RECEIVED
APR 12 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

Billed Party Preference For InterLATA 0+ Calls	)	CC Docket No. 92-77
Petition of the National Association of Attorneys General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones	)	RM-8606

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON THE INDUSTRY COALITION'S PROPOSAL FOR RATE CEILINGS AND ON THE NAAG PETITION FOR RULEMAKING

Albert H. Kramer
Robert F. Aldrich
Mark R. Paoletta
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919
(202) 789-3400

April 12, 1995

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

TABLE OF CONTENTS

Page

SUMMARY 2

STATEMENT OF INTEREST 3

I. THE RATE CEILING COALITION PROPOSAL IS WORKABLE AND IS FAR SUPERIOR TO BPP 3

A. FCC Has Authority to Establish Benchmark Rates . . . 5

B. The FCC May Impose LEC Reporting Requirements 8

C. Rate Ceiling Coalition Proposal Would Encourage OSPs to Charge Reasonable Rates 9

II. NAAG'S PROPOSAL WOULD NOT SERVE THE PUBLIC INTEREST . . 12

III. APCC SUPPORTS AN APPROPRIATE CONSUMER MESSAGE REQUIREMENT FOR OSPs CHARGING ABOVE-BENCHMARK RATES . . 15

CONCLUSION 19

Before the
Federal Communications Commission
Washington, D.C. 20554

Billed Party Preference For InterLATA 0+ Calls	)	CC Docket No. 92-77
Petition of the National Association of Attorneys General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones	)	RM-8606

To: The Commission

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON THE INDUSTRY COALITION'S PROPOSAL FOR RATE CEILINGS AND ON THE NAAG PETITION FOR RULEMAKING

The American Public Communications Council ("APCC") submits these comments in response to the proposal filed on March 7, 1995 in CC Docket No. 92-77 ("Billed Party Preference" or "BPP" rulemaking) by APCC, Bell Atlantic, BellSouth Telecommunications, the Competitive Telecommunications Association ("Comptel"), MFS Communications, NYNEX, Teleport Communications Group and US West ("Rate Ceiling Coalition proposal"), and in response to the Petition for Rulemaking filed February 9, 1995, by the National Association of Attorneys General, Telecommunications Subcommittee ("NAAG petition"). The Rate Ceiling Coalition proposal advocates the establishment of benchmark rate ceilings for operator service calls. The NAAG petition proposes increased disclosures by operator service providers ("OSPs").

SUMMARY

For the reasons discussed herein, APCC supports the Rate Ceiling Coalition proposal as an alternative to BPP, and also as a reasonable regulatory response to the large volume of complaints filed at the FCC with respect to OSP charges. The FCC should: (1) adopt the proposed benchmark rate ceilings; (2) require longer notice periods and cost support data for tariff filings that propose above-benchmark rates; (3) require the local exchange carriers ("LECs") to submit to the FCC certain information on OSPs who are exceeding benchmark rates; and (4) fully exercise its Section 204 and 205 powers to investigate new and existing operator service rates that exceed the benchmarks.

APCC opposes the NAAG petition for rulemaking. The NAAG petition suffers from fatal defects. First, it presumes that dominant carrier rates are the only appropriate rates, and does not allow for a zone of reasonableness for OSP rates. Second, its proposed consumer message is discriminatory, anticompetitive, and inaccurate in several respects.

However, APCC believes that the Commission should adopt an additional requirement, beyond the elements contained in the Rate Ceiling Coalition proposal, to ensure that its benchmark approach is uniformly and effectively applied. OSPs that charge above-benchmark rates should be required to inform consumers when they are about to incur charges which may exceed the benchmark rates.

STATEMENT OF INTEREST

APCC is the principal trade association of the nation's independent public payphone ("IPP") owners, operators, manufacturers and vendors. On behalf of its more than 1,000 members, APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications.

APCC has an interest in ensuring that rates charged by OSPs are just and reasonable. Any practice that makes consumers more reluctant to use payphones may lead to a decrease in payphone use, lessen payphone deployment and growth in the payphone industry.

I. THE RATE CEILING COALITION PROPOSAL IS WORKABLE AND IS FAR SUPERIOR TO BPP

Under Sections 203 & 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 203 & 226, OSPs are required to file tariffs describing their rates for Operator Service calls. Existing Commission regulations, however, allow "non-dominant" OSPs to file rates that become effective after a one-day notice period. Some OSP rates are so high that they have triggered a large volume of consumer complaints to the FCC. In response to those complaints, the FCC opened a rulemaking proceeding in 1986 for a "billed party preference" system for operator assisted calls.

