

(d) Informational tariffs shall be accompanied by a cover letter, addressed to the Secretary of the Commission, explaining the purpose of the filing.

(1) The original of the cover letter shall be submitted to the Secretary without attachments, along with FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, Pennsylvania.

(2) Copies of the cover letter and the attachments shall be submitted to the Secretary's Office, the Commission's contractor for public records duplication, and the Chief, Tariff and Price Analysis Branch, Competitive Pricing Division.

(e) Any changes to the tariff shall be submitted under a new cover letter with a complete copy of the tariff, including changes.

(1) Changes to a tariff shall be explained in the cover letter but need not be symbolized on the tariff pages.

(2) Revised tariffs shall be filed pursuant to the procedures specified in this section.

4. Part 64, Subpart G, is further amended by adding the following new Section 64.710:

§ 64.710 Operator services for prison inmate phones

(a) Each provider of inmate operator services shall:

(1) Identify itself, audibly and distinctly, to the consumer before connecting any interstate, domestic, interexchange telephone call and disclose immediately thereafter how the consumer may obtain rate quotations, by dialing no more than two digits or remaining on the line, for the first minute of the call and for additional minutes, before providing further oral advice to the consumer how to proceed to make the call;

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected; and

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer--

(i) The methods by which its rates or charges for the call will be collected;
and

(ii) The methods by which complaints concerning such rates, charges or collection practices will be resolved.

(b) As used in this subpart:

(1) *Consumer* means the party to be billed for any interstate, domestic, interexchange 0+ call from an inmate telephone;

(2) *Inmate telephone* means a telephone instrument set aside by authorities of a prison or other correctional institution for use by inmates.

(3) *Inmate operator services* means any interstate telecommunications service initiated from an inmate telephone that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

- (i) Automatic completion with billing to the telephone from which the call originated; or
- (ii) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(4) *Provider of inmate operator services* means any common carrier that provides outbound interstate, domestic, interexchange operator services from inmate telephones.

APPENDIX B

Parties Filing Comments

Actel, Inc. (ACTEL)

America's Carriers Telecommunication Association (ACTA)

American Friends Service Committee (AFSC)

American Network Exchange, Inc. (AMNEX)

American Public Communications Council (APCC)

Ameritech

AT&T Corp. (AT&T)

Bell Atlantic Telephone Companies, BellSouth Corporation, and NYNEX Telephone Companies (Bell Atlantic/BellSouth/NYNEX)

People of the State of California and the Public Utilities Commission of the State of California (California Commission)

Citizens United for Rehabilitation of Errants (C.U.R.E.)

Cleartel Communications, Inc. and ConQuest Operator Services Corp. (Cleartel/ConQuest)

Communications Central Inc. (CCI)

Competitive Telecommunications Association (CompTel)

Consolidated Communications Public Services Inc. (CCPS)

Gateway Technologies, Inc. (Gateway)

GTE Service Corporation (GTE)

Hotel Communications, Inc. (HCI)

Inmate Calling Services Providers Coalition (Coalition)

Intellicall Companies (Intellicall)

InVision Telecom, Inc. (InVision)

MCI Telecommunications Corporation (MCI)

National Association of Attorneys General (the Attorneys General)
National Association of Regulatory Utility Commissioners (NARUC)
National Telephone Cooperative Association (NTCA)
New Jersey Payphone Association (NJPA)
New York State Consumer Protection Board (NYSCPB)
New York State Department of Public Service (NYDPS)
North Dakota Public Service Commission (North Dakota Commission)
Office of the Ohio Consumers' Counsel (OCC)
Oncor Communications, Inc. (Oncor)
One Call Communications, Inc. d/b/a Opticom (Opticom)
Operator Service Company (OSC)
Pacific Telesis Group (Pacific Telesis)
Public Utilities Commission of Ohio (Ohio Commission)
Southwestern Bell Telephone Company (SWBT)
Sprint Corporation (Sprint)
Telecommunications Resellers Association (TRA)
U.S. Long Distance, Inc. (USLD)
U.S. Osiris Corporation (USOC)
U S WEST, Inc. (U S WEST)
Virginia State Corporation Commission Staff (Virginia Commission)

Parties Filing Reply Comments

APCC

AT&T

Bell Atlantic/BellSouth/NYNEX

CCI

CompTel

C.U.R.E.

Digital Network Services, Inc. (DNSI)

Gateway

GTE

Coalition

Intellicall, Inc., Intellicall Operator Services, Inc., Network Operator Services, Inc. (Companies)

InVision

State of Maine Public Utilities Commission, State of Montana Public Service Commission, New Mexico State Corporation Commission, State of Vermont Department of Public Service

MCI

NTCA

OCC

Oncor

Pacific Telesis

Peoples Telephone Company, Inc. (Peoples)

Sprint

SWBT

TRA

Teltrust Communications Services, Inc. (Teltrust)

U S WEST

Commenters Filing Late or Ex Parte (Not inclusive)

AT&T

Competitive Telecommunications Association (CompTel)

Martha Dickerson

Richard Foley

Gateway Technologies, Inc. (Gateway)

Inmate Calling Services Providers Coalition (Coalition)

Intellicall, Inc. (Intellicall)

Omniphone, Inc.

State of California Department of General Services, Telecommunications Division

State of California Department of Corrections

Parties Filing Comments or Reply Comments Pursuant to October 10, 1996 Public Notice

AMMEX

APPC

AT&T

Bell Atlantic, BellSouth, NYNEX

Consolidated Communications Operator Services, Inc. (CCOS)

California Commission

Coalition

CompTel

Intellicall

InVision

Metropolitan Airports Authority (Airports Authority)

MCI

Oncor

Opticom

Pacific Telesis

Peoples

PIC, Inc.

