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

Re: In the Matter of Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77; In the Matter of the Petition of the National Association of Attorneys General Proposing Additional Disclosures by Operator Service Providers, RM-8606

Dear Mr. Caton:

Enclosed herewith for filing are an original and five (5) copies of the Intellicall Companies' Comments in the above-captioned proceedings. Please date-stamp the extra copy and return to the undersigned counsel.

Very truly yours,

Enrico C. Soriano

Enclosure

cc: Attached Service list (w/encl.)

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

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In the Matter of	)	
	)	**CC Docket No. 92-77**
Billed Party Preference for 0+ InterLATA Calls	)	
	)	
and		
In the Matter of	)	
	)	
Petition of the National Association of Attorneys General Proposing Additional Disclosures by Operator Service Providers	)	**RM-8606**

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COMMENTS OF THE INTELLICALL COMPANIES

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or the "Commission") Rules of Practice and Procedure,[1] Intellicall, Inc. and Intellicall Operator Services, Inc. (collectively, the "Intellicall Companies"), through their undersigned attorneys, hereby offer their Comments in the above-captioned proceedings. The Intellicall Companies believe that Billed Party Preference is <u>not</u> the solution to perceived problems in the OSP industry. The problems which BPP was designed to solve are now being addressed by a combination of the Commission's existing regulations and the restraints imposed by the competitive marketplace. To the extent

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1 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1994).

to which rate excesses exist, a workable rate cap would, in all probability, address the problem. The Intellicall Companies support a rate cap which uniformly applies to similarly situated OSPs. Moreover, a rate cap cannot, and must not, be tied to dominant carrier rates. To the extent to which consumers would be protected under a rate cap environment, additional audible disclosures would be redundant and unnecessary.

STATEMENT OF INTEREST

Intellicall, Inc. ("Intellicall") is the leading provider of equipment to the Customer-Owned Pay Telephone Service ("COPTS") industry. It has sold over 185,000 "smart" pay telephones for use in forty-six states, of which half use store-and-forward technology, and provides various ancillary services to its customers.

Intellicall Operator Services ("IOS"), a wholly-owned subsidiary of Intellicall, provides network-based operator and prepaid services throughout the United States. Its services are offered from pay telephones, hotels, hospitals, and other locations serving the transient marketplace.

As a manufacturer of pay telephones, an operator service provider ("OSP"), and prepaid service provider, the Intellicall Companies are vitally interested in the outcome of these proceedings.

BACKGROUND

On February 8, 1995, the Telecommunications Subcommittee of the National Association of Attorneys General and the Attorneys General of several states (collectively, "Attorneys General") petitioned the Commission to amend 47 C.F.R. § 64.703(a) to require that operator service providers provide additional information to consumers who use pay telephones or other public telephones. The Attorneys General urged the Commission to adopt a requirement that "OSPs whose rates and connection fees and other charges are not at or below dominant carrier rates provide to consumers, through a voice-over following carrier identification," an audible notification that the caller may be charged more than what he or she expects.[2]

Roughly one month after the Attorneys General filed their petition, a group of industry representatives[3] filed an ex parte

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[2] The voice-over proposed by the Attorneys General is as follows:

> This may not be your regular telephone company and you may be charged more than your regular telephone company would charge for this call. To find out how to contact your regular telephone company call 1-800-555-1212.

Petition of the National Association of Attorneys General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Telephone Operator Service Providers of Public Phones (Feb. 8, 1994) ("Disclosure Petition").

[3] This group includes representatives from the Competitive Telecommunications Association, Bell Atlantic, NYNEX, BellSouth, US West, the American Public Communications Council, Teleport Communications Group, and MFS Communications Company, Inc.

proposal in CC Docket No. 92-77 (Billed Party Preference or "BPP")[4] for a rate ceiling on "0+" operator service calls.[5] Under this proposal, the Commission would adopt a benchmark rate on a simple per-minute basis, without regard to time-of-day, distance, type of call, or other considerations.

By Public Notices,[6] the Commission invited interested parties to file comments and reply comments addressing the Disclosure Petition and the Rate Ceiling Proposal. The Intellicall Companies are filing the instant Comments in response to that invitation.

DISCUSSION

A. THE COMMISSION SHOULD COMPLETELY ABANDON BILLED PARTY PREFERENCE AND, INSTEAD, CAP OSP RATES.

1. Billed Party Preference is Unnecessary

The Billed Party Preference concept was embraced by the Commission primarily as a reaction to perceived rate gouging by some OSPs. Years after BPP was proposed by the Commission, the

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4 The Commission's Billed Party Preference proceeding was initiated in 1992 when the Commission issued a Notice of Proposed Rulemaking to consider the merits of an automated BPP routing methodology for 0+ interLATA traffic. In that proceeding, the Commission tentatively concluded that BPP was in the public interest, and sought comments on a number of issues, including the costs and benefits of BPP. See In the Matter of Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 9277, 7 FCC Rcd 3027, 57 Fed. Reg. 24,574 (June 10, 1992). After a round of comments and reply comments, that proceeding remains pending.

5 See Ex Parte Communication in CC Docket No. 92-77 (Mar. 8, 1995) (proposing a rate ceiling alternative to Billed Party Preference) ("Rate Ceiling Proposal").