The Rate Ceiling Coalition proposal sets forth the deficiencies with respect to the BPP rulemaking, including the immense cost to implement BPP and its ineffectiveness. See Rate

Ceiling Coalition proposal at pp. 1-4.[1/] As an alternative to the BPP rulemaking, APCC, along with the other above-referenced parties, submitted the Rate Ceiling Coalition proposal to establish benchmark rates for OSP calls. The Rate Ceiling Coalition proposal represents a more reasonable approach than the BPP rulemaking by which the FCC can legally and appropriately regulate OSP rates.

Under the Rate Ceiling Coalition proposal, the FCC would designate a rate level which would be deemed presumptively lawful and would require that any rates above that level be accompanied by cost support information. Id. at 4. Additionally, such above-benchmark rate tariffs would have to be filed with a longer notice period, which could be as long as 90 days.

To assist the FCC in monitoring adherence to the benchmark rate, the FCC would require the LECs that provide billing services for OSPs to provide the FCC a summary report disclosing information about OSPs that exceed the benchmark rate. This reporting requirement would provide the necessary data to alert the FCC as to which carriers are charging rates above the benchmark, and, thereby, would facilitate the Commission's ability to identify and investigate those carriers.

[1/]In 1994, APCC submitted a study conducted by Charles L. Jackson and Jeffrey H. Rohlfs of Strategic Policy Research, analyzing the costs of implementing the FCC's BPP proposal. See Jackson & Rohlfs, "Quantifying the Costs of Billed Party Preference" (September 1994), appended to APCC's reply comments dated September 14, 1994. The expert study concluded that based on the FCC's own assumptions, its BPP proposal would cost some $1.5 billion per year and would not produce benefits worth more than $221 million per year.

A. FCC Has Authority to Establish Benchmark Rates

Under the proposed benchmark regime, any tariff filed with rates at or below the "benchmarks" would be presumptively just and reasonable. This level would be known as the "no-suspension" zone because tariffs within this zone would ordinarily not be subject to suspension. Carriers filing tariffs at or below the benchmarks would be subject to very minimal filing requirements, similar to the information currently required. Moreover, such rates (when filed by non-dominant carriers) would still go into effect with a one-day notice period, as is the practice today.

In contrast, any carrier filing tariffs above the benchmarks would be required to file substantial cost data. The carrier would have to file cost support information demonstrating that the above-benchmark rate was reasonable. Moreover, any above-benchmark rate would have a longer (e.g., 90 days) notice period before the rate could go into effect so that the Commission would have ample opportunity to review the submission, and, if appropriate, suspend and investigate the rate.

In order to establish benchmark rates as recommended in the Rate Ceiling Coalition proposal, it is not necessary for the FCC to engage in a rate prescription proceeding. See 47 U.S.C. § 205. Rather, as set forth in the Rate Ceiling Coalition proposal, the proposed benchmark plan is a reasonable method by which the Commission can signal, pursuant to its suspension powers under 47 U.S.C. § 204, under what circumstances it would likely utilize those powers. See, e.g., Trans Alaska Pipeline Rate Cases, 436

U.S. 631, 98 S. Ct. 2053 (1978); Advanced Micro Devices v. CAB, 742 F.2d 1520 (D.C. Cir. 1984); Direct Marketing Ass'n, Inc. v. FCC, 772 F.2d 966 (D.C. Cir. 1985); Consolidated Edison Co. v. FPC, 512 F.2d 1332 (D.C. Cir. 1975). The FCC may also establish different tariff filing requirements based on the rate filed. See, e.g., Advanced Micro Devices, 742 F.2d at 1520.

The proposed benchmark plan is similar in many respects to the FCC's price cap plan for AT&T and certain LECs. The FCC price cap plan establishes "no-suspension" zone price caps for each carrier but also permits them to file rates above the specified price cap. Additionally, the price cap plan has different notice periods and filing requirements depending on whether the filed tariff rate is within the price cap. Policy and Rules Concerning Rates for Dominant Carriers, Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3301-04 (1988); Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 3295, 3307 (1989); Second Report and Order, 5 FCC Rcd 6786, 6788-89 & 6822-24 (1990) ("LEC Price Cap Order"). Thus, the FCC has previously adopted a similar type of regulatory regime.

