COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 2, 1995

DOCKET FILE COPY ORIGINAL

MAY 5 1995

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

Re: In the Matter of Billed Party Preference for 0 Plus InterLATA Calls; CC Docket No. 92-77
In the Matter of Disclosures by Operator Service Providers Serving Public Payphones; RM-8606

Dear Secretary Caton:

Enclosed for filing with your office is an original and four (4) copies of a Motion for Leave to File Reply Comments Out-of-Time and the Reply Comments of the Pennsylvania Public Utility Commission in the above-captioned matter.

Copies have been provided as indicated in the attached Certificate of Service. Thank you for your assistance with this matter.

Very truly yours,

Maureen A. Scott
Assistant Counsel

Encl.

No. of Copies rec'd 0+4
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
BILLED PARTY PREFERENCE FOR 0 PLUS INTERLATA CALLS	)	CC Docket No. 92-77
	)	
DISCLOSURES BY OPERATOR SERVICE PROVIDERS SERVING PUBLIC PHONES	)	RM-8606

MOTION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR LEAVE TO FILE REPLY COMMENTS OUT-OF-TIME

Pursuant to 47 C.F.R. Section 1.46, the Pennsylvania Public Utility Commission ("PaPUC") requests leave to file Reply Comments Out-of-Time in the above-captioned proceeding. In support thereof, the PaPUC avers the following:

1. The PaPUC is the State agency responsible for the regulation of all public utilities, including telecommunications, within the Commonwealth of Pennsylvania. As such, it has a significant interest in the regulation of telecommunications services at the interstate, as well as intrastate levels.

2. On March 8, 1995, the Joint Petitioners comprised of the Competitive Telecommunications Association ("CompTel"), Bell Atlantic, MFS Communications Company, Teleport Communications Company, the American Public Communications Council, Bell South, US West and NYNEX, filed a rate ceiling proposal with the FCC applicable to interstate domestic operator services. Joint Petitioners' proposal would effect the rates paid by Pennsylvania consumers for interstate domestic operator services.

3. On February 9, 1995, the National Association of Attorneys General ("NAAG") filed a proposal for increased disclosures by

operator service providers. The NAAG proposal would effect the provision of interstate domestic operator services in Pennsylvania.

4. The FCC established April 12, 1995, as the deadline for filing initial comments, and April 27, 1995, as the deadline for filing reply comments.[1]

5. The PaPUC was unable to obtain and review the initial comments of other parties and prepare reply comments within the approximately two weeks allowed by the Commission for the filing of reply comments in this proceeding.

6. No party is likely to be prejudiced by the PaPuC's late-filed Reply Comments since the PaPUC has merely responded to the initial comments filed by other parties and the PaPUC has served all known parties of record.

7. If the Commission does not accept the attached comments as late-filed, the PaPUC respectfully requests that it consider the comments as ex parte pursuant to 47 C.F.R. Sections 1.1200-1.1216.

Wherefore, in light of the foregoing, the PaPUC respectfully moves that it be permitted to submit the attached Reply Comments Out-of-Time in response to the initial comments of other parties, or in the alternative, that its Reply Comments be considered ex parte pursuant to 47 C.F.R. Sections 1.1200-1.1216.

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[1]See Public Notice, DA 95-473, March 13, 1995.

Respectfully submitted,

Maureen A. Scott
Assistant Counsel

Counsel for the Pennsylvania
Public Utility Commission

Dated: May 2, 1995.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAY 15 1995
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In the Matter of	)	
	)	
BILLED PARTY PREFERENCE FOR 0 PLUS INTERLATA CALLS	)	CC Docket No. 92-77
	)	
DISCLOSURES BY OPERATOR SERVICE PROVIDERS SERVING PUBLIC PHONES	)	RM-8606

REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

I. Introduction

The Pennsylvania Public Utility Commission ("PaPUC" or "Pennsylvania PUC") respectfully submits the following reply comments in the above captioned dockets. Both proposals before the FCC offer alternatives to Billed Party Preference ("BPP"), either on a long-term or interim basis, and a means to reduce consumer abuse in the operator service provider ("OSP") marketplace. Consistent with our comments in the Commission's BPP proceeding, the PaPUC supports the adoption of alternatives to BPP until the cost and competitive concerns surrounding BPP implementation are resolved.[1] However, even if the FCC finds BPP to be in the public interest, it could not be implemented before the late 1990s, and

[1] See In the Matter of Billed Party Preference for 0 Plus InterLATA Calls, Further Notice of Proposed Rulemaking, Docket No. 92-77, released June 6, 1994.

thus, it is important that the FCC take interim measures to protect consumers.