Sprint

SWBT

Teltrust

USLD

USOC

U S WEST

Petitioners Filing for Reconsideration of Phase I Order:

CompTel

International Telecharge Incorporated (ITI)

LDDS Communications, Inc. (LDDS)

MCI

PhoneTel Technologies, Inc. (PhoneTel)

Polar Communications Corporation (Polar)

SWBT

Value-Added Communications (VAC)

Oppositions or Comments re Petitions for Reconsideration:

AT&T's Opposition filed March 11, 1993

APPC Comments filed March 19, 1993

Intellicall Comments filed March 19, 1993

LinkUSA Corporation Comments filed March 19, 1993

Opticom Comments filed March 22, 1993

Sprint Opposition filed March 19, 1993

SWBT Comments filed March 10, 1993

Other responsive pleadings:

APPC Reply filed March 30, 1993

AT&T Reply filed March 29, 1993

Capital Network System, Inc. (CNS) Reply to AT&T's Opposition to Petitions for Reconsideration, filed Apr. 1, 1993

CompTel Reply filed March 29, 1993

LDDS Reply filed March 29, 1993

MCI Reply filed April 1, 1993

PhoneTel Reply filed March. 29, 1993

APPENDIX C
COMMENT SUMMARY

A. COMMENTS ON ADDITIONAL ORAL BRANDING

Commenters Opposed to Universal Oral Rate Branding

1. AT&T, MCI, and Sprint maintain that the largest OSPs should not have to pay additional costs, and their customers should not have to bear unnecessary delays, merely because some OSPs charge prices for 0+ calls that are higher than those of the largest carriers.¹ AT&T states that no current technology enables OSPs to provide automatic rate information on all 0+ calls from payphones and other aggregator locations and that the use of live operators as an alternative would cause substantial post-dial delays, degrading service for consumers. AT&T also contends that such a requirement would increase costs for operator time and systems and require OSPs to pay substantial increased access charges, and thus a rate information requirement on all 0+ calls would require consumers to pay more for a less satisfactory service.² MCI asserts that, in order to disclose the rates for a call, "[a]ll calls may have to be sent to a live operator, in the near term" and estimates that this would cost an additional \$0.40 per call.³ Noting that all providers of operator services currently must disclose their rates on request under Section 64.703(a)(3) of the Commission's Rules, MCI maintains that the proposed rule would significantly increase the burden on OSPs, without significantly improving the protection afforded consumers under the current rule, and that the proposed requirement is not needed.⁴ If the Commission chooses to adopt a requirement for rate information, MCI maintains that offering the choice of getting a quote by pressing one of the keys on the telephone key pad "is more convenient to customers and less expensive to provide than other announcement alternatives."⁵ According to MCI, "giving call-specific quotes on all calls would require expensive development and high continuing costs (e.g. access charges) and would not provide commensurate consumer benefits."⁶

2. Other commenters similarly contend that a universal rate disclosure requirement would "penalize the service quality of the good actors in the industry who already are charging rates that are in

¹ AT&T Comments at 4; AT&T Reply, filed December 3, 1996, at 2; MCI Comments at 3-4; Sprint Reply Comments at 5-6; Sprint Reply Comments, filed December 3, 1996, at 1.

² AT&T Reply, filed December 3, 1996, at 1-2.

³ MCI Comments at 3.

⁴ *Id.* at 3-4. Section 64.703(a) provides, in pertinent part, that each provider of operator services shall "[d]isclose immediate to consumer, upon request and at no charge to the consumer--(i) A quotation of its rates or charges for the call . . ."

⁵ Letter from Leonard S. Sawicki, Director FCC Affairs, MCI, to William F. Caton, Secretary, Federal Communications Commission, June 20, 1997.

⁶ *Id.*

line with consumer expectations."⁷ They assert that such a requirement will only operate to increase the price of 0+ calls and burden an entire industry with "additional, totally unnecessary" costs, and that such a "total industry/total market" approach to the problem of price-gouging "is simply not in the public interest."⁸

3. GTE maintains that current Operator Service System (OSS) call rating systems cannot "rate quote the specific calls in question" and that none of the 0+ calls of its domestic telephone companies handled on a mechanized basis (about 80%) or on a typical operator-handled basis are currently rated by the OSS.⁹ GTE further maintains that, while it may be possible to enhance mechanized equipment to quote rates prior to the call, this likely would require significant capital outlays and take several years lead time to accomplish; and that its current mechanized equipment (costing approximately \$22 million in 1993) would most likely require a complete replacement for such a modification.¹⁰ GTE asserts that for calls handled by an operator, the average work time per call to determine and quote cost prior to call completion would likely double, increasing the operator surcharge per call accordingly; and that for both mechanized and operator-handled 0+ calls, quoting the call cost to consumers would significantly increase call holding time and necessitate additional trunking facilities.¹¹ GTE further maintains that, because call costs would have to be quoted to the billed party, the process would be further complicated, requiring additional equipment for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls.¹² GTE believes most other OSPs would report similar situations when assessing their equipment for enhancement to quote such call costs and that there would be little or no public benefit if these costs were mandated to all OSPs.¹³ If disclosure of rate information is required, quoting rates for maximum or average duration might have no relation to the call being placed and thus would distort the customer's perspective. Accordingly, GTE maintains that any mandated disclosures should quote the rate for the first minute and additional minutes, not average rates.¹⁴

4. The Metropolitan Washington Airports Authority (Airports Authority) states that the problem of excessive payphone charges does not exist at Washington National and Dulles airports because it "has not and would not accept a bid for payphone services at rates that exceed established industry norms."¹⁵ The Airports Authority maintains that a system of on-demand call rating would serve, in most

⁷ Peoples Comments, filed November 13, 1996, at 2.

⁸ U S WEST Comments, filed November 13, 1996, at 4.

⁹ GTE Comments at 7.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id. at 8.

¹⁴ Id.