Under the Rate Ceiling Coalition proposal, OSP tariff filings that exceed the rate ceilings would be subject to a longer notice period and more detailed cost support requirements even though the OSP involved may not have been classified as a "dominant" carrier. Therefore, these new requirements would be a departure from the Commission's existing tariff filing rules. See, e.g., 47 C.F.R. 61.23(c). The application of such requirements, however, can be

justified based on Congressional findings and the Commission's own records. In enacting the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), 47 U.S.C. § 226, Congress recognized that there had been numerous consumer complaints about OSP rates, and specifically empowered the Commission to investigate and take other actions to reduce OSP rates, despite the Commission's continued streamlined regulation of other services provided by "non-dominant" OSPs. 47 U.S.C. § 226(h). In Billed Party Preference for InterLATA 0+ Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 94-117, released June 6, 1994, ¶ 16, n. 31, the Commission noted that, while its OSP rules had been effective in ensuring that callers could dial access codes to reach their carrier of choice, the Commission continues to receive a high volume of consumer complaints about rates charged by some OSPs for "0+" operator services. To the extent that the volume of complaints about OSP rates substantially exceeds the volume of complaints filed at the Commission regarding other telecommunications services, such a disparity would support the adoption of appropriate rules that differentiate between operator services and other telecommunications services for purposes of rate regulation.

In summary, APCC believes the Commission could justify a finding that some OSP rates are not adequately governed by market forces, and that, in order to ensure just and reasonable OSP rates, it is necessary for the FCC to bring under direct regulation those outlying rates that exceed the proposed benchmarks.

The Rate Ceiling Coalition proposal also contemplates that the Commission will initiate investigations of existing OSP rates that exceed the benchmarks. This issue is addressed in Section III, below. With respect to existing rates, the Commission is not able to suspend the rate or impose an accounting order pending completion of its investigation. Therefore, there is an issue as to whether the Commission should take other steps to protect consumers with respect to existing above-benchmark rates.

B. The FCC May Impose LEC Reporting Requirements

The Rate Ceiling Coalition proposal also provides that the FCC require the LECs who provide billing services for OSPs to supply the FCC with a quarterly summary report listing the OSP, total calls for the period, number of calls reviewed, number of calls exceeding the benchmark, and percentage of calls reviewed which exceeded the benchmark rate. Pursuant to its powers under Title I of the Communications Act of 1934, the FCC may impose such reporting requirements on the LECs.

Imposing a reporting requirement on the LECs is consistent with the FCC's decision to deregulate billing and collection services. See Detariffing of Billing and Collection Services, 102 FCC 2d 1151, 1169 (1985). In that decision, the FCC concluded that it could regulate billing and collection services under its Title I ancillary jurisdiction powers, Id., citing 47 U.S.C. §§ 152(a), 153(a), and 154(i), but found that "[t]he exercise of ancillary jurisdiction requires a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'" 102

FCC 2d at 1170 (citations omitted). In Detariffing of Billing, the FCC found that market forces provided adequate protection and that regulation of rates and other practices in the provision of billing services to carriers was not necessary to advance a statutory purpose. Id.

Here, the FCC would not be re-regulating LECs' provision of billing and collection services to carriers, but would be merely imposing a reporting requirement to enable the FCC to gather data for another regulatory purpose. However, even if this LEC reporting requirement were to be considered a regulation of billing and collection services, the FCC could still take such action consistent with Detariffing of Billing. The record in these proceedings permits the FCC to find that requiring LECs to report information about billing of above-benchmark rates is necessary to promote the statutory purpose of ensuring reasonable rates for operator services.

C. Rate Ceiling Coalition Proposal Would Encourage OSPs to Charge Reasonable Rates

The benchmark rate established by the FCC would not be based on the rates of any particular carrier, dominant or otherwise. Rather, it would be set at a level which is calculated (1) to encompass a zone of reasonableness that accommodates the variation in carrier cost structures, and (2) to address the vast majority of consumer complaints currently filed at the FCC concerning operator services charges.

The proposed no-suspension zone recognizes that there may be many different rates that fall within a zone of reasonableness. Rather than using a rate that is tied to a particular carrier, the proposed benchmark rate allows for a reasonable degree of variation, due to cost differentials and other factors, between various OSPs. It recognizes that even though a certain carrier's rates may exceed another's, such rates may still be just and reasonable. At the same time, the proposed zone recognizes that beyond a certain level, the reasonableness of outliers' rates will be legitimately in question, and it is appropriate to shift to the carrier the risk that those rates may not be lawful. See, e.g., Advanced Micro Devices, 742 F.2d at 1528-30; LEC Price Cap Order, 5 FCC Rcd at 6823-24.

