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

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In the Matter of	)	
	)	
COMPTEL Petition on Rate Ceiling On Operator Service Calls	)	CC Docket No. 92-77
	)	
and	)	
	)	
Petition for Rulemaking of National Association of Attorneys General Proposing Additional Disclosures By Some Operator Service Providers	)	RM-8606

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

SOUTHWESTERN BELL TELEPHONE COMPANY

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CC Docket No. 92-77
RM-8606

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SUMMARY*

This industry is strongly divided over the remedies needed to stop abuses in the operator services market. Some, such as SWBT, contend that implementation of BPP is needed. The Attorneys General request that a message be given to consumers at the beginning of a call, announcing that the IXC carrying the transmission may not be the consumer's "regular" carrier. The COMPTEL Group believes that a rate ceiling, with nothing more, will stop certain OSPs from charging enormous rates to unsuspecting customers.

The suggestion of the Attorneys General, though well intentioned, will not solve the problem, in part because the proposed message may or may not be given by OSPs. Also, effective enforcement of the message requirement is highly problematic.

The COMPTEL rate ceiling proposal would perpetuate existing problems and reliance on ineffective regulatory controls. There would, for one thing, be no practical ceiling. Also, the rate ceiling would place the emphasis of the OSP market on illusory price controls rather than on consumer-focused competition.

Only BPP, in the form proposed by SWBT, will tame the operator services beast. BPP will focus the operator services market on quality of service to consumers rather than on the size of commission payments to premises owners. If the FCC wishes to

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* All abbreviations used herein are referenced within the text.

allow competition to manage rates, rather than price controls, it will order the implementation of BPP in the form proposed by SWBT.

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On February 8, 1995, the Telecommunications Subcommittee for Rules of the National Association of Attorneys General Consumer Protection Committee ("the Attorneys General") petitioned the Commission to require increased disclosure by operator service providers. On February 28, 1995, the Commission established RM 8606, seeking comment on the Attorneys General petition. On March 7, 1995, the Competitive Telecommunications Association (COMPTEL) and a group of other companies (hereinafter referred to as COMPTEL)[1] filed a Request in CC Docket No. 92-77, seeking comment on a rate ceiling proposal for domestic operator services. On March 13, 1995, the Commission issued Public Notice DA 95-473 to establish common dates for Comments and Replies. Southwestern Bell Telephone Company (SWBT) submits its Comments on the significant issues raised by these petitions.

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[1] COMPTEL, American Public Communications Council, MFS, Teleport, Bell Atlantic, BellSouth, NYNEX, and U S WEST.

I. INTRODUCTION

The industry is strongly divided over the rules changes needed in the operator services markets. Some, such as SWBT, MCI, GTE, Ameritech and Pacific Bell, correctly contend that implementation of an appropriately constructed Billed Party Preference (BPP) plan is needed to achieve the goals of the Commission and Congress. The Attorneys General believe that "many consumers need immediate redress from the oppressive pricing practices of some OSPs [Operator Service Providers]," and urge the Commission to order implementation of warning messages to protect consumers from unfair and deceptive practices.[2] The COMPTEL group believes that implementation of a simple rate ceiling plan, with nothing more, will correct continuing operator services problems.

Such divisions, with changing partners and varying intensities, have existed over the nine years the Commission has been trying to tame the operator services beast. Twice now the Commission has concluded that BPP is in the public interest.[3] Still, the Commission has yet to order implementation of BPP. The Commission must decide between open, competitive markets and closed markets regulated by ineffective controls. More importantly, the Commission must decide between regulations that promote consumer protection and convenience and those that promote deception and captivity.

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[2] Attorneys General at 4.

[3] Notice of Proposed Rulemaking, CC Docket No. 92-77, released 5/8/92 (NPRM); and Further Notice of Proposed Rulemaking, CC Docket No. 92-77, released 6/6/94 (FNPRM).

II. THE ATTORNEYS GENERAL FILING

The Attorneys General identify market problems which BPP "may resolve" and propose interim implementation of a voice-over message following carrier identification (i.e., call branding), while consumers and the industry wait for a decision on BPP. This message requirement would remain permanent if BPP is not adopted.[4] The message would be applied on calls for which OSP "rates and connection fees and other charges are not at or below dominant carrier rates" and would warn consumers that "this may not be your regular telephone company and you may be charged more than your regular company would charge for this call. To find out how to contact your regular telephone company call 1-800-555-1212."[5]

Citing wide-spread consumer misunderstanding and non-compliance by various service providers, the Attorneys General believe that "the [existing] rules do not provide sufficient information or protection to many consumers."[6] The proposed rule is intended to "provide consumers with a fairer opportunity to make an informed purchase of OSP services."[7]

SWBT applauds the Attorneys General. Corrective actions are clearly needed. This well-intentioned plan, however, will not achieve the desired results.

The plan has three main defects. First, it relies on regulation and enforcement. The data cited by the Attorneys

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[4] Attorneys General at 4.

[5] Id.

[6] Id.

