
					NITE		