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Office of the
Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

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July 16, 1996

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

Re: CC Docket No. 92-77

Dear Mr. Caton:

Enclosed please find the original and nine (9) copies of the Office of the Ohio Consumers' Counsel's Initial Comments and Summary to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Sincerely,

Andrea M. Kelsey

Andrea M. Kelsey
Assistant Consumers' Counsel

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

In the Matter of	)	FCC 96-253
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket No. 92-77
	)	

SUMMARY OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INITIAL COMMENTS

The Office of the Ohio Consumers' Counsel (OCC) believes that only a fully informed consumer can make a meaningful choice. The choices afforded consumers by aggregators of Other Service Providers (OSPs), the subject of this Notice, are few. Thus it is critical to enhance the information available to consumers.

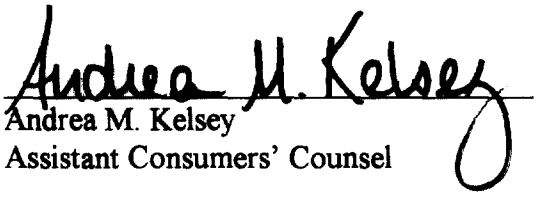
For these reasons, OCC supports an absolute cap on OSP charges, consisting of the benchmark composed of 115% of the average of rates of the three largest OSPs as proposed by the Federal Communications Commission (Commission). If the benchmark is not a ceiling on rates, then OCC supports both price disclosure and an audible warning that the rates exceed the Commission imposed benchmark.

Because OSPs have misinformed consumers about the purpose of informational tariffs, OCC supports Commission forbearance in this area. OCC also submits that recipients from inmates in secured facilities should be told the price before accepting the call.

With these protections in place, consumers will be as fully informed as possible when using services provided by OSPs.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL



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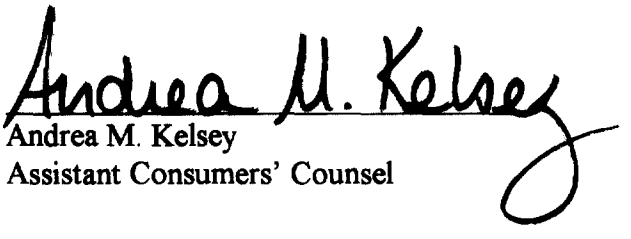
CERTIFICATE OF SERVICE

I hereby certify that the Summary of the Office of the Ohio Consumers' Counsel's Initial Comments, have been served by overnight mail to the International Transcription Service, two (2) copies to the Enforcement Division, and, in diskette form to Adrien Auger on this 16th day of July, 1996.



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THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S INITIAL COMMENTS

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC), the statutory representative of Ohio's residential utility consumers (Ohio Rev. Code Chapter 4911), hereby offers its comments upon the Federal Communications Commission's (Commission) Second Further Notice of Proposed Rulemaking (NPRM) in this docket. These comments are a result of concern over mounting complaints regarding operator service providers (OSPs), both those reported in the press and by OCC's own constituency. The number of such complaints that OCC received in the first six months of 1996 has increased fivefold over those received in the comparable period in 1995.

The Commission itself reports receiving thousands of complaints per year. NPRM at ¶ 47. As the Commission correctly points out, "It is clear that the presence of numerous competitors has not resulted in the benefits of reduced rates, which generally would be expected in a fully competitive market." *Id.* at ¶ 46. The key to competition is choice, and the key to choice is information. Since the OSP supplied by aggregators and pay telephones rarely allows end-user customer choice, the key is to enhance the available

customer information. In the words of the Commission, "We believe that consumers have the right to make fully informed decisions at the time of making a call." *Id.* At ¶ 47. It is in the spirit of that principle that OCC submits these comments to the Commission.

