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APR 1 1 1997
Federal Communications Commission
Office of Secretary

April 11, 1997

Mr. Christopher Heimann
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 544
Washington, DC 20554

Re: **Bell Companies' CEI Plans, CC Docket No. 96-128**

Dear Mr. Heimann:

The attached ex parte letter, submitted yesterday on behalf of the Inmate Calling Service Providers Coalition ("ICSPC") addresses the critical issue of which functions are properly defined as part of a Bell company's "regulated local exchange service operations" and which functions are properly defined as part of a Bell company's "nonregulated inmate calling service" ("ICS") operations.

This issue of definition is critical to the pending requests for approval of CEI Plans. If the Bell companies do not correctly identify "nonregulated ICS" functions, then the FCC cannot determine whether a Bell Company is properly offering, under tariff, all the network functions that support its "nonregulated ICS" operation.

Thank you for your consideration.

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich

Attorneys for the Inmate Calling Service Providers Coalition

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Attachment

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Office of Secretary

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April 10, 1997

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE
PRESENTATION

Re: **Bell Companies' CEI Plans, CC Docket No. 96-128, Cost Allocation Manual Revisions of:**

Aliant Communications Co.	AAD 97-9
Ameritech Operating Cos.	AAD 97-4
The Bell Atlantic Telephone Companies	AAD 97-31
BellSouth Corporation	AAD 97-129
GTE Telephone Operating Cos.	AAD 97-8
Nevada Bell Telephone Co.	AAD 97-10
NYNEX Telephone Companies	AAD 97-32
Pacific Bell Telephone Co.	AAD 97-12
Rochester Telephone Corp.	AAD 97-14
Southwestern Bell Telephone Co.	AAD 97-42
U S WEST, Inc.	AAD 97-18

Dear Mr. Caton:

The Inmate Calling Service Providers Coalition ("ICSPC") hereby replies to Bell Atlantic's ex parte letter dated March 24, 1997 ("Bell Atlantic Letter"), regarding Bell Atlantic's treatment of inmate collect calling. This letter should be read in conjunction with our letter of March 19, 1997 (copy attached) on behalf of ICSPC.

This reply is necessary because, at the very end of its March 24 letter, Bell Atlantic supplies, at long last, <u>some</u> information regarding the manner in which Bell Atlantic intends to provide inmate calling services ("ICS") and the manner in which Bell Atlantic's regulated network services will support its ICS operation. This is exactly the type of information that Bell Atlantic was required to, but did not, supply in its original CEI plan three months ago.

Bell Atlantic's description of its ICS operations discloses that, in over 80% of Bell Atlantic's inmate accounts, inmate call processing is performed by the "store-and-forward method" in dedicated "3d Party Vendor's Inmate Call Processing Equipment." See Bell Atlantic Letter at 4, and Attachment entitled "Inmate Collect Calling." ICSPC believes that this equipment is similar to the equipment that independent providers use for call processing, and that Bell Atlantic's CEI Reply Comments acknowledge is also "used for inmate call restriction, PIN identification, and related security controls," and is "dedicated to specific correctional faciliities and has been classified as deregulated premises equipment." Bell Atlantic CEI Reply at 12.

Yet, this "deregulated" equipment is used to process collect calls (i.e., validate the call and obtain the called party's acceptance) and generate billing records for those calls. Bell Atlantic Letter at 4, and Attachment entitled "Inmate Collect Calling." Even though the service is clearly provided using "deregulated" equipment, Bell Atlantic continues to book all the costs[1] and revenues (and uncollectibles) to its "regulated" accounts. This approach, in which "deregulated" equipment is used to provide a service that Bell Atlantic defines as part of its regulated telephone service operations, not only conflicts on its face with Section 276 and the Payphone Order, but even violates the Commission's Declaratory Ruling on ICS equipment, issued more than a year ago. Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, FCC 96-34, released February 20, 1996. The Declaratory Ruling held that "equipment used to deliver inmate-only payphone services is [customer premises equipment ("CPE")] and must be provided on an unbundled, unregulated basis . . . ." Id., ¶ 26.

