RECEIVED
APR 27 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77
	)	
	)	
	)	
Disclosures by Operator Service Providers of Serving Public Phones	)	RM No. 8606 [redacted]

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ON ALTERNATIVES TO BILLED PARTY PREFERENCE

Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Vice President and
General Counsel
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1140 Connecticut Ave., N.W.
Suite 220
Washington, D.C. 20036
(202) 296-6650

Danny E. Adams
Steven A. Augustino
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

April 27, 1995

TABLE OF CONTENTS

Page

SUMMARY ii

I. A RATE CEILING APPROACH IS A WORKABLE RESPONSE TO LINGERING CONCERNS IN THE OPERATOR SERVICES MARKETPLACE 2

A. The Rate Ceiling Approach is Within the Commission's Statutory Authority 3

B. The Use of Benchmarks Places the Burden on Carriers to Justify Their Rates 7

C. The Benchmark Rates Identified in the Rate Ceiling Proposal are Reasonable 8

D. The Billing Reports Advocated in the Rate Ceiling Proposal Will Not Overburden the LECs 12

II. THE COMMISSION SHOULD RECONSIDER THE 0+ IN THE PUBLIC DOMAIN SOLUTION TO ADDRESS OTHER INEQUITIES IN OPERATOR SERVICES 14

III. THE NAAG PROPOSAL AND ITS VARIANTS ARE UNNECESSARY AND COUNTERPRODUCTIVE 18

IV. CONCLUSION 20

SUMMARY

The coalition Rate Ceiling Proposal presents a fundamental choice for the Commission. Will the Commission adopt a $2 billion unfunded mandate directing the LECs to overhaul the operator service call routing system over the next several years, reducing interexchange OS competition to a handful of national IXCs in the process, or will the Commission abandon billed party preference once and for all in favor of less costly and disruptive alternatives targeted to the predominant problems in the operator services marketplace? CompTel believes that the time has come for narrowly-tailored solutions to identifiable problems.

The Rate Ceiling Proposal attacks the one lingering concern that pervades this proceeding: excessive OSP rates. The Rate Ceiling Proposal uses a benchmark approach to identify, isolate, and ultimately, eliminate excessive operator services rates. The primary criticisms of this approach have been that the approach either will not work or sets an improper benchmark. Neither criticism is valid.

First, as to the proposal's feasibility, the benchmark approach effectively isolates rates considered by consumers to be unreasonable. Consistent with constitutional requirements, it preserves a carrier's right to attempt to justify rates above the benchmark, but requires the carrier to demonstrate that the rate is just (i.e. necessary) and reasonable. Moreover, the cost and potential delay of a rate hearing present a clear incentive for OSPs to ensure that their rates are at or below the benchmark rates.

Second, some criticize the proposal because the benchmarks are said to be set too high. Their alternative benchmark rates either improperly impute the "dominant" carrier's cost structure to the entire operator services industry, or fail to show any relationship between the proposed benchmark and OSP costs. The benchmarks proposed by the coalition, on the other hand, were the result of three separate analyses of OSP rates. They are the most reasonable starting point for identifying and isolating potentially excessive OSP rates.

One IXC, Sprint, states merely that the benchmarks are set "far too high." Its comparison of the benchmark rates with what are purported to be "Sprint" rates misleadingly conceals the fact that last year (while it was preparing reply comments in this proceeding criticizing OSP rates) Sprint created a separate subsidiary through which it charges consumers rates exceeding those in the Rate Ceiling Proposal. Sprint's subsidiary offers six rate plans, all of which exceed the benchmark -- sometimes by as much as $3 per call -- for most calls. It simply is not credible, therefore, for Sprint to contend that the benchmarks are themselves unreasonable rates.

Some commenters also criticize the Rate Ceiling Proposal for not addressing other problems, such as AT&T's recapture of its pre-divestiture 0+ calling monopoly through its unlawful and discriminatory CIID card practices. CompTel agrees that the Rate Ceiling Proposal is narrowly-tailored to address the problem which has been a driving a force in this proceeding, but believes this is a virtue, particularly compared to the overbroad, unworkable "solution" called billed party preference. Like these commenters, CompTel would like to see the Commission act to level the playing field

in calling card services, but believes the solution is to reexamine the proposal put forth in Phase I of this proceeding. That proposal would restore the clear distinction between proprietary calling cards, which should be used by first dialing an access code, and non-proprietary calling cards, which may be used with 0+ dialing. (This distinction still exists in the market for every IXC except AT&T.) The Commission's initial consideration of this proposal was skewed by several errors -- not the least of which was its prejudgment that BPP would be implemented -- which, if corrected now, will make clear the public interest benefits of "0+ in the public domain."