II. DISCLOSURE OF PRICE ON ALL OPERATOR SERVICE CALLS

Initially the Commission inquires whether all operator-assisted calls should require price disclosure. *Id.* at ¶ 15. The Commission further inquires "whether such a requirement may obviate the need to establish any benchmark level requirements." *Id.* OCC submits, as is discussed more fully below, that establishment of a proper benchmark will in fact obviate the need for price disclosures.

III. SETTING A BENCHMARK

OCC agrees that a benchmark should be set and concurs with the Commission's proposed benchmark of 115 percent of the average of the three largest OSPs. *Id.* at ¶ 24. This benchmark corresponds with consumer expectations, namely that consumers "generally expect rate levels to be within a comparable range of the rates charged by the three largest carriers," *id.* at ¶ 23, and thus prevents consumer surprise. The methodology is neither too difficult to be unduly costly and burdensome nor too simple to be unfair. *See, e.g.,* NPRM at Appendices D and E. It should therefore satisfy the concerns expressed by commenters that benchmarks that are too simple would be imprecise. *Id.* at ¶ 21. Some commenters expressed concern that too precise a benchmark, namely one that was required to "float" with every change in large carriers' rates, would be an

"administrative 'nightmare'." *Id.* at ¶ 22. That concern is satisfied by the Commission's proposal that the benchmark "be set at the average of the rates charged by the three largest carriers as of January 1 of each year" and that there be a six month time lag, so that the benchmark would apply from July 1 to June 30 of the following year. *Id.* at ¶ 25. This is a reasonable protection against repeated rate changes, although it does not seem administratively necessary for the time lag to be as long as six months. Telephone companies develop tariffs in the usual course of business, and two or three months should be more than sufficient time for OSPs to do so.

Some commenters suggested benchmarks based on the highest rates of the three largest carriers. *Id.* at ¶ 18. OCC submits that this would not meet the consumer expectation standard. Most customers do not usually encounter only the highest rates when calling from their homes, and would not expect to when calling from an aggregator. OCC further submits that the CompTel benchmarks are even more excessive and concurs with Ameritech that "rates that are so high as to result in large numbers of complaints are likely to be well above the level that is properly presumed just and reasonable." *Id.* at ¶ 17.

The Commission has sought comment on the consequences of exceeding the benchmark. *Id.* at ¶¶ 29-37. OCC submits that a benchmark should form a ceiling that OSP rates may not exceed. Ohio's commission has capped OSP rates for local, intraLATA, and interLATA intrastate calls. OSP rates for local calls may not exceed the price list rates of the local company for an operator-assisted call in the same exchange, including both message toll service and operator surcharges. For interexchange calls,

message toll service may not exceed the rate charged by the Ohio Bell Telephone Company (Ameritech Ohio, or Ameritech). Interexchange operator-assistance rates for customer dialed calling card calls, operator handled calls and person-to-person calls are capped at $1.70, $2.50 and $4.80, respectively.[1] *In the Matter of the Commission Investigation Into the Provision of Intrastate Interexchange Operator Assisted Services in Ohio*, Case No. 88-560-TP-COI, Appendix B to Entry On Rehearing (February 27, 1992). This method has worked well in Ohio, and OCC supports it. OCC knows of no reason it should not work at the federal level as well.

If, however, the Commission determines that benchmarks should not constitute rate ceilings, then OCC supports a combination of two of the methods upon which the Commission invites comment: price disclosure and warning messages. The Commission has tentatively determined that price disclosure is sufficient. *Id.* at ¶ 25. OCC cannot agree.

Most consumers are not familiar with the rates charged by their presubscribed carrier. They understand how their typical bill looks, but they are unaware of the components of the rates. A price disclosure consisting of the average rate of a seven minute call, such as the Commission suggests at ¶ 35, may be meaningful, but may not correspond to the consumers' situation. A list of rates for different call components -- the price for the first minute, the price for next block of minutes, the price for each minute thereafter -- will be complex and even less meaningful. Such a disclosure would demand that the consumer calculate the price of the entire call before determining whether to

[1]Operator service providers to secured inmate facilities are treated differently, as is discussed *infra*.

complete the call. The average consumer, even if intelligent and well-educated, will not be able to do so. Consumers are entitled to know whether the rates they are being asked to pay exceed those they are accustomed to. OCC suggests a voice warning, given prior to connection, that incorporates the benchmark: "This carrier charges rates that are more than 15 percent in excess of those of AT&T, MCI and Sprint."

