Alan F. Ciamporcero

PACIFIC TELESIS
Group-Washington

April 27, 1995

APR 27 1995

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William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

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

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their *"Reply Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan F. Ciamporcero

Enclosure

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

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

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REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell ("the Pacific Companies") file these reply comments responding to various issues raised by commenters in this proceeding. The majority of commenters seem to support some concept of a rate cap as an appropriate way to curtail excessive rates. However, there are great differences as to parties' understanding of what a rate cap is.

The CompTel, et al., ex parte treats the rate ceiling as a "soft" roof. If a company wants to exceed the ceiling, that company needs only to submit cost justification for its higher rates. Thus, the ceiling is not a ceiling at all, but simply a band

over which certain regulatory requirements (of cost justification) apply. Many commenters seem to support this type of rate ceiling.[1]

One of the problems BPP was meant to address was the excessive commission payments made by OSPs, which have the effect of driving up prices to consumers.[2] If OSPs who want to charge excessive rates can justify those rates because of their excessive commission costs, then the rate cap system will not change the current market conditions.[3] We agree with Ameritech that this type of approach will not discourage gouging if an OSP can justify its outrageous costs by including high commission payments in its rates.[4]

The only way consumers will be protected is for absolute rate caps to be instituted. No company should be allowed to exceed the mandated cap. Consumers will then know that they will not be gouged, even by an unknown OSP. This type of rate cap system is the only way to obviate the need for BPP.[5] Without absolute caps, consumer protection will not occur. And, the Commission's responsibility is to set rates which are just and reasonable.[6] The Commission cannot set maximum rates which

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[1] See, e.g., Intellicall, pp. 5-7; Operator Service Company, p. 4; Teltrust; US Long Distance, p. 2.

[2] Billed Party Preference for 0+ InterLATA Calls, 9 FCC Rcd 3320, para. 9 (1994).

[3] We disagree, however, with Oncor Communications who seeks to have the Commission regulate the commissions or compensation mechanism OSPs may utilize. Oncor, p.9. Regulation of these mechanisms will only serve to confuse the marketplace, will encourage "creative" methods of compensation to circumvent any restrictions, and will not serve to benefit the consumer.

[4] Ameritech, p. 1.

[5] Rate caps will not apply to surcharges that are not charged directly by OSPs. For example, hotel/motel surcharges will not be included in the rate cap. Such charges should be listed separately on the customer's hotel/motel bill.

[6] 47 U.S.C. 201.

allow a carrier or OSP to charge abusive or excessive rates which are within the maximum. In Farmers Union Central Exchange, Inc. v. FERC, the Court held that a scheme which established maximum rates which protected only abusive and exploitive rates was inconsistent with FERC's statutory duty to determine "just and reasonable" rates.[7]

We believe our rate cap proposal will serve to protect consumers while allowing OSPs to charge just and reasonable rates. The rates in our proposal were calculated by taking, in essence, an average of rates for the big three carriers (AT&T, MCI and Sprint) for each call type and adding about 10%. Our proposal is therefore very similar to Ameritech's which proposes taking 120% of the highest rate among the big three and using that as the cap. Ameritech, however, suggests using mileage bands and time of day as additional stratification to the rate cap. We do not believe this additional banding is necessary in order to adequately set just and reasonable rates. Our proposal is therefore simpler to administer and easier to understand.

Gateway Technologies argues that inmate service providers OSPs should not be subject to any rate cap, because of the "uniqueness" of this market.[8] While inmate service providers and correctional institutions certainly need to retain flexibility to combat fraud and other particularities, there is no reason to exempt these providers from the rate cap. The individuals paying for these services, usually the families of inmates and not the inmates themselves, need to be protected from excessive rates, as do other consumers. And, in our proposed rate caps, we have built in an additional

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[7] 734 F.2d 1486 (D.C. Cir. 1984).
[8] Gateway Technologies, p.2.

amount to account for the increased fraud detection devices that may be required in this market.

Intellicall comments that any rate cap adopted by the Commission should make clear how minutes are to be calculated and charged.[9] We agree. Intellicall illustrates two different types of OSP charging that are in use today. We agree with Intellicall that "method 2" (conversation minutes) is the appropriate way OSPs should charge their customers.

As to monitoring, we wish to make clear that the monitoring that we can perform is limited in some ways. We can only monitor those OSPs who choose to have us perform their billing. And, it is only for those OSPs that give us records in the individual call detail format that we can scan for compliance with the cap. We will not be able to monitor those OSPs who give us "invoice ready" billing information or those OSPs who do not contract with us for billing services; those OSPs would need to be monitored by some other method.

[9] Intellicall, p.6.

In conclusion, the Commission should adopt the rate cap proposal as set forth in our comments, and not adopt the warning language suggested in the Petition for Rulemaking since, as explained in our Comments, it will be unnecessary.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL

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