¹⁵ Comments of Airports Authority, filed November 13, 1996, at 4.

cases, merely to make payphone service less convenient and less efficient at both airports.¹⁶ The view of the New York State Consumer Protection Board (NYSCPB) is that establishing benchmarks at levels no higher than the highest rates charged by AT&T, MCI and Sprint is preferable to requiring companies charging competitive rates to automatically disclose such prices to all consumers.¹⁷

5. Intellicall asserts that the significant associated costs and administrative burdens imposed upon the manufacturers and payphone providers "strongly militate against imposing any specific granular requirement on these entities."¹⁸ According to Intellicall, in addition to being operationally burdensome and costly, universal rate disclosure is impractical and technically infeasible.¹⁹ Intellicall asserts that the costs of implementing a mandatory, real-time exact audible rate disclosure requirement would be prohibitive with respect to both store-and-forward and network-based payphones.²⁰ If the Commission should require some form of rate disclosure, Intellicall urges a less granular approach, e.g., quoting the maximum rate (initial and additional periods) for a particular destination class of calls, which alternative is more readily implementable from a technical perspective and would avoid stranding investment in store-and-forward pay telephones.²¹ Intellicall's view, however, is that "given the wide variation in rates for different call types and the prevalence of distance-sensitive rates, it would be impossible to provide an 'average' or 'maximum' quote that is both accurate and informative to the caller."²² In addition, Intellicall asserts that such information "would have to be provided on every call -- including 0+ intraLATA and 0+ local calls -- which could be even more misleading to callers."²³

6. American Public Communications Counsel (APCC) states that "[m]anufacturers indicate that providing a complete set of rate tables for operator assisted calls within each payphone would place such huge demands on available memory capacity that the cost of such an implementation at store-and-forward payphones would be prohibitive for new payphones as well as for the installed base."²⁴ Pacific Telesis agrees with "the near unanimous view that currently no technology exists that would provide on

¹⁶ Id. at 3-4.

¹⁷ NYSCPB Comments at 5-6.

¹⁸ Intellicall Comments at 12.

¹⁹ Intellicall Reply Comments, filed December 3, 1996, at 2.

²⁰ Id. at 3.

²¹ Intellicall Comments at 15. See also Joint Reply Comments of Intellicall and Network Operator Services, Inc. at 20 (Disclosure of maximum rates for initial and subsequent minutes of use approach provides "unique benefit in that existing equipment need not be replaced.").

²² Letter from Steven A. Augustino, counsel for Intellicall, to William F. Caton, Secretary, Federal Communications Commission, June 12, 1997, at 2.

²³ Id.

²⁴ APCC Comments, filed November 13, 1996, at 3-4.

demand call rating information."²⁵ MCI concurs in this assessment and states that "[t]he only current method of providing information on demand is through a live operator."²⁶

7. US WEST maintains that, to the extent that the current rules may be insufficient to protect consumers, the challenge is primarily in the area of consumer education, not further regulatory mandates.²⁷ U S WEST opposes the imposition of mandatory rate disclosures on all 0+ calls and maintains that "[t]he Commission should deal with malcreants in this market . . . through enforcement activities."²⁸ U S WEST maintains that any mandate that ubiquitous rate information disclosures be made of every 0+ call from any aggregator station is not supported by general market demand, logic, or sound public policy theory and asserts that carriers should not be expected to expend substantial sums of money to remedy persistent consumer "head in the sand" behavior.²⁹ If, the Commission adopts rules requiring ubiquitous rate disclosure messages, U S WEST asserts that such messages should be required to do no more than provide the consumer the opportunity to stay on the line to secure rate information; that the particular presentation of the rate information should be left up to the OSP providing the service; that this model is capable of fairly easy implementation, access and use, and represents the most targeted model and, thus, "the model most in the public interest."³⁰ If a caller was not interested in rate quotes, the caller could bypass receiving any rate information by proceeding with the call through either an automated or live process.³¹

8. AMNEX contends that "given the costs and complexity associated with implementing per call pricing announcements," the Commission's proposal "is not practical."³² AMNEX, echoing the comments of other parties, asserts that "[t]he Commission's proposal would require the creation and maintenance of a very expensive, very large, dedicated database processor" that would require daily updating to account for rate changes, although such a database does not currently exist.³³ BA/BS/NYNEX contend that "[t]here is no indication that consumers want per-call price disclosure or that they would view it as an improvement to existing 0+ call services."³⁴

9. The IPTA contends that any rate disclosure on operator service calls would have to apply to all operator service calls, including 10XXX, 950, and 1-800 access code calls, and not solely

²⁵ Pacific Telesis Reply Comments, filed December 3, 1996, at 2.

²⁶ MCI Comments, filed November 13, 1996, at 3.

²⁷ Reply Comments, filed December 3, 1996, at 2.

²⁸ *Id.* at 6.

²⁹ U S WEST Comments, filed November 13, 1996, at 22.

³⁰ *Id.* at 22-23.

³¹ U S WEST Reply Comments, filed December 3, 1996, at 1.

³² AMNEX Comments, filed November 13, 1996, at 3.

³³ *Id.* at 2; see also BA/BS/NYNEX Comments, filed November 13, 1996, at 4.

³⁴ BA/BS/NYNEX Comments, filed November 13, 1996, at 4.

presubscribed 0+ calls.³⁵ The IPTA further argues that because OSPs would be unable to distinguish between an access code call and a 0+ call, the imposition of a mandated rate quote on 0+ calls would require OSPs to state the applicable rate on every call, increase call setup time, and provide unnecessary information to callers that dial access code operator service calls.³⁶ InVision Telecom, Inc. (InVision) states that it "does not believe that it would be in the public interest to force consumers to listen to a price disclosure they have no desire to hear."³⁷ InVision further contends that, "[s]pecifically, in the inmate environment consumers typically receive multiple calls from the same inmate, making a rate quote preceding each call repetitive and unnecessary."³⁸

10. A number of commenters allege that a significant barrier to the imposition of an oral rate branding requirement is the dialing delay.³⁹ Peoples argues that "[a]ny requirement for mandatory price disclosure of prices that already are in line with consumer expectations, prior to connecting these calls, will only cause greater distress for the consumer that expects a payphone call to be connected quickly without any unnecessary delay."⁴⁰ AMNEX argues that the necessary development of a database which would contain various call rates would "add from ten to fifteen seconds to the duration of the call, which would tie up trunks longer, increase access costs and require a higher number of trunks to serve the same number of calls."⁴¹ Oncor argues, that it is "highly unlikely that OSP rate disclosures could be provided in a manner which would increase call completion time by only 1.5 to 3 seconds."⁴²

11. In response to the Common Carrier Bureau's request for further comment on whether there are any industries in which price disclosure to consumers at the point of purchase is not the normal practice, Sprint, BA/BS/NYNEX, and MCI cite the electric, gas, and water utility services as applicable examples.⁴³ Sprint further cites the examples of auto and appliance repair shops and grocery stores which use scanners to register sales.⁴⁴ Citing provisions of TOCSIA, Oncor states that none of the referenced

³⁵ IPTA Comments, received July 18, 1996, at 6.

