MESSAGEPHONE, INC.

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RM 8606

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

VIA FEDERAL EXPRESS

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Dear Mr. Caton:

Enclosed for filing, please find an original and 10 copies of MessagePhone's Reply Comments on the Commission's Request for Comments on CompTel's Filing in the Matter of Billed-Party Preference (CC Docket No. 92-77) Proposing a Rate Ceiling on Operator Service Calls. A copy for each Commissioner is included.

Please acknowledge receipt of this filing by date stamping the extra copy and returning it to MessagePhone in the self-addressed envelope provided.

Sincerely,

Douglas E. Neel

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Vice President,
Regulatory Affairs

Enclosures

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

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In the Matters of	§	
	§	
Billed-Party Preference	§	
for 0+ InterLATA Calls	§	CC Docket No. 92-77
	§	
Petition for Rulemaking	§	RM-8606
Proposing Additional Disclosures	§	
by some Operator Service	§	
Providers	§	

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REPLY COMMENTS

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Dated: April 26, 1995

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Washington, D.C. 20554

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Petition for Rulemaking Proposing Additional Disclosures by some Operator Service Providers	§	RM-8606

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TO: The Commission

REPLY COMMENTS

MessagePhone, Inc. ("MessagePhone") hereby replies to comments submitted in response to the above-captioned request for comments by the Federal Communications Commission ("Commission"). The comments of record demonstrate that both the Petition for Rulemaking ("Petition") submitted by the National Association of Attorneys General ("NAAG") and the Ex Parte Proposal ("Proposal") submitted by the Competitive Telecommunications Association ("CompTel"), et al,[1] fail to provide a viable alternative to billed party preference ("BPP") for ending the ongoing incidences of consumer abuse by operator service providers ("OSPs").

I. SUMMARY

Almost universally, the parties to the proceeding agree that the NAAG's Petition should not be adopted by the Commission. The NAAG Petition recommends that OSPs install voice prompts that tell customers how to access their preferred carriers. This plan is flawed because it relies on the unscrupulous OSPs to regulate themselves by installing

[1] The Ex Parte Proposal was submitted by representatives of CompTel, Bell Atlantic, NYNEX, BellSouth, US West, and the American Public Communications Council ("APCC") on March 7, 1995.

and playing the prompt, and it unfairly punishes carriers that charge competitive rates. In like manner, MessagePhone described similar flaws with the NAAG's recommendation and suggested that it be used only as an interim measure while BPP is being installed.[2] The Commission can actualize NAAG's goals of consumer choice and protection by mandating BPP.

Because it was much more vigorously debated, CompTel's Proposal will be the primary focus of MessagePhone's Reply Comments. CompTel's Proposal recommends that the Commission begin regulating the OSP market by initiating rate caps.

BPP's opponents continue to presuppose that rampant consumer abuse within the OSP market simply does not exist. Because of this skewed perspective, most of BPP's detractors can support CompTel's Proposal and assert that it will end current pricing abuses by some OSPs. However, once it is analyzed from the context of ongoing consumer abuse, the Proposal falls significantly short of the Commission's goals. The Proposal simply will fail to stop the ongoing consumer abuse. Unethical OSPs will continue to block dial-around calls and violate the other provisions of TOCSIA.[3] Worse yet, it is highly probable that, if the Proposal was adopted, OSPs will be able to legally raise their rates even higher.

It is also notable that AT&T Corp. ("AT&T"), MCI, and Sprint -- the three largest OSPs -- as well Oncor Communications Inc. ("Oncor"), the largest alternate OSP -- all find fatal flaws with CompTel's Proposal and recommend that it be abandoned. Moreover, there is an enormous disparity among the parties that support a rate cap scheme concerning the rates that should be used -- with rates ranging, for example, by three dollars or more for a three minute call. Additionally, proponents' opinions on rate caps vary on whether the rate cap ceiling should be a fixed cap or "porous," allowing many carriers to opportunity to charge even higher rates.

For these and other reasons described herein, MessagePhone recommends that the Commission abandon CompTel's Proposal, or use it only as an interim solution, and

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2 MessagePhone at 3, 5. Also see Bell Atlantic at 2-3, MCI Telecommunications Corporation ("MCI") at 6-7, Sprint Corporation ("Sprint") at 2-4, and Southwestern Bell Telephone Company ("SWBT") at 3-5.