Bell Atlantic straightfacedly contends that this approach is "adjunct" to its regulated network operator services, even though nothing happens in Bell Atlantic's network except transmission of the call -- no operator processing occurs in networks; the only involvement of the network with the call is that the call traverses the network once the CPE-based processor reoutpulses the call as a 1+ direct dialed long distance call.

In the first part of its letter, Bell Atlantic agrees that collect calling is "critical" to inmate services, but still argues that the processing of calls from inmate payphones, no matter where it takes place, should be treated as part of "regulated network operator service" and separate from its deregulated ICS operation. APCC's argument for treating such call processing -- no matter where it takes place -- as part of deregulated ICS is fully stated in our March 19 letter. As we stated there:

According to Bell Atlantic, the third party vendor is paid a fee for the use of the equipment. Thus, it appears that Bell Atlantic's regulated side pays, directly or indirectly, for the call processing equipment, the network usage, the validation of the call, and the billing and collection of the collect call charges. Id.

> [T]o allow Bell companies to leave with their regulated operations the entire responsibility and risk associated with inmate collect calling is to grant the Bell companies carte blanche to continue subsidizing and discriminating in favor of their ICS, to the detriment of ICS competition. As discussed in ICSPC's comments, the risk of fraud and the percentage of uncollectibles associated with ICS is far higher than for other telecommunications services. Independent ICS providers receive revenue only for bills actually collected and must assume these risks because they pay the costs of transmission, processing, validation and billing whether or not the revenue for the call is ever collected. [CEI] Comments of the ICSPC, Att. 1 at 12.
>
> * * *
>
> In short, Bell Atlantic's integration of inmate collect calling with regulated services means that the Commission's Computer III safeguards, on which the Commission is relying to implement Section 276, are totally powerless to prevent subsidies and discrimination favoring Bell Atlantic's inmate services. Those safeguards, which attempt to prevent subsidies and discrimination in connection with nonregulated activities, will be inapplicable if Bell Atlantic's regulated side has assumed all responsibility and risk associated with transmission, processing, validation, billing and collection for the collect calls that are the essence of ICS.

March 19 Letter at 3-4.[2] Among these safeguards are the accounting requirement that uncollectibles be directly assigned, to the maximum extent possible, to "regulated" and

---

[2] Bell Atlantic is simply wrong in saying that the regulatory status of its inmate calling service is an issue that "affects only the accounting treatment of such collect calls" and that resolution of the issue against Bell Atlantic "would still not justify rejection of the CEI Plan." Bell Atlantic Letter at 1. For purposes of deciding whether to approve the CEI Plan, the FCC must be able to identify which operations are correctly classified as "nonregulated Bell Atlantic/ICS" and which operations are correctly classified as "regulated Bell Atlantic telephone service." Otherwise, the FCC cannot determine whether Bell Atlantic is properly offering under tariff, all the regulated network functions that support its "nonregulated ICS," properly defined.

For example, if Bell Atlantic's use of dedicated "third party vendor equipment" for call processing properly belongs to its ICS operation, rather than to its regulated

(Footnote continued)

"nonregulated" operations,[3] and the CEI requirement that regulated network services supporting the deregulated ICS operation be unbundled from the ICS service, made generally available under tariff to ICS providers, and purchased for resale by the Bell company's own ICS operation.

While Bell Atlantic finds such a "resale" requirement problematic,[4] it is fundamental to the entire concept of CEI derived from Computer III. If network services

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(Footnote continued)

network service operation as Bell Atlantic has assumed, then Bell Atlantic must, at a minimum, amend its plan to clarify what regulated transmission services, validation services, and fraud protection information services support that equipment's nonregulated ICS call processing and call control functions, and how much Bell Atlantic/Network intends to charge Bell Atlantic/ICS for such services. Bell Atlantic's previous responses to these questions, such as they were, were made under the assumption that network services supporting that equipment were not CEI services.

Further, if Bell Atlantic provides network call processing of ICS calls, and the provision of collect calling service to inmates is properly defined as part of "nonregulated ICS," then the network call processing function must be provided to the ICS as a CEI function pursuant to tariff, and the CEI plan must say so, so that independent providers have assurance that the offering will be actually tariffed and actually available to them if they wish to use it.