³⁶ Id.

³⁷ InVision Comments, filed November 13, 1996, at 5.

³⁸ Id.

³⁹ See, e.g., MCI Comments, filed November 13, 1996, at 3-4 ("customers indicated that the number one reason for dissatisfaction with 0+ operator services was that the call takes too long to set up.") Id. at 4.

⁴⁰ Peoples Comments, filed November 13, 1996, at 3.

⁴¹ AMNEX Comments, filed November 13, 1996, at 4.

⁴² Oncor Comments, filed November 13, 1996, at 5.

⁴³ Sprint Comments, filed November 13, 1996, at 1, 3; BA/BS/NYNEX Comments, filed November 13, 1996 at 1; MCI Comments, filed November 13, 1996, at 2.

⁴⁴ Sprint Comments, filed November 13, 1996, at 1, 3-4.

industries is "subject to more comprehensive requirements to ensure consumers' rights to price information at the time of service than the interstate 0+ calling industry."⁴⁵

12. With respect to the Bureau's inquiry regarding whether there are any telecommunications markets outside of the U.S. that already make use of price disclosure prior to call completion, the majority of parties either declined to answer this question⁴⁶, or were unaware of any instances of price disclosure prior to call completion.⁴⁷ BA/BS/NYNEX state that "as far as we have been able to determine . . . there are no communications markets that use price disclosure prior to completion of 0+ calls."⁴⁸ U S WEST does acknowledge that there are "smart payphones [which] contain a type of device that allows callers making certain types of calls (i.e.; cash or telephone debit cards) to know that the monetary value of their cash deposit or debit card is being used up."⁴⁹ U S WEST argues that this type of technology is present in other markets, including the United Kingdom, and that beyond these technological innovations, it is unaware of any additional technologies supporting on-demand call rating information.⁵⁰ Southwestern Bell Telephone Company (SWBT) contends that although "[i]f a customer calls the operator and requests a rate, the technology is in place within SWBT to quote the SWBT rate for any call within the serving area . . . there is no mechanized system for real-time quotation for 0+ calls."⁵¹

13. APCC contends that, "[i]f the Commission decides to impose a rate-disclosure-on demand requirement on all 0+ calls, regardless of the applicable rate, then those [payphone service providers] that provide store-and-forward operator services could incur crippling cost burdens."⁵² APCC suggests that the Commission should mitigate the financial impact of universal rate disclosure, through the adoption of a requirement for disclosure on demand rather than automatic disclosure of rates.⁵³ Teltrust Communications Services, Inc. (Teltrust) agrees with this assertion, arguing that its switch vendor, "has stated that implementation of real-time audible rate disclosure would require a major software upgrade," which would "result in significant cost to Teltrust and other carriers."⁵⁴ Other commenters agree, that, especially with respect to "store-and-forward payphones", rate disclosures would be technically infeasible

⁴⁵ Oncor Comments, filed November 13, 1996, at 3.

⁴⁶ See APCC Comments, filed November 13, 1996, at 4; see generally Peoples Comments, filed November 13, 1996; AMNEX Comments, filed November 13, 1996 (commenters did not address the question).

⁴⁷ See Sprint Comments, filed November 13, 1996, at 1; MCI Comments, filed November 13, 1996, at 3.

⁴⁸ BA/BS/NYNEX Comments, filed November 13, 1996, at 3.

⁴⁹ U S WEST Comments, filed November 13, 1996, at 15.

⁵⁰ Id. at 15-16.

⁵¹ SWBT Comments, filed November 13, 1996, at 3.

⁵² APCC Comments, filed November 13, 1996, at 8 (emphasis in original).

⁵³ Id.

⁵⁴ Teltrust Comments, filed November 13, 1996, at 3.

and necessitate forced retirement of existing equipment.⁵⁵ USOC contends that its "embedded base equipment at hotel locations is not capable of providing rates on a real-time basis. . . [i]n order to implement real-time rate quotes on all calls, site equipment would have to be changed completely."⁵⁶ Intellicall requests that its ULTRATEL store-and-forward payphones be exempted from a proposed requirement that rate quotes be provided to callers, without their having to re-dial a second number, asserting that such payphones lack sufficient internal memory to be retrofitted to do so.⁵⁷

Commenters Supporting Universal Oral Rate Branding

14. Opticom asserts that the Commission's proposal to impose a requirement on all OSPs to disclose orally their rates to consumers when a call is placed could immediately address many of the concerns prompting the consideration of BPP and at a much lower cost to consumers and carriers.⁵⁸ Moreover, according to Opticom, the costs associated with a disclosure requirement would be minimal and most OSPs already have the technology to allow for full disclosure when a call is made and prior to the time charges are incurred.⁵⁹ Opticom asserts that: the concept of cost is fundamental to a healthy marketplace; access to cost information prior to purchase is expected by members of the consuming public; and that there are two technological systems currently capable of providing on-demand cost information to consumers purchasing operator services.⁶⁰ Opticom states that it currently uses voice file technology to brand its operator service calls; that such technology would not require the purchase of any new hardware or software but that various voice files would have to be developed for each on-demand rate at an approximate cost of \$500 per voice file; that such technology could be developed and implemented in less than 7 months but that most OSPs have rating complexities, such as mileage or time of day sensitivity, that exceed such technology's capabilities.⁶¹ Opticom also identified a second type of technology system which it states is "fairly mature and well suited for the purpose of providing on-demand call rating information," *i.e.*, voice annunciators or text-to-speech converters, the same technology used for annunciating numbers at the end of a directory assistance call.⁶² Opticom estimates that it would take approximately two people working between eight and eighteen months or "two man years" to develop the necessary software.⁶³ Opticom asserts that both types of rating systems thus can be implemented timely

⁵⁵ Intellicall Reply at 17-18.