3 Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. §226)("TOCSIA").

immediately mandate BPP. It is time for the Commission to finally extend the benefits of equal access, provided by BPP, to all consumers of operator services.

II. THE OPPONENTS OF BPP CONTINUE TO IGNORE THE REALITY OF THE OSP MARKET PLACE.

The NAAG's Petition should have served as a "wake-up call," alerting the Commission and all interested parties to this proceeding that the abuse of consumers by many OSPs continues unabated. The Petition details that a very large number of OSPs continue to violate TOCSIA and the Commission's rules[4] by the unlawful blocking dial-around calls, unlawful or incorrect branding, misleading or incorrect carrier identification, unlawful slamming, and unlawful or confusing barriers that block access to rate information. Yet, almost without exception, the proponents of CompTel's Proposal simply refuse to acknowledge the existence of this evidence.

As an example, Frontier Communications International Inc. ("Frontier") claims that, in spite of increases in call blocking and record numbers of complaints, problems have significantly decreased.[5] The Intellicall Companies ("Intellicall") advance this absurd line of reasoning one step further by hinting that the abuses described by the NAAG's Petition and the multitude of consumers' letters of complaint actually never existed:

> The Intellicall Companies believe that [BPP] is the solution to *perceived problems* in the OSP industry.... The [BPP] concept was embraced by the Commission primarily as a reaction to *perceived rate gouging* by some OSPs.[6]

In like fashion, contrary to the voluminous letters of complaint, other supporters of the Proposal insist, because TOCSIA is working, that there is no need for BPP and that rate

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4 Policy and Rules Concerning OSPs, Report and Order, CC Docket No. 90-313, 6 FCC Rcd 2744 (1991).

5 Frontier at 1-2; also NYNEX at 2; CompTel at 3.

6 Intellicall at 1, 4 (emphasis added). Also see CompTel at 3.

caps will resolve the very few remaining problems.[7] At the same time, many of these parties admit that, since TOCSIA was enacted, they have raised their rates considerably, thus exacerbating the situation.[8]

Most of the supporters of the Petition also continue to misrepresent the previously established record for this docket. CompTel and others have completely disregarded MessagePhone's equipment pricing data and insist that BPP will cost approximately $2 billion to install.[9] This simply is not true. MessagePhone has repeatedly supplied the record with quotes for its architecture. Without end office upgrades to SS7, MessagePhone's architecture will cost between $350-500 million for nation-wide implementation.[10] An architecture that includes end office upgrades to SS7 would cost $700-800 million. Clearly, MessagePhone's cost estimates are quite a bit less than the $1.1 billion originally estimated by the Commission and *substantially less* than the $2 billion.

CompTel and other parties continue to insist that BPP will create consumer confusion and fraud.[11] Nothing can be farther from the truth. BPP will be no more confusing and cause no more fraud than "1+" equal access. With BPP, consumers will automatically access only *their presubscribed service provider*. Consumers will always know exactly which carrier they are accessing and what rates they are being charged. CompTel's position is especially ironic considering the massive confusion and consumer fraud that exists in the current OSP market place. Even with branding and signage placed on pay telephones, public telephone consumers often do not know what OSP they have accessed or what rates they are being charged because the information is confusing or wrong.

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7 E.g., see CompTel at 3, note 8; U.S. Long Distance ("USLD") at 2; Oncor at 2. Interestingly, after declaring that TOCSIA is a success, Oncor, the largest of the alternate OSPs, supplies the record with a very critical and detailed examination of the numerous flaws with the current system caused by relying on premises owner pre-subscription. (Oncor at 5-8). AT&T provides a unique twist by claiming that TOCSIA would be a success if only the Commission would enforce it. (AT&T at 2-4).

8 Oncor at 6; USLD at 3.

9 See Proposal at 1; Frontier at 2; USLD at 2; NYNEX at 2.

10 MessagePhone at 7-8.

11 Proposal at 1; NYNEX at 2; Oncor at 2.

The parties that support CompTel's Position as a viable alternative to BPP do so based on this skewed perspective of reality.[12] They can only claim that the Petition's price cap scheme is better for consumers than equal access if they completely ignore the ever growing record of consumer abuse. MessagePhone need only remind the Commission the record clearly reflects the facts -- consumers who use telephones that have blocked dial-around or who do not have the practical know-how to dial around the OSP, still accrue charges that are substantially higher than those of their presubscribed service providers. These abuses will not diminish until the Commission mandates implementation of equal access for operator service calls. Moreover, as demonstrated in Section II herein, the CompTel's Position contains many serious flaws and will not create the results it promises. These reasons should compel the Commission to dismiss CompTel's Position or use it only as an interim solution while BPP equal access is being implemented.

