Exhibit 7

13 F.C.C.R. 6122, 13 FCC Rcd. 6122, 11 Communications Reg. (P&F) 1, 1998 WL 31845 (F.C.C.)

NOTE: An Erratum is attached to the end of this document.

Federal Communications Commission (F.C.C.)

Second Report and Order and Order on Reconsideration

IN THE MATTER OF BILLED PARTY PREFERENCE FOR INTERLATA 0+ CALLS

CC Docket No. 92-77
FCC 98-9

Adopted: January 29, 1998

Released: January 29, 1998

By the Commission: Commissioner Tristani issuing a statement

I. INTRODUCTION

1. In this Second Report and Order and Order on Reconsideration, we address the problem of widespread consumer dissatisfaction concerning high charges by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as payphones, hotels, hospitals, and educational institutions.[FN1] Today, callers at such locations who dial "0" followed by an interexchange number typically do not know what rates the particular OSP will be charging.[FN2] We amend our rules to require OSPs to disclose orally to away-from-home callers how to obtain the total cost of a call, before the call is connected.[FN3] This rule makes it easier for such callers using operator services to obtain immediately the cost of the call, prior to the call being completed.[FN4] Under the current rules, to obtain rate information, a 0+ caller generally has to dial a separate number to reach the OSP and inquire about the OSP's rates. This action should eliminate the surprise that many consumers encounter upon being billed for an operator services call. Further, requiring that OSPs divulge this information without the consumer having to dial a separate telephone number more readily enables consumers to obtain valuable information necessary in making the decision whether to have that OSP carry the call at the identified rates, or to use another carrier.

2. As discussed below, we believe that adoption of this rule will result in better informed consumers, foster a more competitive marketplace, and better serve the public interest than if we were to establish price controls or rate benchmarks.[FN5] We also decline to implement a billed party preference (BPP) approach to the problem of high rates.[FN6] We also deny petitions for reconsideration of our Phase

I Order in this proceeding, where we declined to implement a fourth alternative to the problem, namely, a 0+ in the public domain approach, in which OSPs would be entitled to access the calling card validation databases of all carriers.[FN7]

3. In this order we also conclude that we should not, at this time, either waive or forebear from enforcing the requirement that OSPs file informational tariffs pursuant to Section 226 of the Communications Act.[FN8] We amend our rules, however, to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers.[FN9]

II. BACKGROUND

4. This Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs for calls from public phones at away-from-home aggregator locations.[FN10] In 1990, Congress responded to such consumer concerns by providing the Commission and consumers with additional tools to address abusive practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.)[FN11] Under TOCSIA, an aggregator must, among other things, allow consumers the option of using an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the particular OSP the aggregator has selected as its preferred or presubscribed interexchange carrier (PIC) for long-distance calls.[FN12] Further, under TOCSIA, OSPs are required to file and maintain tariffs informing consumers of, not only their interstate charges, but also any applicable premises-imposed fee (PIF) or aggregator surcharge collected by the OSP or permitted in an OSP's contracts with aggregators.[FN13]

5. The Commission initiated Phase I of the instant proceeding in May, 1992 to examine alleged competitive inequities arising from AT&T's issuance of its proprietary card and short term proposals by many of AT&T's competitors to restrict the use of proprietary carrier cards with 0+ access.[FN14] At the same time, we also initiated an investigation of long term issues related to certain interexchange carrier (IXC) calling card practices, including a BPP routing system for all 0+ interLATA calls (Phase II).[FN15] In November, 1992, the Commission released a Report and Order with respect to Phase I of this proceeding, declining to adopt a "0+ in the public domain" proposal or other alternative interim remedies proffered by AT&T's competitors.[FN16] In Phase II, we are addressing, on a generic basis, the continuing complaints and concerns over the high level of charges billed consumers by many OSPs.[FN17]

6. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted.[FN18] The goal of the 1996 Act is to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition."[FN19] The 1996 Act requires that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations.[FN20] On June 6, 1996, the Commission

released a Second Further Notice of Proposed Rulemaking in the instant proceeding[FN21] seeking comment on whether, under the 1996 Act, we should forbear from applying the informational tariff filing requirements of Section 226.[FN22] The Commission also sought comment on whether to require all OSPs to disclose their rates on all 0+ calls.[FN23] Alternatively, the Commission sought comment on a tentative conclusion that we should: (1) establish benchmarks for OSPs' consumer rates and associated charges that reflect what consumers expect to pay and (2) require OSPs that charge rates and/or allow related PIFs whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest interstate, interexchange carriers to disclose the applicable charges for the call to consumers orally before connecting a call.[FN24] Further, with respect to collect calls initiated by prison inmates, we sought comment on whether the public interest would be better served by some alternative to BPP.[FN25]

7. In the OSP Reform Notice, we noted that OSPs generally compete with each other to receive 0+ traffic by offering commissions to payphone or premises owners on all 0+ calls from a public phone. In exchange for this consideration, the premises owners agree to designate the OSP as the "presubscribed" IXC or PIC serving their payphones.[FN26] Many OSPs using this strategy agree to pay very high commissions to both premises owners and sales agents who sign up those premises owners and claim, as a consequence, they must assess very high usage charges to consumers placing calls from payphones. While this process has generated added revenues for the premises owners and sales agents, it forces callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP.[FN27] Because payphone owners and other aggregators did not earn any commissions on these so-called "dial around" calls, many aggregators blocked the use of access codes from their phones.[FN28]

8. As noted above, Congress enacted TOCSIA in 1990, which directed the Commission to promulgate regulations to "protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls ... [and to] ensure that consumers have the opportunity to make informed choices in making such calls."[FN29] Among the regulations that we have issued pursuant to that mandate is a requirement that payphone providers and other aggregators permit callers to use 10XXX, 1-800, and 950 access codes to reach their carrier of choice.[FN30]

9. Branding requirements that the Commission adopted in response to TOCSIA currently require an OSP to "[i]dentify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call."[FN31] This identification is intended to notify consumers of the identity of the presubscribed OSP before they purchase service from that OSP.[FN32] Consumer education initiatives by the industry, government, and the media appear to have helped produce a favorable downward trend over recent years in the number of complaints received by the Commission about high OSP rates. Nevertheless, more than five years after enactment of TOCSIA, the high rates of many OSPs and surcharges imposed by aggregators continue to be a concern.[FN33] In 1995, the second largest category of complaints processed by the Commission's Common Carrier Bureau consisted of complaints directed against OSPs, and the vast majority of these concerned rates and charges that consumers thought were excessive.[FN34] In 1996; the Commission processed 4,132 written complaints about the

level of interstate rates and services of OSPs.[FN35] Accordingly, we examine in the next sections what additional steps we can and should take to foster greater competition by OSPs.

III. ADDITIONAL ORAL BRANDING

A. Background

10. In our OSP Reform Notice, we sought comment on the benefits and costs associated with imposing a price-disclosure requirement on all 0+ calls. We noted that while consumers generally are informed about the prices that they will be charged for the individual 1+ calls that they make from their homes, they may not be aware that 0+ calls from outside the home may be more expensive than such 1+ calls. We asked commenters to evaluate whether the benefits of requiring disclosure of the price for each 0+ call before a call is completed, including calls priced at levels that consumers expect, would exceed the costs of such disclosure. We indicated that such a requirement would further a pro-competitive, pro-consumer environment and obviate Commission regulation of particular nondominant carriers' prices.

B. Comments

11. Many commenters agree with our observation that the problem of consumers often being billed charges much higher than expected stems from a lack of adequate information for callers to make an informed choice.[FN36] Several commenters attribute this problem to a misconception among many consumers that if they use a LEC calling card to charge the call, the call will be handled by that LEC or at least at rates comparable to those charged by their residential or business presubscribed carrier or the LEC's rates.[FN37] In fact, these calls are typically billed at the presubscribed OSP's rates and the aggregator's surcharge. Consumers, relying on their mistaken impression, however, do not discover their error until they receive bills for their calls some time later.

12. The commenters disagree on whether a new price disclosure rule would be in the public interest.[FN38] Several commenters contend that a universal rate disclosure requirement will only operate to increase the price of 0+ calls and burden an entire industry with additional, unnecessary costs. Some argue that to the extent that current rules may be insufficient to protect consumers, the challenge is primarily in the area of consumer education. Others contend that a universal rate requirement will distress consumers that expect a payphone call to be connected quickly without unnecessary delay. One commenter states that it has no current technology in place to quote rates and that there is no mechanized system for real-time quotation for 0+ calls.

13. Other commenters assert 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. CompTel 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. Such disclosure would inform the customer how to obtain a rate quote without having to re-dial a second number. A number of state commissions and 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 fairer than a benchmark system, and lead to more competitive pricing.

C. Discussion

14. Insofar as ultimate consumers are concerned, we disagree with suggestions that the Commission should adopt regulations requiring OSPs to provide consumers with less, rather than more, information about the prices of their services and any related per call surcharge that an OSP permits in order to be selected by an aggregator to be its PIC. As noted previously, OSPs generally compete to receive 0+ traffic by offering commissions to payphone or premises owners, or allowing surcharges to be placed, on all 0+ calls from a public phone in exchange for being chosen by the premises owners as the PIC serving their phones at that aggregator location.[FN39] The North Dakota Commission, Sprint, and other commenters correctly note that competition between OSPs in this segment of the market for aggregator customers historically has driven prices to consumers up, rather than down, in order to finance such commissions and gain 0+ business.[FN40]

15. We cannot find that existing measures that are designed to protect consumers against excessive prices for 0+ payphone calls are adequate. Although current statutory dial-around, branding and posting requirements,[FN41] the Commission's implementing rules,[FN42] industry print, radio and television advertisements,[FN43] other industry, governmental and media consumer education initiatives,[FN44] marketplace competition, and the Commission's complaint and enforcement procedures provide important assistance to consumers, the large number of complaints concerning OSP rates we continue to receive indicates that these measures are not sufficient. Accordingly, we disagree with those commenters who contend that no additional rules are necessary at this time.[FN45] As the New York State Consumer Protection Board (NYSCPB) observed, current branding and posting requirements are insufficient notification to prevent consumer surprise and dissatisfaction because they provide no indication of what consumers will be charged for 0+ calls from an aggregator site.[FN46] We agree with its view that the high rate of complaints and inquiries, at both the federal and state levels, regarding excessive OSP charges demonstrates that stronger consumer safeguards are needed.[FN47] Some commenters rely on the Commission's findings and conclusions in its Final TOCSIA Report to support their claims that the market is sufficiently competitive and that all that is needed are targeted ad hoc enforcement proceedings or further consumer educational initiatives, not new rules.[FN48] The Commission there found that informed consumer choice "is the best means of ensuring that the rates consumers pay for interstate operator service calls are just and reasonable."[FN49] We concluded that, especially because of the availability and growing use of the dial-around option by consumers, market forces were securing rates for consumers that, "overall, are just and reasonable."[FN50] Accordingly, we found that "conditions in the operator services marketplace are such that we need not initiate a further proceeding to prescribe regulations concerning rates for operator services at this time."[FN51] Despite these conclusions regarding the operator services marketplace as a whole, the Commission noted that some OSPs "still charge rates that are substantially above the industry mean and these rates may warrant further action by the Commission."[FN52]

16. Based on our experience following release of the Final TOCSIA Report, we conclude that, although many OSPs compete for the business of aggregators, such

competition in this segment of the interstate, domestic interexchange market has not ensured that OSP charges and aggregator surcharges are not excessive insofar as ultimate consumers are concerned. Indeed, ACTEL, a payphone service provider (PSP) and OSP operating throughout New Jersey, readily conceded, that in the absence of adequate compensation for all dial-around and toll-free subscriber 800 and 888 calls, the rates for operator-assisted calls placed from its public pay telephones have been "too high."[FN53] Also, additional consumer educational initiatives, while necessary and appropriate to further consumers' awareness of their options and enable them to make an informed or better informed choice, have proven insufficient, and are unlikely to be sufficient, in and of themselves, to protect thousands of consumers who have not availed themselves of dial-around options. Nor has our overall experience with targeted ad hoc rate proceedings proven to be an efficient and effective means of ensuring just and reasonable charges in the OSP marketplace.

