Ex. H

[Service Date: August 27, 2009]

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL, Complainants, v. AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC., Respondents.	Docket No. UT-042022 **T-NETIX, INC.'S AMENDED MOTION FOR SUMMARY DETERMINATION**

Respondent T-Netix, Inc. (T-Netix), through counsel, submits this amended motion for summary determination (Motion) in the above-captioned primary jurisdiction proceeding.

1. On July 28, 2005, T-Netix submitted a motion for summary determination (the Initial T-Netix Motion) in which it argued that respondent AT&T Communications of the Pacific Northwest, Inc. (AT&T) was the telecommunications carrier serving as and meeting the definition of Operator Service Provider (OSP) promulgated by the Washington Utilities and Transportation Commission (WUTC) for inmate calls originating from correctional institutions in Washington. Pursuant to ALJ Friedlander's invitation, in a telephonic status conference on August 24, 2009, T-Netix now submits this amended motion for summary determination to fairly reflect the post-discovery evidence of record and to ensure that the Commission has before it all

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material factual and legal considerations. This Amended Motion supplements the Initial T-Netix Motion and adopts and incorporates the Initial T-Netix Motion, in its entirety, by reference herein.

I. SUMMARY

2. The Initial T-Netix Motion, filed before any depositions and prior to significant discovery in this matter, argued that T-Netix "did not act as an operator service provider in this case — not for any of the institutions involved or the calls that Complainants challenge." Initial T-Netix Mot. at 1 ¶ 2. The facts compiled in discovery corroborate that conclusion and provide ample factual and legal support for a Commission determination that, as the common carrier providing all intrastate interLATA telecommunications services (including all "0+" collect calls) at the Washington Department of Corrections (DOC), AT&T alone was the OSP for those facilities for such calls. There are several parallel reasons for this determination, which the Commission can and should make as matter of law given the undisputed facts of record.

3. First, under the definition of OSP in WAC 480-120-021, the entity "providing a connection" to local or long-distance services from payphones is considered the operator service provider. At all of the correctional facilities in question, the facts make clear that the applicable T-Netix "platform" — a combination of hardware and software ***sold to AT&T*** pursuant to contract and operated by T-Netix ***on behalf of AT&T*** at the prisons — did not provide a "connection" for any calls. All inmate calls from these correctional institutions were sent directly by T-Netix to the central office of serving local exchange carrier (LEC) over plain old telephone service (POTS) lines ordered by T-Netix on behalf of AT&T; no switching or routing of inmate calls was performed by T-Netix. Thus, the LECs made the "connection" to local exchange services by switching local calls onto their own local exchange facilities/services and

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AT&T made the "connection" to long-distance services by switching interLATA calls, at its point of presence (POP), onto AT&T long-distance facilities/services.

4. Second, the OSP rules, themselves derived from earlier 1991 regulations governing so-called Alternative Operator Services (AOS) providers, are premised expressly on the precondition that an OSP is a provider of "telecommunications services," in other words a common carrier. WAC 480-120-021 (1991), attached as Exhibit 4 to AT&T's Amended Motion for Summary Determination (hereafter cited at "AT&T Exh. ___"). Because it is undisputed that AT&T, contractually and as a matter of telecommunications law, was the common carrier serving inmates for **inter**LATA collect calling from these institutions, only AT&T can be the OSP for those calls.[1] Whatever functions T-Netix and its "platform" performed are irrelevant to whether AT&T, as the entity holding itself out to the public as the carrier and the entity providing transmission of 0+ calls from the institutions, can escape its OSP responsibilities by virtue of a subcontract. The law is plain and settled that a reseller is responsible for regulatory compliance with respect to its own services, not any of its underlying facilities or services providers.

5. Third, a determination that T-Netix was the OSP for purposes of the verbal rate quote requirement cannot be squared with AT&T's compliance with the other OSP mandates — branding, customer service, etc. — or with the purpose of the Commission's regulations. For interLATA collect calls, branded (by T-Netix on behalf of AT&T) as AT&T calls, charged at rates set by AT&T and billed on behalf of AT&T through arrangements made contractually by AT&T with T-Netix, the rates Complainants argue were not disclosed **are indisputably**

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AT&T's collect calling rates. It makes no sense for AT&T to assume responsibility for branding calls, something that only the OSP is required to do, if it were in fact not acting as an OSP. Nor does it make any sense as a matter of regulatory policy to require T-Netix to disclose rates **set by another carrier over which it has no control** for payphone-originated calls.

6. Finally, Complainants have assumed that the verbal rate quote requirements of WAC 480-120-141 govern collect calls placed by inmates at correctional institutions. They do not. The WUTC adapted its rate disclosure rule from a Federal Communications Commission (FCC) requirement for verbal rate quote disclosures that applied only to services provided at "aggregator locations." But the FCC ruled in 1991 that prisons are not aggregators and thus, when it wanted to extend rate quote requirements to inmate services providers, passed a separate rule. The WUTC never did so here. Consequently, the 1999 verbal rate quote disclosure requirement has never governed payphones serving only correctional facility inmates, as here, and cannot lawfully be applied to the calls at issue in this proceeding.

III. EVIDENCE RELIED UPON

7. T-Netix relies upon the following evidence in support of its Motion that has either been filed with the Commission in this docket or was produced in discovery in this proceeding and is annexed hereto:

a. All affidavits, documents and other evidence relied on in support of the Initial T-Netix Motion, filed on July 28, 2005, including the evidence listed at page 2, ¶¶ 5(a)-5(o).

b. Declaration of Robert Rae [12/12/2008] (attached as Exh. 4).

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[1] Similarly, the LECs serving those institutions were the common carriers serving inmates for intraLATA collect calling, and, if the WUTC's OSP rules applied to them, only they could be the OSPs for those calls.

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c. Declaration of Robert Rae [8/5/2009] (attached as Exh. 6).

d. Excerpts from deposition transcript of Kenneth Wilson [8/7/2009] (attached as Exh. 5).

e. Excerpts from deposition transcript of Mark Pollman [8/10/2009] (attached as Exh. 3).

f. Excerpts from deposition transcript of Robert Rae [8/6/2009] (attached as Exh. 2).

g. Deposition Exhibit 77, List of Opinions of Kenneth Wilson (attached as Exh. 1).

h. Letter from WUTC Secretary to Interested Persons, Docket No. 900726 (dated April 30, 1991) (attached as Exh. 10).

i. Billed Party Preference for InterLATA 0+ Calls, Second Report and Order on Reconsideration, CC Docket No. 92-77, 13 FCC Rcd. 6122 (1998) (attached as Exh. 7).

j. Policies and Rules Concerning Operator Service Providers, Notice of Proposed Rulemaking, 6 FCC Rcd 2744, 2752 (1991) (attached as Exh. 11).

k. In the Matter of Amending WAC 480-120-021, 480-120-106, 480-120-141 and Adopting WAC 480-120-143, Order R-345, Docket No. UT-900726 (1991), WSR 91-13-078 (AT&T Exh. 4).

l. In the Matter of Amending WAC 480-120-021, 480-120-138 and 480-120-141; and repealing WAC 480-120-137, 480-120-142 and 480-120-143, Order R-452, Docket No. UT-970301 (1998), WSR 99-02-020 (AT&T Exh. 5).

m. AT&T's Comments on proposed rules in Docket No. U-88-1882-R, dated December 21, 1988 (attached as Exh. 8).

n. Clarification Comments from Paul Curl, WUTC, Docket No. UT-900726, dated October 1, 1991 (attached as Exh. 9).

IV. BACKGROUND

8. Complainants Sandy Judd and Tara Herivel sued AT&T and T-Netix, among other parties, claiming they received inmate-initiated collect phone calls from Washington prisons that lacked the audible rate disclosures required by the Commission. The trial court

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dismissed three of the defendants (Qwest, Verizon and CenturyTel) because they were LECs exempt from the disclosure requirements. The Court of Appeals and the Washington Supreme Court affirmed. *Judd v. Am. Tel. & Tel. Co.*, 116 Wn. App. 761, 66 P.3d 1102 (2003), *aff'd*, 152 Wn. 2d 195, 95 P.3d 337 (2004).

9. Later, the trial court entered summary judgment for the remaining defendants and vacated its referral of certain issues to the Commission under the doctrine of primary jurisdiction. The Court of Appeals, in an unpublished opinion, reversed and remanded the case to the trial court with directions to reinstate the primary jurisdiction referral for the issues originally before the WUTC, namely (1) whether AT&T or T-Netix were OSPs, and (2) whether they violated the WUTC disclosure regulations. *Judd v. Am. Tel. & Tel. Co.*, 2006 WL 3720425 (Wash. App. Div. 1, December 18, 2006). This proceeding was initiated as a result of reinstatement of the referral.

10. The relevant factual background regarding the AT&T/T-Netix relationship and the provision of operator services at the Washington DOC facilities is set forth in Section IV (¶¶ 7-12) of the Initial T-Netix Motion.

V. ARGUMENT

A. UNDER THE UNDISPUTED FACTS, T-NETIX WAS NOT THE OSP FOR WASHINGTON DOC INMATE CALLS BECAUSE T-NETIX DID NOT "PROVIDE A CONNECTION" FOR ANY OF THE CALLS COMPLAINANTS RECEIVED

11. There is no dispute regarding the configuration and functionality of the T-Netix "P-III" platform, the equipment provided by T-Netix to AT&T at the four correctional institutions in question, or the relationship of AT&T to T-Netix. T-Netix sold software, equipment and maintenance services "to" AT&T pursuant to a 1997 contract. Initial T-Netix

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Mot. at ¶¶ 17-20; Depo. Exh. 77 [Wilson opinion #5] (Exh. 1). T-Netix was solely a subcontractor to AT&T, having no direct or independent relationship to the Washington DOC or to either the calling parties (inmates) or called parties for collect calls placed from these institutions. The P-III platform was interconnected with the PSTN by a series of POTS lines, provisioned by T-Netix on behalf of AT&T, and performed no routing or switching functions whatever. Initial T-Netix Mot. at ¶¶ 22-24; Rae Depo. Tr. at 289:4 – 291:8 (Exh. 2); Pollman Depo. Tr. at 89:22 – 90:4, 91:3-9 (Exh. 3). At all times, T-Netix maintained a 1:1 ratio between station lines (to inmate phones) and trunks to the LEC, acting merely as a gate for approval of the calls. Rae Depo. Tr. at 219:22 – 220:14, 235:11-22, 289:4 – 290:10 (Exh. 2).

12. The Commission's definition of OSP in WAC 480-120-021 (1999) (identical in substance to the earlier definition of AOS provider in WAC 480-120-021 (1991)) provides in full:

> any corporation, company, partnership, or person **providing a connection to intrastate or interstate long-distance or to local services** from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than: Automatic completion with billing to the telephone from which the call originated, or completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier.

(Emphasis added) (AT&T Exh. 4 and 5).

13. Under the operative language of the first sentence of this definition, T-Netix could not have been the OSP for inmate collect calls from the four Washington DOC institutions because T-Netix did not "provide a connection" to either local or long distance services. The

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rule does not define "connection," which is not a recognized term in the telecommunications industry. Rae Decl., Dec. 12, 2008, ¶ 9 (Exh. 4). However, T-Netix did not provide switching, routing, access or transport for any of the local exchange or intrastate interLATA calls originating from these institutions. *Id.* Moreover, as T-Netix expert Robert Rae explained:

> As corroborated by the Schott Supplemental Affidavit, a call was placed by an inmate, processed by the T-Netix platform (essentially holding the voice path while the call was verified and the called party queried for collect call acceptance), outpulsed to a LEC trunk and thereafter switched at the LEC central office to connect either to (a) a local or intraLATA called party, via the LEC's local or intrastate toll networks, respectively, or (b) LEC intrastate switched access services purchased by AT&T and thereafter to AT&T's point-of-presence (POP). *Id.* For interLATA calls, the call was then switched at the AT&T POP to connect to AT&T's long-distance network and then to a terminating LEC via the LEC's intrastate switched access service (typically at the tandem in the serving wire center) and finally switched by that terminating LEC to the called party's line. In this call flow, the entity that "connects" a collect call to local and long-distance services (WAC 99-02-020) is in every case the LEC or AT&T, so reviewing the engineering details underlying any of the T-Netix platforms, or their quantity and provider of trunks, facilitating this call flow will tell the Complainants and this Commission nothing of relevance.

Id. ¶ 8.

14. The opinions offered by the purported experts testifying on behalf of Complainants (Kenneth Wilson) and AT&T (Mark Pollman), in contrast, are based on a test — specifically, which party performed "operator services functions" — that is neither drawn from nor consistent with the Commission's OSP definition. Wilson Depo. Tr. 64:3-19, 158:5 – 159:16, 245:18 – 246:18 (Exh. 5); Pollman Depo. Tr. 61:23 – 62:25 (Exh. 3). Further, Mr. Wilson testified that a call is "connected" within the meaning of WAC 480-120-021 only when it is terminated to the called party and an "end-to-end connection" established. Wilson Depo. Tr.

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213:9-12, 227:22 – 228:14, 236:16 – 237:7, 245:2-7 (Exh. 5). Neither of these positions can possibly be correct. The former is wrong because (a) the rule in question applies to operator **service** providers, not operator **functionality** providers, and (b) it bears no textual or logical relationship to the definition's "providing a connection" criterion. The latter is wrong because OSPs remain OSPs even for incomplete, busy, and other call attempts, whether or not an end-to-end connection is established to the called party. Indeed, under Mr. Wilson's approach, there could be *no* OSP for incomplete 0+ call attempts from payphones, because no end-to-end connection is ever established by any entity, even though the Commission's substantive rules expressly prohibit OSPs from billing for uncompleted calls. *See* WAC 480-120-141(5)(b) (1999).

15. Moreover, there is no dispute as to when — putting aside Complainants' unsupported and *sui generis* end-to-end connection theory — an interLATA call was "connected to . . . long-distance services" in this case. As Mr. Pollman conceded, the first possible point at which an interLATA call from the prisons was "connected" to long-distance services was when the LEC delivered the call to AT&T, via intrastate switched access services ordered by AT&T from the LEC as a carrier, at AT&T's POP. Pollman Depo. Tr. 57:1-22, 60:11 – 61:7 (Exh. 3). Therefore, as Mr. Rae explained: "[f]or interLATA traffic, the question for the Commission to resolve is whether the LEC (by 'connecting' to AT&T's switched access services) or AT&T (by 'connecting' to its long-distance network) connected such calls to 'long-distance services.'" Rae

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Decl., Aug. 5, 2009, ¶ 9 (Exh. 6). Either way, T-Netix was not and could not have been the OSP for interLATA calls pursuant to the definition set forth in WAC 480-120-021.[2]

B. UNDER THE UNDISPUTED FACTS, T-NETIX WAS NOT THE OSP FOR WASHINGTON DOC INMATE CALLS BECAUSE T-NETIX DID NOT SERVE AS THE COMMON CARRIER PROVIDER OF "TELECOMMUNICATIONS SERVICES"

16. The central purpose of the WUTC's OSP rules, the history of OSP regulation and the language of the regulations themselves all lead to the conclusion that to be an OSP an entity must be a common carrier, in other words a "telecommunications company" that provides "telecommunications service," as those terms are defined under state law. An OSP must also be the entity that contracts with the call aggregator. T-Netix cannot be considered to be an OSP because it does not satisfy either of these requirements; AT&T was the common carrier for all interLATA calls from the Washington DOC institutions, both as a matter of contract and telecommunications law, and it contracted with the DOC, which Complainants will argue is the aggregator in this case[3].

17. The objective of OSP regulation has always been to protect consumers from the high charges formerly assessed by some carriers for calls from public phones at aggregator locations. The concern is with carriers contracting with aggregators to be designated as the presubscribed IXC for long distance calls from the payphones and charging excessive fees due to their preferred status. The policy problem was described by the FCC in its *Billed Party*

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[2] Similarly, T-Netix was not and could not have been the OSP for intraLATA calls, because the LEC performed the function of "connecting" to LEC-carried intraLATA long distance services.

[3] As discussed below, as a matter of law, a prison is not a call aggregator for inmate phones.

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Preference for InterLATA 0+ Calls, Second Report and Order on Reconsideration, 13 FCC Rcd. 6122 (1998), as follows:

> 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. 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.

Exh. 7).

18. The FCC and the WUTC both adopted a number of protections for consumers that were designed to address this concern. In its 1991 rules, which mirrored earlier FCC regulations, the WUTC required AOS providers (as a part of any contract with an aggregator) to require aggregators to post a notice advising that services provided on the phone may be provided at rates that are higher than normal, identifying the AOS provider and its telephone number, and disclosing that, among other things, the caller has the right to access other carriers from payphones. WAC 480-120-141(4) (1991) (AT&T Exh. 4). The AOS provider was required to withhold payment of commissions to any aggregator that blocked access to other IXCs. WAC 480-120-141(2)(a) (1991) (AT&T Exh. 4). The AOS was also required to have the aggregator post a notice stating whether a location surcharge was imposed for calls from the phone, the amount of the surcharge and the circumstances when it would apply, to identify or "brand" itself

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at the beginning of a call and to disclose the charges for the call upon request.[4] WAC 480-120-141(4)(d) (1991) (AT&T Exh. 4).