The PaPUC considers rate caps to be an essential component of any interim or long-term BPP alternative that the Commission may ultimately adopt. However, while PaPUC supports the establishment of ceilings on interstate domestic operator service rates, the Joint Petitioners'[2] specific proposal is in need of significant modification before it could begin to serve as an effective consumer safeguard.

Further, as the comments of others indicate, rate caps alone may not be enough. Consequently, consistent with our reply comments in the BPP docket, the PaPUC would encourage the FCC to consider other safeguards including the NAAG proposal[3], which when used in combination with rate ceilings, may present a more effective assault on consumer abuse in this area.[4]

Increased monetary penalties for violations of federal OSP laws and regulations along with other measures proposed herein should significantly alleviate the enforcement burden associated

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[2]Joint Petitioners include the Competitive Telecommunications Association ("CompTel"), Bell Atlantic, MFS Communications Company, Teleport Communications Company, the American Public Communications Council, Bell South, US West and NYNEX. On March 8, 1995, Joint Petitioners filed a rate ceiling proposal with the FCC applicable to interstate domestic operator services. Joint Petitioners offer their proposal in lieu of BPP.

[3]On February 9, 1995, the National Association of Attorneys General ("NAAG") filed a proposal for increased disclosures by operator service providers.

[4]The record in the BPP proceeding contains still other viable alternatives that the Commission should consider.

with these important protective measures.

In summary, the FCC should take immediate action on the two proposals before it. The record in the Commission's BPP proceeding and customer complaint levels in Pennsylvania and elsewhere demonstrate that consumer abuse is still prevalent in the OSP marketplace and that additional actions are necessary to protect the interests of unsuspecting consumers. With the modifications proposed herein, both proposals could be effective in stemming consumer abuse in the OSP marketplace.

II. Discussion

A. Joint Petitioners' Rate Cap Proposal Needs Significant Modification.

PaPUC supports the imposition of a ceiling on interstate domestic operator service rates. In 1992, the PaPUC imposed a cap on intrastate OSP rates which, together with increased enforcement measures, has resulted in an overall reduction in the number of OSP related complaints received by our agency.[5]

Notwithstanding our support of rate caps as an important consumer safeguard in the OSP marketplace, the PaPUC cannot endorse certain critical aspects of the Joint Petitioners' proposal. Indeed, contrasted with the terms and conditions of the intrastate cap in effect in Pennsylvania, the deficiencies inherent in the Joint Petitioners' proposal are fairly conspicuous. If the FCC adopts the Joint Petitioners' proposal, it should first modify it

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[5]See Proposed Rulemaking Regarding Interexchange Service Providers and Telecommunications Resellers, Docket No. L-900054, (Order entered November 27, 1991).

to: 1) establish rate ceilings more in line with underlying costs; 2) establish OSP obligations that are more than merely gratuitous in nature; and, 3) place enforcement obligations primarily upon the OSP, rather than the LEC and FCC. The PaPUC will address each of these concerns and potential remedies in turn.

1. **The Rate Ceilings Are Excessive and Need To Be Lowered.**

First, PaPUC agrees with the initial comments of others that the rate levels proposed by Joint Petitioners are excessive.[6]

Sprint notes that the rate levels proposed by Joint Petitioners range as much as three times what Sprint charges, depending on the type of call and time of day.[7] Sprint includes other telling comparisons which show for example that Joint Petitioners' rates for a nine-minute calling card call range from 183% (daytime) to 255% (night/weekend) of Sprint's charges. This does not include Sprint's discount calling plans which offer up to 20% off of regular rates for calling card and operator services calls.[8]

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[6]See Comments of Sprint Corporation, p. iii. Comments of the Colorado Public Utilities Commission Staff, p. 12 ("The rate caps proposed by Comptel are excessive, if not outrageous, for the kinds of calls that receive the largest number of complaints (short duration, credit card or collect calls.") Comments of the National Association of Attorneys General, Telecommunications Subcommittee of the Consumer Protection Committee, p. 5 ("In effect, the Rate Ceiling Proposal authorizes OSPs to charge an amount that is just below an amount excessive enough to trigger consumer outrage.") Ameritech Comments, p. 2 ("These ceilings do not provide sufficient protection for consumers. On the contrary, they would legitimize rates that are excessive and unreasonable.")