17. Under the rules adopted herein, before a 0+ interstate, domestic, interexchange call from an aggregator location may be connected by an OSP, the OSP must orally advise the caller how to proceed to receive a rate quote, such as by pressing the # key or some other key or keys, but no more than two, or by simply staying on the line.[FN54] This message must precede any further oral information advising the caller what to do to complete the call, such as to enter the caller's calling card number. Thus, under our rule, OSPs may require affirmative action by the consumer in order to receive a rate quote. The rule applies to all calls from payphone or other aggregator locations, including those from store-and-forward payphones or "smart" telephones. Potential OSP customers, after hearing an OSP's message, may waive their right to obtain specific rate quotes for the call they wish to make by choosing not to press the key specified in the OSP's message to receive such information or by hanging up.[FN55] Therefore, it is quite unlikely that all calls would entail costs associated with the intervention of a live operator. Further, the additional time for consumers to make 0+ calls and for OSPs' call set-up process for such calls should not be significant, given the brief language that OSPs are required to add following their audible identification brand. Just as now, consumers may bypass their right to receive rate quotes by proceeding to enter their credit card number. And OSPs may proceed with call set-up at the same time that the oral message required by our rules is being delivered. Of course, as currently mandated by TOCSIA and our rules, OSPs must continue to afford consumers a reasonable opportunity to terminate the telephone call at no charge before the call is connected.[FN56] OSPs may proceed with call set-up whether they require callers either to act affirmatively to receive rate quotes or merely to remain on the line to receive such quotes. We conclude that the information disclosure requirements adopted herein are sufficient to enable consumers to make informed business decisions in the marketplace. Such disclosure also is in accord with the dual purpose and policy objectives of TOCSIA, i.e., (1) "[protecting] consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls;" and (2) providing sufficient information to "ensure that consumers have the opportunity to make informed choices in making such calls."[FN57] This disclosure requirement will better ensure that consumers do not unintentionally use carriers that charge unexpectedly high rates for interstate calls, or use such carriers only because they are unaware that they have other options. We conclude that the rules adopted herein will serve to place downward pressure on prices charged in excess of competitive rates, and could save consumers part, if not all, of a previously estimated quarter of a billion dollars per

year.[FN58]

18. The proper allocation of resources in our free enterprise system requires that consumer decisions be intelligent and well informed.[FN59] In a competitive market, people will tend to search for the cheapest product or service when other factors are comparable. Accurate price information at the point of purchase is therefore important for commercial choices in a market economy. Especially, as here, when an OSP may not have established long-term relationships with potential customers, the absence of price information at the point of purchase inhibits competition from driving prices down and requires consumers, provided that they are so inclined, to spend more time to find the best or a lower price. OSP and aggregator practices that are designed to keep, or have the effect of keeping, callers ignorant of all applicable charges for a 0+ call from that particular aggregator location facilitates undue manipulation of consumers' choices in this segment of the interstate, domestic interexchange market.

19. We agree with the assessments of the Attorneys General and other commenters that rules requiring universal rate disclosure to the paying party would be administratively simpler, more informative, and fairer than our benchmark proposal and that "a complete and accurate universal rate disclosure requirement will increase consumer awareness and lead to more competitive pricing."[FN60] In further implementation of our responsibilities under TOCSIA "to ensure that consumers have the opportunity to make informed choices in making [interstate operator services telephone] calls,"[FN61] we shall require all OSPs to make additional oral disclosure at the point of purchase of 0+ calls. This will better enable consumers to be aware of, and have the option of, exercising their legal rights. We believe consumers need to have sufficient information, prior to being charged for an interstate call, to be fully aware of their right to know the cost of a 0+ call, including any applicable PIF or aggregator surcharge, and of their right to obtain rate quotes of the applicable OSP charges for the initial rate period and each subsequent rate period. Consistent with the intent of Congress when it enacted TOCSIA, we conclude that the price quoted for the call must include either the cost of the specific applicable surcharge, or the maximum surcharge that could be billed at that aggregator location.[FN62] We believe that these additional up-front oral disclosures will prove to be a more effective and efficient means of providing consumers the information they need to make fully informed decisions regarding the choice of an OSP than (a) various other messages that have been proposed by some commentators[FN63] or (b) requiring carriers that are not bound by our accounting and cost allocation rules to file cost data in support of their charges.

20. Several commenters, including Sprint, oppose adoption of a universal prior price disclosure requirement to address the problem of high OSP charges and related PIFs. These commenters maintain that such a requirement will lead to increased costs and delayed call completion.[FN64] Sprint continues to maintain that "the only way to mitigate, if not eliminate, the market power of premises owners is to require the implementation of [BPP]."[FN65] No one has denied, however, that to implement BPP would entail a considerable period of time and even greater costs. The cost of implementing BPP has been estimated at around a billion dollars, whereas the estimated costs of implementing the oral disclosure requirement are much less and will accomplish many of the same objectives.[FN66] Insofar as delayed call completion is concerned, the California Commission has concluded, on the basis of its experience from its 900 proceedings, that "price disclosure prior to call

completion will not create an unacceptable delay to consumers."[FN67] Pacific Telesis disagrees with the California Commission, contending that, because 900 rates are postalized and the disclosure is on the terminating line of the call, "the disclosures involved are so dissimilar as to be irrelevant."[FN68] Pacific Telesis does not explain, however, why the disclosure apparatus for 0+ calls from a particular aggregator site could not be sited on a particular originating, rather than terminating, number or line. It also fails to take into account that, as market segments become more competitive, current industry trends are toward postalized or flat rates, irrespective of such factors as mileage, time of day, and other specifics of a call.[FN69]

21. Further, requiring OSPs to disclose price information about their services does not infringe on their First Amendment commercial speech rights. The United States Supreme Court has stated that when the government "regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review."[FN70] In commercial speech cases, the Supreme Court has used a four-prong analysis:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquires yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[FN71]

22. Requiring OSPs to disclose the price of a 0+ call does not compel them to make misleading or confusing commercial speech, contrary to a commenter's suggestion,[FN72] and does not contravene their First Amendment rights. The Commission previously has imposed a similar requirement to disclose rates on providers of 900 service.[FN73] No common carriers, including OSPs, may lawfully provide interstate telecommunications service, except at rates that are just and reasonable.[FN74] Assuming, arguendo, that an OSP's charges and any applicable PIF associated with an interstate 0+ call are neither unreasonable nor misleading, then a governmental requirement that the OSP must disclose such charges at the point of purchase, i.e., mandating commercial speech that is not misleading concerning lawful activity, is not inconsistent with the first part of the four-prong analysis.

23. With respect to the second prong of the analysis, the rules adopted herein will directly advance a substantial governmental interest, i.e., protecting consumers from unfair and deceptive practices or possible rate gouging. We have received thousands of complaints annually over the past several years, directly from consumers, or from Congressional offices, alleging that callers from payphone and other aggregator locations have been billed excessive rates and charges. These represent the third largest category of complaints that our Common Carrier Bureau has processed over recent years. With respect to the third prong of the analysis, our new rules are tailored to advance directly "the asserted governmental interest" in this proceeding and are not more extensive than what we believe is necessary to serve that interest. For example, we do not require OSPs automatically to disclose the rate for every call. Instead, we require such disclosure only upon affirmative

request of the caller. Indeed, we believe other regulatory alternatives we have considered would not advance as well our goals of fostering a more fully competitive OSP marketplace and ensuring that away-from-home callers have sufficient information at the point of purchase to make an informed decision whether or not to place a call through a particular OSP. Such alternative regulatory options we considered include: mandating BPP; prohibiting PIFs; conducting a rulemaking to prescribe appropriate accounting, cost allocation, and cost support rules with respect to charges of nondominant carriers; prescribing caps on charges of OSPs and aggregators; establishing benchmark rates; and engaging in other price regulation of nondominant carriers' retail charges. As we discussed above, each of these options would have been more burdensome, and possibly less effective, than what is necessary to serve the public interest.

24. MCI erroneously maintains that OSPs should not be required to include PIFs in any rate disclosure required by Commission rule because PIFs are not part of the carrier's tariffed rate.[FN75] To the contrary, all OSPs, including MCI or its OSP affiliate, are required currently under TOCSIA to include PIFs in their Section 226 informational tariffs.[FN76] Only PIFs that an OSP has specified or permitted in its PIC agreement with a particular aggregator must be reflected in such tariffs. Our information disclosure rules similarly require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that it has permitted in the applicable PIC agreement with an aggregator.

25. The rules adopted herein provide OSPs and potential OSP competitors a level playing field in that they apply equally to all OSPs and, unlike benchmark proposals based on the rates of AT&T, MCI, and Sprint, do not establish two classes of OSP competitors (i.e., "the Big Three" and all smaller carriers). Accordingly, we need not address contentions that proposed benchmark policies and rules based on such classes are arbitrary, discriminatory and, if adopted, would deny smaller carriers "equal protection" of the law in contravention of their Fifth Amendment rights.[FN77]

26. We are cognizant of the remarks of those who have commented that exact rate disclosure is technically infeasible to implement for store-and-forward payphones, and would necessitate the forced retirement of existing equipment.[FN78] Other commenters, such as GTE, assert that, while it may be possible to enhance mechanized equipment to quote exact rates prior to the call, this likely would require significant capital outlays and take several years lead time to accomplish. In our 1991 order implementing TOCSIA, we stated that, "with regard to automated technology only, the provision of rate and other information via the use of a separate toll-free number is a reasonable method of compliance with [Section 64.703(a) of our rules]."[FN79] We cautioned, however, that "as technology is developed that eliminated the necessity for a separate number, the use of that number should also be eliminated."[FN80] OSPs have had more than six years to adapt to, and come into full compliance with, our rules that implemented TOCSIA in 1991. Under such rules, OSPs currently must provide oral rate quotes to prospective customers on request. The rules, as amended herein, require that such rate quotes be furnished at no charge to the caller and without the caller having to hang up and dial a separate number to obtain them. We also stated that "any rates quoted by an OSP must be exact rather than approximate."[FN81] In computing the price of any given 0+ call that OSPs disclose mechanically under Section 64.703(a), as amended herein, OSPs may, at their option, use the maximum cost, including any aggregator

surcharge, for the initial and additional minutes, in lieu of using the actual rates, including any surcharges, for the call. We decline, however, to adopt proposals that would afford OSPs the additional flexibility to quote average charges that the caller could be billed. We agree with the views expressed by some commenters that consumers could easily be misled by an average rate disclosure as to the level of the applicable charges for the particular call they wish to make.

27. We deny requests to exempt currently embedded store-and-forward equipment, even when such "smart" telephones are not capable of being retrofitted to comply with the new disclosure rules. The record does not provide a sufficient basis to justify such a broad exemption from our rules. We shall, however, allow 15 months after the effective date of our rules before such embedded equipment must be modified or replaced. That should provide more than sufficient time for parties to come into compliance with the rules. In particular, we are prepared to consider waiver requests on a specific factual showing of good cause. Such showing should specify, for example, the number of embedded phones for which waiver is sought, whether significant numbers of complaints emanate for calls from such phones, and whether the pay phone provider is willing to offer other meaningful efforts to increase consumer awareness of their options. Intellicall, Inc., a provider of "smart" pay telephones to the customer-owned pay telephone service industry,[FN82] has requested that its ULTRATEL store-and-forward payphones be required only to advise callers how to obtain rate quotes and to be exempt from the requirement to provide such quotes without callers having to dial a second number.[FN83] Intellicall, Inc. states that its ULTRATEL payphones can be retrofitted within four to six months to provide verbal instructions advising callers on how to obtain a rate quote on each call by hanging up and dialing two digits, i.e., *0 (star-zero).[FN84] We deny such request. It is within an OSP's discretion what rate information it will disclose and how it will do so, not the decision of an equipment provider. Although Intellicall, Inc.'s subsidiary company, Intellicall Operator Services, Inc., provides network-based operator and prepaid services throughout the United States from aggregator locations,[FN85] the request before us is on behalf of the equipment manufacturer, not its OSP subsidiary. Moreover, while it appears that Intellicall, Inc. has sold over 200,000 pay telephones for use in forty-six states, of which over 60,000 use store-and-forward technology,[FN86] its request fails to specify how many of its payphones cannot be retrofitted to comply with the rules adopted herein and otherwise lacks the specificity necessary to justify a blanket exemption from the rate disclosure requirement. We have determined that disclosure of rate information at the point of purchase will better enable consumers to make informed decisions and also further competition in the OSP marketplace. Intellicall, Inc. has not made a sufficient showing of good cause to warrant exempting calls from any of its payphones at aggregator locations from the requirement that OSPs, including its subsidiary OSP, disclose the cost thereof if requested by prospective customers.