6 See Public Notice, DA 95-473 (Mar. 13, 1995); Public Notice, Report No. 2059 (Feb. 8, 1995).

problems which BPP was intended to cure have been, in large measure, addressed by a combination of the Commission's existing regulations and the restraints imposed by the competitive marketplace. The remaining concern, rate gouging by some OSPs, can readily be addressed through a rate cap. Intellicall believed then, and believe now, that the Commission should exercise direct rate regulation over OSPs to remedy the rate excesses, and abandon the concept of BPP which has become manifestly archaic.[7]

2. A Rate Cap that Applies Uniformly to Similarly Situated OSPs is Appropriate.

The Intellicall Companies agree with the industry consensus that the marginal benefits that can be derived from BPP pales in comparison to the costs that OSPs -- and ultimately, the public -- would have to bear,[8] and wholeheartedly support the concept of rate caps.

While the Intellicall Companies believe that a rate cap is by far the most workable solution to the problem of rate gouging, the Intellicall Companies believe that any rate cap must be fair and reasonable. To be sure, any rate cap cannot, and must not, be

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7 In its comments and reply comments in the BPP proceeding, the Intellicall Companies specifically suggested that the Commission adopt rate caps or zones of reasonableness for OSP rates in order to address the problem of rate gouging. The Intellicall Companies contended that rate caps, or the establishment of zones of reasonableness, could be readily adopted and implemented, without the delays and costs associated with BPP implementation.

8 In their reply comments, virtually all of the commenters expressed their disfavor of BPP, citing cost, competitive, technological, and other reasons as their basis of opposition.

pegged to dominant carrier rates. What may be reasonable rates in the context of dominant carriers may not necessarily be reasonable when applied to OSPs, many of whom are small, entrepreneurial companies. Clearly, the costs of doing business, economies of scale derived from size and structure, competitive positioning, to name a few, dramatically differ between many OSPs and dominant carriers. Any attempt to tie OSP rates to dominant carrier rates would, with all certainty, create more problems than would be solved.

The Intellicall Companies also strongly believe that a workable rate ceiling must be uniformly applied to similarly situated OSPs. To illustrate, there are OSPs that begin charging (for completed calls) when the calling party is connected to the OSP's network. The total charges for the call would thus include, in addition to the actual conversation time, the time required for call setup, billing number validation, and call extension. For collect calls, the charges would also include the time required for soliciting the called party's acceptance of the charges (hereinafter, "Method 1"). On the other hand, there are OSPs that begin billing only when the <u>receiving line</u> goes off-hook, i.e., when the incoming call is answered either by the person being called or an answering device (hereinafter, "Method 2"). Thus, the chargeable call is longer in the first scenario.

The Intellicall Companies believe that Method 2 is predominantly in use by most OSPs and that the consumers have an expectation that they will be charged only for conversation time. The Intellicall Companies strongly believe that any rate ceiling

must take these differences into consideration and, in any event, must be applied uniformly to similarly situated entities. For example, if the Commission were to adopt a rate cap of $4.25 for a two-minute call, the Commission must clearly define whether rating applies to total network connection time or only to conversation time. Indeed, if the Commission were to determine that either method were acceptable, it would likely be advisable to have two sets of rate caps: one that applies to those OSPs that utilize Method 1, and another that applies to those utilizing Method 2.

3. OSPs Must be Permitted to Charge Above the Rate Ceiling where the Proposed Rate is Demonstrated to be Reasonable.

The Intellicall Companies support allowing an OSP to charge a higher rate if it can prove that the suggested rate is not unjust and unreasonable, based on its specific set of circumstances, particularly its cost structure. Permitting rate variations, to the extent they are justified, would allow and encourage OSPs to invest in new technology and offer enhanced services.

B. ADDITIONAL DISCLOSURE OR BRANDING, AS SUGGESTED BY THE ATTORNEYS GENERAL, IS UNNECESSARY IN THE CONTEXT OF A WORKABLE RATE CEILING.

The sine qua non of the Attorneys Generals' disclosure proposal is a profound concern about excessive OSP rates. In the context of a workable rate ceiling, such a disclosure is redundant and unnecessary. Because rates under a rate cap environment are presumptively reasonable, the consumers are already protected.

Additional disclosure requirements would unnecessarily impose unwarranted costs on OSPs for no ostensible benefit.

CONCLUSION

Billed Party Preference is not the solution to perceived problems in the OSP industry. A workable rate cap would, in all probability, address rate gouging concerns. The Intellicall Companies support a rate cap to the extent it is uniformly applied to similarly situated OSPs. For the foregoing reasons, the Intellicall Companies request that the Commission terminate the BPP proceeding in favor of mandating a workable rate ceiling.

Respectfully submitted,

Judith St. Ledger-Roty
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Attorneys for the
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DATED: April 12, 1995

CERTIFICATE OF SERVICE

I, LAVERNE WATKINS, hereby certify that a copy of the foregoing **Reply Comments of the Intellicall Companies** was sent, this 12th day of April 1995, by U.S. first-class mail, unless otherwise indicated, to the following individuals:

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***Delivered By Hand.