19. In its 1998 Order implementing the verbal rate quote requirement (effective in 1999), Order No. 452, Docket No. UT-970301, at 8 (Dec. 29, 1998), the Commission "adopt[ed] the FCC's verbal disclosure requirement on an intra-state basis." (AT&T Exh. 5) The federal scheme specifically defines a "provider of operator services" as "any **common carrier** that provides operator services or any other person determined by the Commission to be providing operator services." 47 U.S.C. § 226(a)(9) (emphasis added). Likewise, the 1998 FCC rule imposing a rate disclosure requirement on providers of inmate operator services states that a "[p]rovider of inmate operator services means any **common carrier** that provides outbound interstate, domestic, interexchange operator services from inmate telephones." 47 C.F.R. 64.710(b)(4) (emphasis added). As a matter of law, the FCC provision that OSPs are common carriers must be deemed incorporated into the WUTC's definitions due to its "adoption" of the FCC rule.[5]

20. This conclusion is equally supported, without regard to the FCC's approach, by the language of the second sentence of WAC 480-120-021. There, the WUTC makes clear that the term "operator service provider" applies to a common carrier that provides calling service to end users at aggregator locations. WAC 480-120-021, both the 1991 and 1999 versions, defines

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[4] In later rules adopted by FCC and mirrored by the WUTC, at issue here, additional protections were added including a requirement that OSPs disclose orally to payphone callers how to obtain the rates for a operator-assisted call before the call is connected. It is the latter 1999 mandate that Complainants allege was violated in this proceeding.

[5] *State v. Bobic*, 140 Wash. 2d 250, 264 (2000); *Everett Concrete Products, Inc. v. Department of Labor & Industries*, 109 Wash. 2d 819, 823-24 (1988); *State v. Carroll*, 81 Wash. 2d. 95, 109 (1972); *State v. Tranchell*, 164 Wash. 71, 75 (1932); *Peoples State Bank v. Hickey*,

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"operator services" as "any intrastate **telecommunications service** provided to a call aggregator location that **includes as a component** any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call." (Emphasis added). Accordingly, to be a provider of operator services subject to the WUTC's rules, an entity must provide an intrastate "telecommunications service" that includes the assistance of an operator to arrange for billing or completion of an intrastate call. "Telecommunications" is defined in RCW 80.04.010 as "the transmission of information" and "telecommunications company" is defined as "every corporation, company, . . . operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state." Thus, an OSP — which of course provides "operator services" — in Washington is an entity providing an intrastate transmission service to the general public that includes operator assistance as a component.

21. T-Netix cannot be considered to be an OSP with respect to the correctional facilities at issue in this case for three basic reasons. First, T-Netix did not operate as a common carrier or telecommunications company at any of those facilities, because it did not offer a "telecommunications" services (*i.e.*, transmission) to the public, let alone any end user. The incumbent LECs and AT&T were the entities offering transmission services, *i.e.*, local and intraLATA long-distance calling in the case of the LECs and interLATA long-distance calling in AT&T's case. Second, T-Netix did not contract with the aggregator.[6] Rather, AT&T contracted with the

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55 Wash. App. 367, 371 (1989); *McClellan v. Sundholm*, 89 Wash. 2d 527, 531 (1978); *State v. Williams*, 17 Wash. App. 368, 371 (1977).

[6] The WUTC's 1989 rules defined AOSCs as those companies "with which a hotel, motel, hospital, campus, or customer-owned pay telephone, etc., contracts to provide operator services to its clientele." The reference to "contracts" was dropped from the definition in later versions of the rule, but other provisions of those later rules make it clear that the Commission

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Washington DOC, and that contract expressly obligates AT&T "to provide '0+' interLATA and international service" to inmate phones at the prisons. AT&T/DOC Contract, Mar. 16, 1992, at 2 (AT&T Exh. 7). Third, T-Netix supplied equipment and services to AT&T; the LECs and AT&T provided the long-distance services of which operator services were a component. Depo. Exh. 77 [Wilson opinion #5] (Exh.1). As such, under this Commission's precedent, AT&T was reselling the services it purchased from T-Netix to its own end users (called parties), which makes AT&T and not T-Netix the common carrier for the operator services at issue.

22. AT&T has admitted as much in the past. For instance, in December 21, 1988 comments in Docket No. U-88-1882-R (Exh. 8), AT&T acknowledged that the WUTC's AOS rules applied to carriers. Addressing "the fundamental question of how to define an Alternative Operator Service (AOS) provider and, hence, to whom the proposed rules should apply" (AT&T Comments, at 1), AT&T stated that the incentive for the Washington Legislature to pass what is now RCW 80.36.520 was

> the ongoing concern that the public, without adequate notice, is often being charged higher rates for operator assisted and card interexchange calls than they have come to expect from their local exchange company and presubscribed interexchange carrier when calls are made from an institution (or aggregator) such as a hotel, hospital or university. This would occur when the aggregator enters into an agreement with an AOS provider, whose rates may be different than those which end-user customers are usually charged by their presubscribed carriers, to provide interexchange service to that aggregator and its patrons.

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considered AOSCs/AOS providers as the entities that contracted with the call aggregator. For example, an AOS's "customer" was defined as "the call aggregator, i.e., the hotel, motel, hospital, prison, campus, pay telephone, etc., **contracting with an AOS for service.**" WAC 480-120-141 (1991) (emphasis added). The rules also required AOS providers to assure its customers (aggregators) complied fully with contract provisions specified in the rules and withhold payment to aggregators if they did violate them. WAC 480-120-141(1), (1)(a) (1991). An AOS couldn't do that if it wasn't the entity contracting with the aggregator.

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AT&T Comments at 2. AT&T went on to explain that:

> AOS providers are resellers who specialize in operator handled long distance calls. AOS providers enter into contracts with the aggregator industry, *i.e.* hotels, hospitals, privately owned pay telephone owners, for the purpose of providing operator assisted calls to the telephone customers of the aggregator.

Id. at 2-3. These companies have an incentive to maximize revenue for the aggregator and themselves. *Id.* at 2-3. On the merits, AT&T argued that "if the Commission is concerned that a facilities-based carrier such as AT&T or US West Communications would attempt to charge a unique rate to telephone customers of a particular aggregator — beyond the rate offered to the general pubic — AT&T suggests that the definition now in WAC 480-12-021 and WAC 480-120-141 remain." *Id.* at 4. That is just what the WUTC did, left the definition alone.

23. Significantly, in a clarification notice to all parties in Docket No. UT-900726, dated October 1, 1991, the WUTC Secretary advised it was a Staff consensus that, among other things, "[a]n AOS company is any which offers service through aggregators — service as defined in the rule. In a non-equal access setting, AT&T is an AOS company although the person who controls the instrument has no other option for presubscribed AOS service." (Exh. 9) In other words, to be an AOS provider one must be an entity that offers a telecommunications service and the entity that contracts with an aggregator. Also, since a state correctional facility is essentially the equivalent of a non-equal access setting because only a single interLATA provider, AT&T, can be accessed, AT&T is by Staff consensus an AOS provider.

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C. A DETERMINATION THAT T-NETIX WAS THE OSP CONFLICTS WITH THE COMPLIANCE BY AT&T, IN AT&T'S OWN NAME, WITH THE OTHER SUBSTANTIVE OSP OBLIGATIONS IMPOSED UNDER THIS COMMISSION'S RULES

24. A determination that T-Netix was the OSP for purposes of the verbal rate quote requirement cannot be squared with AT&T's compliance with the other OSP mandates — branding, customer service, *etc.* — or with the purpose of the Commission's regulations. For interLATA collect calls, branded (by T-Netix on behalf of AT&T) as AT&T calls, charged at rates set by AT&T and billed on behalf of AT&T through arrangements made contractually by AT&T with T-Netix, the rates Complainants argue were not disclosed are indisputably AT&T's collect calling rates. Wilson Depo. Tr. at 151:7-14 (Exh. 5). It makes no sense for AT&T to assume responsibility for branding calls, something that only the OSP is required to do[7], if it were in fact not acting as an OSP. Nor does it make any sense as a matter of regulatory policy to require T-Netix to disclose rates set by another carrier for payphone-originated calls when it is neither responsible for establishing nor has any control over those rates.

25. The approach advocated by Complainants and AT&T would make large portions of the Commission's OSP regulations a nullity. For instance, under these parties' approach, an OSP can brand traffic from payphones with the name of whatever carrier it desires as a business matter. Wilson Depo. Tr. at 134:18 – 136:22; 168:6-17 (Exh. 5). Since the purposes of the rules are to assure the identification and accountability of parties offering operator services to the public, segregating the branding requirement from the serving OSP is irrational, as end users would have no way to discern which carrier is responsible for service to payphones. Furthermore, since the objective of the rate quote disclosure requirement is obviously to guaranty

[7] WAC 480-120-141(5) (1991) and WAC 480-120-141(4) (1999).

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that **the OSP's rates** can easily be known to consumers before payphone-originated calls are accepted, divorcing OSP status from the entity whose rates are applied (and thus disclosed) is equally absurd.

26. Not unsurprisingly, therefore, neither AT&T nor Complainants can explain how T-Netix could as a matter of law be the OSP for purposes of the rate quote mandate yet AT&T be named the OSP for calls "branded" from the same phones. As even Mr. Wilson concedes, there can only be one OSP for any call from a payphone. Wilson Depo. Tr. at 56:22 – 57:16 (Exh. 5). Consequently, AT&T's assumption of responsibility for compliance with the branding requirement (directing T-Netix to brand the calls in AT&T's name) and for pricing of the calls, among other things, means that AT&T was the OSP. The result of any other conclusion would be chaos, in that some of the OSP regulations would apply to one party for some calls while other portions of those same regulations would apply to a different entity for the very same calls. There is nothing in the Commission's rules, orders or jurisprudence to sanction such a result.

D. REGARDLESS OF WHICH OF T-NETIX OR AT&T WAS THE OSP, COMPLAINANTS CANNOT PREVAIL BECAUSE THE RATE QUOTE REGULATIONS DO NOT APPLY AS A MATTER OF LAW TO INMATE PAYPHONE CALLS

27. Complainants have assumed that the verbal rate quote requirement of WAC 480-120-141 governs collect calls placed by inmates at correctional institutions. It does not. The WUTC adapted its rate disclosure rule from an FCC requirement for verbal rate quote disclosures that applied only to services provided at "aggregator locations." But the FCC decided in 1991 that prisons are not aggregators and thus, when it wanted to extend rate quote requirements to inmate services providers, the FCC passed a separate rule. The WUTC never did so here. Consequently, the 1999 verbal rate quote disclosure requirement has never governed

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payphones serving only correctional facility inmates, as here, and cannot lawfully be applied to the calls at issue in this proceeding.

28. After the break-up of the Bell System in the 1980s, the Washington Legislature enacted statutes to protect consumers of calls provided by alternative operator services companies. RCW 80.36.520. The statute defines an "alternate operator services company" as "a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones." *Id.* Both the statute and the legislative history are silent as to the inclusion of correctional institutions with regard to inmate-only phones. The statute directs the WUTC to make rules that:

> Require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

Id.

29. As is clear from the Commission's definition, an OSP must provide a "connection to" long-distance services "from locations of call aggregators." WAC 480-120-021. The term "call aggregator" was defined (now and in 1991) in the WUTC's rules as:

> any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones.

WAC 480-120-021.

30. These WUTC rules mirror the federal Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226 ("TOCSIA"), and the federal rules adopted by the

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FCC to implement it.[89] That federal act defines "aggregator" as "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). It defines "operator services" as:

> any interstate telecommunications service initiated from an aggregator location 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
>
> (A) automatic completion with billing to the telephone from which the call originated; or
>
> (B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

47 U.S.C. § 226(a)(7). It also provides that the term "provider of operator services" means "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services." 47 U.S.C. § 226(a)(9). The FCC's rules adopted the same definitions contained in the Act, 47 U.S.C. § 226. *See* 47 C.F.R. § 708(b)("aggregator"), (g)("operator services"), (i)("provider of operator services").

31. In its Order adopting the rules, the FCC held that "the definition of 'aggregator' does not apply to correctional institutions in situations in which they provide inmate-only

---

[8] 47 C.F.R. §§ 64.703-708.

[9] It is clear that the WUTC and its Staff had the FCC's rules in mind as the WUTC's rules were being developed. In fact, Paul Curl, Secretary of the WUTC, sent a letter to Interested Persons participating in the rulemaking docket which contained a summary sheet comparing the principal provisions of the recent FCC rules with those of the WUTC's draft rules. Letter, dated April 30, 1991, to Interested Persons, Docket No. 900726, attached as Exhibit 10. Also the Commission in its order adopting the 1991 rules stated "The definition of operator services is changed to more closely reflect federal definitions, and to emphasize that the alternative operator services, AOS, rules apply only to operator services, as defined." In the Matter of Amending

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phones." *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744, 2752 (1991) (Exh. 11). Correctional institutions are not aggregators with respect to inmate payphones because they do not make these phones available to the "public" or to "transient users," but rather only to persons who are involuntarily incarcerated. The commenters pointed out that administrators of correctional institutions typically require that inmate-only phones allow only collect calls and that phone numbers for certain individuals such as judges, witnesses, and jury members be blocked. The FCC explained:

> We are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein. Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules. Phones provided for the use of the public, however, such as those in visitation areas, would be covered by the Operator Services Act and the rules.

Id. (footnotes omitted).

The FCC also held that the carrier providing service to inmate-only phones at correctional institutions would not fall under the definition of "provider of operator services" as such service is not provided at an "aggregator" location with respect to inmate-only phones. *Id.* at 2752, ¶15. A carrier that provides service to phones at correctional institutions that are made available to the public or to transient users would have to comply with the requirements of the FCC's rules and TOCSIA. *Id.*, 6 FCC Rcd at 2752 n.30.

32. It is well-established in Washington that when a statute or rule is identical or substantially similar to a federal law, the Washington law will carry the same construction and the same interpretation as the federal law. *See, e.g., State v. Bobic*, 140 Wash. 2d 250, 264

WAC 480-120-021, 480-120-106, 480-120-138, and 480-120-141 and Adopting WAC 480-120-

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(2000) ("Because our law was taken 'substantially verbatim' from the federal statute, it carries the same construction as the federal law and the same interpretation as federal case law."); *State v. Williams*, 17 Wash. App. 368, 371 (1977) ("When a state borrows federal legislation it also borrows the construction placed upon such legislation by the federal courts."). Therefore, the WUTC's 1991 disclosure rules do not apply to inmate calling services — and **neither** T-Netix nor AT&T are OSPs under those rules with respect to inmate services at the Washington DOC institutions — because inmate calling service was not provided at an "aggregator" location.

33. In 1998 the FCC modified its position and decided that providers of 0+ service to inmate-only phones should verbally disclose the rates for inmate operator services.[10] However, when it did so the FCC did not change its earlier determination that correctional institutions are not aggregators for inmate-only phones. Instead, the FCC adopted a separate disclosure rule that applied specifically to inmate calling services, requiring carriers serving inmate phones to orally identify themselves to the party to be billed and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the call prior to deciding whether to accept the call. *Id.* ¶ 60. The FCC regulation specifically addresses identification and rate disclosure requirements for providers of inmate operator services. *See* 47 C.F.R. § 64.710.

34. When the WUCT adopted its oral rate quote disclosure requirement in 1998, it did not change the definition of "aggregator." Unlike the FCC, however, the Commission did not adopt a rule specifically addressing rate disclosure obligations of providers of inmate services. Accordingly, there is no change from the previous situation; *i.e.*, the WUTC's rules do not apply to providers of operator services to inmate-only phones, and those providers have no rate

---

143, Order R-345, Docket No. UT-900726 (1991), WSR 91-13-078, at 106 (AT&T Exh. 5).

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disclosure obligations under the WUTC's rules. While the WUTC's mandate does make reference to "prison phones" in connection with other aggregator locations, as a matter of law that reference is only to the provision of phones for use of the public or transient users, such as in visitation areas. If the WUTC's rules were construed so that providers of 0+ service to inmate-only phones were considered to be OSPs, as the Complainants contend, many of the requirements, such as Billed Party Preference, which the FCC considered inappropriate for prison inmates because of security concerns would automatically apply to them. Such a result would be nonsensical and would put the WUTC in conflict with federal policy and the documented security needs of prison authorities.

CONCLUSION

For the reasons stated above and in the Initial T-Netix Motion filed on July 28, 2005, T-Netix respectfully requests the entry of an Order granting summary determination in favor of T-Netix.

DATED this 27th day of August, 2009.

T-NETIX, INC.

By: _____

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[10] *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order on Reconsideration, CC Docket No. 92-77, 13 FCC Rcd. 6122 (1998) (Exh. 7).

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CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of August, 2009, served via e-filing a true and correct copy of the foregoing, with the WUTC Records Center. The original, along with the correct number of copies (4), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

David Danner
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

____ Hand Delivered
____ U.S. Mail (first-class, postage prepaid)
__x__ Overnight Mail (UPS)
____ Facsimile (360) 586-1150
__x__ Email (records@wutc.wa.gov)

I hereby certify that I have this 27th day of August, 2009, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T Communications

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S. Williams

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Exhibit 1

Opinions of Kenneth L. Wilson in Judd vs T-Netix and AT&T

1. The T-Netix P-III platform was being used at the ~~institutions~~ institutions in question to provide phone service to inmates in those institutions

2. The P-III platform was providing the automated operator function to inmate phones in the form of call screening, collect call set up and associated called party interactions, and billing functionality for all inmate calls at the designated institutions.

3. The P-III was making the connection to the network for each call.

4. The P-III platform was accumulating billing information on each call placed by an inmate and periodically downloading that information to a T-Netix billing processing center.