⁵⁶ USOC Comments, filed November 13, 1996, at 6.

⁵⁷ Letter from Judith St. Ledger-Roty, Counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (March 21, 1997).

⁵⁸ Opticom Comments at 8 n.31.

⁵⁹ Id.

⁶⁰ See Opticom Comments, filed November 13, 1996, at Summary.

⁶¹ Id. at 2.

⁶² Id.

⁶³ Id. at 3-4.

and at a reasonable cost to OSPs.⁶⁴ Moreover, according to Opticom, on-demand call rating would create only a minimal delay in call processing, approximately 12 seconds, and the technology could be developed to allow consumers to voluntarily bypass this rate information.⁶⁵ For these reasons, Opticom concludes, the Commission should adopt regulations requiring OSPs to provide on-demand rate information prior to call completion.⁶⁶

15. In its response to the Bureau's Public Notice, CompTel recommends that the Commission adopt an alternative audible disclosure requirement that it now proposes instead of the disclosure described in OSP Reform Notice. CompTel asserts that its proposed disclosure requirement would not only be helpful to consumers but avoid what it regards as "the legal pitfalls of the Commission's proposal."⁶⁷ Specifically, CompTel now proposes that, before a customer may incur any charges for any interstate 0+ calls from an aggregator location, the presubscribed carrier serving that aggregator phone be required to provide an audible disclosure immediately after its carrier brand. Under CompTel's proposal, the customer would be instructed to press a key, e.g., the # key, to obtain a rate quote or assistance. Alternatively, at the option of the OSP, customers would be advised that they need only remain on the line to obtain rate quotes or assistance. Under CompTel's proposal, an OSP would not be permitted to require a caller to re-dial a second number to obtain a quote of its rates.⁶⁸ According to CompTel, the disclosure should be substantially in one of the following forms:

Option 1

BONG: "Thank you for using _____ . For assistance or a rate quote, please press the ___ key. To complete your call, please enter your calling card number now."

Option 2

BONG: "Thank you for using _____ . For assistance or a rate quote, please stay on the line. To complete your call, please enter your calling card number now."⁶⁹

16. Because the disclosure it proposes is simple, direct, and consistent on each call, CompTel claims carriers could implement it with minimal expense, integrating it with the audible brand they already are required to provide.⁷⁰ CompTel contends that the overwhelming majority of OSPs would be able to provide the message it proposes if they were given the option of choosing among four methods for callers

⁶⁴ Id. at 3.

⁶⁵ Id.

⁶⁶ Id. at Summary.

⁶⁷ CompTel comments, filed Nov. 13, 1996, at 2-5.

⁶⁸ Id. at 3.

⁶⁹ Id.

⁷⁰ Id. at 5.

to obtain a rate quote, *i.e.*, (1) "time out" (stay on the line) to a live operator, (2) press "0", (3) press "#", or (4) press "*X" where X is a specified digit on the keypad.⁷¹

17. The National Association of Attorneys General (the Attorneys General) support adoption of rules requiring universal rate disclosure to the paying party, believing that option "would be administratively simpler, more informative, and fair"⁷² than a benchmark system, and that "a complete and accurate universal rate disclosure requirement will increase consumer awareness and lead to more competitive pricing."⁷³

18. The People of the State of California and the Public Utilities Commission of the State of California (the California Commission) argues that "disclosure on all calls will better serve to reduce customer confusion."⁷⁴ The California Commission, which strongly advocates BPP as the preferred solution to OSP pricing abuses, supports price disclosure by OSPs for all 0+ calls "because, in the interim, the full disclosure alternative would appear to provide many of the benefits of BPP at little, if any, cost to consumers."⁷⁵ It asserts that disclosure of OSP rates prior to the customer's use of the service is "a reasonable minimal protection," which should be afforded the OSP customer, and "believes that this expedient safeguard will significantly deter pricing abuses, and may result in a substantially lowered level of consumer complaints."⁷⁶ The California Commission favors disclosure of both the initial minute rate, including any operator or other surcharges, and subsequent minute rates, but not an averaged rate.⁷⁷

19. The North Dakota Public Service Commission (North Dakota Commission) favors the oral disclosure of rates on all OSP calls over any benchmark approach because it "will contribute to a better consumer awareness of OSP pricing practices" which in turn "will enhance customers' ability to make true choices."⁷⁸ The North Dakota Commission states that, in its experience, operator service providers will increase their rates "to meet the competition" and that in such an environment, it does not believe the alternative benchmark proposal will have the intended result of motivating providers to keep rates low.⁷⁹

⁷¹ Letter from Steven A. Augustino, Counsel for CompTel, to William F. Caton, Secretary, Federal Communications Commission, April 4, 1997, at 1.

⁷² Attorneys General Comments at 4.

⁷³ *Id.* at 8.

⁷⁴ California Commission Comments at 5.

⁷⁵ *Id.* at 3.

⁷⁶ *Id.* at 4.

⁷⁷ *Id.*

⁷⁸ Letter from Susan E. Wefald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, to Secretary, Federal Communications Commission (July 3, 1996).

⁷⁹ *Id.*

In addition, it believes "the benchmark alternative will be harder for companies to implement, harder for the FCC to enforce, and harder for customers to understand."⁸⁰

20. In lieu of the imposition of a benchmark system, USLD "implores that any branding requirement . . . be imposed in a non-discriminatory manner, ubiquitously across all carriers regardless of their individual end user rates."⁸¹ Oncor reiterates its previously stated position that if the Commission orders rate disclosures, the requirements "should be applicable to all providers of 0+ services, and should not be keyed to some arbitrarily established rate 'cap' or rate 'benchmark' set by the Commission"⁸²

21. The Attorneys General express their support for universal rate disclosure, arguing "[t]he most obvious benefit of universal rate disclosure is that OSPs charging outrageous rates will no longer be able to surprise customers with a staggering bill weeks or months after the call in question. Rather, consumers, after hearing the rate disclosure, will be able to decide whether to incur the quoted cost or to access another provider."⁸³

22. Omniphone, in response to the Bureau's requests for further information contends that "[a]ll 'smart technology' manufactured by Omniphone today has the ability to provide on-demand rate quotes to the calling party on all 0+ and 1+ calls . . . this includes public payphones and inmate phones."⁸⁴ Omniphone states that, in response to TOCSIA, it developed software that enabled its public payphone technology to provide accurate rate quotes for the specific call in question, "upon request, to the calling party for coin, calling card, and collect calls."⁸⁵ Omniphone argues that "the smart technology used by that coin payphone could just as easily quote 0+ rates if they do not now."⁸⁶

23. The Pennsylvania Commission recommends, among other things, that OSPs be required to disclose, immediately following their oral identification brand, the specific aggregator surcharge for calls handled by that OSP.⁸⁷ The Pennsylvania Commission contends that a disclosure requirement for 0+ calls could eliminate prices charged in excess of competitive rates and should

⁸⁰ Id.