III. THE COMPTEL PROPOSAL IS SERIOUSLY FLAWED AND MUST NOT BE CONSIDERED AS AN ALTERNATIVE TO BPP EQUAL ACCESS.

Because it is based on a distorted view of reality, the Proposal contains a large number of flaws. Any one of these deficiencies should be enough to convince the Commission that CompTel's rate cap scheme should not be used. The preponderance of problems with the rate cap scheme, as well as the ongoing incidences of consumer abuse, should convince the Commission to mandate BPP equal access immediately.

A. The Proposal Will Not Stop Call Blocking.

The record of this proceeding has demonstrated that, as the number of consumers using dial-around to access their preferred service providers has increased, the number of

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[12] CompTel continues to insist that BPP will cause different routing on only 20% of "O" calls because AT&T presently controls 80% of the market. This point remains true only until BPP equal access is activated. AT&T will immediately lose an additional 20-25% of the market once the customers of other OSPs can access their previously presubscribed service provider. Of course this immediate loss of market share is the primary reason AT&T is opposed to equal access on "O" calls. CompTel also has overestimated implementation time by 50%. See Petition at 2-3.

pay telephone providers and OSPs that intentionally block dial-around calls has also increased.[13] At the same time, because state regulatory agencies and the Commission have only limited enforcement capability and diminishing funding, it is probable that the number of service providers that use call blocking will continue to increase. As this trend continues, an ever growing number of consumers will be forced to use OSPs with flagrantly excessive rates.

Unlike BPP, the Proposal does not offer either the technical capability or the incentive to stop call blocking.[14] The same service providers who currently engage in call blocking will, in all likelihood, continue to do so indefinitely. This trend is reason enough to dismiss the Proposal and mandate BPP.

B. The Proposal Will Not Assure Adherence To The Other TOCSIA Provisions.

The record demonstrates that other provisions of TOCSIA are also being violated by a large percentage of OSPs.[15] Call brands are purposely garbled or company identities are disguised. Pay telephone signage often is inaccurate or out-of-date. Barriers are erected between consumers and OSP rates. Many OSPs are guilty of "slamming." As with call blocking, CompTel's Proposal offers neither a technical solution that will force compliance or an incentive for these OSPs to stop violating TOCSIA. Likewise, there is no reason to believe that the OSPs that violate TOCSIA suddenly will abide by the rate caps -- regardless of how generous the rates are. It is more likely that many OSPs will simply continue to violate TOCSIA in order to gouge consumers with unchecked rates.

C. The Proposal Does Not Provide A Mechanism For Detecting Violators Who Do Not Use LECs To Process Their Billing.

The Proposal and its proponents assume that the LECs which provide billing services will become the market "watch dogs" and alert the Commission when their OSP customers exceed the rate cap.[16] Some LECs state that they do not have the technical

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[13] MessagePhone at 3-4, note 8; NAAG Petition at 2-4, Attachments I & II; MCI at 3.

[14] MessagePhone at 4-5; MCI at 2-3; and NAAG at 4-5.

[15] MessagePhone at 4; MCI at 3; NAAG at 4-5.

[16] Proposal at 8-9; APCC at 8-9.

capability to monitor all billing data.[17] Other LECs complain that the role of market watch dog places them at cross purposes with their business plans.[18] These LECs are attempting to get customers by providing a quality billing service. They rightfully fear that the role of watchdog will cause them to lose the trust of their OSP customers and that these customers will find other service providers.

The LECs might be able to monitor most of their OSP customers, but they do not have the capability to monitor OSPs that use non-LEC companies to process their billing data. The Proposal fails to address how these OSPs will be monitored. The Proposal also fails to estimate the number of OSPs that will switch to non-LEC billing service providers in order to avoid detection for consumer abuses. It must be assumed that the Commission is responsible for the funds and human resources necessary to monitor these OSPs.[19]

D. The Proposal Places Onerous Burdens On The Commission.

The Proposal reverses the Commission's on-going trend of deregulating telecommunication services and markets in favor of establishing consumer-based competition. Instead, the Proposal recommends that regulation of the OSP market should be increased dramatically. The Proposal also is contrary to current policies that seek to "downsize" governmental agencies by decreasing funding and the number of employees. If implemented, the Proposal will cause a greatly increased regulatory burden of a Commission experiencing decreased enforcement capability -- without lowering OSP prices or helping consumers automatically access their preferred service providers.[20] Moreover, it is highly possible that the Proposal will cause hundreds, maybe thousands, of new rate hearings as almost all alternate OSPs will attempt to justify rates that are higher than the ceiling. Already, many of the OSPs filing comments have begun to prepare the

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17 E.g., Sprint at note 8; Pacific Bell and Nevada Bell ("PacTel") at 3.