5. T-Netix was providing a service to AT&T, not just leasing equipment

6. T-Netix was the Operator Service Provider for all inmate calls in the designated institutions

7. The Local Exchange Companies (LECs) were not providing operator services for inmate calls from the designated institutions

8. T-Netix should have upgraded its P-III platform to provide rate quotes as required by the WUTC in 1991.

9. I have seen no evidence that T-Netix upgraded their platforms at these institutions to give correct rate quotes for InterLATA Intrastate calls until early in 2001.

10. During the period when the called party was receiving announcements from the P-III platform, inmates were able to hear the announcements but were not able to speak to the called party.

11. AT&T had technical oversight responsibility for the services being provided.

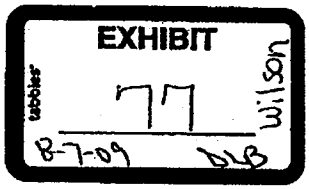


Exhibit 2

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

SANDY JUDD, ET AL COMPLAINANT	
VS.	DOCKET NO. UT-042022
AT&T COMMUNICATION OF THE PACIFIC NORTHWEST, INC. AND T-NETIX, INC. RESPONDENT.	

****

ORAL DEPOSITION OF

ROBERT RAE

AUGUST 6, 2009

****

ORAL DEPOSITION OF ROBERT RAE, produced as a witness at the instance of the DEFENDANT, and duly sworn, was taken in the above-styled and numbered cause on the 6th of August, 2009, from 8:48 a.m. to 5:41 p.m., before Carolyn England, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Bennett, Weston & LaJone, PC, 1750 Valley View Lane, Suite 120, Dallas, Texas, 75234, pursuant to the provisions stated on the record or attached hereto.

Job No.: 211476

Q. I'm going to start from the beginning and ask you to turn to page -- first start with 4.

A. Four four?

Q. TNXWA 4.

A. Okay.

Q. Under the product overview, it lists different T-NETIX platforms. Do you see that?

A. I do.

Q. And the first one listed is the P-III.

A. I see that.

Q. Okay. And it says each of those call control platforms, including the P-III --

A. Yeah.

Q. -- is comprised of three main functions: The telephony interface, a validation service --

A. I'm sorry. Where are you -- oh, I see where you're reading. I got it. Go ahead. Sorry for interrupting.

Q. A validation service and graphical user interface. Do you see that?

A. Yes.

Q. Could you describe for me what you understand the P-III telephony interface to do?

A. Well, the telephony interface is basically the call-gating function of the P-III, i.e., the -- let me

read this for sure before I finish answering. This is -- this is -- it's the actual telephone processing function that occurs, i.e., detecting and communicating with the inmate, detecting -- well, I'm sorry.

Let me back up. The best way I can describe it is the telephony portion of the functions of the platform, which would include telephony connecting to the inmate phone and telephony connecting to the carrier, either the local exchange or directly to the IXC, depending on the usage.

Q. You said that one of its functions is call gating. What did you mean by call gating?

A. I would say the decision of whether or not to let the call go through.

Q. Another function of the P-III platform is a validation service. Do you see that?

A. Yes.

Q. Could you describe what the function is of the validation service?

A. It's the -- it's the collecting of a telephone number and querying of that telephone number or the collecting of the inmate PIN and querying the inmate PIN and, in both cases, testing the validity of those numbers and the desire to let the call go out, continue based on the numbers.

that?

A. I see that.

Q. Do you believe that that was true of the system between 1996 and 2000?

A. Yes. I mean, it's -- that was -- it's accurate.

Q. Do you believe that that was valuable to T-NETIX?

A. I'm not sure what you mean by valuable to T-NETIX.

Q. Did it have -- well, how -- let me back up for a second. How did the T-NETIX system between '96 and 2000 do this, this automated operator eliminating the need for a live operator?

A. Well, I think we discussed before that historically there was an operator that was connecting calls and making what I call the gating determination on letting calls out. And so this system -- what it's referring to there is the system replaced that gating determination. And so, I mean, that's what the system did. And that was the technical piece of equipment being sold at the time, performed.

Q. Would you turn to page 372?

A. Yes.

Q. The section titled "system administration," do

career would a loss by T-NETIX in this case have?

A. None. My career has moved on. I am now CIO of a -- of a wonderful company called Mosaic.

Q. Okay. Let's focus in particular on just one technical area that I would like to explore. In connection with one of the exhibits, you testified that there was what you called a one-to-one ratio between station lines and outbound trunks to the LEC.

A. Yes.

Q. Do you recall that?

A. I do.

Q. Could you explain what you mean by a one-to-one ratio, please?

A. That in the P-III, there is no switching capability whatsoever. The P-III has, for every telephone attached to the system, a standard telephone trunk is attached to the other side. And so what happens is it's -- a single telephone -- it's called a telephone one. When it goes off hook and it passes through the call flow, when that telephone goes to seize a telephone trunk and make a call out, it will always go to trunk one. There's -- it's actually a one-to-one connection.

Q. There are the same number of station lines as there are trunks to the LEC?

A. That's an accurate statement.

Q. Does the P-III, in any of its configurations, switch telephone lines?

A. No, it does not make any decisions about call routing in any form.

Q. And am I correct to understand, from what you just testified, that it's the one-to-one relationship between station lines and trunk lines that means that the P-III is not a telephone switch as you had testified before?

MR. YOUTZ: Objection, leading.

A. That's perfectly accurate. There is no -- and I think a couple of times I accidentally said the word "switch" and took it back every time I did. There is no switching capability whatsoever in the product.

Q. Is the word "routing calls" a function that's -- is the routing of telephone calls a function you're familiar with in the telecommunications industry?

A. Yes, it is.

Q. Does the P-III make any decisions as to how or where to route calls?

A. No, it does not.

Q. And in your understanding, what, if any, relationship is there between the functions that P-III does perform and the connection of calls to the called

party?

A. I think I used the word a couple of times of a gate or a gating function, and the P-III is simply gating the calls prior to allowing the call to then progress to the next step, which is dialing the telephone number out to the public switch telephone network, and the public switch telephone network then performs the routing and switching functions.

Q. Now, just to clarify a couple of points, what, if anything, were you asked either by Mr. Reinhold or myself in connection with your work here to opine on as to the ultimate question of whether the regulations were complied with or were violated, that is, whether rate quotes were, in fact, being given during the relevant period?

A. It was not part of my testimony. What I was here for was not specific to those areas.

Q. And what, if anything, were you asked to look at with regard to the installation, operation or configuration of the P-III in states other than Washington state?

A. I was not asked to investigate anything out of Washington state.

Q. Finally, given your role as vice president of operations for all those years, are you aware of any

Exhibit 3

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD, et al., Complainants, vs. AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC., Respondents.	)	DOCKET NO. UT-042022

Atlanta, Georgia

August 10, 2009

DEPOSITION OF MARK POLLMAN

called for oral examination by Counsel for Respondents, pursuant to notice, at Duane Morris, 1180 West Peachtree Street, Suite 700, Atlanta, Georgia, commencing at 10:45 a.m., before Donna Fishman for Capital Reporting, a Notary Public and Certified Court Reporter in and for the State of Georgia.

Q Without regard to how Mr. Schott described the call flow, in your view, having conducted your analysis, at what point in the initiation to the final completion of a collect call from Washington DOC facilities was a connection to intrastate long distance services made?

A That's an ambiguous question. I can't answer that question.

Q Can you tell me what's ambiguous about it?

A You use the term "final connection." In a call such as this, there are multiple connections performed at various points in the call flow. In the context of this particular item here where we look at the WUTC definition, there is a connection when the OSP has decided to connect the call to the LEC to provide access to the local service provider, the intrastate or the interstate provider, has made that decision to provide that connection to that next step. That is not the final connection. The final connection is the point a lot further on down the line. That's why I consider it ambiguous.

Q By final connection, if I define final connection as terminate the call to the called party --

connected to a local service versus intrastate interLATA calls being connected to a long distance service?

A No, there was no difference.

Q And at what point, since there's no difference, were those connections made, in your view for calls, originating from the Washington DOC facilities?

A I don't understand the question.

Q Let me rephrase it.

Whether you want to call it call flow, call path, network routing configuration, whatever description you want to use, where in that train, in that process, in your opinion, for Washington DOC calls were calls connected to a long distance service?

MR. PETERS: Same objection.

A If the call was deemed to be a long distance call, the LEC would make the determination that it was a long distance call and they would make that determination from the LEC to the long distance provider. The same LEC that would also make the determination if it was a local call or an intrastate call.

Q And by the same LEC, you mean not only

the same company but that for purposes of this definition it's the same point in the call flow?

A The same point in the call flow, yes.

Q Am I correct that that is when a call from the Washington DOC would reach the LEC central office?

A Yes, that is -- that's the point, yes.

Q Now, why don't we turn to Exhibit 82 then.

Your first opinion states, quote, AT&T did not serve as the operator service provider at the Washington prisons at issue between 1996 and 2000.

That's an accurate statement of your opinion, is it not, sir?

A Yes, it is.

Q Can you tell me the basis for that opinion, please.

A It was based upon, number one, the definition of the operator services provider as based upon the UTC definition, the regulations. Also, based upon the call flow as provided in the declarations and through my personal experience.

Q What criterion or criteria did you apply to determine who was the operator service provider at the Washington prisons between 1996 and 2000?

A The criteria was based upon who was performing the functions that are classified as those considered operator services.

Q Then from where did you formulate or derive that criterion?

A Meaning?

Q Meaning?

A Where did I formulate what criteria they are, or who was providing the criteria?

Q No, let's back up.

I asked you what criteria did you apply in deciding who was an OSPS, and you said the criterion was who was doing the functions of an OSP.

A Doing the functions.

Q And my follow-up question was from where did you derive that performing the functions of an OSP was a test that you should apply in your analysis, that's what I'm asking.

A I was -- I was aware of the particular functions that the DOC had required. I was also aware of what were the standard functions that an operator services provider should use in processing a collect call. That was my criteria. I looked at those functions and then looked at who was actually performing those particular functions.

Q What do you mean by "type one," sir?

A From what I have been led to believe, that those were lines and they utilized lines-based signaling, which is essentially the originating number was assigned at the LEC end, a piece of copper wire came in, it must be associated with this telephone number. The only thing that was conveyed across that telephone line was, bear with me, the prefix code, which in this case was a one, and the ten-digit designation number. The CIC was not signaled.

Q And all of this was using in-band signaling as opposed to out-of-band SS7 signaling?

A Yes, it was.

Q Is the reason that you clarified my use of CIC code that T-Netix, the P-3 platform, and the LEC were not connected on a carrier-to-carrier basis?

MR. PETERS: Objection to form. And foundation.

A I don't understand the use of the term "carrier-to-carrier."

Q Okay. Well, let me see if I can ferret that out because I believe you told me that the type of facility connecting the P-3 platform to the LEC central office was a regular line, a type one line?

A That is my understanding, yes.
Q Is that also the same thing as what's commonly referred to as a DS-0 or a POTS line?
A Yes, it would be.
Q Okay. And if an originating carrier, say, an originating CLEC sends traffic for routing to a local exchange carrier, does it ordinarily do that over regular POTS lines or some other sort of access, service or facility?
MR. PETERS: Objection. Form. It's vague and ambiguous.
A That's not --
Q Is that beyond the scope of your expertise?
A Not only is it beyond the scope of my expertise, it would have to depend upon the circumstances of the connection.
Q It could because -- well, if it's beyond the scope of your expertise, I won't ask you about it. You're not familiar with the different ways in which carriers connect for purposes of long distance access?
MR. PETERS: I'm going to object to the form of that, but you can answer subject to that objection.

Exhibit 4

[Service date: *December ___, 2008*]

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL, Complainants, v. AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC., Respondents.	Docket No. UT-042022 **DECLARATION OF ROBERT L. RAE**

Robert L. Rae hereby declares under penalty of perjury as follows:

1. I am personally familiar with the facts set forth in this declaration. If called to testify on any of these matters, I could and would testify to them competently.

2. I am Executive Vice President - Operations for Securus Technologies, Inc, parent company of T-Netix, Inc. My office address is 14651 Dallas Parkway, Dallas, Texas, 75254.

3. I received a Bachelor of Arts Degree in Economics, a Bachelor of Science degree in Psychology and a Masters of Business Administration Degree from the University of Pittsburgh.

4. I have worked in the telecommunications industry for over 18 years. Prior to joining Securus in 2002, I was employed by Bell Atlantic Corporation where I held various

management positions with responsibilities in the Network Operations Center (NOC), installation, maintenance, and outside construction areas. After leaving Bell Atlantic, I was employed by Fujitsu Communications, Inc where I directed the technical assistance center and the field installation and maintenance group. Additionally, I worked for EngineX Networks, Inc as the Vice President - Operations where my organization was responsible for engineering, design, implementation and maintenance of IP, optical and wireless telecommunications networks. Since joining Securus in 2002, I have had responsibility for the entire company Operations organization. This includes network management, installation, provisioning, technical software and telephony support, hardware manufacturing, field maintenance, engineering and network planning. I was the architect of several system upgrades to the company's inmate calling platforms. I currently have 19 technical Patents pending in my name.

5. Kenneth Wilson, an expert hired by Complainants, has stated that certain "system drawings, configuration diagrams, systems engineering documents, systems architecture documents and ... other engineering drawings or documents specific to each Washington institution" served by AT&T and/or T-Netix have not been produced and are needed to "evaluate who the OSP was and whether the equipment was providing automated rate quote information." Wilson Decl. ¶ 6. This is not correct. First, T-Netix has previously produced configuration diagrams for the inmate call processing system at issue in this proceeding, see TNXWA 01052 thru TNXWA 01239 and TNXWA 01528 thru TNXWA 01652, and a call flow chart prepared by expert witness Alan Schott on behalf of T-Netix is already part of the record. Supplemental Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination, Fig. 1 (July 2005)

6. Second, what Mr. Wilson terms "the exact telecommunications configuration in use at each institution" has no bearing on the determination of which entity, under this Commission's regulations and definitions, provided a "connection" to local or interLATA services for inmate collect calls originating from these correctional facilities. That is because the number of trunks or lines and the type of inmate call processing platform deployed at an institution have no relevance to the functions performed by the various entities. No party claims in this proceeding, as I understand it, that rate quotes were technically infeasible for some or all of the equipment and systems deployed. Therefore, the capabilities and arrangements actually in place make no difference.

7. Third, Mr. Wilson is incorrect in asserting that it is "important from an engineering standpoint to see how that platform is connected into the Public Switched Telecommunications Network (PSTN)." None of the issues he identifies, "who the lines and/or trunks were purchased or leased from, how they were connected to the P-III Platform, [and] how many lines and/or trunks were in use," will offer any evidence as to which party provided the operator services at an institution. The call flow for intrastate interLATA inmate collect calls (the type of traffic at issue in this proceeding) from each institution was the same. Schott Supp. Aff., ¶¶ 15-21 & Fig. 1.

8. As corroborated by the Schott Supplemental Affidavit, a call was placed by an inmate, processed by the T-Netix platform (essentially holding the voice path while the call was verified and the called party queried for collect call acceptance), outpulsed to a LEC trunk and thereafter switched at the LEC central office to connect either to (a) a local or intraLATA called party, via the LEC's local or intrastate toll networks, respectively, or (b) LEC intrastate switched access services purchased by AT&T and thereafter to AT&T's point-of-presence (POP). *Id.*

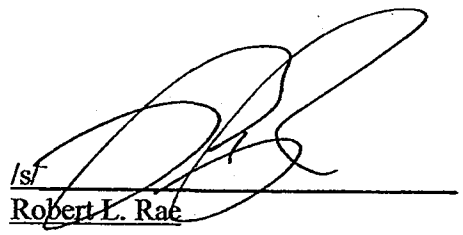
For interLATA calls, the call was then switched at the AT&T POP to connect to AT&T's long-distance network and then to a terminating LEC via the LEC's intrastate switched access service (typically at the tandem in the serving wire center) and finally switched by that terminating LEC to the called party's line. In this call flow, the entity that "connects" a collect call to local and long-distance services (WAC 99-02-020) is in every case the LEC or AT&T, so reviewing the engineering details underlying any of the T-Netix platforms, or their quantity and provider of trunks, facilitating this call flow will tell the Complainants and this Commission nothing of relevance.

9. In fact, telecommunications network configuration cannot be used to derive an answer to which party provided operator services under the Commission's regulations. That is because the word "connection" is not a term of art in the industry. A "connection" can never be be limited to a single carrier, especially in the context of inmate services, because all local loop, access line, LEC switching, long distance carrier trunks and terminating LEC access lines and loops must work in conjunction to "connect" or complete a call to the called party end user. Carriers (whether facility-based or resale) can provide access, switching and/or transport, with access broken down further into originating or terminating and switched or dedicated. Taking the inmate collect call flow described above, from a telecom engineering perspective the originating LEC, AT&T and the terminating LEC all provided a "connection" for the traffic. For interLATA traffic, the question for the Commission to resolve is whether the LEC (by "connecting" to AT&T's switched access services) or AT&T (by "connecting" to its long-distance network) connected such calls to "long-distance services." (T-Netix, in contrast, did not provide access, switching or transport for any interLATA calls, and therefore did not make a "connection" as I interpret that phrase.)

