

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

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In the Matter of)

Billed Party Preference for)
InterLATA 0+ Calls)
_____)

CC Docket No. 92-77

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**REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2236

Attorneys for the American Public
Communications Council

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SUMMARY

There are two competing theories in the comments regarding how the Commission should address the problem of high rates. One approach is to try to ensure that consumers are fully informed about prices whenever they make an operator-assisted call. The comments demonstrate that this approach would impose very substantial burdens on carriers, consumers, and the Commission. An alternative approach is to target a price disclosure or other consumer message at those calls where the need for the message is greatest. The record in this proceeding unequivocally favors this second approach.

The record also supports setting benchmarks triggering disclosure requirements at the rate levels originally proposed by the industry Coalition in March 1995, rather than at the rate levels of the "Big Three" interexchange carriers (AT&T, MCI, and Sprint), or a small percentage increment over Big Three charges. The Coalition benchmarks are more solidly based on evidence of consumer expectations, they limit unnecessary burdens on carriers, consumers, and the Commission, and they are less vulnerable to legal challenge.

Unless and until the Commission effectively addresses the payphone compensation problem it is mandated to address under Section 276 of the Communications Act, 47 U.S.C. § 276(b)(1)(A), it would be inappropriate for the Commission to adjust 0+ benchmarks below the levels proposed by the Coalition. In the event that lower benchmarks are set, the Commission must allow independent public payphone providers the flexibility to avoid incurring prohibitively expensive equipment

modification costs by making disclosures based on average or maximum rates rather than exact prices.

The comments also confirm APCC's position that (1) a LEC bill screening and reporting requirement would be an important aide to enforcement that is applicable to benchmark-based price disclosure requirements as well as to more traditional rate enforcement; (2) Section 203 tariff filing requirements should be retained, so that the Commission's suspension powers can be used to encourage compliance with benchmarks; and (3) the Commission should definitively terminate its consideration of billed party preference ("BPP").

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The American Public Communications Council ("APCC") submits the following reply comments on the Second Further Notice of Proposed Rulemaking ("Notice") in these proceedings, FCC 96-253, released June 6, 1996.

I. SINCE DISCLOSURE REQUIREMENTS IMPOSE BURDENS, TARGETED DISCLOSURE REQUIREMENTS ARE A MORE REALISTIC POLICY THAN BROADLY APPLICABLE DISCLOSURE REQUIREMENTS

The comments in this proceeding reflect two competing theories of how to address the problem of high-priced 0+ calls. One theory is that the problem should be addressed by maximizing the information available to consumers whenever they make 0+ calls. If consumers were informed beforehand of the price applicable to every 0+ call, then they could make an informed choice whether to dial 0+ at a particular payphone, or to dial an access code -- or to use a debit card, cellular phone, or other alternative. One-Call Communications, Inc. ("Opticall") at 8-9, citing Notice, ¶ 37.

Having fully informed consumers is a desirable outcome and this outcome would be promoted in theory by the Commission's proposal to require price disclosure on every 0+ call. However, the comments indicate that a rate disclosure requirement would impose significant burdens on carriers as well as consumers. See, e.g., AT&T at 4-5 (disclosure requirements will slow call processing, add to carriers' access costs); Bell Atlantic, BellSouth, and NYNEX ("BBN") at 4-5 (price disclosure would impose significant hardware and software costs, and could add 10-20 seconds to call holding time, forcing operator service providers ("OSPs") to add switch and transmission capacity to handle peak call volumes); Comptel at 18-19 (many OSP systems would require substantial modification to provide real-time call rating, and any disclosure would add 5-10 seconds or more to call set-up times); GTE at 7 (real-time call rating requires several years lead time to replace existing equipment); Intellicall at ii (real-time call rating would require store-and-forward payphone manufacturers to incur huge costs to retrofit existing payphones and would significantly affect the efficiency and reliability of the phones); U S West at 4-6.¹

In addition to these burdens on carriers and consumers, the Commission must also consider the potential burdens on its own enforcement resources. As BBN point out, any price disclosure requirement will be difficult to police and enforce. BBN at 4. The enforcement burden will be greatest for a generally applicable price disclosure requirement.

¹ These arguments apply with even greater force to the even more comprehensive approach that would require price disclosure on all operator-assisted calls, including both 0+ and access code calls.

Modifying a price disclosure requirement to allow disclosure of average or maximum prices would relieve some of the cost burden on OSPs and store-and-forward payphone providers associated with the addition of real-time call rating capabilities to the automated processing of 0+ calls. However, the inconvenience to consumers would remain, as would the burden of added holding time on switch and transmission capacity and the burden on the Commission's own enforcement resources.

Thus, the comments confirm that, while the delivery of a rate disclosure or other appropriate consumer message in appropriate circumstances undeniably would offer a significant public benefit in enabling consumers to avoid unknowingly incurring exorbitant rates for 0+ calls,² the burdens associated with consumer messages are significant.