[7] Id.

General, for example, clearly show that regulation and enforcement are ineffective. Various commissions, including the FCC, the Texas PUC and Florida PSC also cite data showing that existing controls do not work.[8] Regulations without strident enforcement do not prevent consumer and competitive abuse.

Second, the Attorneys General plan relies on abusers of rate ceilings to provide the proposed warning to consumers--the "fox guarding the hen house." Voluntary compliance with a consumer warning requirement is highly unlikely. Effective enforcement is also problematic.

Third, the Attorneys General propose that consumers call 800 directory assistance to obtain the number of their "regular" telephone company. Test calls by SWBT have shown there are no listings with 800 directory assistance for "regular" telephone companies. On each test call, operators have requested a specific name of a specific company. Operators have claimed not to know the identity of the caller's "regular" telephone company. Given the possible answers that could be given to a request to transfer a call to a consumer's "regular" telephone company, plus the fact that many callers could be located out of the service area of their "regular" telephone company, the suggestion by the Attorneys General would likely produce more confusion and frustration than assistance and satisfaction.

Further, the plan of the Attorneys General does not facilitate completion of calls. Consumers would merely be placed

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[8] FNPRM at fn. 31; Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, (released February 8, 1995), at 3.

on alert, causing them to hang-up or follow the dead-end path described above.

III. THE COMPTEL FILING

COMPTEL proposes implementation of a rate ceiling in lieu of BPP. The "ceiling" would be invisible, however; COMPTEL does not believe the proposed rate ceilings should be tied to anything. The ceiling "should not be based on the rate levels or cost structure of any particular carrier, dominant or otherwise."[9] How can effective consumer protection result from a rate ceiling with no ceiling?

The COMPTEL proposal proceeds from the mistaken belief that there is "only [one] lingering concern" in the operator services market.[10] This assertion is not true. The operator services market is plagued by countless consumer and competitive problems. If not, the Attorneys General would not have filed their Petition, and the Commission would not have initiated its recent Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) on policies governing OSPs and call aggregators.[11] If there were only one lingering concern in the operator services market, the Commission would not have concluded that consumer problems abound, and that competitive parity does not exist in the OSP market.[12]

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[9] COMPTEL at 7.

[10] Id. at 5.

[11] Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, (released February 8, 1995).

[12] FNPRM at 3, 4, 6-9.

State agencies would not have prohibited OSP services and limited excessive OSP charges.[13] Moreover, attempted solutions to these problems have failed. To suggest that a rate ceiling (minus the ceiling) will solve the only problem existing in operator services is, simply put, incorrect.

Another fundamental flaw of the COMPTEL filing is its reliance on indirect enforcement by Local Exchange Carriers (LECs). Under the COMPTEL plan, LECs would be required to provide to the Commission a quarterly summary of the composite per-call rates of each OSP for whom LECs perform billing and collection. Based on this report, the Commission might then request a more detailed call-by-call report for particular OSPs. Upon receipt of this report, 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."[14]

This proposal incorporates the worst elements of regulatory enforcement time-lag. Moreover, LECs should not be required to monitor and enforce rate compliance by OSPs. This is not the role of LECs as suppliers of service to IXCs and OSPs. Neither should LECs be required to bear the implementation and ongoing costs of COMPTEL's proposal. Additionally, such actions would be completely unnecessary if consumer choice through effective market forces controlled the rates and practices of OSPs, as would be the case with BPP.

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[13] Attorneys General at fn. 4.

[14] COMPTEL at 8.

The COMPTEL plan is predicated on the mistaken belief that controls enacted thus far have successfully reduced consumer confusion and abuse, while also promoting competition.[15] The Commission, however, "continue[s] to receive large numbers of complaints despite TOCSIA rules."[16] The Florida and Texas Commissions also report problems under current rules."[17]

The Attorneys General have also found evidence of continuing problems: "Consumer complaints and investigations conducted by the Attorneys General indicate that many OSPs may not be in compliance with Commission rules mandating disclosures on payphones and prohibiting blocking of dial around access. Furthermore, consumers' ability to obtain price information in a timely manner is also suspect."[18]

A survey of public payphones conducted by the Michigan Attorney General's office in early 1994 is most revealing:

> "Results of the survey showed that substantial percentages of pay phones: (1) were not properly labeled with the presubscribed OSP's identity; (2) were served by OSPs who furnished audible branding that did not match the company identified on labels or stickers on the telephone; (3) were served by OSPs who were not able to provide directions for contacting the carrier of the caller's choice beyond telling the caller to look on the back of a calling card; and (4) were served by OSPs who were not able to provide a rate quote in less than 3 minutes."[19]

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[15] Id. at 1.

[16] FNPRM at fn. 31.

[17] Id.

[18] Attorneys General at 3.

[19] Id. at fn. 5.

These are the very rules which COMPTEL's plan presumes are working. It is illogical to base a new rule on others which have failed to produce the intended results.