Thus, the Commission has three options available to address the consumer and competitive problems in the operator services submarket. It can mandate a $2 billion plus investment in billed party preference -- a plan that will cost consumers a more than it will save them, and will reduce greatly competition in operator services, destroying many small businesses in the process. Alternatively, it can adopt the Rate Ceiling Proposal to address the concern about excessive rates. This option will solve the problem pervading this whole proceeding at minimal cost, but will preserve the status quo favoring AT&T's unlawful and discriminatory CIID card practices. Or, third, in addition to the rate ceiling, it can act to restore competitive balance in calling cards by endorsing 0+ dialing as a "public domain." This added measure also would involve little cost and would eliminate AT&T's current 0+ advantage. These latter two actions, in combination, achieve everything BPP is promised to achieve, with none of its financial costs or competitive harms. The choice seems clear.

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

In the Matter of	)	
	)	
Billed Party Preference	)	
for 0+ InterLATA Calls	)	CC Docket No. 92-77
	)	
	)	
	)	
Disclosures by Operator	)	RM No. 8606
Service Providers of	)	
Serving Public Phones	)	

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ON ALTERNATIVES TO BILLED PARTY PREFERENCE

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully replies to the further comments filed on April 12, 1995 in this proceeding.[1] CompTel also is joining in a joint reply submitted by the same broad coalition that developed the Rate Ceiling Proposal (of which CompTel is a member). CompTel submits the following reply on its own behalf, as the industry association representing the nation's competitive interexchange industry, including the operator services industry, in addition to the joint reply comments being submitted in this docket.

---

[1] By Public Notice dated March 13, 1995, the Commission requested additional public comment on an OSP rate ceiling proposal made by an industry coalition, which includes CompTel, and on a separate proposal made by the National Association of Attorneys General ("NAAG"). *See* DA 95-473 (rel. Mar. 13, 1995). Comments filed in response to this Notice are cited herein as "[Name of Party] Comments at ___."

The comments filed on April 12, 1995 confirm the judgment of the record in CC Docket 92-77 that the goals ascribed to BPP can be achieved in far less costly and disruptive ways. CompTel believes that the coalition Rate Ceiling Proposal is a significant and workable alternative means to rein in unreasonable operator service rates. The criticisms of the proposal fail to refute the showing that the Rate Ceiling Proposal is an effective and less costly alternative to BPP. Moreover, the additional disclosure alternative proposed by NAAG was almost uniformly opposed as unfair, ineffective and confusing. Accordingly, CompTel urges the Commission to adopt the Rate Ceiling Proposal, reject the NAAG proposal and abandon billed party preference once and for all.

I. A RATE CEILING APPROACH IS A WORKABLE RESPONSE TO LINGERING CONCERNS IN THE OPERATOR SERVICES MARKETPLACE

In its supplemental comments, CompTel explained how BPP is a hugely expensive solution to what is, in actuality, a diminishing problem in the operator services marketplace.[2] CompTel also explained that a carefully-tailored rate ceiling could provide a solution to the lingering concern regarding excessive OSP rates, without the economic, constitutional, and policy implications of BPP or other alternatives.[3] Several commenters in this proceeding have attacked portions of the

---

[2] CompTel Comments at 2-4.

[3] *Id.* at 4-10.

Rate Ceiling Proposal, alleging that it would not be effective. As shown below, however, these criticisms are without merit.

A. The Rate Ceiling Approach is Within the Commission's Statutory Authority

Basing its claim on three pre-competition administrative rulings involving telegraph rates, Sprint claims that the Rate Ceiling Proposal contradicts a "half century of Commission policy."[4] Sprint's argument is wrong in several respects. First, as CompTel has explained on several occasions, a benchmark rate approach to regulation must satisfy the appropriate constitutional requirements.[5] The Supreme Court's expressions of these requirements, which also span "more than a half century," are binding upon the Commission. Thus, to the extent the telegraph cases may contradict the holding of the *Permian Basin*[6] cases, the Commission's policy has been overruled by the Supreme Court.