The alternative approach would target information disclosure requirements at those calls for which the need for consumer information is greatest. Under this theory, since there are burdens associated with consumer disclosure requirements, those burdens should only be imposed when a major benefit can be expected to be obtained thereby. Since the main benefit sought by the Commission is the elimination of exorbitant operator service rates,³ it makes sense to limit the price disclosure requirement and its associated

² Bell Atlantic, BellSouth and NYNEX say that price disclosure "is not an effective way to deter overpricing by OSPs". BBN comments at 2. While price disclosure is not perfectly effective, it would deter many consumers from incurring prices that they are unwilling to pay -- particularly if it is judiciously targeted at rates above a reasonable benchmark such as those proposed by the Coalition.

³ See Notice, ¶ 5 ("Many OSPs have chosen to compete with a strategy [that] . . . forces callers to pay exceptionally high rates"); ¶ 7("many callers who are unwilling, unable or not readily able to use access codes are forced to pay high charges to the OSP. . .").

burden to those calls for which the charge is substantially more than an amount that consumers reasonably might expect or be willing to pay. Under this approach, the Commission would set a benchmark level for triggering rate disclosure or consumer message requirements, based on the point at which the benefits of disclosure exceed the associated burdens.

II. THE COALITION RATE LEVELS ARE MORE APPROPRIATE THAN OTHER PROPOSED THRESHOLD LEVELS FOR TRIGGERING DISCLOSURE REQUIREMENTS

The record establishes that a rate disclosure or other consumer message requirement should be targeted at rates which clearly exceed a reasonable threshold level of consumer tolerance. Accordingly, the threshold price level for imposing price disclosure requirements or other consumer message requirements is more appropriately set at the levels proposed by the Coalition than at Big Three rates or at a small percentage increment over Big Three rates.

First, the Coalition rate levels have a more solid basis in record evidence of consumer expectations. As U S West points out:

There is no clearer demonstration of the outer boundaries of customer "expectations" than the taking of affirmative action to complain about assessed charges. Below that level, it is all a matter of generalization, averaging and speculation.

U S West at 3. As BBN point out, while subscribers to Big Three services may be aware of Big Three rates for the 1+ services that they use at home, "callers on the move typically use

a variety of OSPs, depending on the carrier to which the particular line is presubscribed." BBN at 8. While callers that dial access codes arguably have some awareness of their preferred carriers operator service rates, these are not the callers that the Commission's 0+ price disclosure proposal would reach. The whole point of the proposal is to protect callers that do not customarily dial access codes. With respect to 0+ callers, since they typically use a variety of carriers depending on which payphone they are using, their expectations are more accurately defined in terms of rate levels that provoke complaints, rather than rates charged by any particular group of carriers.

Second, the Coalition rate levels are better targeted in terms of the imposition of the burdens of rate disclosure. Requiring rate disclosures for calls where the charges are 15% or 20% higher than Big Three rates for the same type of call would inflict burdens on carriers, consumers and the Commission for no legitimate reason: where is the compelling need to warn consumers about such rates? At the Coalition rate levels, by contrast, there is clearly a need to inform consumers about the rates, because consumers have filed numerous complaints about rates that exceed those levels.

Finally, targeting rate disclosure or other consumer message requirements at rates that exceed the Coalition levels also will help immunize such requirements from legal challenge. Comptel and other parties argue that it is arbitrary and unfair to set benchmarks at levels that, by definition, almost guarantee that Big Three carriers will never have to make rate disclosures. See, e.g., *Cleartel Communications, Inc. and ConQuest Operator Services Corp.* at 7-10. Using the Coalition rate levels, by contrast, is equitable to all

carriers because it is based on the neutral criterion of the level at which rates provoke substantial consumer complaints.

Comptel also argues that because a rate disclosure requirement is so burdensome, it is effectively a prescription, subject to Section 205 of the Communications Act. Comptel at 8-9. Yet, as Comptel acknowledges, there is support for the conclusion that the rate levels proposed by the Coalition are just and reasonable as a prescribed maximum⁴ rate. Comptel at 17. To the extent that there is validity to Comptel's argument that rate disclosure requirements constitute a prescription, the rate disclosure requirement would be more defensible if triggered by the Coalition rate levels than if triggered by levels which are not supported by credible evidence that they are the maximum "just and reasonable" rates.

Further, if rate disclosure requirements constitute a prescription, Comptel further argues that the Commission must allow individual OSPs an opportunity to show that they are entitled to a waiver of the prescribed rate. Comptel at 17, n. 39. Again, to the extent there is validity to Comptel's argument, the Commission will have to deal with fewer such waiver requests, and there is less likelihood that the OSP will prove its entitlement to a waiver, if the benchmark is set at Coalition levels.

⁴ Of course, to the extent that a rate disclosure threshold is treated as a prescribed rate, it is properly viewed as a prescribed "maximum" charge, leaving carriers free to charge lower rates. 47 U.S.C. 205.