18 E.g., SWBT at 6.

19 There may be concern that BPP represents an unfunded regulatory mandate. Actually TOCSIA's provisions represent unfunded mandates. With BPP, the network hardware and software upgrades are funded with network access fees and, if MessagePhone's solution is used, revenues from new automated competitive products.

20 MessagePhone at 5; Sprint at 11; NAAG at 6-7; MCI at 3.

Commission for future rate hearings by rationalizing their use of higher than average rates.[21] It is likely that the resulting proceedings will throttle the Commission for years, while allowing OSPs to continue to charge exorbitant rates.

E. The Proposal Does Not Provide The Benefits Of Equal Access.

Only parties with self-serving interests can deny that consumers want instant equal access to their preferred service providers. Consumers do not want to have to dial extra telephone numbers or long carrier identification codes. Even after extensive consumer education, still almost half of the operator telephone calls are not dial-around calls.[22]

Likewise, the Proposal does not alleviate consumer confusion. Only the most myopic of BPP's opponents dispute that consumers are confused and angered by the current system of premises-owner presubscription. Many consumers do not know when or how to dial around the presubscribed OSP. Even more consumers do not know how to detect or what to do if dial around calls are blocked. American consumers deserve the by-products of a competitive, fair marketplace enabled by equal access. CompTel's rate caps will solve nothing and consumers still will be denied the advantages of equal access. Conversely, with BPP, the Commission will complete the installation of equal access started over a decade ago.

F. The Record Exhibits Extreme Differences In Rate Recommendations From The Proposal's Supporters And Detractors.

A wide disparity of opinion exists among the supporters of rate caps concerning the recommended rate ceiling.[23] For example, the Petition recommends that the rate ceiling for a three minute calling card call should be $4.75.[24] PacTel recommend that the rate for the same call should be $1.70.[25] If adopted, the Petition would allow many OSPs to charge rates higher than the ceiling, thus increasing the gap.

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21 E.g., see Intellicall at 6-7; Oncor at 5-6; USLD at 2-3.

22 E.g., see MessagePhone at 6-7; MCI at 3-5; Sprint at 5; SWBT at 2, 6, 9-11; Ameritech at 1.

23 E.g., see Sprint at 8-10; PacTel at 2.

24 Petition at 8.

25 PacTel at 2.

There is also considerable disagreement concerning the formula with which rate caps are determined. Several parties believe that rate caps should reflect the rates of dominant carriers and should be based on industry averages or on the costs to actually provide the services.[26] The Proposal bases its caps on rates that are just below the amounts that actually induced provoked complaints.[27]

By itself, this wide disparity of opinion should provoke the Commission's concern. Before adoption of any rate cap scheme, the Commission should assure that a proposed rate cap scheme is greeted with greater consensus. Likewise, the Commission must certify that the scheme fulfills its goals. However, this scheme contains numerous other flaws and is an extremely poor substitute for equal access.

G. The Proposal's Rate Cap Process Causes Enforcement Time-Lag.

The Proposal is crafted so that detection and enforcement of rate cap abuses would take months or years:

> 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.[28]

Unfortunately, during the lengthy process of detection, report preparation, notification, explanations, and hearings, the offending OSP would be able to continue charging exorbitant rates. This lag-time and concomitant consumer abuse is unacceptable. The Commission must execute a solution that will end customer abuse by implementing equal access.

Furthermore, the Proposal does not provide a recommendation for appropriate fines for OSPs that exceed the rate caps. PacTel suggests a base fine of $75,000 per

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26 PacTel at 2; NAAG at 3, 5-7; Sprint 9-11.