Nevertheless, the cases cited by Sprint in fact do not stand for the proposition asserted in its comments. *Postal Telegraph-Cable*, which was quoted in part by Sprint, involved a "me-too" petition by one telegraph carrier to raise its rates <u>if</u> other carriers, who were contending that they faced a "financial emergency," were permitted to raise

---

[4] Sprint Comments at 9-11.

[5] *See* CompTel Comments at 8-10; CompTel Comments, CC Docket No. 92-77 (filed August 1, 1994).

[6] *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

their rates.[7] The statement quoted by Sprint, made in response to the "me-too" carrier's petition, was an effort to refute the implied proposition that the rates for all carriers must be identical.[8] This becomes obvious in *the Commission's very next sentence* (omitted by Sprint), in which it affirms that:

> It would be purely a coincidence if rates, reasonable as to one carrier, should also prove, measured by the same standards, to be reasonable for another carrier.[9]

Postal Telegraph-Cable, therefore, recognizes that a benchmark rate cannot be applied mechanically to all carriers and circumstances; it must leave open the possibility that a carrier can demonstrate that the rate, "measured by the same standards," would not be reasonable in its case.

Similarly, in *Charges for Communications Service*, the Commission emphasized that it would not allow a carrier to boot-strap a rate increase for itself, simply because another carrier might demonstrate its need for such an increase.[10] Summarizing the portion quoted by Sprint, the Commission concluded, "In short, we do not think that the poverty of a competing carrier in and of itself should provide a windfall for a

---

[7] *Postal Telegraph-Cable Company et al.*, 5 F.C.C. 524 (1938). The "me-too" petitioner did not contend that it was facing the same "financial emergency" faced by the other petitioners "and the evidence [did] not indicate" such a situation. *Id.* at 525.

[8] In particular, the Commission noted that the situation before it was not comparable to petitions pursuant to a provision of the Transportation Act, where the railroad companies requested "flat percentage increases in rates for all railroads or any group of railroads." *Id.* at 527.

[9] *Id.*

[10] *Charges for Communications Service Between the United States and Overseas and Foreign Points*, 12 F.C.C. 29 (1947).

prosperous one."[11] Again in *Western Union Telegraph Co.*, where the Commission discussed the "bellwether" carrier concept, it emphasized that individual scrutiny of carrier rates must be preserved, in order to accommodate "special situations."[12]

Thus, the telegraph cases cited by Sprint stand for the proposition that when a carrier establishes that a higher rate is reasonable in light of its special situation, other carriers are not automatically entitled to a matching increase. As the Commission noted in *Postal Telegraph-Cable*, a rate may be reasonable as to one carrier but unreasonable as to others. This principle is recognized by the Rate Ceiling Proposal, which initially presumes the benchmark rate to be reasonable, but allows a carrier an opportunity to demonstrate that the benchmark rate is <u>not</u> reasonable when "measured by the same standards," *i.e.*, when measured against the carrier's cost of service.[13] The benchmark approach, then, is not contradicted by the telegraph cases cited by Sprint.

Furthermore, this line of cases, although consistent with the Rate Ceiling Proposal, does not address the constitutional limits of the Commission's rate regulation powers. As the Commission pointed out in *Postal Telegraph-Cable*, the petitioners

---

[11] *Id.* at 62.

[12] *Western Union Telegraph Co.*, 25 F.C.C. 535, 581 (1958).

[13] Indeed, consistent with the line of cases cited by Sprint, the benchmark would not be adjusted upward simply because one carrier might establish that an above-benchmark rate was appropriate in its situation. The benchmark would continue to apply to all other carriers. Thus, the demonstrated "poverty of a competing carrier" would not provide a "windfall" to other, lower cost carriers. *Cf. Charges for Communications Service*, 12 F.C.C. at 62.

who claimed a "financial emergency" did "not assert their constitutional right to a fair return on the fair value of their property investment."[14] The Commission's statements are not an interpretation of its powers when a carrier's constitutional right to a "fair return on the fair value" of its property is implicated. Accordingly, the cases should not guide the Commission's evaluation of the Rate Ceiling Proposal.