10. Indeed, literal application of the word "connection" to identify an OSP leads to absurd consequences. For instance, as noted carriers can be resellers, that is using the network(s) of a facilities-based wholesale carrier to provide service to their end users. Many if not most OSPs are resellers. If "connect" was directed, as Mr. Wilson seems to suggest, to the provider of physical connectivity for a call path, then the operator service provider under the Commission's regulations would be the wholesale carrier, not the actual service provider. That would make no sense from a regulatory perspective, in my view, because the point of telecom regulation is to ensure that the carrier serving the end user complies with pricing, disclosure, certification and related regulatory requirements. Literal application of a "connect" definition of OSP would therefore identify a party, in this example the wholesale network (switching and transport) provider, as responsible for regulatory compliance when the service, prices and customer(s) involved are actually those of its resale customer.

11. In sum, while Mr. Wilson is partially correct when he says "[a] P-III Platform for an institution would need to be connected to incoming and outgoing telephone lines or trunks," (the system does not require "incoming" access lines and will operate with only out-going access lines) the number, configuration and lessor of these lines, as well as the equipment deployed by the various carriers and providers serving any specific Washington State prison, has no significance to the matters at issue before this Commission. In fact, there is no relevance to any telecom configuration because the Commission's regulations use terms that, if applied literally, are at odds with accepted telecom parlance and lead to consequences that, in my view, are absurd and inconsistent with the purpose of telecommunications regulation.

Executed under penalty of perjury and in accordance with the laws of the State of Washington this 12th day of December 2008, at 9:38am.



/s/
Robert L. Rae

Exhibit 5

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CASE NO. UT-042022

DEPOSITION OF KENNETH L. WILSON

August 7, 2009

SANDRA JUDD, et al.,

Complainants,

vs.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.; and T-NETIX, INC.,

Respondents.

APPEARANCES:

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Appearing on behalf of Respondent AT&T.

Job No: 211473

those up then and then threw away the notes. That's why I don't have the notes, but I do have a set of opinions. Generally those would have been in an expert report, but since we didn't do expert reports, I just wrote up a set of opinions.

Q Good. This actually is helpful.

A Great.

MR. PETERS: Let's mark this as Exhibit 77.

(Exhibit 77 was marked.)

Q (By Mr. Peters) Exhibit 77 is the -- is that a listing of your opinions?

A Yes, as I have them today.

Q Okay. And I'm going to go through each of these at least at some level, but am I correct in terms of Item No. 6 -- I'm sorry -- yeah, Item No. 6 -- it's your view as you sit here right now that T-Netix was the operator service provider for all inmate calls from the designated institutions between 1996 and 2000?

A Yes, certainly during that period.

Q Do you have any opinion as to whether or not more than one entity could serve as the OSP or the operator service provider at the same time?

A Aside from a legal question as to contract

or subcontractor, the actual physical providing of the operator service's functions either by a live operator or by an automated operator -- a box that does the automated operator function, that that function would be provided by a single party.

Q Okay. And I understand that and appreciate that; but I want to know, though, whether in your view for purposes -- whether you're rendering an opinion as to whether or not for purposes of the Washington Utility and Transportation Commission rules, one entity would serve as the operator service provider or could multiple entities serve as the operator service provider?

A Technically the function is provided by a single provider.

Q And I take it your view as to who served as the OSP would be the same for both interLATA and intraLATA calls, correct?

A In this instance, that's correct.

Q What's the basis for that view?

A The configuration of equipment, where the functions were being provided, all the details of the -- the information that I have had available would point to a single provider.

information that's been available in the course of the case.

Q Item No. 6 is that T-Netix was the operator service provider for all inmate calls in the designated institutions. Did I read that correctly?

A Yes.

Q Could you explain to us the basis for that opinion?

A Well, it's really putting Opinion 4 and 5 together in a logical way. Inasmuch as T-Netix was providing the P-III platform, they had the personnel supporting that platform. The P-III platform was providing the operator service -- the automated operator service function -- so with the -- providing the platform with that function plus providing all of the servicing of that platform, I come to the conclusion that T-Netix was the operator service provider.

Q You said it was putting Opinions 4 and 5 together. Is there any reason why your Opinions 1, 2, and 3 don't relate to 6 as well?

A Actually, that's correct. It's really -- 6 is kind of a logical conclusion of 1, 2, 3, and 4, and 5.

2005 time frame.

Q (By Mr. Peters) Do you believe, as you sit here right now, that the WUTC would have expected a call to be branded to an entity that played no role in the transmission of the call?

A I honestly don't know how to answer that question.

Q Why is that?

A Can you ask it again?

Q Yeah, and I will even try to rephrase it a little bit.

Do you believe, as you sit here right now, that the WUTC would have expected a call to be branded to an entity that played absolutely no role in the transmission of that call?

A I would not be so bold as to speculate on what the WUTC wanted in that regard.

Q Would it be consistent with your understanding of the -- of an operator service provider to require a call to be branded to an entity that never played any role in the transmission of the call?

A Well, it was common practice in the time frame of this case for many telecommunications providers to hire outside operator services firms,

and they all wanted branding for their calls.

Beyond that, I'm not sure I can answer that.

Q Right, but back in the situation that you're talking about, they would have been involved in transporting or billing the call, correct?

A Which party?

Q The party that you're saying -- the branded -- the party to which it's branding.

A Yes.

Q Okay. If the entity played no role in the call, meaning they didn't transport the call and they didn't physically provide any functionality as the operator service provider, can you think of any logical reason why a call should be branded to that entity?

MR. MANISHIN: Objection to the extent that you appear to be asking him a hypothetical question, which is permissible, but I'm not sure you've identified it as -- the assumptions underlying the hypothetical.

Q (By Mr. Peters) You can answer the question.

A Well, I could imagine a case where a third party leased or contracted multiple providers to

provide a service that they had no part in any of it and that yet they wanted it branded with their brand. I mean, there's examples of that that we can probably figure out.

Q But if the scenario was that the -- the scenario wasn't that scenario, it's a scenario where the entity wasn't transporting the call, it was not leasing the lines that were transporting the call, and it was not providing any of the operator service functionality, can you think of any reason why that call should be branded to that entity?

MR. MANISHIN: Same objection. There's no facts in the records supporting that.

A In the -- hypothetically, I could imagine that that could be done; and similar to the circumstance of my hypothetical, that if a company was contracting others to provide all of the telecommunications and the operator function and yet they were the overall contractor, they could -- you know, Ken Wilson, Inc., could set up a phone service without having any of the facilities or the people and still brand it Ken Wilson Telephone.

Q (By Mr. Peters) Yeah, and you would expect that call to be billed as a Ken Wilson Telephone call, correct?

provide rate quotes, that you provide notice of that to us.

A Certainly.

Q Is that fair?

A I believe it is.

Q Okay. Thank you.

For the rate quotes that T-Netix failed to provide, looking at No. 9, using the term you used there, interstate -- interLATA intrastate calls, whose rates were to have been disclosed?

A That would be AT&T's rates.

Q And why should AT&T's rates have been disclosed?

A AT&T was the carrier for the calls.

Q What do you understand "carrier" to mean in the context of the telecommunications industry? I'm using "industry" there as differentiated from "regulation."

A AT&T was providing a critical part of the end-to-end connectivity for those calls and was the carrier that was selected by the institution in this case which was making the calls.

Q Now, you testified before in response to one of my questions that you were familiar with the concept of resale.

MR. SPOONEMORE: Well, I'm not sure that that summary is correct. You're certainly trying to ask for other information, but his answer stands, and I think it's pretty clear at this point.

Q (By Mr. Manishin) You described Exhibit 77 as -- the record will reflect this -- quote, My opinion as to who was providing the operator services function.

A Sorry. Redirect me again.

Q I'm reading what I wrote down you testified word for word. My opinion as to who was providing the operator services function.

A Yes.

Q Okay. Is there a difference between operator service functions and operator services in your opinion, sir?

A In this context, no difference.

Q And what do you mean by "in this context"?

A Well, we have operator service functions, which I went over earlier today. Operator service provider, which is a Washington State definition, and I've said that it's consistent with the functions that the T-Netix P-III was providing, plus the personnel that supported it, and then operator services in general, which I think part of your

question got to.

Q Is "operator service provider" and "operator service functions" synonymous in your view in the context of this case?

MR. SPOONEMORE: Objection. Asked and answered. He gave a pretty clear answer on that one.

A Let me just maybe clarify it a little bit more. The combination of the functions that the P-III was providing plus the supporting personnel that were managing that platform would constitute the total operator services provider.

So if we wanted to really cut that in the way that I see it, the functions are the technical part; the services are the technical part plus the management by people of the technology.

Q (By Mr. Manishin) Are the services the technical functionality or a service offered to the end user under the Washington regulations?

A Well, when you add "under the Washington regulations," I want to look at -- I want to have that in front of me while I was answering it.

Q Why don't we look at that. We can look at any of your declarations. Why don't we take No. 79. I think that's your most recent one, your August

provide operator services with real people, who would be providing the operator services? It would be the company they were providing, and that -- that was providing the service, and that was common before these automated operator services devices.

Q (By Mr. Manishin) Under the Washington regulations, is it correct that the OSP is required to brand calls using its own trade name?

A I didn't look at the branding regulation.

Q That's common practice in the industry, is it not?

A It's --

MR. PETERS: Objection, form.

A It's common practice -- well, it's common practice for whoever is getting paid by whomever to brand whatever they want. There is no common practice there.

Q (By Mr. Manishin) How were these calls branded?

A Best of my knowledge, they were branded AT&T.

Q So is -- would it be also correct, then, in your opinion that if T-Netix was the OSP, that it violated the regulations by branding the calls in the name of AT&T?

or interstate long distance"?

MR. PETERS: Objection, asked and answered.

MR. SPOONEMORE: Same objection.

A Right. I did answer this earlier, but again, the T-Netix P-III platform, it makes the connection that completes the call between the inmate and the party they're calling.

Q (By Mr. Manishin) You also said in response to Mr. Peters that you have discussed this with your counsel what "connections" means in the course of this case, and that you concluded it was finally made when a call is completed from end to end.

Did I accurately summarize your prior statements?

A I think that's approximately what I said.

Q Did T-Netix complete the call from end to end?

A T-Netix provided the last part of the end-to-end connection. So in that sense, very definitely they are providing a connection, yes.

Q Wouldn't it be more fair to say that T-Netix provided the first part of the connection, not the last part?

Q We can rule out in this case direct trunking to an IXC switch for the reasons we previously discussed about a direct connection?

A Correct.

Q So we're dealing with a situation in which all the routing to the IXC was done through the LEC?

A Correct.

Q Was there any routing of calls performed by the P-III platform?

A Not in the sense that we're discussing here. The P-III was not selecting individual trunks. There was one -- one phone, one trunk.

Q And that trunk went from the P-III to the LEC?

A That's correct.

Q When the call -- a collect call placed from a P-III platform long distance, meaning eventually going to AT&T, reaches the LEC switch, has it been connected at that point to an intrastate long distance service?

A No, not completely.

Q When it is switched by the LEC to AT&T's access trunk and transported to AT&T's point of presence or POP, at that point, has the call been connected to a long distance intrastate service?

A No. It hasn't been -- completely been connected.

Q How has it not been connected?

A Well, a service is an end-to-end function -- feature. Until you complete the call, it's not fully connected.

Q Has it been -- at that point when it reaches AT&T's point of presence, has it been connected to a long distance service provider?

A Well, we're starting to split hairs here, but I would -- I -- I -- all of my career I have dealt in end-to-end phone calls. So I'm going to answer no. No, it hasn't. The service has to be completely connected before a connection is made.

Q Okay. And on an end-to-end basis, it would be fair to say that not only calls from these Washington DOC institutions but virtually every telephone call that traverses in part of a PSTN involves a number of carriers, frequently three or more: an originating LEC, a long distance provider, and a terminating LEC. Is that a fair generalization?

A Well, I don't know about majority, but certainly many, many calls involve three or more carriers as part of the total end-to-end connection.

quote?

MR. PETERS: Objection, form and foundation. You're talking now outside any specified regulatory scheme and any specific time without a whole bunch of characterizations. You're really just arguing with him, Mr. Manishin.

MR. MANISHIN: Thank you.

MR. SPOONEMORE: I'll join.

A And there again, they could do -- they could quote AT&T's rates if they were using AT&T long distance. They could have their own rates filed. They could do a number of things; but, you know, that's -- that would depend on the State rules and a whole lot of other things that I haven't really investigated.

Q (By Mr. Manishin) Go on further down and I think Mr. Peters asked you about this, and there are two sentences. It says, When the called party answers the telephone, the platform plays a prerecorded message stating that they have a call from the inmate and by playing the inmate's recording, the platform then gives the person the option of accepting the call or rejecting the call by pressing a number on the keypad of their phone.

At the time that the message is given, the

option of acceptance, has the call been connected to a long distance provider or a long distance service as used in the WUTC definition of OSP?

A There's no end-to-end connection yet, a complete connection between the inmate and the person they were calling. So it doesn't meet my interpretation of the WUTC definition.

Q And you say next, "It is at this time that the platform should play a prerecorded rate announcement and give the called party an opportunity to hear a message regarding the rates associated with the call."

What do you mean by "it is at this time"?

A Actually, with what I know now, those two sentences are probably reversed. The platform should give a rate quote before giving the person the ability to complete the call. Otherwise, they may go ahead and complete the call before they had the opportunity to receive the rate quote, and that is that order of -- that sequence is spelled out in some of the WUTC rules.

Q Was it something that changed between the date when you filed this declaration, May of 2005 and now?

A No.

connection. That's the key.

Q And so you interpret connect to long distance services, just to summarize, to mean in essence, connecting the call on an end-to-end basis to the called party, right?

A Correct. The final -- the final operation that completes the full end-to-end call.

Q Okay. Why don't you read Paragraph 10. And I'll preface this by saying in Paragraph 10, Mr. Rae states that your analysis leads to absurd consequences. I would like you to read that paragraph to yourself, if you would, and tell me how, if at all, you disagree with him.

A What's your question exactly?

Q He says your analysis leads to absurd consequences. How, if at all, do you disagree with him?

A Well, I disagree with the whole premise he's making here. The whole critical issue for the WUTC is who -- which party is providing the collect call interaction: the announcements, the billing, all of those other functions.

The term "connect" is a minor -- in my mind a minor part of the definition of operator service provider, and Mr. Rae is making a

presumption that I was basing my whole opinion on this term "connect." I'm not.

That's -- I'm trying to explain how I think that term fits in with the definition, but the main premise and if you look at my statements 1 through 6, you can see that the main thrust of my opinions is on the more generally accepted operator services functions that the P-III was providing.

Q I just want to make sure I understand you correctly. Did you just tell me that in your opinion the use of connect in the definition provided by the WUTC is a minor issue in deciding who is the OSP in this case?

MR. PETERS: Objection, form.

A It is one element of it; but it's not, to me, the major element. The major elements are the providing of the interaction -- the collect call interaction that is going on as the call is set up.

Q (By Mr. Manishin) And you draw that all from your experience or from something that we haven't read from the WUTC or what, sir?

A It's in the WUTC definition, and it certainly is what I would be looking for in an operator services provider, would be the interactions with the customer on both ends and the

Exhibit 6

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL, Complainants, v. AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC., Respondents.	Docket No. UT-042022 **DECLARATION OF ROBERT L. RAE IN SUPPORT OF T-NETIX, INC.'S MOTION FOR SUMMARY DETERMINATION**

Robert L. Rae hereby declares under penalty of perjury as follows:

1. I am personally familiar with the facts set forth in this declaration. If called to testify on any of these matters, I could and would testify to them competently.

2. I am the same Robert L. Rae who previously filed a declaration dated December 12, 2008, submitted in support of T-Netix, Inc.'s Opposition to Complainants' Motion to Compel.

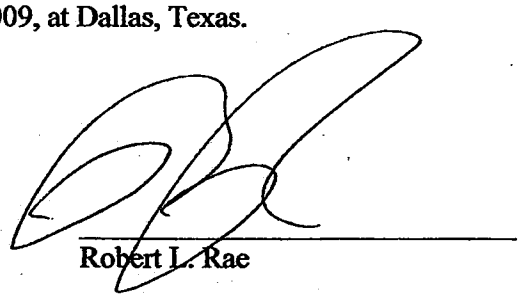
3. At the time I prepared my initial declaration in this case, I was Executive Vice President - Operations for Securus Technologies, Inc., parent company of T-Netix, Inc. In May of 2009, I left that position and now work for Mosaic Sales Solutions as Chief Information Officer. My new office address is 6051 N State Hwy 161, Irving, TX 75038-2236.

4. I have reviewed the "Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination," dated June 10, 2005, and Exhibit 1 to T-Netix, Inc.'s Motion for Summary Determination, filed July 28, 2005, the "Supplemental Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination," dated July 27, 2005.

5. It is my understanding that Mr. Schott is no longer serving as an expert witness in this matter. I have been retained as an expert by T-Netix to replace Mr. Schott.

6. Based upon my 18 years in the inmate telecommunications services industry and my operational experience at Securus and previously at Evercom Systems, I am able and prepared to testify to the facts, conclusions, and opinions set forth in the two affidavits by Mr. Schott. I hereby adopt these affidavits as if they were my own and affirm the facts, conclusions, and opinions therein to the best of my knowledge, information, and belief.

Executed under penalty of perjury and in accordance with the laws of the State of Washington this 5th day of August, 2009, at Dallas, Texas.