28. In summary, OSPs' informational tariffs, our open entry policies, and current competition in the OSP marketplace have not been sufficient to ensure that the charges for all OSP calls are just and reasonable. The price of an interstate 0+ call from an aggregator location is generally higher, and, in some cases, substantially higher, than consumers pay for 0+ calls from their regular home or business location. Consumers making such away-from-home calls often do not have any long-term business relationship or familiarity with the presubscribed OSP that the aggregator has selected to provide operator services at its site. The policies

and oral information disclosure rules we adopt herein require OSPs to provide accurate information about the price of their services to consumers, particularly prospective new customers whom they have never served, if callers exercise their right to receive a rate quote. The rules require OSPs to disclose to consumers the true cost of placing a call through them, including any applicable aggregator surcharge, or the maximum possible such charge, that they permit. Such surcharges are a principal, if not the principal, reason for consumer complaints about OSP rates and charges. The rules provide transient callers with the information necessary to maximize their awareness of their options and to make informed decisions with respect to payphone calls. The rules, thus, are not only pro-consumer, but also pro-competitive in furthering marketplace decisions based on options available to an informed consumer.

IV. FCC RATE BENCHMARK OR PRICE REGULATION

A. Background

29. In the OSP Reform Notice, we invited comment on our tentative conclusion that we should require OSPs to disclose rates when they exceed consumers' expectations. To achieve this, we tentatively concluded that OSPs that charge rates, or allow related PIFs, whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest IXCs be required to disclose the cost of the call orally to consumers, before connecting the call.[FN87] We also sought suggestions for alternative disclosure requirements that would more effectively and efficiently provide consumers with the information that they need to make fully informed decisions regarding the choice of an OSP.[FN88]

B. Discussion

30. For reasons set forth below, we decline to adopt benchmark rules. Instead, as previously discussed, we are requiring OSPs to disclose to consumers orally how to obtain rate quotes or the price of a call to a specific terminating location, to enable them to make a more informed decision at the point of purchase.[FN89] This course of action will best serve the dual objectives of TOCSIA, further our goal of fostering a more fully competitive marketplace for operator services from payphones and other aggregator locations, help ensure a level playing field for all OSP competitors, and better serve the public interest than would the use of benchmarks as tentatively proposed in the OSP Reform Notice.

31. Commenters were divided in terms of support for the use of benchmarks and whether such benchmarks should be based upon consumer expectations and tied to the rates of the three largest carriers (e.g., based on some percentage of the average of those rates or some set flat increase over such rates).[FN90] After considering the alternatives to benchmarks and examining the record before us, we agree with those commenters who believe that benchmarks would not be the best alternative for addressing the problem. We believe that the imposition of price controls or benchmarks upon the entire industry, in order to curtail rate gouging by some carriers and aggregators, would be overly regulatory and could even stifle rate competition (e.g., if it results in carriers migrating their rates to the benchmark, or only slightly below it).[FN91]

32. In addition, commenters submit that many consumers would not expect OSP

charges and aggregator surcharges at even the levels that would be allowed under CompTel's benchmark proposal of 115% of the weighted average of the largest three carriers' rates. Such charges are perceived as excessive not only by some consumers, but public officials, regulators, and, according to the state Attorneys General, even many OSPs.[FN92] We also agree with commenters that establishing benchmarks based on the average of rates of the three largest IXCs or their OSP affiliates, could arguably constitute a denial of the equal protection of the law to all other OSPs.

33. Moreover, even if benchmarks were not based on a separate class of carriers, setting benchmarks at the level initially proposed by CompTel could be anti-competitive and anti-consumer. If such presumed reasonable or "safe harbor" benchmarks were adopted, we believe those OSPs whose rates currently are below those levels would have an incentive to increase their rates to those levels. Also, it could be argued that express or implied Commission forbearance from regulating tariffed rates that did not exceed the levels proposed by CompTel, constitutes federal agency approval of collusive price-fixing by OSP competitors.

34. Accordingly, we are persuaded by the comments of those opposed to our benchmark proposal that such a price regulatory approach is not the best answer to the problem of consumers being billed unexpectedly high charges for 0+ services. The anomalies in this segment of the interstate telecommunications market are directly attributable to consumers lacking sufficient information of the cost of service at the point of purchase. We believe that the oral disclosure requirements that we adopt today will help to ensure that consumers have the information they need to make informed decisions concerning whether they wish to make a 0+ call through a particular carrier or to place the call through one of hundreds of other OSPs competing in this market. We therefore find that the oral disclosure requirement adopted above will not only more readily achieve our goal of protecting consumers, but by providing consumers with access to information necessary to make informed choices, also accomplishes this goal in a manner more consistent with the pro-competitive goals of the 1996 Act.

V. BILLED PARTY PREFERENCE

A. Background

35. Under BPP, operator-assisted long-distance traffic would be carried automatically by the OSP preselected by the party being billed for the call.[FN93] This would be done by permitting a person signing up for a calling card to select the OSP that would carry that customer's interstate payphone traffic whenever that customer used the calling card. The network would be able to identify that OSP by checking a database listing the chosen OSP associated with each calling card. Based on the comments filed by parties in 1993, the Commission estimated that the cost of implementing BPP would be on the order of $420 million in amortized annual costs.[FN94] This is based on an estimate of LEC costs of $1.1 billion in non-recurring costs (including approximately $500 million for end office software) plus $60 million in recurring costs (most of which would be due to increased expenses for training and employing operators), and recurring OSP costs of about $35 million per year.[FN95] Given the estimated cost of BPP, the Commission sought proposals for less costly alternatives.[FN96] We stated that we would mandate BPP only if its benefits outweighed its costs, and those benefits could not be achieved through alternative, less costly, means.[FN97] Two years later, we noted that, while the

record indicated that the cost of BPP "would likely be quite substantial," local number portability was mandated by the 1996 Act and we intended to give further consideration to BPP as number portability developed.[FN98] We remarked that "[i]f local exchange carriers are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide."[FN99]

B. Discussion

36. We decline to adopt BPP. As detailed in Appendix C, only a few parties continue to support BPP.[FN100] Moreover, there is no convincing evidence that the benefits of BPP outweigh its costs, and that those benefits can not be achieved through alternative, less costly, means.[FN101] Thus, we decline to require this expensive change to the network as a means of reducing customer dissatisfaction with OSP rates. Rather, the increased consumer disclosures required by this Order will meet our objectives, including protecting consumers, and fostering rate competition, in a less burdensome manner.

37. In the OSP Reform Notice, we noted that the 1996 Act mandates local number portability and that we intended to give further consideration to BPP as number portability developed. We requested comment on our suggestion that "[i]f local exchange carriers are required, thus to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide."[FN102] Based on the updated record, we cannot conclude that the implementation of local number portability will have this effect. In the absence of firm data that shows a favorable cost/benefit ratio, we are not willing to mandate BPP, and the proponents have not provided us with such data. No one has challenged the LECs' assertions that implementation of number portability will not render BPP more economically feasible to implement.[FN103] The fact that local number portability [LNP] databases will not exist in all areas also militates against reliance on LNP as a basis for mandatory BPP.[FN104] Moreover, as some commenters argue, the increased advertisement and use of dial-around will yield the same result as BPP at no cost to upgrade the network. We are cognizant of assertions that to continue to leave open the possibility of BPP as a possible long-term solution to the problem of high OSP rates is harming OSPs in the capital markets.[FN105] We also agree that it would be unwise to implement BPP in the inmate calling environment, given the need for special security measures there.[FN106]

38. Equally as important, and as discussed in detail in the previous sections, we find that the oral price disclosure requirement will achieve the same benefits, at significantly less cost, and in a manner consistent with the pro-competitive goals of the 1996 Act. Accordingly, we decline to adopt BPP to redress the problem of high rates of OSPs and providers of operator services to prison inmate phones.

VI. FORBEARANCE FROM APPLYING SECTION 226 TARIFF FILING REQUIREMENTS

A. Background

39. Under the 1996 Act, we must forbear from applying any regulation or provision of the Communications Act if we determine that such forbearance is consistent with

the statutory criteria listed in Section 10(a) therein.[FN107] In our OSP Reform Notice, we sought comment on whether we should forbear from applying Section 226 tariff filing requirements to nondominant interexchange OSPs if they either provide an audible disclosure of the applicable rate and charges prior to connecting any interstate 0+ call from a payphone location, or certify that they will not charge more than FCC-established benchmarks for such calls. We noted that TOCSIA authorizes us to waive the requirement for informational tariffs if we determine that such tariffs no longer are necessary to: (1) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and (2) ensure that consumers have the opportunity to make informed choices in making such calls.[FN108] We tentatively concluded that a requirement that OSPs disclose the specific price of a call to the consumer before connecting a call would better protect consumers from unexpectedly high charges than the filing of "informational" tariffs, which are effective without prior notice and provide very limited protection at the time of purchase.[FN109] Based on this analysis, we sought comment on whether the most effective long-term solution for protecting consumers is to provide them with a mechanism for exercising choice, such as by entering into a long-term relationship with carriers, by having an audible brand stating the price of any call before the call is connected, or additional branding stating the price of any call that would exceed benchmarks that we might establish.[FN110]

40. We also sought comment on whether price information at the point of purchase, rather than the availability of pricing and other material information from the public tariffs of rivals, is more likely to allow consumers to exercise rational purchasing decisions, encourage OSPs to initiate price reductions and other competitive programs, and impose market-based discipline on abusive OSPs.[FN111]

B. Comments

41. The commenters disagree on whether we should forbear from applying the Section 226 tariff filing requirement.[FN112] Some support a complete detariffing policy and assert that informational tariffs are not necessary to protect consumers against unfair or deceptive practices. Others urge us to make the finding specified in that section for waiving such requirement. AT&T maintains that the Commission should apply the same tariff forbearance rules to its operator services as it applies to its other interstate services. Another commenter supporting forbearance with regard to the requirement to file informational tariffs asserts that OSPs have misinformed consumers about the purpose of informational tariffs.

42. Other commenters are opposed to complete detariffing, believing that informational tariffs ensure that OSP charges and practices are just and reasonable and are an important consumer safeguard. Some commenters contend that it is premature to remove the tariff filing requirement and that informational tariffs are needed as a tripwire to enable the Commission to determine whether further investigation is necessary.