[3] While the Bell companies may believe that it is not "possible" at present to directly assign to nonregulated uncollectibles from collect inmate calls processed in their networks, it is indisputably possible to directly assign uncollectibles from calls processed in dedicated equipment, which can generate its own billing records in the same manner as the equipment used by independent ICS providers, and which thus allows the same format to be used to track the origination of those billing records as they make their way through the billing cycle.

[4] Bell Atlantic Letter at 2. Bell Atlantic appears to believe that there would be some inherent contradiction if, as a result of reselling network services, Bell Atlantic's "deregulated" ICS operation became subject to some type of state or federal regulation as a carrier or operator service provider. Section 276 requires that subsidies and discrimination be eliminated from a Bell company's provision of ICS. However, Section 276 does not require that a Bell company's ICS or payphone operations be completely relieved of regulation as a carrier when they engage in carriage. Payphone service providers for

(Footnote continued)

are not provided under tariff for resale by the Bell company's ICS operation, the nondiscrimination requirement of Section 276 has no meaning.

These arguments apply a fortiori when Bell Atlantic seeks to continue to treat dedicated non-network store-and-forward equipment as part of Bell Atlantic's regulated network service, because the functions of the equipment are so obviously central to Bell Atlantic's inmate calling service operation.

Respectfully submitted,

Robert F. Aldrich

Albert H. Kramer
Robert F. Aldrich

Attorneys for the Inmate Calling Service Providers Coalition

RFA/nw
Attachment

(Footnote continued)

example, still resell long distance service and may be required to refile tariffs for that service. One of the measures to implement those requirements is "deregulation," in the sense of accounting separation of ICS and other payphone operations from regulated local exchange operations. "Deregulation" in this sense does not necessarily preclude forms of "regulation" that are consistent with such accounting separation, such as rate ceilings that many states impose on operator service rates. Such intrastate rate ceilings are frequently imposed on all operator service providers doing business in a state, including inmate calling service providers. Just as BellSouth's "nonregulated" subsidiary, BellSouth Public Communications, may be subject to regulation as a payphone service provider or operator service provider, so other local exchange carriers' "deregulated" payphone and ICS operations may be subject to such regulation, as long as the separation necessary to prevent subsidies and discrimination is preserved.

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March 19, 1997

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE
PRESENTATION

Re: Response of Inmate Calling Service Providers Coalition to Bell Companies' Replies to Comments on the Bell Companies' CEI Plans, CC Docket No. 96-128

Dear Mr. Caton:

The Inmate Calling Service Providers Coalition ("ICSPC") hereby responds to statements in the Bell companies' replies to comments on their Comparably Efficient Interconnection ("CEI") Plans regarding their definition of, and provision of network support for, their nonregulated inmate calling service ("ICS") operations.

In their reply comments, most of the Bell companies have continued to evade the most critical question raised by ICSPC in its comments: do the Bell companies define the provision of collect calling service in confinement facilities as part of their nonregulated ICS operations?[1]

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[1] Most of the Bell companies' replies do address in some fashion the related but separate question of whether they define equipment dedicated to inmate calling as regulated or nonregulated. Most indicated they were not (at least in the future) going to provide dedicated call control equipment in the network and those that were said they would define the equipment as nonregulated. See, e.g., Pactel CEI plan at 11; Bell Atlantic reply at 12 ("Equipment used for inmate call restriction, PIN identification, and related security controls are dedicated to specific correctional facilities and has been classified as deregulated premises equipment"); U S WEST at 22 ("call control equipment uniquely associated with inmate calling services that provides timely PIN, and other call-control functions" is being treated as deregulated "and is not collocated in U S WEST's central office"); Ameritech Reply Comments at 3-4. Most did not squarely address the issue of whether they will provide dedicated inmate collect call processing equipment in their (Footnote continued)

As explained in ICSPC's comments, collect calling is fundamental to ICS. In most facilities with which ICSPC members are familiar, collect calling is the only type of calling that is allowed. If a Bell companies' nonregulated ICS operation is not assuming the responsibility and risk associated with collect calling service, then it is not really providing ICS at all. In that event, the Bell company's ICS is still being provided as a regulated service and is still benefiting from subsidies and discrimination by the Bell company's regulated operations, contrary to Section 276 of the Communications Act. 47 U.S.C. § 276.