Robert L. Rae

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of August, 2009, served via e-filing a true and correct copy of the foregoing, with the WUTC Records Center. The original, along with the correct number of copies (4), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

David Danner
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

____ Hand Delivered
____ U.S. Mail (first-class, postage prepaid)
__x__ Overnight Mail (UPS)
____ Facsimile (360) 586-1150
__x__ Email (records@wutc.wa.gov)

I hereby certify that I have this 6th day of August, 2009, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T Communications

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Susan Mellano

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)

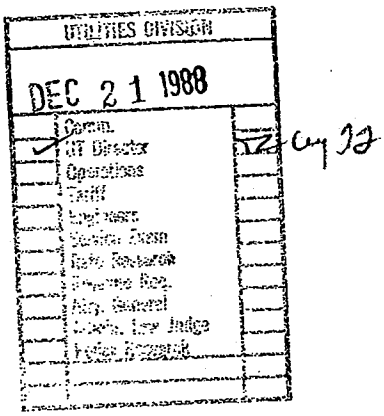
Gateway Technologies, Inc. (Gateway)

GTE Service Corporation (GTE)

Exhibit 8

Randolph W. Deutsch
Attorney

795 Folsom Street
San Francisco, CA 94107
Phone (415) 442-5550



December 21, 1988

Mr. Paul Curl, Acting Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 Evergreen Park Drive, SW
Olympia, Washington 98504

Re: Docket No. U-88-1882-R

Dear Mr. Curl:

Enclosed are an original and 15 copies of the Comments of AT&T Communications of the Pacific Northwest, Inc. on Amended Rules for filing with the Commission in Docket No. U-88-1882-R.

Sincerely,

Randolph Deutsch

Enclosure

00188

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Amendment to WAC 480-120-021, 480-120-041, 480-120-106, and 480-120-141 relating to alternate operator services	)	Docket No. U-88-1882-R

COMMENTS OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. ON AMENDED RULES

Pursuant to the November 21, 1988 Notice of Intention to Adopt, Amend, Or Repeal Rules relating to WAC 480-120-121, 480-120-041, 480-120-106, and 480-120-141 pertaining to alternate operator services, AT&T Communications of the Pacific Northwest, Inc. (AT&T) herein submits its comments on the proposed amended rules.

AT&T responded on September 13, 1988 to the original August 26 proposed rules in Docket No. U-88-1882-R, commenting on a number of issues. The revised proposed rules satisfy many of AT&T's concerns, particularly in the areas of branding, universal availability of access to the carrier of the customer's choice and the availability of rate information. However, AT&T believes the revised proposed rules do not adequately address the fundamental question of how to define an Alternative Operator Service (AOS) provider and, hence, to whom the proposed rules should apply.

The incentive for the Washington Legislature to pass Senate Bill 6745 is the ongoing concern that the public, without adequate notice, is often being charged higher rates for operator assisted and card interexchange calls than they have come to expect from their local exchange company and presubscribed interexchange carrier when calls are made from an institution (or aggregator) such as a hotel, hospital or university. This would occur when the aggregator enters into an agreement with an AOS provider, whose rates may be different than those which end-user customers are usually charged by their presubscribed carriers, to provide interexchange service to that aggregator and its patrons.

The resolution of this problem does not require the inclusion of telecommunications companies such as US West Communications or AT&T within the proposed rules. Yet, the current definition of an AOS provider in the revised rules (WAC 480-120-021, WAC 480-120-141) has just this result. There are fundamental differences between a telecommunications company such as AT&T, that offers interexchange service to the general public and an AOS provider. AT&T, although classified as a competitive carrier in the state of Washington, provides services to the general public on a non-discriminatory basis pursuant to published price lists. Further, AT&T cannot abandon service to any customer in Washington without Commission approval.

Generally, AOS providers are resellers who specialize in operator handled long distance calls. AOS providers enter into contracts with the aggregator industry, i.e. hotels, hospitals, privately owned pay telephone owners, for the purpose of providing

operator assisted calls to the telephone customers of the aggregator. These companies have an incentive to maximize revenue for the aggregator and themselves.

There are legitimate competitive reasons for AT&T to enter into a commission contract with an aggregator. However, use of such a contract does not indicate that AT&T would charge telephone customers who use AT&T's services on an aggregator's premises, a different rate than it charges any other AT&T customer. In the intensely competitive business of attracting the long distance "0+" calling from pay telephones and aggregator locations, contracts between interexchange carriers and premises owners have become an established way of doing business. The existence of a contract with an aggregator thus is not an appropriate trigger for application of the proposed rules as is now contemplated by WAC 480-120-021 and WAC 480-120-141.

The rules should be aimed at those companies whose business structure and marketing strategy are aimed at maximizing revenue from the aggregator market and who do not market directly to end-user customers. To this end, AT&T offers the following definition of an AOS provider to replace the definitions in WAC 480-120-021 and WAC 480-120-141:

> "For the purpose of this chapter an Alternate Operator Service Provider is a non-facilities based company, who is a reseller who leases lines from local exchange carriers and interexchange carriers and who, using these leased facilities along with their own operators, provides operator services."

In the alternative, if the Commission is concerned that a facilities-based carrier such as AT&T or US West Communications would attempt to charge a unique rate to telephone customers of a particular aggregator--beyond the rate offered to the general public -- AT&T suggests that the definition now in WAC 480-120-021 and WAC 480-120-141 remain. However, an exception should be added to the definition as follows:

> "This section does not apply to a telecommunications company that also offers operator services and interexchange services directly to the general public pursuant to a uniform published price list or tariff (inclusive of all charges to end-users) and does not charge the telephone customers any contractually established surcharges."

This definition would allow a telecommunications company such as AT&T to serve the telephone customer of an aggregator -- in a manner similar to its other customers in the state -- without being subject to unnecessary rules aimed at safeguarding the public from excessive and unexpected charges.

Should the Commission reject both of AT&T's suggested alternative definitions, AT&T respectfully requests that the notice added to WAC 480-120-142 (1) (a) -- implying that rates may be higher than normal when made from the aggregator's phone -- be deleted at least for AT&T which has traditionally provided service to Washington consumers at reasonable and consistent rates. This notice is unfair to an interexchange carrier such as AT&T and indeed could have a chilling effect on AT&T's ability to

adequately serve aggregators like hotels and hospitals. In addition, in locations where AT&T continues to be the "0+" service provider, such a notice could discourage customers from placing calls due to their unwarranted concerns about overcharging.

December 21, 1988

Respectfully submitted,

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Exhibit 9

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W. • Olympia, Washington 98504-8002 • (206) 753-6423 • (SCAN) 234-6423

October 1, 1991

RE: Docket No. UT-900726

TO ALL PARTIES:

Pay phone and AOS industry members have raised several issues arising from implementing the Commission's recent rule amendments. The following reflects a staff consensus on those issues, but does not obligate the Commission nor prevent it from making its own independent decision.

1. The language of WAC 480-120-141(4)(d)requires posting the absence of a location surcharge. In practice, that may be more confusing than helpful and more costly than justified by any benefit. The Commission Staff will not recommend assessing penalties for failure to post the absence of a surcharge, when no surcharge is imposed. Commission Staff will recommend amending the rule to eliminate any negative posting requirement the next time the rule is reviewed.

2. Some local exchange companies (LECs) apparently prohibit posting by others on their pay phone instruments. That is not inherently bad, as long as the goal of the rule, full and accurate public disclosure, is met. Commission staff has two concerns about the prohibition.

   First, LECs should not use the prohibition to impede an AOS company from complying with the rules. The Commission staff will consider doing so a serious violation by the local exchange company. Second, the Commission staff will closely examine whether any charges imposed for LEC posting "services" are proper and lawful.

3. An AOS company is any which offers service through aggregators -- service as defined in the rule. In a non-equal access setting, AT&T is an AOS company although the person who controls the instrument has no other option for presubscribed AOS service.

4. WAC 480-120-141(4) requires AOS companies to impose specified requirements upon presubscribing aggregators in any contracts and as a term and condition of service specified in their tariffs. Some companies offering AOS services have previously been authorized to file price lists and do not file tariffs. Some affected companies have represented, and staff will expect, that the requirements will nonetheless be terms and conditions of service and that aggregators will comply. Commission staff will consider possible amendments for the next update of the rule and will watch closely to determine whether violations may require expedited amendment of the rule or other action.

Sincerely,

Kathy Barker for

Paul Curl
Secretary

Exhibit 10

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W. • Olympia, Washington 98504-8002 • (206) 753-6423 • (SCAN) 234-6423

April 30, 1991

TO INTERESTED PERSONS:

RE: DOCKET NO. 900726:

Staff has considered the oral and written comments and has made some changes in the noticed draft, which it expects to recommend to the Commission at the May 8, 1991, open meeting.

Please note that this draft is only a staff document. Among the provisions which the staff expects the Commission to study critically is whether local exchange companies should be included within the AOS definition. A second is whether charges, including location surcharges, should be limited on local calls to the rate charged by the local exchange company for its own per-call service. Language to accomplish this is added at page 26, for discussion purposes.

While staff does not now intend to make further changes prior to presentation to the Commission, such changes are possible. Staff expresses its appreciation for information presented by a great number of persons. That information enabled staff to make a number of technical changes, to meet some of the concerns of nearly every commenter and to highlight the policy and practical issues in an enlightened manner.

If you have questions or further comments you would like to address to the staff prior to the open public meeting, you are encouraged to call either Bob Wallis at (206) 753-6404 or Pat Dutton at (206) 753-2126.

We are also including a brief summary sheet comparing the principal provisions of the recent FCC rules with those of the enclosed draft. The summary is intended merely to highlight major similarities and differences, and is neither an exhaustive list nor an exhaustive presentation of each issue.

Sincerely,

Paul Curl
Secretary

01541

COMPARISON: FCC RULES v. WUTC STAFF DRAFT

"FCC" column: federal rules adopted April 9.
("OSP" -- operator service provider)

"WUTC" column: staff April 29 discussion draft.
("AOS" -- alternate operator service company)

FCC	WUTC
"Aggregator" defined	"Aggregator" defined
Branding: requires OSPs to brand with carrier's name. To 1/14/94, double branding is required.	Branding: requires AOSs to brand with carrier's name. Double branding is required--no time limit. Must use the carrier's name as registered with the Commission.
Posting: Aggregators must post consumer information: Name, address, toll free No. of OSP; written disclosure that rate information is available and of right to preferred IXC; name and address of FCC. Defers to similar State rules.	Posting: Aggregators must post consumer information: Name, address, without-charge No. of AOS; notice that rates may be higher than normal and of right to preferred IXC. Must also post location surcharge and amount.
Enforcement: OSPs must ensure that aggregators don't block 1-800 and 950 IXC access. Must withhold commissions for blocking. Failure to ensure blocking compliance is a violation.	Enforcement: AOSs must require compliance with rules including IXC access. Must withhold commissions for blocking. Failure to assure compliance is a violation.
Splashing: Call splashing is prohibited unless consumer knowingly agrees.	Splashing: Call splashing is prohibited.
Surcharges: Aggregators are prohibited from charging a larger surcharge on IXC calls than on presubscribed OSP calls.	Location Surcharges: No restriction on aggregator location surcharges collected by the aggregator; those collected by the AOS must be tariffed. [Possible local call price limit.]
Emergencies: OSPs are required to connect emergency calls immediately.	Emergencies: AOSs are required to connect emergency calls immediately or route 0+ calls to the LEC.

AMENDATORY SECTION (Amending Order R-293, filed 1/31/89)

DRAFT

WAC 480-120-021 GLOSSARY. Alternate operator services company - any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier. ((~~places including but not limited to, hotels, motels, hospitals, campuses, and customer-owned pay telephones. Alternate operator services companies are those with which a hotel, motel, hospital, campus, or customer-owned pay telephone, etc., contracts to provide operator services to its clientele.~~))

Applicant - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.

Automatic dialing-announcing device - any automatic terminal equipment which incorporates the following features:

(1)(a) Storage capability of numbers to be called; or

(b) A random or sequential number generator that produces numbers to be called; and

(c) An ability to dial a call; and

(2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.

Billing agent - A person such as a clearing house which facilitates billing and collection between a carrier and an entity such as a local exchange company which presents the bill to and collects from the consumer.

Base rate area or primary rate area - the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.

Call aggregator - a person who, in the ordinary course of its operations, makes telephones available for intrastate service to the public or to users of its premises, including but not limited to hotels, motels, hospitals, campuses, and pay telephones.

Central office - switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission (agency) - In a context meaning a state agency, the Washington utilities and transportation commission.

Commission (financial) - In a context referring to

01543

compensation for telecommunications services, a payment from an AOS company to an aggregator based on the dollar volume of business, usually expressed as a percentage of tariffed message toll charges.

Competitive telecommunications company - a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service - a service which is classified as such by the commission pursuant to RCW 80.36.330.

Consumer ((~~Customer~~)) - user not classified as a subscriber.

Exchange - a unit established by a utility for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area - the specific area served by, or purported to be served by an exchange.

Farmer line - outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station - a telephone instrument installed and in use on a farmer line.

Interexchange telecommunications company - a telecommunications company, or division thereof, that does not provide basic local service.

Location surcharge - a flat, per-call charge assessed by or on behalf of a call aggregator in addition to message toll charges, local call charges, and operator service charges. When a location surcharge is collected by an alternate operator services company it is remitted, in whole or in part, to its call aggregator-customer.

Operator service charge - a charge, in addition to the measured toll rate or local call rate, assessed for use of a calling card, a credit card or for automated or live operator service in completing a call.

Outside plant - the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices.

Station - a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

Subscriber - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.

Toll station - a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.

Utility - any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of

Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order R-293, filed 1/31/89)

WAC 480-120-106 FORM OF BILLS. Bills to subscribers shall be rendered regularly and shall clearly list all charges. Each bill shall indicate the date it becomes delinquent and notice of means by which a subscriber can contact the nearest business office of the utility.

The portion of a bill rendered by the local exchange company on behalf of itself and other companies shall clearly specify the alternate operator service company's billing agent and, where feasible, within ninety days after the effective date of this rule, the provider of the alternate operator service ((~~or its authorized billing agent~~)) and a toll free telephone number the consumer can call to question that portion of the bill and, if appropriate, receive credit. A number may be used on this portion of the bill only if it connects the subscriber with a firm which has full authority to investigate and, if appropriate, to adjust disputed calls including a means to verify that the rates charged are correct. Consumers requesting an address where they can write to question that portion of the bill shall be provided that information.

A local exchange company shall not provide billing and collection services for telecommunications service to any company not properly registered to provide service within the state of Washington, except to a billing agent that certifies to the local exchange carrier that it will submit charges only on behalf of properly registered companies. As a part of this certification the local exchange company shall require that the billing agent provide to it a current list of each telecommunications company for which it bills showing the name (as registered with the commission) and address. This list shall be updated and provided to the local exchange company as changes occur. The local exchange company shall in turn, upon receiving it, provide a copy of this list to the commission for its review whenever a carrier is added or deleted.

All bills for telephone service shall identify and set out separately any access or other charges imposed by order of or at the direction of the Federal Communications Commission. In addition, all bills for telephone service within jurisdictions where taxes are applicable will clearly delineate the amount, or the percentage rate at which said tax is computed, which represents municipal occupation, business and excise taxes that have been levied by a municipality against said utility, the effect of which is passed on as a part of the charge for telephone service.

Subscribers requesting by telephone, letter or office visit an itemized statement of all charges shall be furnished same. An itemized statement is meant to include separately, the total for exchange service, mileage charges, taxes, credits, miscellaneous or special services and toll charges, the latter showing at least date, place called and charge for each call. In itemizing the charges of information providers, the utility shall furnish the name, address, telephone number and toll free number, if any, of

such providers. Any additional itemization shall be at a filed tariff charge.

Upon a showing of good cause, a subscriber may request to be allowed to pay by a certain date which is not the normally designated payment date. Good cause shall include, but not be limited to, adjustment of the payment schedule to parallel receipt of income. A utility may be exempted from this adjustment requirement by the commission.

AMENDATORY SECTION (Amending Order R-316, filed 3/23/90)

WAC 480-120-138 PAY TELEPHONES--LOCAL AND INTRASTATE. Every telecommunications company operating an exchange within the state of Washington may allow pay telephones to be connected to the company's network for purposes of interconnection and use of registered devices for local and intrastate communications. Every such telecommunications company offering such service shall file tariffs with the commission setting rates and conditions applicable to the connection of pay telephones to the local and intrastate network under the following terms and conditions. Local exchange companies that do not have a public access line tariff on file with the commission shall not be subject to these rules.

For purposes of these rules "pay telephone" is defined as equipment connected to the telephone network in one of the following modes:

(a) Coin operated: A telephone capable of receiving nickels, dimes, and quarters to complete telephone calls. Credit card or other operator-assisted billing may be used from a coin-operated instrument.

(b) Coinless: A pay telephone where completion of calls, except emergency calls, must be billed by an alternative billing method such as credit card, calling cards, collect, third-party billing, or billed in connection with the billing of meals, goods, and/or services. These pay phones include, but are not limited to, charge-a-call, cordless, tabletop, and credit card stations. The term does not include in-room telephones provided by hotels, motels, hospitals, campuses or similar facilities for the use of guests or residents.

For purposes of these rules, the term "subscriber" is defined as a party requesting or using a public access line for the purpose of connecting a pay telephone to the telephone network.

(1) Pay telephones connected to the company network must comply with Part 68 of the Federal Communications Commission rules and regulations and the ((~~current~~)) National Electric Code and National Electric Safety Code as they existed on January 1, 1991, and must be registered with the Federal Communications Commission, or installed behind a coupling device which has been registered with the Federal Communications Commission.