In order to assist the Coalition's development of proposed benchmark rates, APCC requested that the Enforcement Division of the Common Carrier Bureau provide a random sampling of consumer complaints currently on file at the FCC concerning OSP charges. The Enforcement Division supplied 103 complaints filed between May 1, 1994 and August 15, 1994. APCC reviewed and analyzed those consumer complaints.

The proposed benchmark rates reflect a consideration of, among other factors, a review of the sample of consumer complaints. As demonstrated by the attached list detailing consumer complaints in relation to the proposed benchmark rates, the proposed benchmark rates are below almost 95% of the rates cited in those consumer

complaints.[2/] Thus, if OSPs adopt the proposed benchmark rates, consumer complaints about OSP charges should be significantly curtailed.

The proposed benchmark plan is not only legal, but it also is good public policy for balancing the needs of carriers and the public. In Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 98 S. Ct. 2053 (1978), the Supreme Court not only rejected a challenge to a similar Interstate Commerce Commission benchmark plan, but noted that such an approach constituted good public policy. In Trans Alaska, the ICC had issued an order suspending initial tariffs filed by pipeline carriers and computed "new rates that approximated what full investigation would likely reveal to be lawful rates." Id. at 2058. The ICC stated that it would not suspend interim tariffs which "specified rates no higher than those estimated." Id. Petitioners argued that this order amounted to a rate prescription. In rejecting this argument, the Supreme Court noted:

> No principle of law requires the Commission to engage in a pointless charade in which carriers desiring to exercise their [tariffing] rights are required to submit and resubmit tariff until one finally goes below an undisclosed maximum point of reasonableness and is allowed to take effect. The administrative process, after all, is not modeled on "The Price is Right." What the Commission did here, therefore, far from being condemnable, **is an intelligent and practical**

[2/]Two of the complaints were excluded from the sample because they did not appear to be rate complaints. The charges involved were $0.97 for three minutes and $1.37 for three minutes. Of the remaining 101 complaints, 95 involved rates exceeding the proposed benchmarks.

> **exercise of its suspension power which is thoroughly in accord with Congress' goal . . . to strike a fair balance between the needs of the public and the needs of regulated carriers.**

Trans Alaska Pipeline Rate Cases, 436 U.S. at 653, 98 S. Ct. at 2066 (emphasis added) (citations omitted); see also Advanced Micro Devices, 742 F.2d at 1531 ("there is value in an agency articulating some suspension policy upon which the regulated industry can rely."). Here, the FCC would merely be signaling rate levels that it believes are likely to be found lawful.

II. NAAG'S PROPOSAL WOULD NOT SERVE THE PUBLIC INTEREST

APCC opposes the NAAG petition. NAAG proposes that the Commission 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, the following statement:

> 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.

NAAG asserts that such an audible disclosure would adequately protect consumers from OSP overcharging.

This proposal is seriously flawed for many reasons. Most importantly, the proposal is both unduly overbroad and discriminatory against non-dominant OSPs, and, therefore, anti-competitive. It has long been Commission policy to encourage competition whenever possible. The NAAG proposal also fails to

provide adequate mechanisms for FCC monitoring and enforcement to protect consumers from OSPs who overcharge.

The first major flaw in the NAAG petition is that it uses dominant carrier rates as the trigger for a notice requirement. This is an arbitrary and unfair standard. Under the Act, rates are required to be just and reasonable, but not identical. Smaller OSPs may charge higher rates than the dominant carriers for a variety of reasons, including higher cost structures, but those rates may still be just and reasonable.

Using dominant carrier rates as an absolute standard of reasonableness is clearly inappropriate, particularly since some OSPs undoubtedly have higher cost structures than the dominant carriers. Such a dominant carrier-based message would be the equivalent of requiring a small business, which sells consumer products with higher prices than WAL-MART, to disclose to its customers that its prices are higher than WAL-MART.