⁸¹ USLD Comments, filed November 13, 1996, at 13. (conversely, USLD contends that customers will have a negative response to additional call delay as a result of price disclosure. Id. at 10.)

⁸² Oncor Comments, filed November 13, 1996, at 1; see also Oncor Comments at 3-4.

⁸³ Attorneys General Comments at 5.

⁸⁴ Letter from Les Barnett, President, Omniphone, Inc. to the Commission (October 29, 1996), at 1.

⁸⁵ Id. at 2-3.

⁸⁶ Id. at 1.

⁸⁷ Pennsylvania Commission Reply Comments, filed May 5, 1995, at 11. In addition to supporting the NAAG proposal for a voice over on OSP calls to allow consumers to avoid the aggregator surcharge, the PaPUC has urged the Commission to cap OSP rates and to establish a \$1.00 cap on aggregator surcharges. Id. at 10-11.

save consumers money.⁸⁸ The Pennsylvania Commission, in addition to supporting oral rate disclosure, also recommends that the Attorneys General's proposed disclosure requirement be modified to include the amount of the surcharge over and above the underlying carrier's rates that the end user will be assessed.⁸⁹ The Pennsylvania Commission argues 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."⁹⁰

B. COMMENTS ON RATE BENCHMARK OR PRICE REGULATION

Commenters in Favor of Proposed FCC Rate Benchmark Rules

24. Ameritech submits in its comments "that undoubtedly there should be such benchmarking, and that the three largest IXC's are the best yardstick."⁹¹ Ameritech claims that "each of those carriers, [AT&T, MCI, & Sprint] besides providing operator services at aggregator locations, also serves a vast base of *non-aggregator* (*i.e.*, ordinary residence and business) locations."⁹² Ameritech asserts that the three largest IXC's have operated in a competitive environment and serve as "something of a benchmark for the *same* carriers' rates that apply at aggregator telephones."⁹³ Ameritech further asserts that "specialized carriers who only serve aggregators have never been in a ballot campaign competing directly for the presubscription choices of end users so their charges never had to face the rigors of competition."⁹⁴ Accordingly, Ameritech maintains that, "[s]ince those carriers thus have no internal competitively-established benchmark against which their aggregator rates can be compared, it is entirely appropriate, in the interests of protecting consumers, to compare their aggregator rates to the benchmark rates of AT&T, MCI, or Sprint, which long have had to stand against competitive challenge."⁹⁵

25. The IPTA argues that the Commission should use its authority to adopt rate benchmarks " which are tied to the Commission's actions taken in the Payphone Compensation

⁸⁸ Pennsylvania Commission Comments at 5 (The Pennsylvania Commission maintains its position that regulatory oversight of OSP rates through the use of benchmarks is necessary. *Id.* at 5-6.

⁸⁹ Pennsylvania Commission Reply Comments at 10.

⁹⁰ *Id.* at 10-11.

⁹¹ Ameritech Comments at 4.

⁹² *Id.* (emphasis and parentheses in original).

⁹³ *Id.* at 4-5.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.*

Order.⁹⁶ The IPTA argues that "[a]fter the Commission eliminates the subsidies to local exchange carrier payphone providers (as required by Section 276 of the Telecommunications Act of 1996), and after the Commission [sic] sets a fair rate of compensation (which at a minimum exceeds costs) for access code calls and subscriber 1-800 calls, then the Commission could set rate caps which are acceptable to consumers."⁹⁷

26. Sprint states that "[a]s a corporation that participates in both tiers of the market, Sprint fully supports the benchmark concept proposed" by the Commission.⁹⁸ It agrees that "[t]he requirement to disclose rates that exceed the benchmark level will create a powerful inducement to moderate the changes in the high-rate tier of the market."⁹⁹

27. Certain commenters argue that a benchmark rate system has merit, subject to certain modifications. The Virginia Commission proposes that benchmark rates be established utilizing "the AT&T dominant carrier tariff rate schedule, plus a flat increase (as opposed to a percentage increase) of, say, \$.50 per call."¹⁰⁰ The Virginia Commission argues that such an approach would be simple to administer and would "meet the FCC objective of reflecting consumers' expectations."¹⁰¹ Sprint supports a benchmark rate of 115% of the weighted average operator service charges imposed by Sprint, AT&T and MCI.¹⁰² Sprint further contends that there "is no demonstrated need to impose the benchmark and disclosure requirements on 0+ calls made from business and residential phones."¹⁰³ US WEST suggests that "the benchmark or rate ceiling should be as targeted and remedial as possible, focusing on those rates/prices where it is predictable that consumer complaints will be generated."¹⁰⁴ US WEST further urges that "[t]he

⁹⁶ IPTA Comments at 5.

⁹⁷ Id. (parentheses in original).

⁹⁸ Sprint Comments at 4.

⁹⁹ Id.

¹⁰⁰ Virginia Commission Comments at 3.

¹⁰¹ Id.

¹⁰² Sprint Comments at 5. Sprint, however, in anticipation of deliberate actions by other OSPs to avoid the spirit of the benchmark disclosure requirements, suggests, "the benchmarks should be revised quarterly, rather than annually. . . with a much shorter lag than the proposed six months between the date on which rates are based and the date on which they begin to apply." Id. at 5-6.

¹⁰³ Id. at 6.