C. Discussion

43. We are not prepared to conclude at this time that Section 226 informational tariffs no longer are necessary to protect consumers and that we should either waive or forbear from requiring such tariffs. We continue to receive thousands of

consumer complaints each year about OSP rates and related aggregator surcharges or PIFs. We amend our rules to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers.[FN113] The continued filing of these tariffs will allow the Commission to monitor OSPs' rates and any related surcharges after the rules adopted herein become effective. We will revisit whether informational tariffs by nondominant carriers still are needed if our rules achieve the anticipated results. We conclude that requiring OSPs to disclose how to obtain the price of a call to prospective customers at the point of purchase, in addition to the availability of pricing and other material information from the public tariffs of rivals, will allow consumers to exercise rational purchasing decisions, encourage OSPs to initiate price reductions and other competitive programs, and impose market-based discipline on OSPs. Under TOCSIA, the rates and related surcharges or fees in OSPs' informational tariffs may be changed without prior notice to consumers or to this Commission. As noted above, we have authority to waive the statutory requirement for such tariffs if we determine that our rules adequately protect consumers from unfair and deceptive practices and ensure their opportunity to make informed choices in making 0+ calls from payphones or other aggregator sites such that tariffs are unnecessary.[FN114]

VII. PETITIONS FOR RECONSIDERATION OF THE 1992 PHASE I ORDER (0+ PUBLIC DOMAIN PROPOSAL)

A. Background

44. In 1992, the Commission considered the need to address competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access.[FN115] Although the Commission planned to examine a wide range of issues related to the OSP market segment, we decided to take immediate action in response to parties' concerns and proposals.[FN116] MCI first proposed restriction of proprietary IXC cards with 0+ access in April 1991.[FN117] MCI then proposed that the Commission should mandate 0+ dialing as being in the "public domain," so that all carriers issuing calling cards with instructions to use 0+ as the access method would be required to permit access by other OSPs to billing and validation information for these cards, so that other OSPs would be able to handle and bill for 0+ calls by such card holders.[FN118] Under that proposal, carriers that wished to issue proprietary cards, in other words, not make billing and validation information available to other OSPs, would be required to establish an 800 or 950 access method instead of using 0+.[FN119] In addition, MCI advocated that the Commission require that any OSP completing a calling card call using 0+ access, where feasible, not charge more than the applicable rates of the carrier issuing the card, so that consumers would not be assessed unexpectedly high rates.[FN120] This concept was ultimately termed the "0+ Public Domain" proposal.[FN121]

45. The Commission received expressions of concern that the 0+ public domain proposal could undermine AT&T's card issuer identification (CIID) cards,[FN122] which in 1992 were used by more than 20 million people.[FN123] Conversely, some of AT&T's competitors claimed that their inability to accept calls made with these cards seriously handicapped them in the operator services marketplace.[FN124] In taking certain steps to protect consumers and mitigate competitive problems that resulted from the use of proprietary IXC calling cards with 0+ access, the Commission released its Phase I Order.[FN125]

46. In its Phase I Order, the Commission considered the competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access in the presubscription environment, wherein an OSP other than AT&T could be the presubscribed OSP for aggregator phones.[FN126] The Commission considered arguments which urged that adoption of a system of 0+ access for calling cards with open validation databases was essential to preserving a competitive market segment for operator services.[FN127] The Commission also considered arguments that the 0+ public domain proposal would create confusion and inconvenience for IXC customers.[FN128] Consistent with its paramount concern for consumer welfare, and in order to mitigate the competitive problems that result from the use of proprietary IXC calling cards with 0+ access, the Commission required AT&T to change its practices by revising its access instructions to card holders.[FN129] Specifically, the Commission directed AT&T to (1) educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T; (2) provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use.[FN130] The Commission found that consumer education was the interim remedy best suited to the immediate consumer and competitive concerns caused by AT&T's dialing instructions, and declined to adopt the 0+ public domain proposal or other alternative interim remedies proffered by AT&T's competitors.[FN131] Eight parties (petitioners) filed petitions for reconsideration of that decision.[FN132]

47. Petitioners advance various arguments in support of their requests: the Commission failed to take appropriate action to eliminate anti-competitive problems posed by the CID program;[FN133] the Commission's promise to consider BPP as a solution was inappropriate in light of "immediate competitive problem(s);"[FN134] the Commission failed to recognize that the CIID card is not a common proprietary IXC card;[FN135] the Commission acquiesced to AT&T's "threat" that it would require access codes for its cardholders, thereby perpetuating a "monopolistic" environment;[FN136] the CIID card is not truly proprietary; and the Commission's actions are inconsistent with its requirement of nondiscriminatory access to LEC validation data.[FN137] Thus, petitioners argue, the Commission should adopt the 0+ public domain proposal and require AT&T to open its billing and validation database. In this section, we address these issues and conclude that the petitions for reconsideration should be denied.

B. Discussion

48. As an initial matter, we conclude that petitioners restate arguments that they previously raised and which the Commission fully considered in reaching its Phase I Order.[FN138] Because petitioners have offered no new facts or legal arguments in support of their petitions, as discussed below, we find no basis to reconsider the Commission's decision not to adopt the 0+ Public Domain proposal in the Phase I Order. We also note that AT&T has been dropping its calling card billing agreements with LECs, reportedly as part of its strategy to handle all calls on its own network rather than sharing billing information with LECs.[FN139] AT&T's cancellation of its billing agreements with LECs has rendered, or in the foreseeable future should render, petitioners' concerns in this regard largely moot. Thus, we deny the petitions for reconsideration of the Phase I Order.

49. LDDS argues that because AT&T permits shared access to its CIID card database by "virtually any company that jointly provided long distance service with AT&T prior to divestiture," the Commission was incorrect in considering the database to be proprietary.[FN140] LDDS maintains that AT&T should be required to permit access to its database by all other carriers, not just LECs. This argument, however, ignores the fact that AT&T nonetheless exercises control over access to its database. Nothing in the record suggests that any entity other than AT&T has control over its CIID card validation database. The fact that AT&T chooses to share access to its database with certain other carriers (e.g., LECs) does not mean that it has relinquished dominion over the database or that the card is not proprietary to AT&T's system. The Commission did consider the option of requiring AT&T to open its card validation database to all carriers.[FN141] The Commission noted, however, that AT&T clearly stated that it would not open its database for its competitors' use and would implement a system of strict access code calling.[FN142] The Commission found that to force this result would not serve the public interest.[FN143]

50. In its Phase I Order, the Commission attempted to address the issues of consumer costs and a competitive OSP calling environment through the remedy of a mandated consumer education program.[FN144] CompTel asserts that "the record shows that the instance of misdirected attempts by MCI or Sprint proprietary card holders is negligible because these carriers educate their customers to use the card in conjunction with an access code."[FN145] The Commission adopted the consumer education requirement, finding that any costs to AT&T of carrying out this remedy were far outweighted by the gains in consumer convenience and competition.[FN146] The Commission further noted that "[i]f AT&T educates all of its customers to check public phone signage before dialing, and to dial 0+ only where AT&T is identified as the presubscribed carrier, its competitors should receive significantly fewer misdirected calls."[FN147] Some petitioners argue that the Commission should order an alternative remedy such as the recall and reissuance of 25 million AT&T CIID cards.[FN148] We believe, however, that such a remedy would be even less effective because it would create even greater customer confusion and market disturbances than existed prior to the Commission's consumer education order. The Commission's mandated customer education program attempts to reduce the instances of unbillable CIID calls while not unreasonably disturbing the dialing habits of AT&T cardholders. This remedy is less burdensome and more consistent with the public interest than the proposed recall and reissuance of all AT&T CIID cards. The Commission's choice of a narrowly tailored remedy has proven effective, in light of a four-year period in which consumers have used the CIID card in accord with AT&T's new instructions[FN149] and hundreds of OSPs continue to operate in this market segment.[FN150]

51. In October 1995, the Commission took note of the competitive concerns, including AT&T's use of its proprietary CIID card, that petitioners had raised more than three years earlier when they sought reconsideration of the Commission's Phase I Order. In AT&T Reclassification Order, the Commission found that AT&T's competitive position in the provision of calling card and other operator services had not created market power in the overall interstate, domestic, interexchange telecommunications market.[FN151] The Commission noted that because of requirements adopted in the Phase I Order in the instant proceeding, AT&T no longer marketed its proprietary card using a 0+ message to gain a competitive advantage with public phone presubscriptions.[FN152] The Commission further noted that, by 1992, MCI and

Sprint, together, had issued over 32 million proprietary cards.[FN153] The Commission stated that it, "has closely monitored operator services in recent years, and [that] the primary problems that we have observed in this market segment have not involved AT&T"[FN154] and that "... to the extent that there are problems in this market segment, they do not appear attributable to AT&T."[FN155]

VIII. INTRASTATE OPERATOR SERVICES

A. Background

52. We note that with respect to operator service providers that compete with LECs to provide operator services from aggregator locations, state regulation has varied from prohibiting competitive operator services altogether (no longer permissible under Section 253 of the Communications Act)[FN156] to allowing such services on an unregulated basis.[FN157] More than thirty states regulate long-distance charges for intrastate calls made through OSPs.[FN158] Illinois, for example, permits a surcharge of no more than $2.50 and requires that per-minute rates be no higher than those of the dominant provider.[FN159]

B. Comments

53. Although we did not invite comment on this issue, NARUC and the NYCPB request that we make clear that states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services.[FN160] The Ohio Commission, which supports adoption of oral disclosure rules as suggested by the Colorado Commission staff, urges that, regardless of our decision regarding additional oral branding requirements, "any posting requirements, either mandated by the FCC or by the individual states, be maintained."[FN161] Other state regulatory agencies similarly oppose adoption of any rules that would preclude states from adopting more safeguards or more stringent rules regarding OSPs and providers of operator services to correctional institutions.[FN162] Such state agencies assert that OSPs and providers of operator services to correctional institutions should be prohibited from charging rates in excess of absolute rate caps on all operator service calls and, if they are not, that any oral information required to be given by OSPs be provided audibly and distinctly, in both English, and in the predominant second language, if any, of the residents of the wire center served by the aggregator's telephone.[FN163] In addition, the oral information should also provide the consumer with directions how to reach and use a carrier whose rates are less than FCC established benchmarks.[FN164] The agencies suggest adoption of a rule that would not require customers to pay any charges that exceeded any FCC established price cap or benchmark if the required notice had not been given.[FN165] The Florida Commission is concerned that the use of forbearance authority to eliminate interstate tariff requirements might have repercussions at the state level.[FN166]

C. Discussion

54. While we continue to receive many complaints about high rates for 0+ calls involving both interstate and intrastate services from payphones, the policies and rules adopted herein are applicable only to interstate services.[FN167] As requested by NARUC and the NYCPB, we clarify that the states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator

practices with regard to intrastate operator services than those that we have adopted herein for interstate services. Any such state statute, regulation, or legal requirement, however, may not violate Section 253 (a) of the Communications Act,[FN168] must not be preempted under Section 276(c) of the Communications Act,[FN169] and must not contravene any other provision of the Communications Act, or any Commission regulation or order. We stress that we are adopting minimum requirements that are not intended to preempt state requirements or safeguards. We note, for example, that the New York State Department of Public Service (NYDPS), which urged this Commission to set benchmarks for OSPs' interstate rates, has rules that:

> allow the tariffs of operator services providers [which are required to be filed by the New York State Public Service Commission] to take effect unless the maximum rates charged by such providers exceed the highest rates authorized by the commission for a local exchange telephone corporation or a dominant interexchange telephone corporation in the state for similar kinds of operator assisted telephone calls.[FN170]

55. The policies and rules we adopt herein do not preclude, for example, state actions that prohibit aggregator surcharges or other PIFs for intrastate calls, or that cap OSP rates and related PIFs, such as the rate cap in Florida tied to AT&T's rates that the Florida Commission adopted[FN171] and the Pennsylvania Commission's proposed $1.00 cap on location surcharges on intrastate OSP calls in Pennsylvania.[FN172] As requested by Citizens United for Rehabilitation of Errants (C.U.R.E.) with regard to intrastate rates for collect calls from prisons,[FN173] we also make clear that our action herein similarly does not preempt state rate caps that may be lower than any rate benchmark proposals for interstate operator services considered, but not adopted in this proceeding. We note, however, that some commenters believe that interstate telecommunications services ratepayers should subsidize providers of operator services whose intrastate operator service rates and surcharges have been capped by a state at a level that is alleged to be "unfair" or which precludes recovery of the carrier's alleged "reasonable" costs and profit.[FN174] Any such subsidy or cross-subsidization would inhibit competition at the intrastate level, contrary to our policies encouraging competition in all telecommunications markets. We are unaware of any public policy reason why users of interstate operator services should be required to subsidize users of intrastate operator services.[FN175]

IX. 0+ CALLS BY PRISON INMATES

A. Background

56. In our OSP Reform Notice, we considered calls from inmate-only telephones in prisons, jails and other correctional or similar institutions (hereinafter prisons) separately from 0+ calls from aggregator locations for two primary reasons.