The NAAG petition is premised on consumer complaints of higher than expected charges for OSP calls, but it does not use such complaints as a basis upon which to set a benchmark rate. A more logical benchmark rate that triggers certain consumer protective actions would be one related to actual consumer complaints, as the Rate Ceiling Coalition proposal advocates. Linking the benchmark rate to consumer complaints enables the Commission to establish a zone of reasonableness which would more fairly balance the needs of the public with the needs of the regulated carriers. Such a benchmark rate inherently recognizes OSP cost differentials. In

any event, setting the benchmark rate at the dominant carrier's rates is unfair to non-dominant OSPs, anti-competitive, and arbitrary and capricious.

The content of the proposed message is also inherently anti-competitive. It is discriminatory against non-dominant OSPs because the message implies that the telephone company's competitors are, by definition, overcharging and that the consumer must be warned before using any competitor's services. This approach is the anti-thesis to promoting competition. After hearing such a message, what consumer would not be leery of dealing with a non-dominant OSP? This message discourages competition.

Moreover, the proposed message is not accurate. For interLATA Operator Service calls, the message makes no sense because the "regular telephone company" may not be permitted to carry interLATA calls under the MFJ prohibitions. For example, the RBOC LECs may not carry the vast majority of interLATA calls. Thus, it is not clear in those instances who would be the "regular" telephone company to which the message refers where an OSP call originates from a RBOC phone. Further, the last sentence of the proposed message would instruct the caller to call a number to find out how to contact the caller's "regular" telephone company. This is inane. In many instances, there is no "regular" telephone company for interLATA calls.

The NAAG petition's other glaring problem is that it does not enhance the FCC's ability to directly target OSPs that charge high rates. The NAAG proposal has no data collection requirement to

enhance the FCC's ability to identify abusers. The NAAG petition may provide consumers with more notice, but it would not enhance the FCC's ability to target abusive OSP charges.

In contrast, the Rate Ceiling Coalition proposal would require the LECs to identify OSPs charging above-benchmark rates and provide that information to the FCC, allowing the FCC to begin a rate investigation or take other appropriate action. This type of targeted activity would significantly increase the chance that those abusers will bring their rates into line with the benchmark rates, or risk a rate case.

III. APCC SUPPORTS AN APPROPRIATE CONSUMER MESSAGE REQUIREMENT FOR OSPs CHARGING ABOVE-BENCHMARK RATES

APCC believes that the measures taken to address above-benchmarks operator service rates must be effective and uniformly imposed. Although APCC opposes the consumer message requirement proposed by NAAG, APCC does support an appropriate consumer message requirement for OSPs charging above-benchmark rates. APCC urges the Commission to strengthen the Rate Ceiling Coalition proposal by adopting the following additional requirement. If any OSP carrier is charging an above-benchmark rate after a certain date, that carrier must provide the caller, before billing commences, with the following voice message:

> The rates charged by this provider exceed benchmarks established by the government. Check the information posted on or near the telephone for the toll-free number to obtain rate information before placing your call.

Adopting this notice requirement, in addition to the measures proposed in the Rate Ceiling Coalition proposal, will ensure that consumers are better informed when they are about to incur above-benchmark rates. Specifically, this notice provision would serve two purposes.

First, this notice provision directly, uniformly, and immediately addresses existing above-benchmark rates. Once this provision takes effect, any carrier charging above-benchmark rates must provide the message to consumers.

Under the Rate Ceiling Coalition proposal, existing above-benchmark rates would be subject to investigation, but would not be subject to suspension or accounting orders. Therefore, if an OSP with existing rates above the benchmarks does not choose to reduce its rates, consumers will unknowingly incur the above-benchmark rates pending the completion of a rate investigation and will not have the right to a refund if the rates are found unreasonable. Thus, to the extent there is a delay in completing investigation of existing above-benchmark rates, the message provision would provide immediate protection to consumers by alerting them before they incurred charges above the benchmarks.

The message provision also serves the purpose of simply informing consumers that they may incur charges substantially higher than expected, separate and apart from whether the rate is ultimately found just and reasonable. It may ultimately be determined that an OSP's above-benchmark rates are, in fact, just and reasonable under the Act, but consumers should be alerted that

they are about to incur such unusually high charges. This would be somewhat analogous to informing customers in a restaurant that the "house" wine they are about to drink is a $50 bottle of wine. It may be a "just and reasonable" price for the wine, but the consumer should have notice beforehand that they are about to incur a substantial higher-than-expected charge.

The proposed benchmark rates are at levels that would address consumer expectations with respect to OSP rates. As mentioned above, the benchmark rates are below the rates involved in almost 95% of the FCC complaints reviewed by APCC.