(2) All pay telephones shall provide dial tone first to assure emergency access to operators without the use of a coin.

(3) The caller must be able to access the operator and 911 where available without the use of a coin.

(4) ((~~The subscriber shall pay the local directory assistance charge currently in effect for each pay telephone and may charge the user for directory assistance calls.~~)) The charge for each directory assistance call paid by the ((~~user~~)) consumer shall not exceed the ((~~current~~)) prevailing per call charge ((~~paid by the subscriber~~)) for directory assistance. In the absence of persuasive contrary evidence, the charge of U S WEST Communications for intraLATA directory assistance or AT&T for interLATA directory assistance shall be accepted as the prevailing charge. A location

surcharge is not permitted. The charge for sent-paid access to local exchange calls, 1-800 and interexchange carrier service shall not exceed twenty-five cents.

(5) Emergency numbers (e.g., operator assistance and 911) must be clearly posted on each pay telephone.

(6) Information consisting of the name, address, telephone number of the owner, or the name of the owner and a toll-free telephone number where a caller can obtain assistance in the event the pay telephone malfunctions in any way, and procedures for obtaining a refund from the subscriber must be displayed on the front of the pay telephone.

The following information shall also be posted on or adjacent to the telephone instrument:

(a) "An accurate quotation of all rates and surcharges is available to the user by ((dialing '0')) [insert appropriate method] and requesting costs." The method by which the consumer may obtain without charge an accurate quotation of rates and surcharges; and

(b) The notices required by WAC 480-120-141 ((~~(1)~~)) (4)~~(a)~~.

In no case will the charges to the user exceed the quoted costs.

(7) The telephone number of the pay telephone must be displayed on each instrument.

(8) The subscriber shall ensure that the pay telephone is compatible for use with hearing aids and its installation complies with all applicable federal, state, and local laws and regulations concerning the use of telephones by disabled persons.

(9) The pay telephone, if coin operated, must return the coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters. Local exchange company pay telephones shall not be subject to the requirements of this subsection.

(10) All pay telephones must ((~~be capable of providing~~)) provide access to all interexchange carriers where such access is available. If requested by the subscriber, the local exchange company providing the public access line shall supply, where available, (a) restriction where available, which prevents fraud ~~to the~~ by selective blocking of 10XXX 1+ codes and (b) call screening to identify the line as one to which charges may not be billed, at appropriate tariffed rates.

(11) Except for service provided to hospitals, libraries, or similar public facilities in which a telephone ring might cause undue disturbance, or upon written request of a law enforcement agency, coin-operated pay telephones must provide two-way service, and there shall be no charge imposed by the subscriber for incoming calls. This subsection will not apply to pay telephones arranged for one-way service and in service on May 1, 1990. Should an existing one-way service be disconnected, change telephone number, or change financial responsibility, the requirements of this subsection shall apply. All pay telephones confined to one-way service shall be clearly marked on the front of the instrument.

(12) Pay telephones shall be connected only to public access

lines in accordance with the approved tariffs offered by the local exchange company. Local exchange company pay telephones are not subject to this requirement.

(13) A subscriber must order a separate pay telephone access line for each pay telephone installed. Extension telephones may be connected to a pay telephone access line when the instrument:

(a) Prevents origination of calls from the extension station; and

(b) Prevents third party access to transmission from either the extension ((~~of~~)) or the ((~~coin-operated~~)) pay telephone instrument.

Local exchange companies are exempted from (b) of this subsection.

(14) Credit card operated pay telephones shall clearly identify all credit cards that will be accepted.

(15) Involuntary changes in telephone numbers upon conversion of pay telephones from local exchange company-owned to privately-owned pay telephones are prohibited.

(16) No fee shall be charged for nonpublished numbers on a public access line.

(17) Cordless and tabletop pay telephones shall not be connected to the telephone network except under the following conditions:

(a) The bill for usage is tendered to the user before leaving the premises where the bill was incurred or alternatively billed at the customer's request; and

(b) The user is notified verbally or on the instrument that privacy on cordless and tabletop telephones is not guaranteed; and

(c) When other electrical devices are equipped with filters, as necessary, to prevent interference with the pay telephone.

(18) Violations of the tariff, commission rules pertaining to pay telephone service, or other requirements contained in these rules, including interexchange carrier access requirements, will subject the pay telephone to disconnection of service if the deficiency is not corrected within five days from date of written notification to the subscriber. WAC 480-120-081(4)(g) shall not apply to such disconnections. Local Exchange Company field visits shall be charged to the subscriber if the charge is required by a pertinent local exchange company tariff.

It shall be the responsibility of every local exchange company to assure that any subscriber taking service pursuant to these rules and to tariffs filed pursuant to these rules meets all of the terms and conditions contained within these rules and the tariffs so filed. It shall be the duty of the local exchange company to enforce the terms and conditions contained herein.

It shall be the responsibility of the local exchange company to provide free of charge one current telephone directory each year for each public access line. It shall be the responsibility of the subscriber to make a reasonable effort to assure a current directory is available at every pay telephone location.

Public access lines will be charged at rates according to the relevant tariff as approved by the commission.

(19) Disconnection of, or refusal to connect, a pay telephone for violation of these rules may be reviewed by the Commission in a formal complaint under WAC 480-09-420(5) through a brief adjudicative proceeding under the provisions of RCW 34.05.482-491 and WAC 480-09-500.

AMENDATORY SECTION (Amending Order R-293, filed 1/31/89)

WAC 480-120-141 ALTERNATE OPERATOR SERVICES. All telecommunications companies providing alternate operator services (AOS), as defined in WAC 480-120-021, shall ((~~conform to~~)) comply with this and all other rules relating to telecommunications companies not specifically waived by order of the commission. ((~~Alternate operator services companies (AOS) are those with which a hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracts to provide operator services to its clientele.~~)) ~~Alternate operator service provided to the inmates of state or local penal or correctional facilities or jails are exempt from compliance with the provisions of any rule inconsistent with RCW 9.73.095 or an equivalent ordinance, so long as the charges for service are no higher than the prevailing charges for operator services.~~

(1) Each alternate operator services company shall file with the commission at least every six months a current list of operator services customers which it serves and the locations and telephone numbers to which such service is provided to each customer. A customer list provided pursuant to this rule is proprietary information and, if identified when filed as required in WAC 480-09-015 is subject to the protections of that rule.

(2) Each AOS company is responsible for assuring that each of its customers complies fully with contract and tariff provisions which are specified in this rule. Failure to secure compliance constitutes a violation by the AOS company. The AOS company shall withhold on a location-by-location basis the payment of compensation, including commissions, from a call aggregator, if the AOS company reasonably believes that the call aggregator is blocking access to interexchange carriers in violation of these rules. AOS company actions in furtherance of this rule may be reviewed by the Commission in a formal complaint under WAC 480-09-420 through a brief adjudicative proceeding under the provisions of RCW 34.05.482-491 and WAC 480-09-500. An AOS company shall refuse to provide service to a call aggregator who the Commission has found to have knowingly and repeatedly acted in violation of provisions required under Commission rules regarding alternate operator service companies until the Commission has found that the call aggregator will comply with relevant provisions.

(3) For purposes of this section ((~~the~~)), "consumer" means the party ((~~billed for the completion of~~)) initiating an ((~~interstate/intrastate~~)) interexchange or local call. "Customer" means the call aggregator, i.e., the hotel, motel, hospital, prison, campus, ((~~customer-owned~~)) pay telephone, etc., contracting with an AOS for service.

((~~(1)~~)) (4) An alternate operator services company shall require as a part of ((~~the~~)) any contract with its customer and as a term and condition of service stated in its tariff, that the customer:

(a) Post on the telephone instrument in plain view of anyone using the telephone, in eight point or larger Stymie Bold type, ~~one~~

of the information provided in the following notice:~~s.~~

~~(i) If any service is provided at charges which may exceed the prevailing rates for service, the following message shall appear, printed in red ink. In the absence of a determination by the commission as to the prevailing rates, the rates at which service is offered by U S WEST for intraLATA service and AT&T for interLATA service will be accepted as the prevailing rates.~~

SERVICES ON THIS INSTRUMENT MAY BE PROVIDED AT RATES THAT ARE HIGHER THAN NORMAL. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR ((~~DIALING THROUGH THE LOCAL TELEPHONE COMPANY~~)) REACHING YOUR PREFERRED CARRIER ARE ALSO AVAILABLE FROM THE OPERATOR.

~~(ii) If ALL service from the instrument will be provided at charges, including any surcharges or fees, which are equal to or below the prevailing rates for service as identified in subsection (i), above, either the foregoing message or the following message shall appear:~~

~~SERVICE FROM THIS INSTRUMENT IS OFFERED AT RATES WHICH DO NOT EXCEED PREVAILING RATES FOR SERVICE. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR REACHING YOUR PREFERRED CARRIER ARE ALSO AVAILABLE FROM THE OPERATOR.~~

~~It is a violation of these rules to charge more than the prevailing rate for service from a telephone posted under this provision.~~

~~(iii) Posting shall begin within 60 days following the adoption of these rules and shall be completed within 90 days thereafter.~~

(b) Post and maintain in legible condition on or near the telephone:

(i) The name, address, and without-charge number of the alternate operator services company, as registered with the commission;

(ii) Dialing directions so that a consumer may reach the AOS operator ((~~so as~~)) without charge to receive specific rate information; and

(iii) ~~Dialing d~~Directions to allow the consumer to ((~~dial through the local telephone company~~)) reach the consumer's preferred carrier and to make it clear that the consumer has access to the other providers.

(c) Provide without charge access from every instrument to 911 and the local exchange company operator;

(d) Provide access from every instrument to 1-800 services and all available interexchange carriers; and

~~(e) Shall not impose, implement or allow a surcharge for any operator, toll, or local service above the tariffed rates for service, and;~~

~~Shall post, on or near the instrument, a notice stating whether a location surcharge is imposed for telecommunications access through the instrument, the amount of any surcharge, and the circumstances when it will apply.~~

~~(f) Shall not charge more than twenty-five cents for consumer access to local exchange, 1-800 or interexchange carrier service.~~

((~~(2)~~)) (5) The alternate operator services company shall:

(a) Identify the AOS company providing the service ((~~or its authorized billing agent~~)) audibly and distinctly at the beginning of every call, and again before the call is connected, including ((~~those handled automatically; and~~)) an announcement to the called party on calls placed collect.

(i) For purposes of this rule the beginning of the call is immediately following the prompt to enter billing information on automated calls and, on live and automated operator calls, when the call is initially routed to the operator.

(ii) ~~Specifically, the following message shall be used at the beginning of the call: "You are using (name of AOS company as registered with the commission)"; the message prior to connection of the call shall say, "Thank you for using (name of AOS company as registered with the commission)".~~

The message used by the AOS company shall state the name of the company as registered with the Commission whenever referring to the AOS company. No other name may be used in the message.

(iii) The consumer shall be permitted to terminate the telephone call at no charge before the call is connected.

(iv) The AOS company shall immediately, upon request, and at no charge to the consumer, disclose to the consumer

(A) a quote of the rates or charges for the call, including any surcharge;

(B) the method by which the rates or charges will be collected; and

(C) the methods by which complaints about the rates, charges or collection practices will be resolved.

(b) Provide to the local exchange company such information as may be necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(c) Reoriginate calls to another carrier upon request and without charge, when equipment is in place which will accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the ~~carrier~~ AOS company shall give dialing instructions for the consumer's preferred carrier.

(d) Assure that a minimum of ninety percent of all calls shall be answered by the operator within ten seconds from the time the call reaches the carrier's switch.

(e) Maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including as pertinent the facilities for access to consumers' preferred interexchange carriers, does not exceed one percent in any given hour. Should excessive blockage occur, it shall be the responsibility of the AOS company to determine what caused the blockage and take immediate steps to correct the problem. This subsection does not apply to blockage during unusually heaving traffic, such as national emergency, local disaster, holidays, etc.

((~~(3)~~)) (6) The alternate operator services company shall

assure that ((~~consumers~~)) persons are not billed for calls which are not completed. For billing purposes, calls shall be itemized, identified, and rated from the point of origination to the point of termination. No call shall be transferred to another carrier by an AOS which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

((~~(4)~~)) (7) For purposes of emergency calls, every alternate operator services company shall have the following capabilities;

(a) Automatic identification at the operator's console of the location from which the call is being made;

(b) Automatic identification at the operator's console of the correct telephone numbers of emergency service providers that serve the telephone location, including but not limited to, police, fire, ambulance, and poison control;

(c) Automatic ability at the operator's console of dialing the appropriate emergency service with a single keystroke;

(d) Ability of the operator to stay on the line with the emergency call until the emergency service is dispatched.

No charge shall be imposed on the caller ((~~from~~)) by the telephone company or the alternate operator services company for the emergency call.

If the alternate operator services company does not possess these capabilities, all calls in which the ((~~caller~~)) consumer dials zero (0) and no other digits within five seconds shall be routed directly to the local exchange company operator, or to an entity fully capable of complying with these requirements. AOS companies lacking sufficient facilities to provide such routing shall cease operations until such time as the requirements of this section are met.

((~~(5) Consumer~~)) (8) Complaints and disputes shall be treated in accordance with WAC 480-120-101, Complaints and Disputes.

((~~(6)~~)) (9) Charges billed to a credit card company (e.g., American Express or Visa) need not conform to the call detail requirements of this section. However, the AOS shall provide ((~~consumers with~~)) specific call detail in accordance with WAC 480-120-106 upon request.

(10) "Public convenience and advantage"; commissions or fees.

(a) For services, public convenience and advantage means at a minimum that the provider of alternate operator services offers operator services which equal or exceed the industry standards in availability, technical quality and response time and which equal or exceed industry standards in variety or which are particularly adapted to meet unique needs of a market segment. In the absence of other persuasive evidence, a demonstration that operator service equals or exceeds that provided by U S WEST Communications for intraLATA services or AT&T for interLATA services will be accepted as demonstrating public convenience and advantage.

(b) Charges no greater than the prevailing operator service ~~charges~~ rates in the relevant market - intraLATA or interLATA - will be accepted as demonstrating that charges are for the public convenience and advantage. In the absence of persuasive contrary

evidence, the charges for U S WEST for IntraLATA service and AT&T for interLATA service will be accepted as the prevailing charges.

(c) ~~Commissions, Surcharges,~~ charges or fees. ~~The charge to the consumer attributable to any commission, location fee, surcharge, or customer charge or fee of any kind for the benefit of a call aggregator may not exceed twenty-five cents for any sent-paid or non-sent-paid call, except that n~~ An AOS company may not ~~bill the consumer for any location surcharge, customer charge, or fee in excess of rates properly authorized by the commission. N~~ No ~~such~~ location surcharge may be added to without-charge calls nor to a charge for directory assistance. ~~A higher fee may be approved by the commission when necessary for rates which are fair, just and reasonable. The existence of this charge at a location and the basis for its calculation [i.e., per call or percentage of charge] must be clearly posted at the location of the instrument. Except as specified herein, n~~ No tariff may provide for rate levels which vary at the option of a call aggregator.

(11) ~~Tariffed r~~ Rates for the provision of alternate operator services, including directory assistance, shall not exceed the prevailing rates for such services in the relevant market unless need for the excess to produce rates which are fair, just and reasonable is demonstrated to the satisfaction of the commission. In the absence of persuasive contrary evidence, rate levels of U S WEST for intraLATA service and AT&T for interLATA service will be considered the prevailing rate.

(12) Fraud prevention.

(a) A company providing interexchange telecommunications service may not bill a call aggregator for charges billed to a line for calls which originated from that line through the use of 10XXX+0; 10XXX+01; 950-XXX; or 1-800 access codes, or when the call originating from that line otherwise reached an operator position, if the originating line subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) A company providing interexchange telecommunications service may not bill to a call aggregator any charges for collect or third number billed calls, if the line serving to which the call was billed was subscribed to incoming call screening and the call was placed after the effective date of the call screening service order.

(c) Any calls billed through the local exchange carrier in violation of subparagraphs (a) or (b) above must be removed from the call aggregator's bill by the local exchange company upon identification. If investigation by the local exchange company determines that the pertinent call screening was operational when the call was made, the local exchange company may return the charges for the call to the interexchange telecommunications company as not billable.

(d) Any call billed directly by an alternate operator service company, or through a billing method other than the local exchange company, which is billed in violation of subparagraphs (a) and (b), above, must be removed from the call aggregator's bill. The

telecommunications company providing the service may request an investigation by the local exchange company. If the local exchange company, after investigation, determines that call screening which would have protected the call, which is offered by the LEC and was subscribed to by the call aggregator, was not operational at the time the call was placed, the AOS company shall bill the LEC for the call.

New provision:

WAC 480-120-xxx. Local service to Aggregators. The local exchange company's tariff shall provide (1) that any local calls provided by aggregators to customers on a per-call basis may not be offered at a rate, including any location surcharge, which is greater than the local exchange company's tariffed rate for local calls from pay telephones; (2) that every aggregator offering local calls must provide without-charge access to 911, where available, and the local exchange company operator; and (3) that every aggregator offering local calls must provide access to all available interexchange carriers and to 1-800 telephone numbers.