[7]See Comments of Sprint Corporation, p. iii.

[8]See Comments of Sprint, p. 7.

By way of a further illustration, Appendix A contrasts Joint Petitioners' proposal with ceilings calculated using the highest daytime rates of AT&T and a $1.00 added surcharge. With the surcharge, Joint Petitioners' proposed rate ceilings are still almost twice the cap amounts calculated using AT&T's rates for automated calls.

The fact that automated and non-automated calls are grouped together under the same rate ceiling is the PaPUC's chief concern with the Joint Petitioners' proposed rate caps. A combined rate ceiling for automated and non-automated calls denies consumers the significant savings inherent in all underlying facilities based carriers' rate schedules for non-operator assisted calls. Consequently, before the PaPUC could support the Joint Petitioners' rate ceiling proposal, a separate cap would have to be established for automated calls which recognized the lower rates of the underlying facilities based provider.

In Pennsylvania, rate caps consist of a location surcharge and a charge for the long distance call not to exceed the highest daytime tariff charge of any facilities based carrier for the interexchange call.[9] As long as the OSP complies with the rate restrictions established by the PaPUC, its rates are presumed to be just and reasonable. The PaPUC recommends that the Commission

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[9]While the PaPUC also permits an enhanced service surcharge, where appropriate, to the best of the PaPUC's knowledge, no AOS providers are currently imposing this type of fee upon end users. The PaPUC allowed for this surcharge based upon record evidence that it may be appropriate in some cases where enhanced services are provided.

adopt a similar approach for interstate OSP rates.[10] Based upon its experience in Pennsylvania, PaPUC recommends that the surcharge be set at $1.00 on all interstate domestic operator service calls from aggregator locations.[11]

Appendix A contains a comparison of the rate ceilings, including a separate cap for automated calls, proposed by the PaPUC with the Joint Petitioners' proposed rate levels.[12] PaPUC believes that the adjusted rate ceilings more appropriately balance the needs and expectations of consumers, OSP providers, LECs and the underlying carriers.[13]

2. The Rate Ceilings Must Be Enforceable.

Perhaps the major shortcoming of Joint Petitioners' plan is that it offers only "after the fact" remedies because it essentially permits the OSP to charge any rates it chooses until

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[10]Alternatively, PaPUC would also support the recommendation of the Colorado Public Utilities Commission to develop an average rate level for a market basket of predominant players in the market. Colorado Public Utilities Commission Comments, p. 10.

[11]While the PaPUC has not as of yet established a limit on the amount of the location surcharge in Pennsylvania, based upon its experience with intrastate rates, PaPUC believes that the FCC should cap the location surcharge at $1.00 for interstate domestic operator service rates.

[12]As discussed earlier, PaPuC's recommended rate ceilings were calculated using AT&T's daytime rates with an added surcharge of $1.00.

[13]PaPUC would support a proposal similar to Ameritech's that the Commission adjust the ceilings annually by public notice since this would alleviate the need for OSPs to track every AT&T, MCI, and Sprint filing and revise their rates downward every time the carriers did. See, Ameritech Comments, p. 2. Alternatively, adjustments could be made based upon the percent increase or decrease in facilities based carrier rates.

such time as the FCC either discovers that rate gouging is occurring or it once again receives a customer complaint.

This is the result because the Joint Petitioners' rate ceiling is essentially unenforceable.[14] That is, it appears that OSPs are not actually required to charge rates at or below the proposed ceilings. Rather, the rate ceiling appears to act merely as a trigger for reporting purposes. Consequently, OSPs could continue to charge rates as high or higher than the rate levels that are now the subject of complaints at both state and federal agencies.