Finally, it should be noted that the Rate Ceiling Proposal is consistent with the statutory scheme established by TOCSIA. TOCSIA permitted the Commission, under certain circumstances, to establish regulations to ensure that operator services rates were just and reasonable.[15] OSP "rate levels" and "costs" were among the factors the Commission was instructed to consider in making this determination.[16] Thus, TOCSIA, like the Rate Ceiling Proposal, recognized that an OSP's costs are an appropriate factor to consider when determining whether a carrier's rates are reasonable.

---

[14] *Postal Telegraph-Cable*, 5 F.C.C. at 542; *see id.* at 525.

[15] 47 U.S.C. § 226(h)(4)(A). This action was required of the Commission unless it determined in its Final Report to Congress (*see* 47 U.S.C. § 226(h)(3)(B)) that market forces are securing just and reasonable rates. The Commission's Final Report made the finding that market forces were working properly, thereby eliminating the need for a rate proceeding under Section 226(h)(4)(A). *See Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990* (Nov. 13, 1992).

[16] 47 U.S.C. § 226(h)(4)(B).

B. The Use of Benchmarks Places the Burden on Carriers to Justify Their Rates

Sprint also criticizes the Rate Ceiling Proposal as "porous," implying that the benchmark rates would be easy to exceed. This suggestion ignores the procedure established by the Rate Ceiling Proposal.

As explained previously, a carrier wishing to file a tariff proposing a rate above the benchmark rate would be required to submit cost support information "explaining the basis for a claim that the charges are not unjust and unreasonable."[17] The burden is on the *carrier* to justify the proposed rate, not on the Commission (or any other party) to demonstrate that the rate is unreasonable.[18] The carrier's proposal would have to be approved by the Commission after a hearing, and the Commission has sufficient authority to expand the notice period or suspend the proposed tariffs in appropriate cases.[19] This is not merely a theoretical burden, either, since the carrier deciding whether to propose an above-benchmark rate must be willing to bear the expense and potential delay that a rate hearing could involve.

---

[17] *See ex parte* Notice of CompTel, APCC, Bell Atlantic, BellSouth, MFS Communications, NYNEX, Teleport Communications Group, and US West, CC Docket No. 92-77, Mar. 7, 1995 ("March 7 *ex parte*").

[18] 47 U.S.C. § 204(a)(1) (in any hearing on a new or revised charge, "the burden of proof to show that the new or revised charge . . . is just and reasonable shall be upon the carrier"); *see, e.g., Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access*, First Report and Order, 8 FCC Rcd 8344, 8360 (1993) (LECs, who had failed to explain the source of their overhead loading factors, failed to satisfy burden under Section 204(a) to demonstrate that their rates were just and reasonable).

[19] *See* 47 U.S.C. §§ 203(b)(1); 204(a).

Finally, Section 201(b) requires that all of a carrier's schedules, charges and practices be just and reasonable.[20] Thus, the Commission is not obligated to accept all showings of costs, as some commenters suggest,[21] only those showings that involve reasonable costs.[22] Use of these powers can ensure that only just and reasonable rates above the benchmark are approved, while unreasonable above-benchmark rates are disallowed.

C. The Benchmark Rates Identified in the Rate Ceiling Proposal are Reasonable

Some commenters contend that the Rate Ceiling Proposal sets the benchmark rates too high, and argue that any rate ceiling should incorporate lower benchmark rates. For instance, Ameritech proposes that rates be capped at 20 percent above the highest of MCI, Sprint and AT&T's rates.[23] Similarly, Pacific Bell, which --

---

[20] 47 U.S.C. § 201(b).

[21] *See* Ameritech Comments at 1.

[22] *Cf. Open Network Architecture Tariffs of Bell Operating Companies*, Order, 9 FCC Rcd 440, 455-58 (1993) (tariff rates based on embedded costs not affected by new service and based on "excessive direct costs and overheads" are unreasonable; carriers ordered to recalculate rates).