Rather than straightforwardly explaining whether they define the provision of collect calling as part of their nonregulated ICS, most of the Bell companies continue to obfuscate this fundamental question in their reply comments.[2] Several Bell companies even fail to indicate whether their nonregulated ICS operations rely on regulated network operator facilities to perform processing of collect calls. Rather than answer these questions, several Bell companies seek refuge in such meaningless statements as "the entire Plan speaks to inmate service." BellSouth Reply at 21.

Other Bell companies -- Ameritech, Bell Atlantic, and NYNEX -- do expressly state that collect calls will be "handed off" from their nonregulated ICS operations to their network-based operator facilities, and will be "handled" by those network facilities the same as regulated operator service calls. However, Ameritech and NYNEX do not clarify whether these network operator functions will then be resold pursuant to tariff by their nonregulated ICS operations -- as is required in comparable circumstances under Computer III -- or whether the regulated operator service will be treated as a separate service from deregulated ICS, with the deregulated ICS operation perhaps receiving a commission payment from the Bell company's regulated operator service revenues. Ameritech seems to say that the relationship with ICS will be treated, from an accounting perspective, as if the nonregulated ICS operation were reselling network operator services purchased under tariff (Ameritech Reply at 5), but Ameritech never identifies a tariff under which such network operator services are offered to ICS providers so that they can be made available on the same basis to independent ICS providers.

(Footnote continued)

networks. Both these issues, however, are distinct from the question of whether the Bell companies define collect call processing, regardless of where it is performed or what facilities are used, as part of their nonregulated inmate calling service operations.

[2] A compilation of the Bell companies' statements on this issue in their replies is attached to this letter.

Further, most of the Bell companies fail to clarify how they intend to handle billing and collection of the collect calling charges generated by their nonregulated ICS operations. If the Bell companies' nonregulated ICS operations do not assume the responsibility for, and the risk associated with, collection of charges for ICS calls, then the Bell companies' inmate services will continue to be subject to the very subsidies and discrimination that are prohibited by Section 276. Of all the Bell companies, only Bell Atlantic straightforwardly addresses these points, making clear that it does intend to continue treating ICS as regulated -- an approach that violates Section 276.

Bell Atlantic does not intend for its nonregulated ICS operation (or any ICS provider) to resell collect calling services purchased from Bell Atlantic's regulated side. Rather, Bell Atlantic will pay a commission to its nonregulated ICS operation or other ICS providers for routing the calls to Bell Atlantic's network. The regulated side will bear all the risks associated with billing and collection of inmate calls. Bell Atlantic at 14-15.[3]

As discussed in ICSPC's comments, this approach is utterly contrary to Section 276. Collect calling service is not only "incidental," but essential to the provision of ICS. Excluding collect calling from the definition of ICS is as absurd as excluding coin calling from the definition of payphone service.

Furthermore, to allow Bell companies to leave with their regulated operations the entire responsibility and risk associated with inmate collect calling is to grant the Bell companies carte blanche to continue subsidizing and discriminating in favor of their ICS, to the detriment of ICS competition. As discussed in ICSPC's comments, the risk of fraud and the percentage of uncollectibles associated with ICS is far higher than for other telecommunications services. Independent ICS providers receive revenue only for bills actually collected and must assume these risks because they pay the costs of transmission, processing, validation and billing whether or not the revenue for the call is ever collected. Comments of the ICSPC, Att. 1 at 12.