> First, neither TOCSIA nor our rules require telephones for use only by prison inmates to be unblocked. Thus, callers from these facilities are generally unable to select the carrier of their choice; ordinarily they are limited to the carrier selected by the prison. A disclosure requirement can not directly aid such callers. Second, prisons often install and maintain security equipment for a number of legitimate reasons involving security and other government prerogatives. Given that prisons would likely seek to recover the cost of any equipment employed for legitimate security reasons, we would expect that competitive prices for inmate-only telephone calls from prisons could be higher

than the rates of calls from ordinary locations. The record in this proceeding indicates, however, that at least one prison carrier, Gateway, has stated that it is willing and able to provide calls from prisons as well as the standard security equipment at rates comparable to those charged by AT&T, MCI and other large carriers.[FN176]

We invited comment on whether the public interest would be better served by some remedy other than BPP for prison inmate calling, including requiring oral full price disclosure to the called party before connecting the inmate call.

B. Discussion

57. We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable to inmate calls. Moreover, requiring BPP for inmate calls in the absence of BPP for 0+ calls might place the cost of implementation on the recipient of such calls, thus exacerbating the problem of high-cost calls. Finally, as the Florida Commission noted, prisons may allow inmates to place calls to pre-approved 800 numbers of their families and legal counsel, or, as the Florida Commission has done, allow them to use pre-paid debit cards.[FN177] Such options would exert downward pressure on high interstate rates for 0+ calls from inmate phones, diminish the ability of a prison and its PIC to set supracompetitive rates, and thus lessen or obviate the need for further federal regulations concerning 0+ rates in this submarket.

58. The Commission has concluded that the definition of aggregator "does not apply to correctional institutions in situations in which they provide inmate-only phones."[FN178] It does not necessarily follow, however, that we should not adopt consumer protection rules similar to those applicable to providers of 0+ service at aggregator locations. The Commission continues to receive complaints about inmate service providers' practices that result in excessive charges being collected from consumers for interstate collect calls.[FN179]

59. For the reasons set forth in Section IV above, however, we decline to establish price benchmarks or rate caps. Although, prison authorities have considerable power to ensure that rates are just and reasonable by virtue of the monopoly contracts they confer, they also have the power and the incentive to contract with OSPs that will give them the largest revenues from inmate phones. If we set caps or benchmarks, carriers would have little incentive to contract to offer services at a lower rate. Rather, because rates must be filed with the Commission and must conform to the just and reasonable requirements of Section 201 of the Act, we believe that it is more efficient and less intrusive to proceed on a case-by-case basis, should the rules we adopt herein not lead to reasonable rates for calls from inmate phones.

60. Although we do not require BPP or benchmarks, we do agree with commenters that consumers, in this case the recipients of collect calls from inmates, require

additional safeguards to avoid being charged excessive rates from a monopoly provider. We conclude, therefore, that we should require all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone. Just as OSPs may give the party to be billed for an interstate call the option to by-pass receiving such rate information, providers of operator services for interstate calls initiated by a prison inmate similarly may give the party to be billed the option to by-pass receiving rate information. Even if, arguendo, restrictions on all dial-around calls can still be justified for inmate-only telephones, rules requiring providers to identify orally themselves to both parties to a collect call and to disclose to the party to be billed how to obtain specific rate information without charge, can eliminate some of the abusive practices that have led to complaints. Specifically, the billed party can decide whether to accept the call and can limit the length of the call.

61. Finally, just as it would be contrary to our policies encouraging competition in all telecommunication markets to have intrastate operator services from aggregator locations subsidized by interstate service ratepayers,[FN180] it would similarly be an undue burden on interstate commerce to have costs of providing intrastate service to prison inmates cross-subsidized by interstate service ratepayers. We note that most calls by prison inmates appear to be intrastate rather than interstate.[FN181]

X. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

62. As required by the Regulatory Flexibility Act (RFA),[FN182] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the OSP Reform Notice.[FN183] The Commission sought written public comments on the proposals in the OSP Reform Notice, including on the IRFA.[FN184] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).[FN185] The Commission is issuing this Order to protect consumers from excessive charges in connection with interstate 0+ operator services for payphone and prison inmate calls by ensuring that they are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

1. Need for and Objectives of this Report and Order and the Rules Adopted Herein

63. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[FN186] One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

64. In this Second Report and Order, we adopt rules requiring carriers to orally disclose to consumers how to obtain the cost of operator services for interstate calls from aggregator locations and from prison inmate-only telephones.[FN187] The

objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.[FN188]

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

65. In the OSP Reform Notice, the Commission performed an IRFA.[FN189] In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA.[FN190] In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.[FN191]

3. Comments on the IRFA

66. Only one comment specifically addressed the Commission's IRFA. ACTA, a national trade association representing interexchange carriers, strongly supports adoption of a price disclosure requirement for all 0+ calls to provide consumers with the information necessary to make informed choices, thus doing away with the need for alternative proposals setting benchmark rates to trigger oral disclosure requirements.[FN192] ACTA asserts that adoption of the alternative benchmark proposal would lead to anti-competitive and discriminatory results and therefore does not comply with the RFA.[FN193]

67. In support thereof, ACTA asserts: that basing benchmarks on the rates of the three largest IXCs (the Big Three) is unsound because it ignores greater underlying costs borne by smaller carriers and economic disparities which exist between the Big Three carriers and all other OSPs; that the Big Three may recover their costs through cross-subsidization and arbitrary cost allocations that are possible because of their multi-market operations, whereas small providers can only recover their costs directly through rates charged consumers; that because all or most small carriers will be required to make oral disclosures, the public will be conditioned to associate small providers with excessive rates; that OSPs will be forced to charge rates below the Big Three and below their own costs, plus a reasonable profit, to get consumers to use their services; that the benchmark proposal thus has a confiscatory effect; and, accordingly, the already competitively disadvantaged smaller OSPs will not be able to sustain themselves in the marketplace, contrary to broad general policies seeking greater participation by smaller companies in competing in the OSP market, and the more specific policy that the Commission must apply in its RFA analysis.[FN194]

68. Further, ACTA contends that proposed benchmark rate elements such as time of day and distance do not affect underlying costs, are contrary to the industry's growing reliance on nationwide flat rates, and are inappropriate and unduly burdensome on small businesses. Moreover, ACTA contends that the list of characteristics proposed by the Commission does not take into account actual costs necessary to compete in the OSP marketplace such as PIFs and commissions, further skewing the competitive environment adversely to small businesses. According to ACTA, a benchmark margin of two to three times that of the Big Three benchmark carriers is needed to cover differences in underlying costs, not the 15 percent

margin on which the Commission sought comment. ACTA also contends that the proposed benchmark methodology provides the benchmark carriers with the opportunity to engage in anti-competitive conduct and predatory pricing.[FN195]

69. Although not specifically filing an IRFA analysis, other commenters oppose adoption of rules that would unduly burden small businesses.[FN196] Cleartel/ConQuest assert, arguendo, that even if a rate benchmark could be justified on the basis of consumer expectations, any standard disclosure that only applies to the smaller OSPs, and not to the three largest, would be arbitrary and discriminatory, would place an uneven burden on smaller OSPs, and would stigmatize all carriers other than the big three for the traveling public.[FN197] NTCA asserts that industry-wide mandated BPP deployment is not economically feasible and would adversely affect small and rural LECs.[FN198]

4. Discussion

70. We agree with ACTA's views in regard to our IRFA and have concluded that the minimum rules adopted herein are necessary to protect consumers and will not unduly burden small OSPs or other small business entities. Such rules will aid consumers, including small business entities, avoid incurring excessive charges for 0+ operator services. The rules also provide OSPs and potential OSP competitors, including small business firms, a level playing field in that they apply equally to all OSPs, and, unlike benchmark proposals, do not discriminate against smaller OSP companies. Further, we are terminating our inquiry into BPP as urged by NTCA on behalf of small and rural LECs. Moreover, as urged by many commenters, including small business entities, we have not adopted various benchmark proposals or other price control rules set forth in this proceeding. Based on the record in this proceeding, we conclude that, contrary to the initial tentative conclusion in OSP Reform Notice, for the Commission to engage in price regulation of OSPs' rates, including benchmark regulation, would involve micro-managing the rates of nondominant carriers, including hundreds of small business companies. Such regulation would be the antithesis of the deregulatory thrust of the Regulatory Flexibility Act and the 1996 Act.

5. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

71. The rules adopted require that hundreds of nondominant interexchange carriers implement certain information disclosure procedures regarding their rates, and any related fees of the owners of the premises where the telephone instrument is located. Small entities may feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to the policies and rules adopted. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

72. For the purposes of this analysis, we examine the relevant definition of "small entity" or "small business" and apply this definition to identify those entities that may be affected by the rules adopted in this Second Report and Order. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[FN199] A "small business concern" is one that: (1) is independently owned and operated; (2) is not

dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (the SBA).[FN200] The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[FN201] We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within relevant subcategories.

73. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[FN202] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated."[FN203] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

74. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[FN204] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[FN205] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities based on these employment statistics. Because it seems certain, however, that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the decisions and rules adopted in this Order.

75. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.[FN206] Although it seems certain that some of

these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

76. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.[FN207] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Order.

77. Operator Service Providers. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under Section 226 of the Communications Act to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information of which we are aware regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of August 19, 1997, approximately 630 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 630 small entity OSPs that may be affected by the decisions and rules adopted in this Order.

78. Local Exchange Carriers. Consistent with our prior practice, we shall continue to exclude small incumbent providers of local exchange services (LECs) from the definition of "small entity" and "small business concerns" for the purpose of this FRFA. Because any small incumbent LECs that may be subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[FN208] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."[FN209]

79. Neither the Commission nor the SBA has developed a definition of small LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed above. Our alternative method for estimation utilizes the data that we collect annually in

connection with the TRS Worksheet. This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[FN210] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the rules adopted in this Order.

80. In addition, the rules adopted in this Order may affect companies that analyze information contained in OSPs' tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities.[FN211] This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

6. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

81. The rules adopted require carriers to disclose audibly to consumers how to obtain the price of a call before it is connected. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order.[FN212] As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

82. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate 0+ call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they could be billed for such calls. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

7. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

83. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent IXCs, including the significant alternatives considered and rejected.[FN213] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

84. We believe that our action requiring carriers to orally disclose how to obtain

the price of their interstate 0+ operator services up front at the point of purchase will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate, domestic, interexchange 0+ services will enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment. The decision not to require detariffing of OSP informational tariffs will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue.

85. We have rejected several alternatives to the additional oral disclosure requirements and rules adopted herein, including proposals (1) to establish a costly billed party preference system for 0+ calls from aggregator and prison locations; (2) to micro-manage nondominant carriers' prices for such calls, including proposals to cap rates, establish annual FCC benchmarks, and to require cost justification for rates that exceed such benchmarks; (3) requiring oral warnings to prospective consumers comparing a carrier's rates with lower rates of the largest carriers; and (4) mandating 0+ in the public domain. Rejection of these alternatives helps to ensure that small carriers will not be unnecessarily burdened. The rules adopted herein are applicable only to limited interexchange 0+ calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and interstate 0+ calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10333 or 1-800-877-8000, whereby callers may circumvent placing the call through the long-distance carrier that is presubscribed for that line.