[23] Ameritech Comments at 2.

significantly -- endorses a rate ceiling as "an acceptable option,"[24] proposes its own set of benchmark rates.[25]

Neither commenter explains how the proposed rates were derived or the basis upon which this rate should be presumed consistent with legitimate OSP costs. Pacific Bell, for example, acknowledges that cost structures must be considered, but does not attempt to justify the rates it proposes with reference to OSP costs. Moreover, Ameritech's proposal is inappropriate because, as CompTel explained, it is not proper to base the benchmark rate on those of any individual set of carriers, dominant or otherwise. Indeed, *Postal Telegraph-Cable* teaches that the rate that is reasonable for one carrier (such as, say, the dominant long distance carrier), would be a reasonable rate for other carriers only by coincidence.[26] Ameritech's attempt to tie rates to those of a single carrier thus should be rejected.[27] The benchmarks identified in the Rate

---

[24] Pacific Bell Comments at 5. Although maintaining token support for "some alternative form" of BPP, Pacific, like four of its fellow RBOCs before, significantly retreats from its support of BPP. Pacific Bell now argues a rate ceiling is "acceptable," the "design of BPP is very costly" and that "enforced rate caps, and other solutions such as better access to rate quotes, will help to mitigate the need for BPP." *Id.* at 4-5. These statements, from one of the remaining three RBOC "supporters" of BPP, lend additional credence to the position that BPP should be abandoned.

[25] *Id.* at 2.

[26] *Postal Telegraph-Cable*, 5 F.C.C. at 527.

[27] Ameritech and others recognize that any rate ceiling adopted must contain mechanisms to adjust the benchmark levels as circumstances change. *See, e.g.*, AT&T Comments at 4; Ameritech Comments at 2; One Call Comments at 12. CompTel agrees that periodic adjustments are appropriate.

Ceiling Proposal, which were analyzed from three separate approaches to gauge their reasonableness,[28] are more appropriate than those presented by other commenters.[29]

Additionally, although not proposing its own alternative set of rates, Sprint goes to great lengths to criticize the benchmark rates as exceeding "its" charges for similar calls.[30] Sprint claims, in particular, that "in virtually all cases, the proposed ceiling rates are higher than those charged by Sprint."[31] What Sprint fails to disclose, however, is that it, too, charges rates in line with, and often exceeding, those identified in the Rate Ceiling Proposal, through a wholly-owned subsidiary, ASC Telecom, Inc. ("ASC").

ASC Telecom, Inc. is an IXC specializing in the hospitality market. Sprint only recently created this new entity, which was incorporated in August 1994, the same time that Sprint was preparing comments on the FCC's Further Notice of Proposed Rulemaking in this docket (in which it also criticized "high" OSP rates).[32] Although the existence and affiliation of ASC is not widely publicized by Sprint, it is a wholly-owned subsidiary of US Telecom, Inc., which is in turn a wholly-owned subsidiary of

---

[28] CompTel Comments at 7-8.

[29] The rate ceiling includes a separate set of rates for person-to-person calling by adding a $1 rate element to the proposed rates for other types of calling. CompTel understands that the processing of 0- transferred calls also involves unique costs not associated with other types of calling. It may be appropriate, therefore, to authorize a separate rate element applicable to these calls as well.

[30] *See* Sprint Comments at 7 and the table following p. 7.

[31] *Id.* at 7.

[32] ASC's articles of incorporation are appended as Exhibit 1.

Sprint Corporation (the entity that filed comments in this proceeding).[33] ASC stated in an application to the FCC that its purpose was to "provide alternative price and service options" in the marketplace.[34]

Indeed, the rates charged by ASC certainly provide an alternative to those represented as "Sprint's" rates in its comments. According to ASC's informational tariff, ASC charges rates to consumers that are significantly higher than the "Sprint" rates. The ASC tariff provides six separate rate schedules available to aggregators. Using the same 3,000 mile average call distance that Sprint used in its comparison, *all* of the daytime rate schedules exceed the Rate Ceiling Proposal's benchmark rates for every call type except "0++" calling card calls.[35] Two of the rate schedules, Schedule Nos. 2 and 6, exceed the benchmark rates for these calls as well.[36] Indeed for a one-minute automated calling card call, Rate Schedule 6 permits a charge of $4.625, nearly $1 more than the proposed Rate Ceiling. A ten-minute person to person call under Rate Schedule 3, where the person to person service charge is $5.63, would exceed the benchmark by over $3. A table comparing ASC's "alternative" rates with the Rate Ceiling Proposal's benchmarks is attached immediately following this page.