27 Proposal at 7-8; APCC at 3-5.

28 SWBT at 6 (footnote omitted). Also, see NAAG at 6-7.

violation.[29] This amount seems reasonable and might serve as a deterrent for the larger, established OSPs. However, a growing number of OSPs do not provide actual operator services, but purchase these services wholesale from other providers, and resale them to pay telephone providers and hospitality establishments. Unlike established OSPs, these "paper" companies employ a minimal number of employees and have almost no plant or overhead. As with Hydra from Greek mythology, if the Commission's fines were large, the company would merely disband (go out of business) and its owners and employees simply would start one or more new companies with the same customer base -- thus avoiding the fine. Only BPP can deter abuses from these types of service providers.

H. The Proposal Would Actually Cause Rates To Increase.

Instead of having the desired result of making the OSP market more competitive and driving down rates, if adopted, the Proposal will have the opposite effect. Ameritech demonstrates that currently AT&T, MCI and Sprint charge an average of $.34 per minute per call. Alternate OSPs charge an average of $.53 per minute per call. The rate caps will allow alternate OSPs to *raise their rates to $1.25 per minute per call.*[30] It is reasonable to assume that, in order to satisfy the need to pay higher commissions to premises owners in order to remain competitive, almost all alternate OSPs will immediately raise their rates to or beyond the rate cap limit.

Consumers are complaining in record numbers because they want instant access to their presubscribed service providers -- OSPs whom they have selected because of their competitive rates and high quality service. Adoption of a regulatory scheme that would allow unscrupulous OSPs to legally raise their rates even higher should be unthinkable.

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29 PacTel at 4.

30 Ameritech at 1-2. Also see NAAG at 3; Sprint at 11.

I. <u>The Largest OSPs Oppose The Proposal</u>.

Large OSPs that support and object to BPP stand together in their opposition to the Proposal. The Commission must seriously question any rate cap scheme for OSPs that is vigorously opposed by these and other service providers.

MCI and Sprint oppose the Proposal's rate caps for most of the same reasons listed above.[31] AT&T claims that the provisions of TOCSIA are sufficient to curb all consumer abuses -- if the provisions are enforced.[32] Moreover, AT&T claims that the rate ceiling formula is flawed:

> Such a rate ceiling would not be based upon or linked to any rates actually charged in the competitive marketplace, or to the cost or value of service offered by an OSP. At a minimum, any OSP rate ceiling should have built-in mechanisms that will allow the ceilings to rise or fall over time in relationship to actual OSP rates in the marketplace, and be derived from a statistically valid sampling of all OSPs' rates.[33]

Sprint makes similar critiques of the rate formula.[34]

Oncor objects to the Proposal because it fails to correct many of the fundamental deficiencies of the premises-owner presubscription system. Ironically, Oncor provides a scathingly honest diagnosis of the current presubscription system, enumerating its most serious flaws.[35] However, instead of supporting equal access, Oncor recommends yet another solution, asking the Commission to regulate the commission rates that OSPs can pay to premises owners and force AT&T to give away customers to its competitors by only paying commission rates that are one-half of the commission rate ceiling. Instead of promoting equal access and competition, Oncor's scheme will only make it harder for customers to access their preferred carriers.

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31 MCI at 1-5, 7; Sprint at 4-12.

32 AT&T at 2.

33 AT&T at 4.

34 Sprint at 8-11.

35 Oncor at 4-8.

IV. CONCLUSION

Because of its many flaws, the Proposal's rate cap scheme will only postpone the implementation of true equal access made possible with BPP. As shown herein, rate caps will not stop the growing number of incidents of consumer abuse and could even legitimize the increased disparity between the rates of consumers' presubscribed service providers and alternate OSPs. Because the Proposal will not stop consumer abuse, its implementation will only result in even more consumer abuse and angry letters to state and federal regulatory agencies.

Equal access for "O" calls is the solution. By continuing to postpone implementing equal access, the Commission tacitly allows unethical OSPs to continue to abuse American consumers. Furthermore, hardware and software costs for BPP should not be an issue. MessagePhone's architectures demonstrate that there are cost-effective alternatives available for cost conscious LECs. Moreover, once BPP is mandated and the bidding process has started, hardware and software costs will fall even more as equipment manufacturers begin to compete for contracts.

The Commission must mandate BPP. Neither CompTel's Proposal nor NAAG's Petition represents a viable alternative to the completion of equal access made possible with BPP. American consumers deserve equal access.

Respectfully submitted,

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April 26, 1995

Certificate of Service

I, Anne Van Dyke, hereby certify that I have, on this twenty-sixth day of April, 1995, sent copies of the foregoing Reply Comments by first-class United States Mail, postage prepaid, to the parties on the attached list.

Anne Van Dyke

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