¹⁰⁴ US WEST Reply Comments at 14.

benchmark should not necessarily try to emulate presumed 'just and reasonable rates' or to conform to speculative 'customer expectations.'"¹⁰⁵

28. NTCA states that ["it] is not opposed to the use of benchmarks for 0+ interstate calls, so long as the plan does not place the burden of monitoring and enforcement on its LEC members."¹⁰⁶ Further, NTCA submits that the proposal to set a benchmark by approximating the average price charged by AT&T, MCI and Sprint is reasonable. Pacific Telesis asserts that "setting a benchmark level for operator service rates will help to curb some of the abuses present in the marketplace", and that a "useful benchmark would be based on the average price charged by AT&T, MCI and Sprint."¹⁰⁷ Pacific Telesis supports oral disclosure of rates which exceed the benchmark, on the ground that "disclosing the actual price of the call is the only disclosure that will address the problem these rules are trying to solve."¹⁰⁸

Commenters Opposed to Proposed FCC Benchmark Rules

29. AMNEX and CompTel contend that the use of the rates assessed by AT&T, MCI, and Sprint to define consumer expectations violates the Equal Protection Clause of the U.S. Constitution.¹⁰⁹ According to AMNEX, the benchmark does not apply equally to all OSPs because, absent a precipitous increase in their own rates, which although legal have not been found to be just and reasonable, AT&T, MCI, and Sprint by definition would be excluded.¹¹⁰ CompTel states that under the proposed benchmark, AT&T could raise its surcharge from \$2.25 to \$3.75 on third-party, operator station rates (an increase of over 67%) and still fall within the benchmark rate, which would increase to \$3.76, all other factors being equal. Relying on Supreme Court cases, CompTel contends that "the Commission may not grant preferences to preferred classes of carriers, and penalize others, simply based upon a hostility toward the disfavored class."¹¹¹ CompTel further argues that a disclosure requirement based on the rates of

¹⁰⁵ Id.

¹⁰⁶ NTCA Comments at 4-5.

¹⁰⁷ Pacific Telesis Comments at 3.

¹⁰⁸ Id. at 6.

¹⁰⁹ AMNEX Comments at 3; CompTel Comments at 14-15. As noted by one commenter, the Equal Protection Clause directs that "all persons [individuals and corporations] similarly circumstanced shall be treated alike." Peoples Reply Comments at 10 n.28 (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, (1920)). The fourteenth amendment to the U.S. Constitution provides, inter alia, that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

¹¹⁰ AMNEX Comments at 3.

¹¹¹ CompTel Comments at 14, (citing Romer v. Evans, 116 S. Ct. 1620, 1628 (1995) (quoting Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973))).

the Big Three would be arbitrary and discriminatory and deny all other OSPs equal protection of the laws.¹¹² CompTel states that because AT&T, MCI and Sprint permit but do not offer to bill and collect PIFs for aggregators such as hotels that presubscribe to them, these fees are not included in calculating the benchmark, even though they are part of the total charges for which consumers would be liable. CompTel contends that this arbitrarily penalizes those OSPs that collect PIFs on behalf of aggregators that presubscribe to them and that such distinction is arbitrary and capricious.¹¹³ Cleartel/ConQuest contend that any standard disclosure that only applies to the smaller OSPs, and not to the three largest carriers, would be arbitrary and discriminatory.¹¹⁴

30. Noting that OSPs have many different classes of automated and live-operator-assisted calls as well as a variety of rates based on such factors as location, the jurisdictional nature of the call, and the distance of the call, AMNEX contends that if the FCC opted for a lesser disclosure regulation, such as the disclosure of its highest or average rate for a seven-minute domestic call, the requirement would in many cases only serve to confuse or mislead customers about the rates they actually would be charged.¹¹⁵ AMNEX further contends that "alternative proposals . . . would compel affected OSPs to make commercial speech that was misleading or confusing."¹¹⁶ AMNEX states that, "[b]ecause such speech would not directly advance the FCC's and [Congress'] goal of allowing consumers to make informed choices when making operator services calls, and could even serve instead to frustrate that purpose, such a regulation would contravene the First Amendment protection afforded commercial speech."¹¹⁷

31. AMNEX and CompTel contend that TOCSIA does not authorize the Commission to require OSPs to quote their exact charges on each call.¹¹⁸ According to CompTel, Section 226(h)(2) allows the Commission only to require OSPs to state that rates are available on request and that "the Commission is not free to circumvent the OSP branding requirement by using it as

¹¹² Id. at 14-15.

¹¹³ Id. at 15.

¹¹⁴ Cleartel/ConQuest Comments at 7-10.

¹¹⁵ AMNEX Comments at 8-9, n. 22.

¹¹⁶ Id.

¹¹⁷ Id. (citing Zauderer v. Office of Disciplinary Council, 105 S. Ct. 2265, 2275, 2278, (1995) (regulation of commercial speech must serve a substantial governmental interest and be tailored to directly advance that interest). The first amendment provides, inter alia, that "Congress shall make no law ... abridging the freedom of speech" U.S. Const. amend. I).

¹¹⁸ AMNEX Comments at 5-8; CompTel Comments at 7.

a vehicle to bootstrap any information disclosure the Commission desires."¹¹⁹ Similarly, AMNEX contends that TOCSIA expressly delineates the authority the Commission has to impose a pre-connection disclosure requirement and "limits" that authority to information concerning the availability of rates, not the rates themselves.¹²⁰ AMNEX further contends that "if carrier identification is to be equated with disclosure of rates," a conclusion that AMNEX finds illogical, "then *all* OSPs, including AT&T, MCI and Sprint, must disclose their rates prior to call connection, and the benchmark-related disclosure requirement is indefensible."¹²¹

32. AMNEX and CompTel contend that the Commission lacks authority to adopt its benchmark price disclosure proposal, not only under Section 226(h)(2) of the Act, but also under other sections of the Act.¹²² AMNEX contends that adoption of a benchmark as proposed would constitute ratemaking that would not be in compliance with the Commission's authority to prescribe rates.¹²³ According to AMNEX, "rates consumers are willing to pay have never been relevant to a determination to reasonableness" and because the proposed benchmark is not based upon a record inquiry into the costs of providing operator services, the benchmark cannot be justified as just and reasonable.¹²⁴ Finally, AMNEX contends that the general provisions governing the Commission's rulemaking authority contained in Sections 4(i) and 226(d)(1) of the Act do not authorize the Commission to adopt its benchmark price disclosure proposal.¹²⁵ Similarly, CompTel contends that, for all practical purposes, the proposal would "prescribe" rates and the absence of any Commission finding, based on record evidence, that the prescribed rate is just and reasonable is "fatal to the Commission's exercise of its benchmark ratemaking authority under Section 205(a)."¹²⁶ CompTel further contends that the proposal cannot be

¹¹⁹ CompTel Comments at 7-8.