Exhibit 11

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

FCC 91-116
38146

In the Matter of	)	
	)	
Policies and Rules Concerning Operator Service Providers	)	CC Docket No. 90-313
	)	
	)	RM-6767

REPORT AND ORDER

Adopted: April 9, 1991 ; Released: April 15, 1991

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. With this Report and Order, we amend Parts 64 and 68 of our rules to implement provisions and establish policies and standards of the Telephone Operator Consumer Services Improvement Act of 1990.[1] This action establishes rules for operator service providers (OSPs) and call aggregators regarding consumer information, call blocking, restrictions on certain charges, and equipment capabilities. In addition, we establish minimum standards for the handling of emergency calls and adopt requirements for the public dissemination by OSPs of information about the operator services industry.

II. BACKGROUND

2. On June 14, 1990, this Commission adopted the initial Notice of Proposed Rule Making in CC Docket No. 90-313[2] in response to a petition for rule making filed by the National Association of Regulatory Utility Commissioners (NARUC).[3] In the NPRM, we proposed specific rules aimed at solving problems in the operator services industry that had persisted despite previous Commission action and we asked interested parties to express their views on a number of related issues.[4]

3. During the first week of October 1990, Congress passed the Operator Services Act, which the President signed into law shortly thereafter. The purpose of the Operator Services Act is "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices."[5] Under the Act, this Commission must, inter alia, conduct a

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1 Pub. L. No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. § 226) ("Operator Services Act" or "Act"). The text of the Act, in relevant part, is attached as Appendix B.

2 Policies and Rules Concerning Operator Service Providers, Notice of Proposed Rulemaking, 5 FCC Rcd 4630 (1990) (hereinafter NPRM). A full discussion of the development of the operator services industry and the proceedings related to operator service issues is contained in the NPRM at 4630-4631.

3 See Petition of the National Association of Regulatory Utility Commissioners, RM-6767 (filed April 17, 1989).

4 Id. at 4631-35, 4637-38 (these related issues included double branding, charging for unanswered or uncompleted calls, and standards for the handling of emergency calls).

5 S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990); see also H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.").

"general" rule making proceeding to prescribe regulations that will implement statutory provisions and establish certain standards and policies, and a monitoring/reporting proceeding that will ultimately result in three reports to Congress.[6] On December 21, 1990, we released a Further Notice of Proposed Rule Making[7] in order to: (1) "initiate" the general rule making and monitoring/reporting proceedings required by the Operator Services Act;[8] (2) propose the required rules; (3) invite any additional comments that are necessary beyond those submitted in response to our initial NPRM in CC Docket No. 90-313; (4) solicit such further information as is necessary to ensure that the objectives of the Act are satisfied;[9] and (5) declare that, under the Act, the access and payphone compensation issues must be considered in a separate proceeding.[10] The rules proposed in the FNPRM supplanted those proposed in the initial NPRM.[11]

4. In addition, Section 226(h)(3) of the Operator Services Act directs the Commission to initiate a proceeding to determine whether the regulatory objectives specified in Section 226(d)(1) of the Act are being achieved and to report our findings to Congress. The objectives of the Act are to ensure that consumers are protected from unfair and deceptive practices relating to their use of operator services to place interstate long distance calls and, second, to ensure that consumers have the opportunity to make informed choices in making such calls. Toward this end, the Act directs the Commission to monitor OSP rates, complaints filed against OSPs, various costs of providing operator service, innovations in the provision of operator services, and compliance with the requirements of the Operator Services Act. The FNPRM initiated this proceeding as Phase II of this docket and proposed to require OSPs to file reports to assist us in preparing the reports

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6 47 U.S.C. § 226(d), (h)(3).

7 Policies and Rules Concerning Operator Service Providers, Further Notice Of Proposed Rule Making, 6 FCC Rcd 120 (1990) (hereinafter "FNPRM"). Comments were due by January 22, 1991, with reply comments due by February 6, 1991. The monitoring/reporting proceeding will be conducted in Phase II of this docket.

8 47 U.S.C. § 226(d)(2), (h)(3)(A).

9 See id. § 226(h)(3)(A).

10 See id. § 226(e). This proceeding has been initiated. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Notice of Proposed Rule Making, CC Docket No. 91-35, FCC 91-53, 56 Fed. Reg. 11,136 (1991) (hereinafter Access/Compensation NPRM).

11 To the extent comments in the NPRM were relevant to the proposals in the FNPRM, they were considered. Comments that went to proposals in the NPRM that were not subsequently proposed in the FNPRM are moot and were not considered. Comments made in the NPRM that are relevant to issues raised in the Access/Compensation proceeding will be considered in that docket.

required by the Act.[12] We delegate to the Chief, Common Carrier Bureau, authority to impose such reporting requirements as the Bureau shall deem necessary to fulfill the obligations imposed by Section 226(h)(3)(B) of the Act.

5. In response to the NPRM, over 400 parties filed comments and reply comments. In response to the FNPRM,[13] over 50 parties filed comments and reply comments. A list of all parties is contained in Appendix A. The Commission is required by the Operator Services Act to complete this rule making within 210 days of the statute's enactment, that is by May 15, 1991.

III. DISCUSSION

6. The majority of commenters agreed with the rules as proposed by the Commission in the FNPRM. With the exception of rules for which clarification or modification was requested, we will adopt those rules as proposed and without discussion.[14]

A. Section 64.708 - Definitions

7. Section 64.708[15] of the proposed rules defines a number of fundamental terms. In the FNPRM, we proposed to amend our rules to adopt, inter alia, definitions of aggregator, operator services, and provider of operator services. Comments were sought on the definitions of these terms and the other terms as set forth in Section 64.708 of the proposed rules.

1. Section 64.708(b) - "Aggregator"

8. Proposal. The term "aggregator" is defined in paragraph (b) of

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12 See FNPRM, 6 FCC Rcd at 121-122.

13 Two sets of comments have been filed in this proceeding. Comments filed in response to the NPRM will be referred to as "NPRM Comments" or "NPRM Reply Comments" as appropriate. Comments filed in response to the FNPRM will be referred to as "FNPRM Comments" and "FNPRM Reply Comments" as appropriate. In addition, the Commission has considered the issues raised in informal complaints filed with regard to operator services. Finally, the Commission will not consider comments that address issues not raised in the NPRM or FNPRM.

14 The rules requiring OSPs to ensure aggregators' compliance by contract or tariff with certain requirements were unopposed. See Section 64.703(e) (posting requirements), Section 64.704(b)(1) (call blocking), and Section 64.705(a)(5) (charges for access code calls). Commenters did not request clarification with respect to the majority of definitions proposed in Section 64.708, specifically, subsections (a), (c), (d), (f), and (h). Section 64.704(a), which requires that "800" and "950" access be unblocked, was supported by the commenters.

15 See 47 U.S.C. §226(a).

Section 64.708[16] of the proposed rules as follows: "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."

9. Comments. Many parties submitted comments on the proposed definition of "aggregator." A number of parties filed comments stating that correctional institutions are not aggregators with respect to inmate-only phones. The parties argued that such institutions do not make these phones available to the "public" or to "transient users," but rather that these phones are only made available to persons who are involuntarily detained. The commenters note that often administrators of correctional institutions require that inmate-only phones allow only collect calls and that phone numbers for certain individuals such as judges, witnesses, and jury members be blocked.[17] They request that we either exclude correctional institutions from the definition of "aggregator" or grant them an exemption under the fraud provision of the Operator Services Act, 47 U.S.C. § 226(g).[18] There were no comments filed contrary to this position.

10. Comments filed by the Federal Executive Agencies (FEA) in response to the FNPRM stated that the proposed definition of "aggregator" did not encompass the federal executive agencies because "governmental agencies" are not included in the definition of "person" in Section 3(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(i), and the Operator Services Act did not redefine "person" to include them.[19] The FEA operate hospitals, universities, hotel-like institutions and other facilities that provide telephones to transient users.[20]

11. Additionally, many parties filed comments requesting that

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16 See 47 U.S.C. § 226(a)(2).

17 See, e.g., FNPRM Comments of Gateway Technologies, Inc. (Gateway) at 3-4; FNPRM Reply Comments of Robert Cefail & Associates American Inmate Communications Inc. (Cefail) at 2.

18 See, e.g., NPRM Comments of the Ameritech Operating Companies. (Ameritech) at p. 3, n. 3; NPRM Comments of Southwestern Bell Telephone Company (Southwestern Bell) at 6; NPRM Comments of Pacific Bell and Nevada Bell at 4; NPRM Comments of U S West Communications (US West) at 7-8; NPRM Comments of the Bell Atlantic Telephone Companies (Bell Atlantic) at 6; FNPRM Comments of the American Public Communications Council (APCC) at 4-6; FNPRM Comments of Gateway; FNPRM Reply Comments of Chillicothe Telephone Co. at 2-3; FNPRM Reply Comments of Rochester Telephone Co.; FNPRM Reply Comments of MCI Telecommunications Corporation (MCI) at 2-3; FNPRM Reply Comments Cefail.

19 FNPRM Comments of Federal Executive Agencies at 2.

20 Id.

universities[21] and hospitals[22] be excluded from the definition of "aggregator." Generally, universities argue that they are users of communications services and not sellers of such services. They believe that their students are long-term residential users and should not be grouped with hotel patrons, travelers or hospital patients.[23] Hospitals have generally argued that they are not common carriers and, therefore, are not subject to the Commission's jurisdiction.

12. Also with respect to this definition, several parties have asked us to clarify whether it is the premises owner or the owner of the pay telephone who is responsible as the "aggregator" for compliance with the Operator Services Act. This request has been presented to us in various forms. For example, Americall Systems of Louisville (Americall) and its joint commenters suggest that the entity that owns and controls the telephone equipment should be the "aggregator" for purposes of compliance with the Operator Services Act and the Commission's rules.[24] Americall states that, in situations where the payphone owner, rather than the premises owner, controls the telephone, the payphone owner should be considered the "aggregator."[25] Contrary to this position, the National Telephone Cooperative Association (NTCA) requests that the Commission declare that it is the premises owner that is responsible for complying with the Operator Services Act and the Commission's rules.[26] NTCA argues that premises owners

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21 See, e.g., NPRM Comments of the University of Missouri at 1-2; FNPRM Comments of the National Association of College and University Business Officers at 1; FNPRM Reply Comments of the Association of College and University Telecommunications Administrators.

22 NPRM Comments of Ohio Hospital Association; NPRM Comments of Baylor University Medical Center; NPRM Comments of Texoma Medical Center; NPRM Reply Comments of Lorain Community Hospital.

23 See, e.g., Joint NPRM Comments of The American Council on Education and the National Association of College and University Business Officers at 2; NPRM Reply Comments of Trustees of the University of Pennsylvania at 6-7.

24 See, e.g., Joint FNPRM Comments of Americall, et al., at 4.

25 Id. NYCOM Information Services, Inc. (NYCOM) takes the same position ("Without such clarification the premises owner could be considered the aggregator even though they may have no control over the payphone and no authority to ensure that the proper signage is in place."). FNPRM Comments of NYCOM at 9-10. See also NPRM Reply Comments of United Telecommunications, Inc. at 8 ("...placing the posting responsibility on the owner of the pay telephone will facilitate compliance with the Operator Services Act and will prevent premises owners from inadvertently covering up, with the signage required by the Act, other useful information on the telephone.")

26 FNPRM Comments of NTCA at 4.

who have contracts with OSPs should have to comply with these requirements; the local exchange company who leases the equipment to the premises owner has no control over the leased equipment, over the premises where that equipment is located, or over the OSP with whom the premises owner has contracted.[27]

13. Decision. After reviewing all the relevant comments and replies, we believe that the proposed definition should be adopted. We do agree with the commenters, however, that some clarification is necessary.

14. An "aggregator" has certain enumerated responsibilities under the Act and our rules, among them posting the required information on or near the telephone and ensuring that its telephones do not block "800" or "950" access. We believe that the "aggregator" is the entity that is in the position to comply with these requirements through its access to and control of the telephone equipment, a determination that must be based on the facts of each situation. Congress has made clear that pay telephone owners, hotels and other premises owners may be aggregators under the Act. Therefore, a blanket determination by the Commission regarding who the aggregator is with regard to all payphones will not help to meet our goals of ensuring the availability of consumer information and consumer choice. Instead, we will interpret the definitions broadly enough to ensure compliance with the goals of our rules and the Act. Each entity that exercises control over telephone equipment, whether through ownership of the equipment, control of access to the equipment or some other means, will be responsible as an "aggregator" under the Act and our rules. In some situations the premises owner and the pay telephone owner will be jointly responsible as "aggregators" by virtue of their joint access to and control over the telephone equipment;[28] in some situations the "provider of operator services" will also be an "aggregator" who must comply with the provisions of the Act and our rules. In order to remove any ambiguity and to avoid debate

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27 Id. at 3-4. Another commenter requests that we clarify that the premises owner, not the owner of the equipment, is the aggregator. FNPRM Comments of Southwestern Bell at 2. The United States Telephone Association (USTA) also supports this position stating that, absent an agreement, the premises owner should be considered the aggregator when a payphone is located on private premises. FNPRM Reply Comments of USTA at 1, n.1.

28 This interpretation is consistent with the intent of the Operator Services Act. "Telephones made available to the general public include telephones in hotels, hospitals, universities, airports, and other pay telephones." S.Rep. No. 439, 101st Cong., 2d Sess. n. 2 (1990); "Aggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others." Id. at 10. It is clear that Congress intended that all pay telephones be covered by the legislation whether located in, for example, hotels and universities or stand-alone payphones not located in a particular premise. OSPs must ensure aggregator compliance by tariff or contract with Section 64.703(e) (posting requirements), Section 64.704(b)(1) (call blocking prohibition) and Section 64.705(a)(5) (charges for access code calls).

over who is responsible for ensuring compliance with the Act and the Commission's rules, joint aggregators will be equally responsible for complying with the Act and the rules.

15. We conclude that the definition of "aggregator" does not apply to correctional institutions in situations in which they provide inmate-only phones. We are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein.[29] Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules.[30] Phones provided for the use of the public, however, such as those in visitation areas, would be covered by the Operator Services Act and the rules.

16. We also find that hospitals and universities are clearly within the scope of the definition of "aggregator."[31] In discussing the definition, the Senate Committee said that "[a]ggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others."[32]

17. In addition, we are not persuaded that the federal executive

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29 Both the Act and the legislative history are silent with respect to the inclusion of correctional institutions within the definition of "aggregator" with regard to inmate-only phones.

30 Additionally, the carrier providing service to inmate-only phones at correctional institutions would not fall under the definition of "provider of operator services" as such service is not provided at an "aggregator" location with respect to inmate-only phones. A carrier that provides service to phones at correctional institutions that are made available to the public or to transient users would have to comply with the requirements of the Commission's Rules and the Operator Services Act.

31 "Aggregators include, for example, hotels, hospitals, airports, and universities." NPRM, 5 FCC Rcd at 4638, n.6. We will clarify that a university that allows students complete freedom in choosing their own interexchange carriers for operator service would not come within the scope of the definition. In this instance, the university is providing nothing more than would a typical apartment building wherein each tenant is responsible for choosing his or her long-distance carrier; consumers (the students) would have made their own informed choice of OSP. Additionally, we clarify that aggregators "only include persons who make telephones available for interstate calls." S.Rep. No. 439, 101st Cong., 2d Sess. 10 (1990). For example, local exchange companies (LECs) would be "aggregators" to the extent that they make telephones available to the general public or transient users for interstate calls using a provider of operator services.

32 S.Rep. No. 439, 101st Cong., 2d Sess. 10 (1990).

agencies should be excluded from the definition of "aggregator." This Commission has previously found that governmental entities are subject to its jurisdiction.[33] First, the Communications Act has conferred upon the Commission broad and expansive regulatory authority over interstate communications by wire and radio. Second, while the term "person" in the Communications Act is defined to include certain entities, there is no indication that the list is all-inclusive and that entities not specifically mentioned are to be excluded.[34] Finally, when Congress has sought to exclude governmental entities from our jurisdiction they have done so explicitly.[35] We also note that the legislative intent of Congress would be frustrated by excluding "governmental entities" from regulation under the Operator Services Act and our rules. Hence, to the extent such agencies make phones available to the public or to transient users for the placing of operator-assisted interstate telephone calls, they clearly provide the type of service contemplated by the Operator Services Act and therefore come within the statutory requirements of the Act and under the Commission's rules.

2. **Section 64.708(g) and (i) - "Operator Services" and "Provider of Operator Services"**

18. Proposal. The term "operator services" is defined in paragraph (g) of Section 64.708[36] of the proposed rules as follows:

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33 Graphnet Systems, Inc., 73 FCC 2d 283 (1979) (finding that the United States Postal Service was not exempt from Commission jurisdiction due to its status as a governmental entity).

34 Additionally, the Operator Services Act and its legislative history evidence no intent to exclude governmental entities from our jurisdiction. For example, we note that Congress has defined "aggregator" to include hospitals among other entities. There has been no distinction drawn between non-governmental and governmental hospitals, and we shall not draw that distinction.

35 For example, radio stations operated by the United States are excluded from regulation under Title III of the Communications Act. The FEA, however, points to the explicit inclusion of "governmental entities" within a definition of person included in the Cable Franchise Policy and Communications Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (Title VI of the Communications Act) as dispositive with regard to the issue of jurisdiction over "governmental entities." The FEA contends that when Congress wants to include governmental entities within our jurisdiction, they do so explicitly. There is no merit to this argument as the definition of "person" in Title VI of the Communications Act is for the purposes of Title VI specifically and was not meant to limit generally the definition of "person" in Title I. The fact that Congress has explicitly confirmed that a governmental entity is a "person" under Title VI does not mean a governmental entity is not also a person under the Title I definition.