Some commenters argue that setting the threshold at a relatively high level would encourage OSPs to bring their rates up to that level. This argument is illogical: if OSPs want to raise their rates, they can do so already today without incurring disclosure requirements. Thus, setting benchmark thresholds for disclosure requirements should not affect the incentives of OSPs that are already charging below the benchmarks; it will however, add a substantial incentive for OSPs that currently charge above the benchmarks to bring their rates below the benchmarks.

In summary, the record supports APCC's position that benchmarks triggering rate disclosure requirements or other consumer message requirements should be set at the rate levels proposed by the Coalition.

As discussed in APCC's initial comments, no downward adjustments can be made unless and until the Commission has taken effective steps to ensure fair compensation of PSPs for all calls, pursuant to Section 276 of the Act. 47 U.S.C. § 276. APCC at 9. See also Communications Central at 19-20; New Jersey Payphone Association at 8.

III. IF BENCHMARKS ARE SET BELOW THE COALITION'S PROPOSED LEVELS, THE COMMISSION MUST ALLOW FLEXIBILITY TO DISCLOSE AVERAGE OR MAXIMUM RATES

As explained in detail by Intellicall, independent public payphone ("IPP") providers that use the store-and-forward feature of "smart" payphones to provide operator services would incur huge costs if required to provide real-time disclosure of the exact rates

applicable to each call. Therefore, the Commission must allow flexibility for these providers to provide average or maximum rates in lieu of exact rates. This is particularly important if the Commission does not utilize the Coalition's benchmarks, which would allow IPP providers a reasonable opportunity to avoid triggering the disclosure requirement while still recovering their costs.

IV. OTHER MECHANISMS SHOULD SUPPLEMENT PRICE DISCLOSURE OR CONSUMER MESSAGE REQUIREMENTS

The comments of other parties illustrate why the Commission should supplement price disclosure or other consumer message requirements with the monitoring plan suggested by the Coalition. As BBN states, and as discussed above, policing and enforcement of such requirements will not be simple. Local exchange carrier ("LEC") monitoring of carriers that price above the benchmarks will enable the Commission to more easily identify OSPs that price above benchmarks for purposes of checking compliance with disclosure requirements.

In addition, no party provides a legitimate reason for the Commission to forbear at this time from Section 203 or 226 tariffing requirements, at least with respect to carriers that price above the benchmarks. Even though the Commission may prefer to use disclosure requirements as a substitute for, rather than a supplement to, rate regulation, it is premature to remove the tariff requirement from the Commission's arsenal.

First, disclosure requirements may not be as effective as the Commission wishes in encouraging carriers to reduce their rates, may be subject to successful legal challenge, or

may prove to be too difficult to enforce. The Commission should, at a minimum, retain the option of employing traditional rate regulation. For example, the Coalition benchmarks could be used as a criterion for when carriers are required to file Section 203 tariffs. As discussed in APCC's comments, a requirement to file Section 203 above-benchmark tariffs on sufficient notice to permit the Commission to engage in pre-effectiveness review would enable the Commission to prevent new above-benchmark rate filings from taking effect before they were found to be just and reasonable.

Second, either Section 203 or informational tariffs would enable the Commission to identify OSPs with above-benchmark rates for purposes of checking compliance with disclosure requirements.

V. CONSIDERATION OF BILLED PARTY PREFERENCE SHOULD BE TERMINATED

The record is overwhelmingly in favor of terminating consideration of billed party preference ("BPP"). Of the local exchange carriers that used to support BPP, all except one now state they do not support BPP. Southwestern Bell, which used to be a strong supporter of BPP, "now believes that the time has passed for implementation of this service." Southwestern Bell at 1. GTE, another erstwhile diehard supporter, states that "adoption of BPP has been frustrated by high capital costs and resultant cost recovery impacts on OSP rates." GTE at iii. Even Ameritech, which is the only LEC still declaring support for BPP, states unequivocally that "deployment of Local Number Portability ("LNP") databases as required by the 1996 Act is not likely to lessen the incremental cost

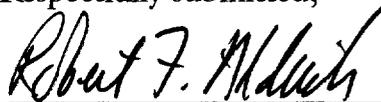
of billed party preference." Ameritech at 2, n. 2. Accordingly, there is no longer any reasonable basis to keep the proposal alive, and as Comptel points out, "[t]he lingering existence of the BPP docket continues to harm OSPs by making it more difficult for them to access capital and by increasing aggregator demands for accelerated commissions to recoup their own investments." Comptel at iii. Consideration of BPP should be terminated.

CONCLUSION

The Commission should adopt regulations in accordance with the foregoing comments.

August 16, 1996

Respectfully submitted,



Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY L.L.P.

2101 L Street, N.W.

Washington, D.C. 20037-1526

(202) 828-2236

Attorneys for the American Public
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