¹²⁰ AMNEX Comments at 5.

¹²¹ Id. at 6 (emphasis in original).

¹²² Id. at 3-8; CompTel Comments at 5-11.

¹²³ AMNEX Comments at 3-4.

¹²⁴ Id. at 4.

¹²⁵ Id. at 6. Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 226(d)(1) requires, *inter alia*, that the Commission prescribe regulations to "ensure that consumers have the opportunity to make informed choices in making [interstate operator services telephone] calls." 47 U.S.C. § 226(d)(1)(B).

¹²⁶ CompTel Comments at 9-10. Section 205(a) provides that:

[w]henever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification,

justified under provisions of the Act that require carrier-specific hearings before prescribing a "hard" rate, which it defines as that which a carrier may not exceed under any circumstances, and that the affected carriers have not been afforded the "full opportunity for hearing" required under Section 205 of the Act for adoption of benchmark rates other than those that it has proposed.¹²⁷

33. Cleartel/ConQuest assert that an FCC rate benchmark is the "functional equivalent of an FCC-prescribed OSP rate, even if the effect of exceeding the benchmark is only a trigger for rate-disclosure announcements."¹²⁸ While they concede that setting a benchmark rate level for OSP rate disclosures "is not per se ratemaking," they state that "it effectively establishes an industry-wide rate, because OSPs with rates exceeding this level will be driven to set rates at or below the benchmark level to avoid announcement burdens."¹²⁹

34. CompTel asserts that the Commission's proposal to rely on "vague" conceptions of consumer "expectations" as the rationale for the proposed benchmark is legally and factually insufficient.¹³⁰ In its view, rates that consumers expect to pay for "away from home" calling are not a valid legal basis for prescribing carrier rates.¹³¹ CompTel also argues that even if it is assumed that AT&T, MCI and Sprint's rates apply to the majority of minutes from aggregator telephones, this does not define consumer expectations in all operator service contexts.¹³² AMNEX notes that FCC reports indicate that more consumers have complaints about AT&T than

regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed . . .

47 U.S.C. 205(a).

¹²⁷ CompTel Comments at 10.

¹²⁸ Cleartel/ConQuest Comments at 7.

¹²⁹ Id. at 7-8 (footnote omitted).

¹³⁰ CompTel Comments at 11-12.

¹³¹ Id.

¹³² Id. at 13. CompTel states for example that a survey it took "found that a number of major hotels in Washington, D.C. charged 40 percent or more in excess of AT&T's daytime rates, even where AT&T was the presubscribed OSP for the telephone." (emphasis in original, footnote omitted) id. at 12. CompTel notes that, even though debit cards avoid substantial costs otherwise associated with a calling card call, such as a third-party validation, billing and collection, and live operator expenses, a 10-minute call with a Sprint debit card "would exceed the Commission's proposed customer dialed calling card charge by over \$1." id. at 13 (footnote omitted).

any other OSP, which "suggests that many persons simply are unaware of the high rates for operator services in general compared to those for direct dialed 1+ calls . . . " and, accordingly, that "customer willingness to pay is a fickle matter and certainly not a sound basis upon which to base a ratemaking."¹³³ ClearTel/ConQuest agree with CompTel's view that expectations of consumers is an invalid standard for ratesetting. Further, they contend that, even if a rate benchmark could be justified on the basis of consumer expectations, the choice of the three largest OSPs is "an administrative shortcut lacking in rational public policy justification," is "entirely arbitrary," is discriminatory "by definition," places an uneven burden on smaller OSPs, "would stigmatize all carriers other than AT&T, MCI and Sprint for the traveling public," and "creates a significant opportunity for anticompetitive pricing."¹³⁴

35. ClearTel/ConQuest also argue that the OSP Reform Notice's benchmark and disclosure proposal would result in excessive regulations that impose burdensome and misleading requirements on OSPs and consumers alike.¹³⁵ USOC contends that "[n]either benchmark nor oral notification of rates are supported by any evidence."¹³⁶ HCI argues that the additional time it will take to process and disclose the information "will cause many otherwise-satisfied callers to hang up and go elsewhere even before the rate is delivered."¹³⁷

36. ACTA submits that the Commission's benchmark proposals cannot pass Regulatory Flexibility Act (RFA) muster and that "a price disclosure requirement for all 0+ calls would provide consumers with the information necessary to make informed choices, and do away with the need for benchmark rates and oral disclosure requirements."¹³⁸ ACTA considers the Commission's tentative conclusion to rely on the Big Three's rates to establish publicly acceptable rates as "simply unsound" because it "ignores the different underlying costs borne by smaller carriers and the economic disparities which exist between the Big Three carriers and all other OSPs."¹³⁹ ACTA asserts that OSPs will be forced to charge rates below the Big Three benchmark rates to get consumers to use their services, and that such rates will not allow these carriers to recover their costs and a reasonable profit.¹⁴⁰ Accordingly, such proposal "has a confiscatory effect and the already disadvantaged smaller OSPs will be unable to sustain

¹³³ AMNEX Comments at 3-4 n.8.

¹³⁴ ClearTel/ConQuest Comments at 8-9.

¹³⁵ Id. at 4.

¹³⁶ USOC Comments at 7.

¹³⁷ HCI Comments at 1.

¹³⁸ ACTA Comments at 1.

¹³⁹ Id. at 2 (emphasis in original).

¹⁴⁰ Id. at 3.