Bell Atlantic's nonregulated ICS operation, however, will not be obligated to pay any of these costs. Instead, Bell Atlantic's ICS operation apparently will be paid a

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[3] Since Bell Atlantic alone has forthrightly admitted how it proposes to treat ICS, the discussion below focuses on Bell Atlantic. However, the discussion may be equally applicable to other Bell companies, depending on how they answer the still answered questions regarding their treatment of ICS.

commission on each ICS call, which presumably will be defined as a percentage of the revenue from collect calls routed to regulated operator services.[4]

In short, Bell Atlantic's integration of inmate collect calling with regulated services means that the Commission's Computer III safeguards, on which the Commission is relying to implement Section 276, are totally powerless to prevent subsidies and discrimination favoring Bell Atlantic's inmate services. Those safeguards, which attempt to prevent subsidies and discrimination in connection with nonregulated activities, will be inapplicable if Bell Atlantic's regulated side has assumed all responsibility and risk associated with transmission, processing, validation, billing and collection for the collect calls that are the essence of ICS.[5]

There is no merit to the claim that such massive assumption of risk and responsibility is permissible because ICS providers are treated "equally" with respect to the availability of commission payments.[6] First, such "equal" treatment does not erase the

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[4] Presumably, the commission arrangement will include an allowance for uncollectibles. Bell Atlantic does not indicate whether the "uncollectibles" amount subtracted from those commission payments will be defined based on the uncollectibles percentage experienced by Bell Atlantic's ICS, or based on Bell Atlantic's overall uncollectibles percentage for regulated services. The latter practice would even further insulate Bell Atlantic's ICS from any risk or responsibility associated with the service.

[5] As a further illustration of the severe competitive problems arising from Bell Companies' continuing to commingle ICS with other regulated operations, ICS providers are subject to the same intraLATA operator service rate ceilings as conventional operator service providers ("OSPs"), even though there are substantial additional costs incurred in providing ICS. These rate ceilings are often keyed to the operator service rates of the Bell company and/or other LECs. As long as the Bell companies (and other LECs) are able to subsidize their ICS, they have insufficient incentives to differentiate their ICS rates from their operator service rates even though such a charge would permit their own ICS operations, as well as their competitors, an opportunity for full cost recovery. Since the Bell companies' ICS operations are not required to separately identify, and pay the costs of, ICS uncollectibles, the Bell companies are insufficiently motivated to lift the unreasonable rate ceilings that currently prevail in many jurisdictions.

[6] In any event, the Bell companies do not recognize an obligation to provide nondiscriminatory commission payments and the Commission's Payphone Order did not expressly impose such an obligation.

subsidies that inevitably result from commingling high-risk ICS operations with regulated public utility services, as required by Section 276.

Second, it cannot be nondiscriminatory for a Bell company to offer an independent ICS provider a commission payment that can be accepted only if the independent provider is willing to become an agent of the Bell company's ICS, and to give up the opportunity to provide its own ICS.

In light of Bell Atlantic's acknowledgment that its regulated side impermissibly assumes the risk and responsibility associated with Bell Atlantic's ICS, Bell Atlantic's CEI Plan must be rejected. Bell Atlantic must be required to refile its plan after modifying its ICS operations so that collect calling is provided by its nonregulated side. If Bell Atlantic wishes to continue using network-based operator facilities to handle it inmate collect calls, Bell Atlantic must file tariffs that make those functions available to its nonregulated ICS and to independent ICS providers on a nondiscriminatory basis. The tariffs must provide that Bell Atlantic's ICS providers is responsible for paying transmission, call processing, billing and validation charges.

Ameritech and NYNEX should also be required to refile their plans under the same conditions. The other Bell companies must be required to amend their plans to clarify whether their regulated operator services handle any calls from their ICS operations, and if so, to make those operator functions available to their ICS and independent ICS providers on a nondiscriminatory basis, as discussed above.

Respectfully submitted,

Robert F. Aldrich /DMJ

Albert H. Kramer
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ATTACHMENT

Summary Of Bell Companies' Statements Re How They Define ICS

The replies of BellSouth, Pacific Telesis, and U S West fail to disclose whether they define the provision of collect calling as part of nonregulated ICS, or even whether or not their nonregulated ICS operations rely upon network facilities to process collect calls.