---

[33] *See* Application of ASC Telecom, Inc., FCC File No. ITC-95-088 (filed Dec. 13, 1994).

[34] *Id.* at 3.

[35] The rate schedule pages of ASC Telecom's tariff are appended as Exhibit 2.

[36] The 0++ rates of the other rate schedules approximate the benchmarks in the Rate Ceiling Proposal.

TABLE 1

Comparison of Rates of Sprint Subsidiary ASC Telecom for Calling Card Calls[1] With the Proposed Rate Ceiling

	1st minute	5 minutes	8 minutes	10 minutes
Schedule 1	$5.03	$6.35	$7.34	$8.00
Schedule 2	$4.53	$5.85	$6.84	$7.50
Schedule 3	$5.17	$6.82	$8.05	$8.88
Schedule 4	$4.55	$6.15	$7.35	$8.15
Schedule 5	$4.51	$5.95	$7.03	$7.75
Schedule 6	$4.63	$6.28	$7.51	$8.34
Rate Ceiling Proposal	$3.75	$5.50	$6.65	$7.35

[1] Calls dialed on a 0+- basis. All calls are rated between points on the U.S. Mainland at daytime rates. A 3,000 mile call distance is assumed.

Obviously, even Sprint, which due to its size probably has average costs below those of most smaller OSPs, considers rates at or above the Rate Ceiling's benchmark to be reasonable rates. CompTel does not know whether ASC has higher costs than its affiliate, Sprint Communications, or simply higher profit margins. In any event, it is disingenuous for Sprint to suggest that the Rate Ceiling Proposal allows charges that are "far too high" when it recently created a subsidiary whose sole purpose seems to be to mask the fact that Sprint itself charges such rates. The Rate Ceiling Proposal would have the salutory effect of ensuring *all* of Sprint's end-user rates are within the zone of reasonableness.

D. The Billing Reports Advocated in the Rate Ceiling Proposal Will Not Overburden the LECs

Several LECs object to the proposal that they provide the FCC with a quarterly report summarizing calls billed through their billing and collection services which exceed the OSP rate ceiling.[37] These LECs, which claim that LEC "monitoring" and "enforcement" would be overly burdensome, have misinterpreted the role of LEC reporting in the enforcement of the rate ceiling.

The Rate Ceiling Proposal does *not* require LEC "monitoring" or "enforcement" of the benchmark rates. This responsibility remains solely with the FCC. Instead, it is proposed that the LECs provide a summary report, once each quarter, to assist the FCC in identifying whether enforcement activities are appropriate. The LEC report

---

[37] Southwestern Bell Comments at 6; NTCA Comments at 3-4.

would provide data to the Commission, for it to decide how to proceed. This reporting function is not unlike a LEC's annual report to the Commission,[38] which provides the Commission with data needed to analyze the performance of the industry as a whole.

Moreover, the reports were designed with the purpose of minimizing the burden on the LECs. The four RBOCs that developed the requirement concluded that it could be implemented within their existing billing systems quickly and with relatively little expense.[39] In addition, the benchmark rates were designed to remove factors that could complicate the reporting requirement -- such as time of day, distance or payment method differences. Finally, even though the reporting costs are expected to be minimal given the proposal's efforts to avoid extensive LEC involvement, CompTel recognized that the LECs should be permitted to recover their costs of producing the reports.[40] Thus, proponents of the Rate Ceiling do not contend the LECs should be uncompensated for their role in resolving a problem involving operator services rates. We expect the LECs to recover their costs in an appropriate fashion.[41]

---

[38] 47 C.F.R. § 43.21.

[39] In essence, the only modification necessary is to compare billed OSP messages with a table of per-minute charges permitted by the rate ceiling. There do not appear to be any significant technological or economic impediments to performing this function.

[40] CompTel Comments at 6 n.15; *see* March 7 *ex parte* at 9.

[41] Some organizations have suggested that reporting may present significant burdens for some small LECs. NTCA Comments at 4; USTA Comments at 2-3. If a small LEC faces unique circumstances that make application of this requirement unduly burdensome, however, CompTel submits that a waiver of the reporting requirement is the appropriate response. *See Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990) (waiver is appropriate if special circumstances warrant deviation from a general rule).