8. Report to Congress

86. The Commission shall send a copy of this Final Regulatory Flexibility Act Analysis, along with this Second Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

B. Final Paperwork Reduction Act of 1995 Regulatory Analysis

87. This Second Report and Order contains a modified information collection. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13,[FN214] the OSP Reform Notice invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained therein.[FN215] The changes to our information collection requirements on which we sought comment in the OSP Reform Notice included: (1) the elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange operator services from aggregator locations;[FN216] and (2) requiring such carriers to disclose the cost of a call to consumers if the call was made using that carrier.[FN217]

88. On September 8, 1996, OMB approved, with comments, the proposed changes to our information collection requirements contained in OSP Reform Notice, in accordance

with the Paperwork Reduction Act.[FN218] OMB asked us to address whether the consumer would not be better served by requiring all OSPs to inform the caller of the cost of the call "regardless of any benchmark."[FN219] Because we have concluded that we should adopt a disclosure requirement applicable to all OSPs, and not a disclosure rule based on benchmark rates,[FN220] concerns that OMB expressed in this regard have been met or rendered moot.[FN221]

89. OMB also stated that we should calculate and include, as a cost burden, the cost of installing the systems that will inform the consumer of the cost of a call[FN222] Although we invited comment on the costs and benefits of requiring all OSPs to disclose their rates on all 0+ calls from aggregator locations, the cost information we received was generally quite conclusionary rather than specific in nature.[FN223] The specific cost data filed by some parties vary. Intellicall states that its ULTRATEL store-and-forward payphones have no internal memory left to accommodate additional functionalities, let alone voluminous rate structures [and] cannot be retrofitted ... to increase their memory capacity."[FN224] With respect to its new generation ASTRATEL store-and-forward payphones, Intellicall estimates that "it would cost approximately $200,000 and would require between eight and fourteen months, barring unforeseen circumstances to, among other things, develop, test, and 'debug' the computer software necessary to install the rate structures into the payphone memory, and 'import' the rate structures into the payphone memory."[FN225] GTE states that "[m]echanized equipment could possibly be enhanced to quote rates prior to the call connection, but this would require significant capital outlays and would involve several years lead time to accomplish."[FN226] GTE further states that its "current mechanized equipment (costing approximately $22 million in 1993) would most likely require a complete replacement for such a modification."[FN227] MCI estimates that it would cost an additional $0.40 per call if all calls have to be sent to a live operator in the near term.[FN228] Sprint estimates that the labor cost of a rate disclosure would approximate $0.35 per call.[FN229] U S WEST estimates that to mechanize a system that "would allow for a data base dip for every 0+/-call" would add about $0.50 to each call.[FN230] Thus, specific cost data of record is sparse and cost estimates of those who have commented vary considerably.

90. The new rules adopted herein require OSPs to orally advise consumers of their current right to obtain rate quotes at the time of purchase on interstate, domestic, interexchange 0+ calls. The rules are inapplicable to 0-calls. Further, we are not requiring real time rate quotes on every 0+ call, only when callers request such price information at the time of purchase. Most if not all who have commented agree with our conclusion that the cost of installing the systems necessary to implement the rules adopted herein should prove to be much less than the foregoing estimates and much less than the estimated one billion dollar cost of implementing an alternative billed party preference routing system for OSP interstate calls.

91. In this Order, we adopt certain changes to our information collection requirements on which we sought comment in the OSP Reform Notice. Specifically, we have adopted rules governing the filing of informational tariffs by OSPs for their interstate, domestic, interexchange 0+ services.[FN231] Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

XI. CONCLUSION

92. We conclude that we should amend our rules to require OSPs to provide additional oral information to away-from-home callers, disclosing the cost of a call, including any aggregator surcharge for a 0+ interstate call from the aggregator location, before such a call is connected, at the consumer's option whether to receive such cost information. We also amend our rules to require carriers providing interstate service to prison inmates to orally disclose their identity to the party to be billed for such calls and, if such party elects to receive rate quotes for the call, to orally disclose the charges for the call before connecting the call. Finally, we deny petitions for reconsideration of the Phase I Order in this proceeding and terminate this proceeding.

XII. ORDERING CLAUSES

93. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 10, 201-205, 215, 218, 226, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 215, 218, 226, 254, that the policies, rules, and requirements set forth herein ARE ADOPTED.

94. IT IS FURTHER ORDERED that 47 C.F.R. Part 64, Subpart G IS AMENDED as set forth in Appendix A, effective July 1, 1998, except that the effectiveness of Section 64.703(a)(4) and Section 64.710 is stayed with respect to embedded store-and-forward telephone equipment until fifteen months thereafter.

95. IT IS FURTHER ORDERED that the request by Intellicall, Inc., filed March 21, 1997, seeking exemption of its ULTRATEL payphones from the rules adopted herein IS DENIED.

96. IT IS FURTHER ORDERED that the petitions for reconsideration of the Commission's Phase I Order in this docket, filed by Competitive Telecommunications Association, International Telecharge Incorporated, LDDS Communications, Inc., MCI Telecommunications Corp., PhoneTel Technologies, Inc., Polar Communications Corporation, Southwestern Bell Telephone Company, and Value-Added Communications ARE DENIED.

97. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, shall mail a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a)(1981). The Secretary shall cause a summary of this Order to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

FN1. OSPs include all carriers that routinely accept interstate collect calls, credit card calls, and/or third-party billing calls from aggregator locations, including hotels providing automated billing. Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2755 (1991). Under the Communications

Act of 1934, as amended (the Communications Act), an aggregator is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2).

FN2. A 0+ call occurs when the caller enters "0" plus an interexchange number, without first dialing a carrier access code, such as 10288. An access code is a sequence of numbers, e.g., 10288, that connects the caller to the interexchange carrier associated with that number sequence. See infra paras. 44-51.

FN3. See Appendix A. The total charges or price that is conveyed must include any aggregator surcharge that such callers will be billed for the operator services call.

FN4. Consumers would be advised to press a digit or digits on the key pad or to remain on the line.

FN5. See infra paras 29-34.

FN6. See infra paras. 35-38. To address the similar problem of high interstate rates for calls initiated by prison inmates, we also amend our rules to require that carriers orally inform the party to be billed for interstate calls initiated by prison inmates of the carrier's identity and to disclose how to obtain the carrier's charges for the call to such party before the call is connected. See infra paras. 56-61.

FN7. See infra paras. 44-51.

FN8. 47 U.S.C. § 226.

FN9. See Appendix A.

FN10. See Telecommunications Research and Action Center and Consumer Action Center, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (TRAC Order) (consumer disclosure and call blocking practices of OSPs found unreasonable in violation of Section 201(b) of the Communications Act); Policies and Rules Concerning Operator Service Providers, Notice of Proposed Rulemaking, CC Docket No. 90-313, 5 FCC Rcd 4630 (1990) (rules proposed to remedy problems related to operator services, such as call blocking, that impeded and distorted the operation of a fully competitive OSP industry). "Public phones" refers here to payphones and other aggregator phones, including hotel phones.

FN11. Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

FN12. 47 U.S.C. § 226(c)(1)(A). This provision requires aggregators to post on or near the telephone instrument, in plain view of consumers:

(i) the name, address, and toll-free telephone number of the provider of operator services;

(ii) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the

interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone ...

FN13. See 47 U.S.C. § 226(h)(1)(A); note 12, supra. The TOCSIA informational tariff filing requirement became effective on January 15, 1991. Thereafter, rates and surcharges contained in informational tariffs of a dozen OSPs were designated for formal investigation because they did not appear to be just and reasonable. See, e.g., People's Telephone Company, Inc., 6 FCC Rcd 6658 (Com. Car. Bur. 1991); South Texas Phone, Inc., 6 FCC Rcd 6664 (Com. Car. Bur. 1991); Capital Network Systems, Inc., 6 FCC Rcd 6707 (Com. Car. Bur. 1991). In December 1991, the tariffed rates and related aggregator surcharges, of an additional fourteen OSPs also were designated for formal investigation. See, e.g., American Network Exchange, Inc., 7 FCC Rcd 163 (Com. Car. Bur. 1991); American Public Communication, 7 FCC Rcd 169 (Com. Car. Bur. 1991). Ascom Autelca Communications, 7 FCC Rcd 175 (Com. Car. Bur. 1991); Fone America, Inc., 7 FCC Rcd 181 (Com Car. Bur. 1991). These proceedings were terminated after the OSPs under investigation generally reduced their rates to more reasonable levels.

FN14. Proprietary cards are calling cards that are valid only for calls handled by the carrier that issued the card.

FN15. Billed Party Preference for 0+ InterLata Calls, Notice of Proposed Rulemaking, CC Docket No 92-77, 7 FCC Rcd 3027 (1992).

FN16. Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 7714, 7726 (1992), petitions for reconsideration pending (Phase I Order). See infra paras. 43-45.

FN17. In May 1994, the Commission tentatively concluded that the implementation of a BPP system for 0+ calls for interLATA payphone traffic and for other types of operator-assisted interLATA traffic would serve the public interest. Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 9 FCC Rcd 3320 (1994) (Further Notice). Under BPP, operator-assisted long-distance traffic would be carried automatically by the OSP preselected by the party being billed for the call. Given the estimated cost of BPP, calculated in the neighborhood of $1 billion as of 1993, and the fact that much of the data of record on which its tentative conclusion was based was dated, the Commission sought proposals for less costly alternatives to BPP. The Commission stated that it would mandate BPP only if its benefits outweighed its costs, and those benefits could not be achieved through alternative, less costly, means. Id., 9 FCC Rcd at 3325.

FN18. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

FN19. Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 113 (1996).

FN20. 47 U.S.C. § 160(a).

FN21. Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996) (hereinafter OSP Reform Notice).

FN22. Id. at 7295-96. Under Section 226, OSPs are required to file informational tariffs specifying all charges, including any PIFs such as aggregator surcharges, that consumers may be billed for making or accepting interstate telephone calls placed from payphone or other aggregator locations. 47 U.S.C. § 226(h)(1)(A) provides that:

> [e]ach provider of operator services shall file ... and shall maintain, update regularly, and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers ... with respect to calls for which operator services are provided ....

On October 31, 1996, the Commission released a Second Report and Order in CC Docket No. 96-61, in which it determined under Section 10 to forebear from requiring or allowing nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services. Policy and Rules Concerning the Interstate, Interexchange Marketplace, 11 FCC Rcd 20,730 (1996), stayed, MCI v. FCC, No. 96-1459 (D. C. Cir. February 13, 1997), modified on reconsid., 12 FCC Rcd 15,014 (1997) (hereinafter Tariff Forbearance for Nondominant Carriers). We left to the instant proceeding whether we should similarly forbear from applying the tariff filing requirements of Section 226 of the Communications Act. 11 FCC Rcd at 20,789-90.

FN23. OSP Reform Notice, 11 FCC Rcd at 7283.

FN24. Id. at 7294.

FN25. Id. at 7301. Thirty-nine parties timely filed comments. Also, two dozen reply comments, including some filed jointly by more than one party, were timely filed. The parties filing comments and reply comments are listed in Appendix B. On October 10, 1996, the Common Carrier Bureau sought further comment on certain specific questions. Public Notice, 11 FCC Rcd 12,830 (Com. Car. Bur. 1996); 61 F.R. 54979 (October 23, 1996) (Public Notice). Twenty-three parties filed comments or reply comments in response thereto. See Appendix B.

FN26. OSP Reform Notice, 11 FCC Rcd at 7278.

FN27. A consumer "dials around" a presubscribed carrier by dialing an access code prefix (e.g., 10333 or 1-800-877-8000 to reach Sprint, 1-800-888-8000 to reach MCI, and 1-800-CALL ATT for AT&T) in order to reach the consumer's preferred long distance carrier.

FN28. Because aggregators also experienced fraud due to access code-like dialing, many blocked the use of access codes from their phones.

FN29. See 47 U.S.C. § 226(d)(1).

FN30. See 47 C.F.R. § 64.704. Pursuant to Section 226(c)(1)(A)(ii) of the Communications Act, the Commission has required unblocking of all aggregator

phones. See 47 C.F.R. § 64.704(c)(5). The Commission also adopted rules and policies governing the payphone industry that, among other things, established a plan to ensure fair compensation for each completed intrastate and interstate call using a payphone. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20,541; Order on Reconsideration, 11 FCC Rcd 21,233; applications for review granted in part and denied in part, Illinois Public Telecommunications Assn. v. FCC and United States, 117 F.3d 555 (D.C. Cir. 1997). (Payphone Compensation Order).