The COMPTEL plan assumes that BPP will not solve the many problems in the operator services market, and that "[t]he record compiled in this process makes clear that billed party preference is not in the public interest."[20] Others disagree, and the record indicates otherwise. COMPTEL's views are not "the record."

For every claim made by COMPTEL, other parties have submitted different and off-setting views. COMPTEL states that BPP is not cost-justified and will endanger fraud controls. SWBT and others have demonstrated the opposite. COMPTEL also incorrectly claims that "the record shows that [BPP will affect] only 19 percent of calls."[21] Even the Commission in its FNPRM disagreed.[22] The COMPTEL filing also bases BPP implementation costs on estimates of BPP opponents, hardly an objective method.

COMPTEL also significantly distorts the dial-around findings of Sprint.[23] COMPTEL claims that a Sprint ex parte of December 23, 1994, demonstrates "dial around" of 44%, a misapplication of relevant facts. The Sprint ex parte showed that "only 15.8% of all 800 calls were operator services dial around

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[20] COMPTEL at 1.

[21] Id. at 2.

[22] FNPRM at fn. 18.

[23] COMPTEL at fn. 6.

calls."[24] The other calls to 800 numbers in Sprint's study involved subscriber numbers and were not "dial-around" access-code calls at all.

COMPTEL's most troublesome assertion is that its rate ceiling would "allow for competitors to set rates based on the marketplace [emphasis added] so that competition can work effectively."[25] COMPTEL's "marketplace" is not composed of consumers, but rather of those commission payment recipients seeking to maintain the status quo. Consumers will gain little, if anything, from COMPTEL's proposal. As SWBT has previously pointed out: "We have reached the Orwellian moment in which OSPs (beneficiaries of divestiture and nascent competition) now employ the regulatory process to maintain closed markets. Absent BPP, those markets will remain closed."[26]

IV. A BETTER SOLUTION

The solution to the problems in operator services is Billed Party Preference, which, if implemented with appropriate cost recovery in the manner proposed by SWBT, would greatly improve access to Interexchange Carrier (IXC) networks. Customers will no longer need to dial cumbersome access codes to reach their IXC of choice. Calls will automatically be carried by the preferred IXC

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[24] Letter from Sprint to William F. Caton, CC Docket No. 92-77, December 23, 1994, at 2.

[25] COMPTEL at 7.

[26] Reply of SWBT, CC Docket No. 92-77, filed September 14, 1994.

of the billed party. Similarly, all IXC calling cards will work at all phones. Competitive parity will be a reality, not a slogan.

BPP will also refocus competitive energies toward end-users and away from commission payments. Not surprisingly, the vast majority of those opposing BPP are premises owners, such as prisons, hospitals, motels and shopping malls, which generally presubscribe their phones to the OSP offering the largest commission. The OSP can offer a large commission only by charging higher rates to consumers, a practice clearly not in the public interest. By allowing the billed customer to receive the services and pay the rates of its IXC of choice from all phones, including those in public places, BPP will likely eliminate the excessive rates of certain OSPs (and the ensuing complaints from overcharged and irate customers) and thus place the focus of competition where it belongs, on quality of service.

Reduced rates through consumer-based market forces will translate to fewer complaints, less rate regulation of OSPs, and little need to police OSP compliance with TOCSIA. The technology required for BPP will produce improved signaling in the telecommunications network, leading to increased efficiency and the possible introduction of new services.

The Commission estimates that consumers will save approximately $620 million annually by removing the necessity of dialing access codes and refocusing competitive energies on consumers rather than on commission payments.[27]

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[27] FNPRM at 6-13.

SWBT agrees with the Commission that BPP will promote both consumer needs and competition through open and unbridled competitive markets. Consumer choice will be the driving force for decisions in a BPP environment. In contrast, the COMPTEL plan would not achieve the benefits of BPP and would continue to promote captive, regulated markets. The COMPTEL plan would perpetuate existing problems and reliance on ineffective regulatory controls. Consumer choice and competitive forces are significantly absent in COMPTEL's plan.

V. CONCLUSION

The proposal of the Attorneys General, though well-intentioned, will not achieve the desired results. The COMPTEL plan is merely an attempt to maintain the status quo without producing consumer or competitive solutions. The only real solution to problems in the operator services market is to implement Billed Party Preference in the manner suggested by SWBT.

The Commission must decide if it intends to maintain its goal of enacting rules for the OSP industry that will foster a marketplace environment in which OSPs compete based on the merits of their services, rather than on commission payments which OSPs provide to traffic aggregators who deliver a captive clientele. The Commission must decide if closed, captive, dominated and regulated markets are in the best interest of consumers, or if the public interest is better served by open and competitive markets. If the Commission chooses open markets, the Commission will choose BPP.

Respectfully submitted,

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April 12, 1995

CERTIFICATE OF SERVICE

I, Martha Marshalek, hereby certify that the foregoing Comments of Southwestern Bell Telephone Company, CC Docket 92-77; RM-8606, have been served this 12th day of April, 1995 to the Parties of Record.

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April 12, 1995

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