The unenforceability of the ceilings completely undermines the proposal's effectiveness as a meaningful consumer safeguard. To have any real effect, the plan must require OSPs to be bound by the rate ceilings established by the FCC. OSPs should be prohibited from charging rates higher than the established caps, without prior FCC approval. Commission approval should be forthcoming only after the OSP has demonstrated that its proposed rates are just and reasonable.

In Pennsylvania, AOS providers are not allowed to charge rates in excess of the caps until they establish through an evidentiary hearing that their costs exceed the maximum allowed rate, and therefore, that the higher rates are just and reasonable.

3. Joint Petitioners' Enforcement Plan Is In Need of Modification.

PaPUC also recommends several modifications to Joint Petitioners' proposed enforcement plan. First, as Joint

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[14]Accord, Sprint Comments, p. 8.

Petitioners realize, enforcement can require a tremendous commitment of agency resources. However, Joint Petitioners' enforcement process appears to exacerbate this problem by putting the primary burden on FCC staff to discover potential violations of its rules.

Under Joint Petitioners' proposal, FCC staff would have to continually review the quarterly OSP filings, assess whether action is needed, undertake further investigatory work, make a determination as to whether higher rates are warranted, if not track down the offending carrier, and finally ensure compliance with its rules. Because there are hundreds of OSPs operating nationwide, the burden of reviewing a steady stream of filings would be nearly impossible.

Rather than placing the primary burden upon FCC staff to review quarterly filings which are likely to contain many over charges since the cap is not enforceable, the FCC should as discussed above prohibit OSPs from charging above the rate ceilings unless they have obtained the FCC's prior approval. Filings should be required of only those OSPs desiring to charge rates in excess of the capped amounts. The filings should consist of detailed cost support which justify any increase over the cap. OSPs should have resort to the evidentiary hearing process, if necessary, to establish that their proposed rates are reasonable. The process proposed by the PaPUC would lessen the burden upon FCC staff by eliminating the need for quarterly reviews and by focusing attention on the filings of a select group of OSPs.

PaPUC's proposal would also resolve potential inequities in the apportionment of enforcement responsibilities between the LEC and OSP provider. Joint Petitioners' proposed enforcement plan would put the bulk of any reporting requirement upon the LEC, which may be overly burdensome for smaller LECs.[15] By contrast, PaPUC's proposal would put the major responsibility for any reporting requirement upon the OSPs which is only reasonable since it is their conduct which has led to the need for increased reporting.

Furthermore, LECs could undertake a more effective enforcement role through their billing and collection function. LECs should be prohibited from billing OSP rates higher than the established ceilings, unless the OSP has previously provided the LEC with a copy of the FCC Order authorizing the higher rates.[16]

If the measures discussed herein are taken FCC enforcement responsibilities associated with a rate cap regime should be correspondingly minimized. The FCC's most powerful enforcement measure, stiff monetary penalties for violations of the rate ceiling and other regulations, may alone act as a sufficient deterrent lessening the need for extensive agency oversight.

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[15]See Comments of the National Telephone Cooperative Association, p. 4. ("The proposed monitoring procedures will impose on small LECs a burden which is not inconsequential and one which they do not desire to assume. While the proposed monitoring may be simple for the larger carriers who agree to the proposal, for NTCA members, it represents a new layer of reporting that must be assumed by the small company irrespective of existing staffing, existing regulatory burdens or existing business operations.")

[16]PaPUC would recommend, however, that the FCC structure this requirement to minimize the need for LECs to undertake any costly or time consuming reconfigurations to their billing systems.

B. The Commission Should Grant the NAAG's Request for Rulemaking

Along with rate ceilings, the PaPUC supports the NAAG proposal for a voice over on OSP calls to allow consumers to avoid the aggregator surcharge before call termination.[17] The NAAG's voice over proposal resolves some of the major shortcomings of the current posting requirements. Customers oftentimes may not notice information posted at the aggregator location before placing their call. Additionally, despite the oral branding requirement, some customers continue to mistakenly believe that his or her PIC will actually be handling the call. This mistaken belief appears to arise in some cases from OSP acceptance of the customer's LEC credit card.

The primary advantage to the voice over is that it will serve to alert consumers prior to placing a call that they will be paying higher rates for the call, and most importantly, it will give the customer the opportunity to immediately terminate the call in favor of a lower cost option. However, just as important, the NAAG proposal would also give less educated consumers the information necessary to access their carrier of choice.