II. THE COMMISSION SHOULD RECONSIDER THE 0+ IN THE PUBLIC DOMAIN SOLUTION TO ADDRESS OTHER INEQUITIES IN OPERATOR SERVICES

Some commenters argue that the Rate Ceiling Proposal should not be adopted because it cannot solve all of the competitive inequities present in the operator services marketplace. In particular, Sprint notes that a rate ceiling will not "end the one remaining advantage that AT&T inherited from its pre-divestiture monopoly relationship with the BOCs" -- its exclusive ability to offer a calling card that combines proprietary validation with 0+ access.[42]

CompTel agrees with Sprint that AT&T's proprietary 0+ card continues to create competitive harms and that the Rate Ceiling Proposal would not address this problem. Indeed, AT&T's 0+ CIID card is a compelling illustration of why AT&T cannot be granted "nondominant" carrier status. However, this is not a reason to ignore the benefits that the rate ceiling can provide. The Rate Ceiling Proposal provides a mechanism to eliminate excessive operator services rates, without excessive cost or undesirable increases in customer confusion and call set-up times. It is effective in the area it is intended to affect: excessive OSP rates. Of course other issues will remain, but that is not a reason to forego a solution to the one lingering concern that pervades this proceeding.

---

[42] Sprint Comments at 6. Sprint notes that AT&T is able to leverage this advantage to other market segments beyond calling card services, such as the 1+ residential and business markets. *Id.*

Moreover, it is not necessary to spend over $2 billion on a disruptive and ultimately ill-advised overhaul of operator service call routing in order to address AT&T's advantages. As CompTel advocated in Phase I of this proceeding, Commission action to restore the principle that 0+ dialing is in the "public domain" provides a more effective and less costly solution to the competitive damage caused by AT&T's CIID card. The 0+ public domain proposal recognizes what prevailed in the market prior to AT&T's issuance of its proprietary CIID card, and what continues to be followed by every IXC *except* AT&T: proprietary calling cards should be used only with access code dialing, while 0+ dialing should be used with non-proprietary calling cards. CompTel will not repeat its Phase I comments here, but it urges the Commission to consider 0+ in the public domain once again, this time as a permanent alternative to BPP.[43]

The Commission's analysis of 0+ in the public domain in the earlier Phase of this docket was skewed by three primary errors which the passage of time has made increasingly obvious.[44] First, by considering 0+ public domain only as an "interim" solution, it distorted both the costs and benefits of the proposal.[45] Now that it is

---

[43] CompTel incorporates by reference its comments in Phase I of this proceeding. *See* CompTel Phase I Comments (filed June 2, 1992); CompTel Phase I Reply Comments (filed June 17, 1992).

[44] *Billed Party Preference of 0+ InterLATA Calls*, Report and Order and Request for Supplemental Comment (Phase I), 7 FCC Rcd 7714 (1992) ("*Phase I Order*").

[45] *Phase I Order* at 7723 (¶ 49); *see* CompTel Petition for Reconsideration at 13-14, CC Docket No. 92-77 (filed Jan. 11, 1993).

apparent that BPP is not the long term solution, it is appropriate to consider *all* of the benefits of 0+ in the public domain, not just its "interim" benefits.

Second, the Phase I order placed great weight on the alleged burden that access code dialing would place upon AT&T's CIID card users. However, as CompTel explained in its petition for reconsideration, the Commission erroneously mischaracterized access code dialing as a "cost" of the proposal.[46] Rather, by equalizing competition, 0+ in the public domain would provide a great benefit to the entire marketplace, regardless of whether AT&T would choose to use non-proprietary 0+ access or proprietary access code dialing.[47] In addition, the significant increase in acceptance of access code dialing -- confirmed by the evidence that access code dialing is in the 55 to 66 percent range today[48] -- precludes a conclusion that access code dialing is a "cost" of 0+ in the public domain.

Third, the Commission relied upon AT&T's erroneous claims of the inferiority of 800 access code dialing due to alleged technical and financial burdens to its operations.[49] Since then, however, AT&T has promoted heavily its 800-CALLATT

---

[46] *Id.* at 15-16.

[47] *Id.*

[48] CompTel Comments at 3 n.8.