FN31. 47 C.F.R. § 64.703(a)(1); see Policy and Rules Concerning Operator Service Providers, 6 FCC Rcd at 2756-57. In this connection, under our rules, OSPs also must identify themselves to both parties of a collect call. 47 C.F.R. § 64.708(d) (definition of consumer includes both parties to a collect call).

FN32. See Policies and Rules Concerning Operator Service Providers, 5 FCC Rcd 4630, 4631-32 (1990) (citing TRAC Order, supra, 4 FCC Rcd at 2159).

FN33. See e.g., Letter from Honorable Strom Thurmond to Reed E. Hundt (February 12, 1996), File No. IC-96-00963 (urging prompt FCC action to protect the American public from excessive rates charged by some OSPs); letter from Honorable John Edward Porter to Reed E. Hundt (February 9, 1996), File No. IC-96-00866 (inquiring about constituent concerns over high rates charged by Oncor Communications, Inc.). Some OSPs charge up to 10 times the AT&T rate. Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002. See also Don Oldenburg, Long Di$tance; Pay-Phone Charges Can Burn the Unwary, Wash. Post, June 8, 1995, at D05, available in 1995 WL 2097640.

FN34. The Bureau processed 4,487 written OSP complaints in 1995. This represented 17.6% of the total complaints processed. Common Carrier Scorecard, Federal Communications Commission, Fall 1996 edition, at 14-15.

FN35. Common Carrier Scorecard, Federal Communications Commission, Dec. 1997 edition, at 22. This represented 11.8% of total complaints processed in 1996.

FN36. See OSP Reform Notice, 11 FCC Rcd at 7282.

FN37. Id.

FN38. See Appendix C at paras. 1-23.

FN39. Our Payphone Compensation Order, requiring providers of payphones at aggregator locations to be compensated for dial-around calls, should serve to alleviate, if not eliminate, any need for OSPs to pay high commissions or to permit high aggregator surcharges. See supra note 30.

FN40. See Letter from Susan E. Wefald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, to Secretary, Federal Communications Commission (July 3, 1996); Sprint Comments at 9; Florida Commission Comments at 8 ("competition exists among OSPs to serve payphone owners, not to serve end users");

Daniel Pearl, Costly Talk: Why Pay-Phone Calls Can Get So Expensive And Spark Complaints, Some Long-Distance Carriers Reward Shops to Sign Up and Then Soak Callers, Wall St. J., May 30, 1995, at A1, available in 1995 WL-WSJ 8715335 ("[c]ompetition over pay phones has made prices soar").

FN41. 47 U.S.C. § 226.

FN42. 47 C.F.R. §§ 64.703-708.

FN43. See, e.g., Daniel Pearl, Costly Talk: Why Pay-Phone Calls Can Get So Expensive and Spark Complaints, supra, Wall St. J., May 30, 1995, at A6. (AT&T and MCI commercials urge callers to dial their special 800 numbers when making collect calls).

FN44. See, e.g., "Public Phone Users Beware," Consumer News, Federal Communications Commission (June 1996); Common Carrier Scorecard, Federal Communications Commission, Fall 1996 edition at 14-15; Jane Adler, Dialing Up for Dollars: Biz Owners Say Beware of Pay Phone Scams, Crain's Chi. Bus., July 18, 1994, at 23, available in 1994 WL 3009472.

FN45. Any complainant alleging that a nondominant carrier's rates are unreasonably high in violation of Section 201(b) has a heavy burden to overcome the presumption of lawfulness of rates of nondominant carriers and that a carrier without market power cannot long survive if it sets its rates at a supracompetitive level. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1 (1981) (applying current regulatory procedures to nondominant carriers imposes unnecessary and counterproductive regulatory constraints upon a marketplace that can satisfy consumer demand without government intervention).

FN46. NYSCPB Comments at 3,7. Unless otherwise indicated, all citations to comments and reply comments of record in this proceeding are to comments or reply comments filed, or which were due to be filed, on July 17, 1996, and August 16, 1996, respectively.

FN47. Id. at 4.

FN48. See, e.g., US WEST Reply Comments, filed December 3, 1996, at 2.

FN49. Final Report of the Federal Communications Commission, pursuant to the Telephone Operator Consumer Services Improvement Avt of 1990, November 13, 1992. Final TOCSIA Report at 2.

FN50. Id. at 32. As required by TOCSIA, the Commission there concluded a "rate compliance" proceeding, which it had initiated as Phase II of CC Docket No. 90-313. Id. at 1.

FN51. Id. at 2 (emphasis added).

FN52. Id. at 3 (footnote omitted).

FN53. ACTEL response, received July 8, 1996, at 3. See Payphone Compensation Order, supra, 11 FCC Rcd at 20549 n.35 (Term "Subscriber 800 calls" includes other sequences of numbers that FCC may deem in future the equivalent, such as 888).

FN54. We are not aware of any technical reason why more than a one or two-digit keypad entry would be necessary. See ex parte letter from Steven A. Augustino, counsel for CompTel, to William F. Caton, Acting Secretary, Federal Communications Commission (April 4, 1997) at page 1; ex parte letter from Mason Harris, President, Robin Technologies, Inc., to Paul F. Gallant, Legal Advisor to Commissioner Tristani (January 22, 1998) at page 2.

FN55. Callers, of course, would also avoid the delay due to disclosure rules regarding prices when calling via an access code rather than making a 0+ call. The new disclosure requirement is not applicable when a caller dials-around the presubscribed OSP by dialing another carrier's 800, 10XXX, or similar identification or access code. The requirement also is inapplicable to calls to local and long distance operators, i.e., 0- and 00 calls, where callers who wish to make interstate calls already have the opportunity to obtain rate quotes.

FN56. 47 C.F.R. § 64.703(a)(2) (OSPs "shall ... permit the consumer to terminate the telephone call at no charge before the call is connected.").

FN57. 47 U.S.C. § 226(d)(1); see § 226(d)(1)(A).

FN58. See OSP Reform Notice, 11 FCC Rcd at 7293-94 (commenters have estimated that prices in excess of competitive rates cost consumers approximately a quarter of a billion dollars per year).

FN59. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748.765(1976)

FN60. Attorneys General Comments at 8.

FN61. 47 U.S.C. § 226(d)(1)(B).

FN62. See H.R. Rep. No. 101-213, 101st Cong., 1st Sess. 14 (1992) (OSPs can meet filing requirement to specify aggregator surcharges by filing the range of surcharges collected on behalf of call aggregators). Unlike aggregator surcharges, which Congress allowed OSPs to express as a range in their information tariffs, OSPs' own charges must be specifically disclosed in their informational tariffs. See Policies and Rules Concerning Operator Service Providers 6 FCC Rcd at 2757.

FN63. See OSP Reform Notice, 11 FCC Rcd at 7291-93.

FN64. Sprint Reply Comments, filed December 3, 1996, at 1, see, e.g., Reply Comments, filed December 3, 1996, of APCC, AT&T, CCOS, Intellicall, and Pacific Telesea.

FN65. Sprint Reply Comments, filed December 3, 1996, at 5 n.2.

FN66. As CompTel notes, the approach that we adopt herein is simple, direct and less costly than BPP. See CompTel Comments filed November 13, 1996 at 2-5.

FN67. California Commission Comments, filed November 13, 1996, at 5 (emphasis in original).

FN68. Pacific Telesis Reply Comments, filed December 3, 1996, at 3.

FN69. Mark Rockwell, GTE Introduces Flat-rate Pricing, Communications Week, Feb. 3, 1997, at T33, available in 1997 WL 7691446 (GTE rolled out a flat-rate long-distance calling plan for consumers, to complement its flat-rate plan for businesses); How to Keep 'Em on the Loop, Telemedia News & Views, Apr. 1, 1996 (A rouster of "low fare" long-distance carriers, led by Sprint Long Distance and several second tier carriers offering "postalized" flat $0.10-a minute rates); Telco Communications Adding Internet to Commercial Long Distance, M2 Presswire, Dec. 10, 1996, available in 1996 WL 14655722 (Prime Business Select II offers one simple flat rate for both intrastate and interstate calls); Sprint, MCI Announce New Long-Distance Plan, Orlando Sentinel, Jan. 7, 1995, at C10, available in 1995 WL 6401982 (Sprint offering flat rates for residential long-distance calls); Kevin Petrie, Small Competitors Roll Out Flat-rate Phone Plans, Denv. Bus. J., Nov. 24, 1995, at 4, available in 1995 WL 11627775.

FN70. 44 Liquormart, Inc. v. Rhode Island, 116 S. Ct. 1495, 1506 (1996).

FN71. Id. citing Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557, 566 (1980).

FN72. See AMNEX Comments at 8-9 n.22.

FN73. Policies and Rules Concerning Interstate 900 Telecommunications Services, 6 FCC Rcd 6166 (1991).

FN74. 47 U.S.C. § 201(b) provides that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign communication by wire or radio common carrier] service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful ...."

FN75. MCI Comments at 4.

FN76. 47 U.S.C. § 226(h)(1)(A). (Every OSP informational tariff must include any surcharges and fees collected from consumers).

FN77. See, e.g., AMNEX Comments at 3; CompTel comments at 14.

FN78. See, e.g., Joint Reply Comments of Intellicall and NOSI at 18. A store-and-forward or "smart" payphone is essentially an automated operator system contained in the payphone itself.

FN79. Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd at 2757.

FN80. Id.

FN81. Id.

FN82. Intellicall Comments at 2.

FN83. Ex parte Letter from Judith St. Ledger-Roty, counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (Mar. 21, 1997) at 4.

FN84. Id. OSPs, including those that provide service from store-and-forward payphones, have been on notice for more than a year that they could be made subject to proposed price disclosure requirements of record in this proceeding and that we expected them "to begin to take the actions necessary to be able to implement them in a timely manner." OSP Reform Notice, 11 FCC Rcd at 7294.

FN85. Id.

FN86. Id.

FN87. OSP Reform Notice, 11 FCC Rcd at 7294.

FN88. Id.

FN89. See supra paras. 14-28.

FN90. See Appendix C at paras. 24-42.

FN91. See, e.g., Letter from Susan E. Wedfald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, North Dakota Public Service Commission, to Secretary, Federal Communications Commission (July 3, 1996) (The North Dakota Commission's experience is that benchmarks will not have the intended result of motivating operator services providers to keep rates low).

FN92. See, e.g., Attorneys General Comments at 4 ("Many OSPs agree with our assessment that CompTel's proposed benchmarks are too high"); NARUC Comments at I (CompTel's proposed rate benchmarks of $3.75 and $4.75 are "excessively high"); NYSCPB Comments at 6 (benchmarks proposed by CompTel, Bell Atlantic, NYNEX and others are "far too high"); Pennsylvania Commission Reply Comments, filed May 5, 1995, at 4-6 (CompTel's proposed benchmarks are "excessive," agreeing with comments to that effect filed on or about April 12, 1995 by the Colorado Commission Staff, Ameritech, Spring and the National Association of Attorneys General, Telecommunications Subcommittee of the Consumer Protection Committee).

FN93. Further Notice, 9 FCC Rcd at 3320.

FN94. Id. at 3325.

FN95. Id. at 3325-26.

FN96. Id. at 3325.

FN97. Id.

FN98. OSP Reform Notice, 11 FCC Rcd at 7277.

FN99. Id. at 7277-78.

FN100. See Appendix C at paras. 43-44.

FN101. Further Notice, 9 FCC Rcd at 3325.

FN102. OSP Reform Notice, 11 FCC Rcd at 7277-78.

FN103. See, e.g., BA/BS/NYNEX Comments at 9; SWBT Comments at 2; U S WEST Comments at 12-14.

FN104. See Appendix C at para. 45.

FN105. See, e.g., CompTel Comments at 22.