IV. FORBEARANCE FROM APPLYING INFORMATIONAL TARIFF FILING REQUIREMENTS

The Commission inquires at ¶ 40 whether it should forbear from requiring non-dominant OSPs to file informational tariffs if the OSP discloses pricing prior to completing calls or certifies to the Commission that it will not charge more than the FCC benchmark. The Commission also expresses doubt whether informational tariffs are the "optimum or even a necessary mechanism to ensure that their [non-dominant OSPs] charges... are just and reasonable...." Id. at ¶ 41. The Commission then observes:

> The volume of complaints we receive concerning the level of rates and charges in informational tariffs indicates that such tariffs may be ineffective in ensuring that consumers placing 0+ calls from aggregator locations are not billed for charges higher than they are willing to pay.

Id. at ¶ 42.

OCC agrees with the Commission's reasoning: "We believe that a requirement that OSPs disclose the specific price of a call to the consumer before connecting a call would better protect consumers from unexpectedly high charges than the filing of 'informational' tariffs...." *Id.* Consumers, at least residential consumers, do not customarily have access to informational tariff filings. Audible price disclosures, coupled

with a warning message, afford greater protection. OCC supports Commission forbearance in this instance.[2]

V. RANGE OF RATES INFORMATIONAL TARIFFS

The Commission invites comments on the type of filings it should require if it decides not to forbear from requiring informational filings. *Id.* at ¶ 45. Presently the Commission requires range of rates informational tariffs. In discussing the complaints it receives, however, the Commission notes that many consumers who have complained to providers have been told that the tariffs have been not only filed with, but also approved by the FCC, which is false. *Id.* at ¶ 46. Thus the Commission invites comments on requiring specific rates in dollars and cents rather than a range of rates. *Id.* at ¶ 47. As an alternative, the Commission proposes forbearance if the OSP certifies that it will not connect any call priced above the benchmark.

OCC agrees with the certification proposal. OCC would also note that requiring specific informational tariffs, as opposed to range of rates tariffs, would not prevent the abuse described above.

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[2]This differs from OCC's general policy regarding informational tariffs. In the Commission's 96-61 docket, OCC submitted that a central repository of tariffs should be maintained. The circumstances here justify a departure from OCC's customary position. If the existence of informational tariffs can be used to mislead consumers, then OCC supports forbearance. Moreover, if disclosures are in place, consumers will be informed.

VI. INMATE-ONLY PHONES IN CORRECTIONAL INSTITUTIONS

At ¶ 48, the Commission explains why it considers phones in secured facilities separately, namely, that individuals in prisons and jails have no choice about their carrier, and since they do not pay for their calls, they will not benefit from disclosures. Therefore the Commission requests comment on whether the billed party should be informed of the charges for inmate calls. *Id.* at ¶ 49.

OCC fully supports rate disclosure to individuals receiving collect calls from inmates. This would at least give that individual the choice of whether or not to accept the call. Under the circumstances this is not an optimal choice.[3] It is the only available choice, however, and the billed party deserves that opportunity.

VII. CONCLUSION

In summary, OCC supports the benchmark proposed by the Commission, namely, a benchmark set at 115% of the average rates of the three largest carriers. OCC submits that this should be a ceiling for rates charged by OSPs. This will obviate the need for price disclosure. If the Commission determines that the benchmark should not be a ceiling, then OCC supports price disclosure before calls are connected, coupled with a warning message. Finally, OCC supports price disclosure to recipients of calls from secured inmate facilities. With these safeguards in place, consumers will have the information they need to make informed decisions.

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[3]The optimal choice is billed party preference.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

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