The PaPUC, however, recommends that the voice over be modified slightly from that proposed by NAAG to include the amount of the surcharge over and above the underlying carrier's rates that the

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[17]Some parties appear to view the NAAG proposal and the Joint Petitioners' proposal as mutually exclusive. The PaPUC does not view the proposals as mutually exclusive; both safeguards compliment one another with one measure focusing on prior customer knowledge before call termination and the other measure focusing on customer protection from rate gouging after call termination.

end user will be assessed. PaPUC believes that it would be more useful to the customer to know exactly what the surcharge will be on the call than to just know in general that they may be charged at a rate higher than that charged by their regular carrier.

Thus, the PaPUC would propose that the voice over state the following:

> "This call is being handled by [carriers name]. Calls made through [carriers name] include a surcharge of $1.00. To avoid the surcharge, and to find out how to contact your regular telephone company, hang up and call 1-800-555-1212. You will not be charged for this call if you hang up now."[18]

To the best of the PaPUC's knowledge, no carrier has alleged that the costs associated with the NAAG proposal would be prohibitive nor have they offered any persuasive reasons why the voice over would not function as an important consumer safeguard.

While PaPUC agrees with some commenters that BPP would be the most effective solution overall, because of the outstanding cost and competitive concerns, PaPUC cannot endorse its adoption at this time.[19]

III. Conclusion

The Pennsylvania Public Utility Commission supports the proposals of the NAAG and the Joint Petitioners, with the modifications discussed herein. As modified in these comments, both options could serve as important interim or long-term consumer safeguards. In addition to these proposals, the Commission should

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[18]The surcharge would be easier to determine than the cost for the call as proposed by some parties.

[19]See Comments of Sprint Corporation, p. 3; MCI Comments, p. 6.

consider still other means to prevent consumer abuse in the OSP marketplace and should use existing enforcement mechanisms including stiff monetary penalties for violations of OSP laws.

Respectfully submitted,

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Dated: May 2, 1995

APPENDIX "A"

Comparison of Joint Petitioners' Proposed Rate Ceiling With Caps Set At AT&T's Daytime Rates Plus a One Dollar Added Surcharge

Automatic Calling Card Calls

	AT&T Plus $1.00 Surcharge	Joint Petitioners Ceiling
1 minute	$2.07-2.17	$ 3.75
2 minutes	$2.34-2.64	$ 4.25
3 minutes	$2.61-2.91	$ 4.75
4 minutes	$2.88-3.28	$ 5.25
5 minutes	$3.15-3.65	$ 5.50
6 minutes	$3.42-4.02	$ 5.95
7 minutes	$3.69-3.89	$ 6.20
8 minutes	$3.96-4.76	$ 6.65
9 minutes	$4.23-5.13	$ 7.00

Other Operator Assisted Calls

	AT&T Plus $1.00 Surcharge	Joint Petitioners Ceiling
1 minute	$3.39-3.49	$ 3.75
2 minutes	$3.69-3.89	$ 4.25
3 minutes	$3.96-4.26	$ 4.75
4 minutes	$4.23-4.63	$ 5.25
5 minutes	$4.50-5.00	$ 5.50
6 minutes	$4.77-5.37	$ 5.95
7 minutes	$5.04-5.74	$ 6.20
8 minutes	$5.31-6.11	$ 6.65
9 minutes	$5.58-6.48	$ 7.00

Person to Person Calls

	AT&T Plus $1.00 Surcharge	Joint Petitioners Ceiling
1 minute	$5.74-5.84	$ 4.75
2 minutes	$6.04-6.24	$ 5.25
3 minutes	$6.31-6.61	$ 5.75
4 minutes	$6.58-6.98	$ 6.25
5 minutes	$6.85-7.35	$ 6.50
6 minutes	$7.12-7.72	$ 6.95
7 minutes	$7.39-8.09	$ 7.20
8 minutes	$7.66-8.46	$ 7.65
9 minutes	$7.93-8.83	$ 8.00

CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION have been served this 2nd day of May, 1995, upon all known parties of record herein.

Executed at Harrisburg, Pennsylvania, this 2nd day of May, 1995.

Maureen A. Scott

Maureen A. Scott

Counsel for the Pennsylvania
Public Utility Commission