FN106. Inmate Calling Services Providers Coalition Comments at 7. See also Gateway Technologies, Inc. Comments at 4 (Commission cannot legitimately provide for carrier choice in the inmate services environment).

FN107. The 1996 Act enacted new Section 10(a) of the Communications Act which provides as follows:

> REGULATORY FLEXIBILITY. -- Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --
>
> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

1996 Act at § 401 (adding Section 10(a), 47 U.S.C. § 160(a)).

FN108. OSP Reform Notice, 11 FCC Rcd at 7296, citing 47 U.S.C. § 226(h)(1)(B).

FN109. Unlike the effective date of rates in tariffs filed pursuant to Section 203 of the Act, which the Commission may suspend, rates and surcharges in informational

tariffs filed pursuant to Section 226 are effective without prior notice to the public and the Commission. See Section 226(h)(1)(A) ("changes in [informational tariff] rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect.")

FN110. OSP Reform Notice, 11 FCC Rcd at 7297.

FN111. Id.

FN112. See Appendix C at paras. 56-64.

FN113. See Appendix A.

FN114. See supra para. 34.

FN115. Phase I Order, 7 FCC Rcd 7714. Proprietary calling cards are calling cards that are valid only for calls handled by the carrier that issued the card.

FN116. Id.

FN117. See id. at 7714 n.1.

FN118. See id.

FN119. See id.

FN120. See id.

FN121. See id.

FN122. The CIID card is proprietary because AT&T does not permit other OSPs to access and use the data necessary to validate calls billed to this card. The lack of OSP access to AT&T's CIID card database was alleged to contribute to consumer confusion and frustration when 0+ calls could not be completed due to the OSP's inability to validate the card information.

FN123. See, e.g., Letter from Honorable Bud Cramer, Member of Congress, to Alfred C. Sikes, Chairman, Federal Communications Commission (June 12, 1992) (requesting that 0+ public domain be carefully evaluated for its effect on consumers and rejected if not beneficial to consuming public).

FN124. See Letter from Alfred C. Sikes, Chairman, Federal Communications Commission, to Honorable Bud Cramer, Member of Congress (June 29, 1992).

FN125. Phase I Order, 7 FCC Rcd at 7726, 7714.

FN126. Id. at 7719.

FN127. Id. at 7721.

FN128. Id. at 7722.

FN129. Id. at 7714,.

FN130. Id. at 7724-25.

FN131. Id.

FN132. See Appendix B at 5; Appendix C at 32.

FN133. See, e.g., CompTel petition at 8.

FN134. Id. at 9, 11-12.

FN135. Id. at 15; LDDS Petition at 5; PhoneTel Reply to Opp. to Petition at 4.

FN136. LDDS Petition at 5-6; ITI Petition at 4; Polar Petition at 3; see also MCI Petition at 4-5.

FN137. LDDS Petition at 10-13.

FN138. See AT&T Opp. Petition at 3; AT&T Reply in Opp. to Petition at 2.

FN139. See Communications Daily, May 28, 1997, at 9 ("AT&T Ending Practice of Allowing its Customers to Use AT&T Calling Card when Dialing Long Distance, Forcing Its Customers to Use 800-CALL-ATT Bypass Service.)

FN140. LDDS Petition at 7.

FN141. Phase I Order, 7 FCC Rcd at 7721, 7723.

FN142. Id. at 7723-24.

FN143. Id. at 7723.

FN144. Id. at 7724.

FN145. CompTel Petition at 15, n.36.

FN146. Phase I Order, 7 FCC Rcd at 7725.

FN147. Id.

FN148. PhoneTel Petition at 8-9; see LDDS Petition at 15-16.

FN149. In 1993, the Common Carrier Bureau reviewed and approved AT&T's plan for consumer education. See Letter from Cheryl A. Tritt, Chief, Common Carrier Bureau,

to Robert H. Castellano, Director, Federal Regulation, AT&T, dated February 4, 1993.

FN150. As of August 19, 1997, approximately 630 OSPs had informational tariffs on file with the Commission.

FN151. Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3323 (1995), petitions for reconsideration denied, 62 FR 56,111 (October 3, 1997) (AT&T Reclassification Order).

FN152. Id. at 3323-24.

FN153. Id. at 3324.

FN154. Id. (footnote omitted).

FN155. Id. at 3325.

FN156. Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (emphasis supplied), 47 U.S.C. § 253(a). See Classic Telephone, Inc., 11 FCC Rcd 13082 (1996) (cities' decisions denying franchise applications preempted), appealed sub nom. City of Bogue, Kansas v. FCC, No. 96-1432 (D.C. Cir.) emergency petition denied and appeal ordered held in abeyance pending further order of the court, 1997 WL 68331 (D.C. Cir.) Jan. 14, 1997; New England Public Communications Council, 11 FCC Rcd 19713 (1996) (overturning Conn. Dept. of Public Utility Control's decision that had prohibited independent pay phone providers and other non-LECs from offering pay phone service in Connecticut), reconsideration denied, 12 FCC Rcd 5215 (1997).

FN157. See NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 362; C.U.R.E. Reply Comments at Attachment 1(Summary of State Survey Regarding Rate Restrictions on InterLata, Intrastate Inmate Telephone Rates).

FN158. NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 3621. See also Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

FN159. Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

FN160. Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to William F. Caton, Acting Secretary, Federal Communications Commission (July 16, 1996) at 1; NYCPB Comments at 7.

FN161. Ohio Commission Comments at 4.

FN162. See, e.g., jointly filed Reply Comments of the State of Maine Public Utilities Commission, State of Montana Public Service Commission, New Mexico State Corporation Commission, and State of Vermont Department of Public Service.

FN163. Id. at 2.

FN164. Id.

FN165. Id.

FN166. Florida Commission Comments at 7.

FN167. Section 226 is concerned with interstate, domestic, interexchange operator services. See 47 U S C § 226(a)(7) ("The term 'operator services' means any interstate telecommunications service initiated from an aggregator location ...") (emphasis added). Providers of operator services from the United States to foreign points are subject to the tariff filing requirements of Section 203, and our rules and policies applicable to international telecommunications services.

FN168. See supra n. 156.

FN169. Any state requirements inconsistent with the Commission's regulations concerning the provision of payphone service in implementation of Section 276 of the Communications Act are preempted under subsection (c) thereof, 47 U.S.C. § 276(c).

FN170. NYDPS Comments at 2 n.1.

FN171. See Florida Commission Comments at 6.

FN172. See Pennsylvania Commission Initial Comments, late filed July 25, 1996, at 3.

FN173. C.U.R.E. Reply Comments at 6.

FN174. See, e.g., InVision Comments at 8; Coalition Reply Comments at 8.

FN175. See also Comments of APCC in CC Docket No. 96-128, July 1, 1996, at 9 (FCC prescription of a fair, uniform payphone fee applicable to every call will end "the forced dependence on interstate 0+ subsidies that destabilizes the entire payphone industry.").

FN176. OSP Reform Notice, 11 FCC Rcd at 7301 (footnotes omitted).

FN177. Florida Commission Comments at 11.

FN178. See OSP Reform Notice, 11 FCC Rcd at 7300 n.122, quoting TOCSIA Order.

FN179. See, e.g., informal complaint File No. 97-24317 (complaint alleging MCI

Telecommunications Corporation overcharged for interstate collect calls from prison inmate phone); File No. 97-20961 (complaint alleging AT&T's practices and charges for interstate collect calls from inmate phones are unreasonable); File No. 97-24319 (complaint about InVision Telecom's monopoly, practices, and high 0+ intrastate and interstate toll rates).

FN180. See supra para. 55.

FN181. See C.U.R.E. Reply Comments at 5 ("the vast majority of inmate calling traffic is intrastate").

FN182. See 5 U.S.C. § 603.

FN183. OSP Reform Notice, 11 FCC Rcd at 7302.

FN184. Id. at 7303.

FN185. Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

FN186. Joint Explanatory Statement at 113.

FN187. See Appendix A.

FN188. In this Order, we also consider, but decline to adopt, proposals to establish, price caps, benchmarks, or other price regulation of OSP charges and aggregator surcharges, 0+ in the public domain, and a billed party preference system.

FN189. OSP Reform Notice, 11 FCC Rcd at 7302.

FN190. Id.

FN191. Id. at 7303.

FN192. Initial Regulatory Flexibility Act Analysis, Comments of America's Carriers Telecommunication Association, filed July 17, 1996, at 1.

FN193. Id.

FN194. Id. at 2-3.

FN195. Id. at 4-5.

FN196. See, e.g., NTCA Comments at 2-3.

FN197. Cleartel/ConQuest Comments at 7-10.

FN198. NTCA Reply Comments at 2.

FN199. See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

FN200. Small Business Act, 15 U.S.C. § 632 (1996).

FN201. 13 C.F.R. § 121.201.

FN202. United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

FN203. 15 U.S.C. § 632(a)(1).

FN204. 1992 Census at Firm Size 1-123.

FN205. 13 C.F.R. § 121.201, SIC Code 4812.

FN206. Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

FN207. Id.

FN208. See Local Competition First Report and Order, 11 FCC Rcd 16144-5 at paras. 1328-30, 16150 at para. 1342 (1996). Because LECs generally are subject to regulation as dominant carriers, many LECs have formed separate IXC subsidiaries for their interstate, domestic, interexchange service offerings, presumably to facilitate competition with nondominant IXCs subject to less regulatory constraints.

FN209. See id.

FN210. Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

FN211. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

FN212. See 5 U.S.C. § 604(a)(4).

FN213. See id. at § 604(a)(5).

FN214. 44 U.S.C. §§ 3501 et seq.

FN215. OSP Reform Notice, 11 FCC Rcd at 7303.

FN216. Id. at 7297.

FN217. Id. at 7298.

FN218. Notice of Office of Management and Budget Action, OMB No. 3060-0717 (September 8, 1996).

FN219. Id. at 2.

FN220. See supra para. 30.

FN221. In asking how consumers would be informed of the benchmark charge, OMB stated that the Commission should not assume that members of the public would know such benchmark cost and that "[t]heir knowledge will, in general, be limited to the cost of services provided by their interlata carrier of choice." Notice of Office of Management and Budget Action, OMB No. 3060-0717, supra at 2.

FN222. d.

FN223. See, e.g., GTE Comments at 7 (Average work time per call to determine and quote cost prior to call completion would "likely double, increasing the operator surcharge per call accordingly"). "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.") Id. Because call costs would have to be quoted to the billed party, "additional equipment would be required for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls." Id. at 7-8. Developing an automated system that can quote a rate at the point the call is made "will significantly increase the OSP's cost." MCI Comments at 4. Price disclosure "on each call is extremely costly." Pacific Telesis Comments at 3.

FN224. Letter from Judith St. Ledger-Roty, counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (March 21, 1997) at 3.

FN225. Id. at 4.

FN226. GTE Comments at 7.

FN227. Id.

FN228. MCI Comments at 3-4.

FN229. Sprint Comments at 4 n.3.

FN230. US WEST Comments at 10.

FN231. See Appendix A.

APPENDIX A

Rule Amendments

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:
1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Part 64, Subpart G, Section 64.703 is amended by removing the word "and" at the end of subsection (a)(2) and the period at the end of subsection (a)(3)(iii), and by adding a semicolon and the word "and" at the end of subsection (a)(3)(iii), and by adding the following new subsection after subsection (a)(3):

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange 0+ call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services; by dialing no more than two digits or by remaining on the line.

3. Part 64, Subpart G, is further amended by adding the following Section 64.709:

§ 64.709 Informational tariffs.
(a) Informational tariffs filed pursuant to 47 U.S.C. § 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per call fees, if any, collected from consumers by the carrier or any other entity.

(b) Per call fees, if any, billed on behalf of aggregators or others, shall be specified in informational tariffs in dollars and cents.

(c) In order to remove all doubt as to their proper application, all informational tariffs must contain clear and explicit explanatory statements regarding the rates, i.e., the tariffed price per unit of service, and the regulations governing the offering of service in that tariff.

(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)