[49] *Phase I Order* at 7721 (¶ 32) (noting the "superiority" of 10XXX over 800 access). This determination was based largely upon AT&T claims that 800 access was an "inefficient dialing protocol" that would be "prohibitively expensive and cause a degradation in service." *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Order on Reconsideration, 7 FCC Rcd 4355, 4364-65 (1992).

product, and realized great success as a result. Any concern about the technical inability of AT&T to offer quality service through 800 access was misplaced.

When these three primary errors are corrected, CompTel is confident that the benefits of 0+ in the public domain will be apparent. Although over two years has passed since the Commission last considered this proposal, the need for it has not diminished. Conversations with CompTel's OSP members confirm that they continue to receive a significant number of misdirected AT&T CIID attempts on a daily basis. Moreover, AT&T remains the only carrier capable of issuing proprietary 0+ calling cards which are accepted by consumers. Now that BPP has been shown to be contrary to the public interest, the Commission should fulfill its promise to reconsider 0+ in the public domain.[50]

It thus appears that the Commission has three options available to address the consumer and competitive problems in the operator services submarket. First, it can adopt billed party preference at a cost of about $2 billion -- an approach that will cost consumers more than it will save them and, at the same time, reduce competition to a handful of large, national carriers. Or, it can enact the Rate Ceiling Proposal advocated by CompTel and others to address the concern about excessive charges. This approach will solve the excessive rate concerns with only minimal cost. And, in addition to the rate ceiling, the Commission can mandate 0+ in the public domain to address the competitive imbalances in the current marketplace. This added measure would eliminate AT&T's current 0+ advantage and ensure universal unblocking of 0+

---

[50] *See Phase I Order* at 7724.

dialing with virtually no cost being incurred. These latter two actions, in combination, achieve everything which billed party preference would provide, and more, with none of the financial costs or competitive harms. The choice seems clear.

III. THE NAAG PROPOSAL AND ITS VARIANTS ARE UNNECESSARY AND COUNTERPRODUCTIVE

Comments on the audible disclosure proposed by NAAG were almost uniformly in opposition to the proposal. As AT&T noted, the TOCSIA-related requirements adopted by the Commission can provide consumers with sufficient information to make an informed choice in operator services calling.[51] Moreover, several commenters noted that the NAAG message was just as likely to confuse callers as it would be to assist them.[52] Southwestern Bell, for example, reports that on a series of test calls, operators were unable to provide meaningful assistance to the caller in identifying or contacting their "regular" telephone company.[53]

Due to the problems with the message proposed by NAAG, some commenters offer their own alternative disclosure to replace the NAAG message. NYNEX, for example, proposes that consumers be told:

> This may not be your regular long distance provider and you may be charged more than your regular long distance provider would charge

---

[51] AT&T Comments at 5.

[52] *See, e.g.*, Southwestern Bell Comments at 4; NYNEX Comments at 3; APCC Comments at 14.

[53] Southwestern Bell Comments at 4.

> you. See the rate card posted on this telephone for more information on how to contact us regarding our rates and charges.[54]

These alternative disclosures suffer from the same defects as the NAAG proposal: they assume that all rates above a dominant carrier's rates are "bad" and they shift the burden to consumers to control rates, rather than placing the burden on carriers to lower their rates.[55] In addition, the NYNEX proposal would introduce a different source of potential confusion by referring the caller to the posted information on the telephone. The Commission already has received comment on a Notice of Inquiry responding to reports that the posted information is not updated promptly upon a change in presubscribed carriers.[56] Indeed, it is ironic that a proposal to refer callers to the telephone's signage should be advanced by an entity that the Commission recently proposed to fine $18,000 for unreasonable delays in updating the information callers would be told to consult.[57] NYNEX's proposal, therefore, is premature at best, since the Commission has not evaluated the need for action to address aggregator signage issues.

Finally, APCC proposes a disclosure which, in contrast to the NAAG proposal, is intended to work in conjunction with the Rate Ceiling Proposal. APCC suggests that

---

[54] NYNEX Comments at 4.

[55] *See* CompTel Comments at 10-12.

[56] *See Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, FCC 94-352 (rel. Feb. 8, 1995).

[57] *New England Telephone and Telegraph Company*, Apparent Liability for Forfeiture, File No. ENF-95-01, DA 94-1156 (Oct. 14, 1994).