The FCC has the authority to adopt such a message requirement for either purpose. Apart from its general authority under Title II to impose such requirements, TOCSIA specifically empowers the FCC to require an OSP to "announce that its rates are available on request at the beginning of each call" for rates filed that appeared to be unjust and unreasonable. 47 U.S.C. § 226(h)(2)(B). TOCSIA also makes clear that its provisions do not affect the FCC's authority to take other measures under pre-existing provisions of the Communications Act. 47 U.S.C. § 226(i). Thus, the FCC may also rely upon its general Title II powers, and specifically, Section 201, which empowers the FCC to prescribe rules necessary to carry out the provisions of the Act. 47 U.S.C. § 201(b).

Under its general Title II authority, and specifically Section 201, the FCC has previously utilized consumer expectations as a basis to impose a message notice requirement. See Policies and Rules Concerning Interstate 900 Telecommunications Services,

6 FCC Rcd 6166 (1991). In regulating 900 services, the FCC promulgated rules requiring carriers to disclose the price of the call and a description of the product, information or service provided. However, the FCC did not require a preamble for 900 services with charges below a certain level.

In arriving at this cut-off figure, the FCC reviewed consumer complaints with respect to 900 calls to determine the appropriate level at which to exempt carriers from providing the preamble provision. While 900 services and operator services do not pose exactly the same considerations, the 900 services example provides a precedent for the FCC to apply a notice requirement based on rate levels that trigger substantial consumer complaints. Thus, there is legal authority for the FCC to impose such a notice requirement.[3/]

[3/]In 1992, one year after the FCC promulgated the regulations relating to 900 call services, Congress enacted the Telephone Disclosure and Dispute Resolution Act, P.L. 102-556, 106 Stat. 4181, 47 U.S.C. 228 et seq., which imposed new requirements. However, the legislation specifically stated that among its purposes was to "recognize the [FCC]'s authority to prescribe regulations and enforcement procedures. . . ." 47 U.S.C. 228(a) (emphasis added). Additionally, the statute explicitly stated that the statute should not be construed to prohibit the FCC from enforcing regulations prescribed prior to the date of the legislation's enactment to the extent such regulations are not inconsistent with the Act. 47 U.S.C. § 228(g)(5). In any event, the legislation did not address operator services or affect the FCC's authority to impose notice requirements on OSPs.

CONCLUSION

For the reasons set forth above, APCC supports the rate Ceiling Coalition proposal as an alternative to the BPP rulemaking. APCC opposes the NAAG petition for rulemaking because it is anticompetitive and unfairly discriminatory. It also fails to directly address operator service rates. However, APCC believes that the Commission should require OSPs that are charging rates above the Coalition's proposed benchmarks to inform callers by voice message that their rates exceed those FCC benchmark rates.

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
Mark R. Paoletta
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919
(202) 789-3400

April 12, 1995

1006201D

ATTACHMENT 1

ANALYSIS OF 101 OPERATOR SERVICE RATE COMPLAINTS

FILED AT THE FCC

BETWEEN MAY 1, 1994 AND AUGUST 15, 1994

10022C88

DURATION IN MINUTES	COST OF CALL	PROPOSED BENCHMARKS
0.5	5.66	
1	5.38	3.75
1	5.64	
1	5.09	
1	3.42	
1	3.22	
1	6.28	
1	7.14	
1	9.85	
1	7.82	
1	6.54	
1	6.77	
1	6.86	
2	5.12	4.25
2	5.87	
2	4.43	
2	3.42	
2	3.01	
2	4.25	
2	4.02	
2	8.07	

DURATION IN MINUTES	COST OF CALL	PROPOSED BENCHMARKS
2	8.07	
2	8.7	
2	8.16	
2	6.57	
2	6.5	
2	7.32	
2	5.32	
3	8.19	4.75
3	5.81	
3	8.44	
3	7.39	
3	3.95	
3	6.99	
3	6.99	
3	8.86	
3	9.27	
3	9.24	
3	9.25	
4	11.26	5.25
4	13.31	

DURATION IN MINUTES	COST OF CALL	PROPOSED BENCHMARKS
4	10.96	
4	8.88	
5	6.27	5.5
5	12.48	
5	8.68	
6	8.64	5.95
6	12.48	
6	13.38	
6	5.89	
6	13.92	
9	13.37	7
9	18	
9	18	
9	17.91	
9	12.42	
9	18.27	
10	16.97	7.35
10	19.28	