In its Reply, BellSouth states that it considers call control and call processing functions to be "part of the inmate service." BellSouth Reply at 21. But then BellSouth describes these functions as aspects of "inmate service call management." Thus, BellSouth's "clarification" still manages to leave open the question whether BellSouth defines the provision of collect calling service as part of its nonregulated ICS operation.

Similarly, Pacific Telesis states that "'call control and call processing functions' can be part of the unregulated ICS service" (Pactel Reply at 36, emphasis original) but avoids saying whether collect call-processing is or is not defined by Pacific Bell as part of its unregulated ICS.

U S WEST's explanation is even more mysterious. U S WEST provides no explanation at all as to how it defines ICS collect calling. Regarding operator services per se, U S WEST states:

> U S WEST's intraLATA operator services offered in connection with USWPS' payphones is part of US WEST's regulated operations. The manner in which U S WEST is accounting for its payphone operations ensures that it is not subsidizing its payphone operations in the provision of operator services. The Smart PAL rate includes the cost of OIS, and USWPS will impute that rate to itself when it utilizes Smart PAL service. Moreover, U S WEST's Vendor Commission Plan has been available to IPPs since March 1993 on the same terms and conditions on which it is available to USWPS.

U S WEST Reply at 28.

Southwestern Bell appears to be defining the provision of collect calling service correctly, as part of its non-regulated ICS operation:

> SWBT's payphone operations do not use any network-based call control and call processing functions. Thus, SWBT will not offer such services to other providers, and SWBT's CEI plan so indicates. Call control and call processing functions are provided by hardware and software owned and operated exclusively by SWBT's payphone

> operations. This equipment is not housed in SWBT central offices but rather in space owned or leased solely by SWBT payphone operations.

SWBT Reply at 17. However, SWBT then goes on to say that:

> SWBT's ICS will make use of SWBT's operator services, which will be purchased from SWBT's state tariffs in the same manner that any other ICS provider may purchase them.

SWBT Reply at 17-18. Based on counsel's conversations with SWBT, the ICSPC understands that this statement does <u>not</u> refer to collect calling functions, which will be provided in premises equipment as part of the nonregulated ICS operation.

By contrast, Ameritech, NYNEX and Bell Atlantic all indicate that their nonregulated ICS operations <u>do</u> rely on network operator facilities to process collect calls. NYNEX states that (even though on the previous page it denies ICSPC's "mistaken assumption that NYNEX may consider its ICS to be regulated"):

> when a call is handed off from NYNEX pay telephones to NYNEX Operator Services (a regulated operation), the call will be handled as a regulated call, and in the same way as any other call handed off to NYNEX's Operator Services.

NYNEX Reply at 16.

However, Ameritech and NYNEX do not clearly indicate whether those operator functions are then "resold" by their nonregulated ICS operations. Ameritech states:

> [W]hether in the inmate context or otherwise . . . when a call is handed off from Ameritech's pay telephones to Ameritech's operator services system, the call is handled as a regulated one . . . .

Ameritech Reply at 4. Ameritech adds, however, that its nonregulated revenue account (Account 5280):

> is debited, and the regulated revenue account is credited for "revenues associated with calls originating on Ameritech's nonregulated pay telephones -- including calls handled by Ameritech's operator service systems. From an accounting perspective, this has the effect of imputing regulated charges for regulated services that are used in the provision of nonregulated services.

Id. at 5. This confusing statement appears to say that Ameritech's nonregulated ICS operation is "reselling" its regulated operator services, but Ameritech cites no tariff offering those services to other ICS providers.

Finally, Bell Atlantic categorically states that it:

> does not presently plan to "resell" operator services as a deregulated service either for its inmate services or its payphone services generally. Collect calls from inmate facilities or other locations as well as calling card and other alternately billed calls will continue to be offerings of Bell Atlantic's operator services. Therefore, the risk and responsibility for performing billing validation through LIDB as well as the billing and collection for these calls, including attendant fraud losses and uncollectibles, will remain with the operator service provider, as it is today. The charges for operator service calls are directly billed and received by Bell Atlantic's operator services regardless of whether the payphone is an IPP or Bell Atlantic payphone.

Bell Atlantic Reply at 15.