36 See 47 U.S.C. § 226(a)(7).

any interstate telecommunications service initiated from an aggregator location 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--

(1) automatic completion with billing to the telephone from which the call originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

19. The term "provider of operator services" is defined in paragraph (1) of Section 64.70837 of the proposed rules as "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services."

20. Comments. A number of parties have sought clarification that "operator services" and "provider of operator services" include "bong-in-the-box," "store-and-forward,"[38] and other similar automated technologies.[39] Generally, these parties state that there is no basis for distinguishing between live or automated off-site services and the "store-and-forward" and "bong-in-the-box" devices located within telephones and PBXs.[40] HF Communications Corporation has requested that we clarify that a hotel that provides automated billing functions only to its patrons is not an OSP under the Act and our rules.[41] It argues that there are distinctions between a hotel that provides services to its patrons and OSPs that provide services to any and all aggregators -- hotels have a direct relationship with the caller and there are many more hotels than OSPs.[42]

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37 See 47 U.S.C. § 226(a)(9).

38 "Store-and-forward" and "bong-in-the-box" devices are microprocessors located within telephones that perform automated call completion and billing services.

39 See, e.g., NPRM Comments of Com Systems, Inc. at 6-9; NPRM Reply Comments of MLD Long Distance, Inc. at 2-3; Joint NPRM Reply Comments of Operator Service Providers of America (OSPA) and NYCOM at 25-26; NPRM Reply Comments of Competitive Telecommunications Association (CompTel) at 3-4; Joint FNPRM Comments of Americall, et al. at 7-9.

40 See, e.g., Joint FNPRM Comments of Americall, et al. at 7-9.

41 Joint NPRM Reply Comments of HF Communications Corporation and Value-Added Communications, Inc. and FNPRM Reply Comments of HF Communications Corporation.

42 FNPRM Reply Comments of HF Communications Corporation at 4.

21. Decision. Sections 64.708(g) and (i) will be adopted as proposed. The legislative history of the Operator Services Act states that "operator services" include

> interstate telecommunications services that involve any assistance to a consumer to arrange for billing other than to the number from which the call was placed. This definition includes assistance provided either by a "live" person or by automation, such as voice recordings or "bong-in-a-box" services. Carriers may not escape this definition by employing a particular technology that does not involve a "live" operator.[43]

Clearly, Congress intended that automated technologies be included within the definition of "operator services" and that those who provide service through such automated technologies are "providers of operator services" under the Act and the Commission's rules. We emphasize that "store-and-forward" and "bong-in-the-box" as well as other automated technologies do not fall within the exemption to the definition of "operator services" found in Section 64.708(g)(1) of the rules.[44] We are not persuaded that a distinction should be drawn between automated billing provided by a hotel vis-a-vis similar services provided by entities that offer such services as their primary business. Hotels providing automated billing fall within the definition of "provider of operator services" and must comply with the Act and our rules.

3. Other definitions.

22. The remainder of the definitions in the proposed rules were generally supported by commenters. MCI asks that we make a technical change to Section 64.708(e), the definition of "equal access."[45] The rule as proposed would have required that "equal access" be defined as that term is used in Appendix B of the Modification of Final Judgment as amended by court orders issued prior to the effective date of the rule. The MCI modification would include only those orders issued prior to the date of enactment of the Operator Services Act, October 17, 1990.

23. Consistent with the Act, we will modify Section 64.708(e) to reflect the inclusion of only those orders amending the Modification of Final Judgment issued prior to October 17, 1990. The remainder of the definitions in Section 64.708 will be adopted as proposed. We believe that the legislative history and intent of the Act provide sufficient guidance regarding the definitions adopted and that adoption of those terms precisely

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43 S.Rep. No. 439, 101st Cong., 2d Sess. 11 (1990).

44 This section exempts from the definition of "operator services" the provision of interstate telecommunications services from aggregator locations that are automatically completed with billing to the telephone from which the call originated. See 47 U.S.C. § 226(a)(7)(A).

45 FNPRM Comments of MCI at 3-4.

as stated in the Operator Services Act is a necessary part of our implementation process.

B. Section 64.703 - Consumer Information

1. Section 64.703(a) - OSP Requirements

24. Proposal. Section 64.703(a)[46] of the proposed rules would require OSPs to brand calls,[47] to allow consumers to terminate calls without incurring a charge before connection, and to disclose immediately to consumers certain information regarding rates and charges. These proposed rules are necessary both to allow the consumer "to make a free and knowledgeable choice among OSPs and to help avoid or resolve disputes over charges."[48]

25. Comments. The commenters generally supported the proposed requirements for OSPs.[49] Additionally, commenters generally believe that these requirements should apply to both "live" and "automated" operators.[50]

26. There is some question over the timing of the first brand. APCC asks that we clarify that the timing of the first brand should be left to the discretion of the OSP. Specifically, APCC suggests, with respect to "store-and-forward" ("S&F") technology, the first brand should occur after billing validation, that is after the bong tone.[51] MCI, on the other hand, argues that the first brand should occur prior to the bong tone because a consumer may be entering his or her billing number and not hear a brand after the bong tone.[52] APCC also asks that we clarify that the entity named in the brand is subject to agreement between the parties, should more than one party be

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46 See 47 U.S.C. § 226(b)(1)(A), (B), (C).

47 Call branding "is the process by which an OSP audibly and distinctly identifies itself to every person who uses its operator services." NPRM, 5 FCC Rcd at 3632.

48 Id.

49 See, e.g., NPRM Comments of Capital Network System, Inc. (CNS) at 8-10 ("CNS believes that customer information sufficient to make informed choices is not only good public policy but is good business."); NPRM Comments of Ameritech at 13; NPRM Comments of US West at 3; NPRM Comments of ComTel Computer Corp. at 5.

50 See, e.g., NPRM Comments of Cleartel Communications, Inc. at 14; NPRM Comments of Com Systems, Inc. at 4, 6.

51 FNPRM Comments of APCC at 9.

52 MCI also argues that should the first brand occur after validation, there would be no distinction between the first and second brand. FNPRM Reply Comments of MCI at 4.

involved in rate-setting.[53]

27. APCC argues that the proposal to require rate disclosure, collection methods and dispute resolution practices may have to be modified with regard to S&F technology. APCC claims that because the S&F device itself may be unable to answer questions, a consumer may have to dial a separate toll-free number to obtain rate and other information. APCC requests that we modify or clarify the rule to allow competitive public payphone providers that employ S&F technology to instruct a consumer to dial a separate toll-free number for information.[54]

28. Decision. After examining the record, we believe that Section 64.703(a) should be adopted without modification. These requirements apply to both "live" operators and automated technologies. The first brand must occur "at the beginning of the call."[55] APCC asks that we allow the first brand to occur after the consumer has entered a billing number and that number has been validated. We do not believe that a brand at that time is "at the beginning of the call." For automated systems, we require that the first brand occur prior to the bong tone, since the bong tone usually signals callers to begin entering a billing number. This requirement will help ensure that consumers hear all of the branding information and have the opportunity to make an informed choice to use a particular OSP.

29. We see no reason for prohibiting parties involved in rate-setting from deciding which party will be named in the brand. However, we prohibit parties from branding in the name of another party if rates are merely modeled on or copied from that party's rates and that party has not consented to the use of its name in the brand.

30. We believe that, with regard to automated technologies only, the provision of rate and other information via the use of a separate toll-free number is a reasonable method of compliance with our rule. We caution, however, that as technology is developed that eliminates the necessity for a separate number, the use of that number should also be eliminated. We will also clarify that any rates quoted by an OSP must be exact rather than approximate. The Operator Services Act is clear that quotes for rates or charges must be for "the call"[56] not for some hypothetical call. Rates should be quoted based on the pricing of the specific call.

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53 FNPRM Comments of APCC at 7.

54 Id. at 8.

55 See 47 U.S.C. § 226(b)(1)(A).

56 See 47 U.S.C. § 226(b)(1)(C)(i).

2. Section 64.703(b) and Section 64.703(d) - Aggregator Posting Requirements and State Requirements

31. Proposal. Section 64.703(b),[57] as proposed, would require aggregators to post on or near telephones in plain view of consumers certain information to help ensure that consumers are fully informed when choosing an OSP. This information includes i) the name, address and toll-free number of the OSP; ii) a written disclosure that, upon request, rates are available for all operator-assisted calls and that consumers have the right to use their preferred interstate common carrier and may contact that carrier for information on accessing its services, and iii) the name and address of the Common Carrier Bureau's Enforcement Division to which a consumer may direct complaints.

32. Proposed Section 64.703(d) provides that the posting requirement of 64.703(b) will not apply if state law or regulation requires an aggregator to take actions that are substantially the same as the requirements of Section 64.703(b). The purpose of this proposed rule is to avoid duplicative posting requirements and to ensure that there is adequate disclosure to consumers through either federal or state regulation.[58]

33. Comments. Commenters were generally supportive of the proposed rules.[59] NTCA requests that we declare that the Section 64.703(b) posting requirement does not apply to payphones in non-equal access areas of the country.[60] NTCA believes that such disclosure "is meaningless unless the consumer in fact has a choice of available carriers."[61] NTCA contends that in non-equal access areas payphones are only capable of accessing one interstate carrier.[62]

34. A number of parties commented on the placement of the required information. Some commenters believe that, under certain circumstances, aggregators should be allowed to hand the required information to their

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57 47 U.S.C. § 226(c)(1)(A).

58 S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

59 See, e.g., NPRM Comments of CompTel at 4; NPRM Comments of MCI at 3.

60 FNPRM Comments of NTCA at 4. A number of parties commented that information that is required to be posted should be kept at a minimum both due to space considerations and replacement costs. See, e.g., NPRM Comments of US West at 6; NPRM Comments of United Telecommunications, Inc. at 8-10.

61 FNPRM Comments of NTCA at 4.

62 Id.

patrons, such as at check-in for hotel patrons and hospital patients.[63] NARUC, on the other hand, believes that the information should be attached to the phone or displayed prominently nearby so that it is certain that all potential users of the phone receive the required information.[64]

35. Some parties have requested that we provide guidance as to the meaning of "substantially the same" in Section 64.703(d) and that we look at each state's requirements and determine whether they are "substantially the same."[65]

36. Decision. After examining the record, we believe that Section 64.703(b) and Section 64.703(d) should be adopted as proposed. Consumers in non-equal access areas should be able to reach carriers that use "800" or "950" access numbers. We therefore find that all aggregator telephones, including those in non-equal access areas, are subject to the posting requirements.

37. We also want to make clear that the required information must be posted on or near all aggregator telephones. For example, it is not sufficient that the required information is posted on or near only one telephone in a hotel suite or room with more than one telephone.[66] Further, it is not sufficient that tent cards or stickers on or near a telephone merely refer the consumer to another source of information such as a pamphlet or hand-out that is not itself within plain view of the consumer.[67]

38. The posting requirement adopted in these rules is a minimum standard. State requirements that include all the information required by

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63 Joint NPRM Comments of Telesphere Communications, Inc. (Telesphere) and National Telephone Services, Inc. (NTS) at 26. See also NPRM Comments of OSPA at 8-9; Joint NPRM Reply Comments of OSPA and NYCOM at 27-28.

64 NPRM Comments of NARUC at 9-10. See also NPRM Comments of Independent Telecommunications Network, Inc. at 2; NPRM Comments of Communications Workers of America at 7-8 ("A hospital patient arguably has major health considerations on her/his mind at check-in time, a situation guaranteeing that literature on an abstruse operator services matter simply placed in hand will go unread and unattended. A hotel guest may be occupied with business matters on arrival.")

65 NPRM Reply Comments of United Telecommunications, Inc. (United Telecom) at 9; APCC also requests that we provide guidance regarding state requirements when it is unclear that they are "substantially the same" as federal requirements. FNPRM Comments of APCC at 10.

66 "Hotels, motels and hospitals are expected to set up 'tent cards' that rest on or near the telephone in each room." S.Rep. No. 439, 101st Cong., 2d Sess. 17 (1990).

67 "This information [that aggregators are required to post] must be placed so that it is plainly visible to a caller." Id.

our rule, though the wording may be different, will be "substantially the same." Aggregators are responsible for complying with the Act and our rules. Aggregators are also responsible for reviewing and complying with any additional state requirements, where they exist.

3. Section 64.703(c) - Double Branding

39. Proposal. Section 64.703(c)[68] would require that OSPs double brand, that is, identify itself twice, for three years from the effective date of the rule. Double branding, "by emphasizing the identity of the operator service company, [would] more fully ensure that the customer has freely chosen to use that company's services."[69]

40. Comments. The majority of the commenting parties are opposed to the double branding requirement.[70] OSPA and CompTel have requested that smaller OSPs be exempted from this requirement, as it may not be technically or financially feasible for smaller OSPs.[71] A number of commenters have asked that we clarify that double branding applies to collect calls.[72] Additionally, one party requested that we change the sunset provision of the rule to mirror that of the legislation, that is, to three years and 90 days from enactment of the legislation or through January 14, 1994.[73]

41. Decision. The Act mandates that OSPs double brand for the three-year period commencing 90 days after its enactment.[74] We will modify Section 64.703(c) to provide that OSPs must double brand through January 14, 1994 in conformance with the Act. This rule applies to all OSPs regardless of size and to all calls including collect calls. Double branding should more fully inform consumers of the identity of the OSP handling a call and that they have the right to freely choose whether to use that OSP's

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68 See 47 U.S.C. § 226(b)(2).

69 NPRM, 5 FCC Rcd at 4632.

70 But see NPRM Comments of the Alabama Public Service Commission (PSC) at 2 ("Double branding will provide an additional opportunity for consumer identification, consumer education and consumer choice."); NPRM Comments of the Missouri Public Service Commission at 2 (supports double branding requirement "...in order to more fully ensure that the customer has freely chosen to use that company's services."); NPRM Comments of the Arkansas Public Service Commission at 5.

71 Joint NPRM Reply Comments of OSPA and NYCOM at 29-31; NPRM Reply Comments of CompTel at 4.

72 See, e.g., NPRM Comments of the Missouri Office of Public Council at 3.

73 FNPRM Comments of MCI at 3-4.

74 See note 68, supra.

services.[75]

C. Section 64.704 - Prohibition on Call Blocking

42. Proposal. Section 64.704[76] would require each aggregator to ensure that telephones presubscribed to an OSP not block "800" and "950" access number calls. OSPs are required to ensure by contract or tariff that aggregators comply with this rule. In addition, an OSP is required to withhold compensation[77] to aggregators it reasonably believes are blocking in violation of this rule. This requirement would place the burden on OSPs to ensure compliance and would subject them to penalties under the Communications Act of 1934 should they continue to pay compensation.[78]

43. Comments. In general, commenters have supported the unblocking of "800" and "950" access as required by Section 64.704(a) of the proposed rules.[79] They say that the unblocking of "800" and "950" does not present the fraud problems associated with "10XXX" unblocking.[80] Some clarification has been requested with respect to the withholding of compensation to aggregators under Section 64.704(b)(2). NYCOM Information Services, Inc. (NYCOM) believes that OSPs should not be required to withhold compensation unless they have received notification from a regulatory agency that blocking has occurred at a particular location.[81] OSPA asks us to consider other enforcement methods, including direct Commission action against aggregators or a program in which OSPs would report to the Commission and we would issue

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75 NPRM, 5 FCC Rcd at 4632.

76 See 47 U.S.C. § 226(c)(1)(B), (b)(1)(D)-(E).

77 "'[C]ompensation' refers to any type of compensation which is paid by any means or device, including, but not limited to, indirect compensation, discounts, and payments by means other than cash." S.Rep. No. 439, 101st Cong., 2d Sess. 13 (1990).

78 S.Rep. No. 439, 101st Cong., 2d Sess. 13 (1990).

79 See, e.g., NPRM Comments of Public Telecommunications Council at 22; Joint NPRM Comments of Americall and First Phone of New England, Inc. at 15.

80 See, e.g., NPRM Comments of the American Hotel and Motel Association at 26; NPRM Comments of OSPA at 14; NPRM Comments of CNS at 13.

81 FNPRM Comments of NYCOM at 8-9; see also Joint NPRM Reply Comments of OSPA and NYCOM at 32; NPRM Comments of MCI at 5 (asking that the Commission clarify that OSPs should not pay compensation at locations where the Commission has determined that blocking has occurred). See also NPRM Comments of Cleartel Communications, Inc. at 10 (OSPS should receive notice that blocking has occurred); accord, NPRM Comments of U.S. Long Distance, Inc. at 14-15.

a Public Notice reporting blocking practices of aggregators.[82]

44. Decision. With respect to "800" and "950" access numbers, Congress has stated, as we have, that "consumers must have...the ability to choose their desired carriers and therefore must be permitted to reach those carriers by dialing the access code associated with that carrier."[83] We believe that the unblocking of "800" and "950" access is an important step in allowing consumer choice.[84]

45. The Commission will not provide notice of blocking to an OSP before the OSP is required to withhold compensation from an aggregator nor will we compile for public dissemination listings of aggregators who purportedly block. The purpose of this rule is to provide additional incentive to OSPs to ensure that aggregators do not block "800" and "950" access. We expect that OSPs will take steps necessary to ensure such compliance. The listing by the Commission of aggregators who block will neither ensure compliance nor deter an aggregator from blocking. Preparation of such a list would merely engender delay. Unlike the Commission, OSPs have direct and regular contact with aggregators. Diligent OSP monitoring and remedial action, in the form of withholding compensation, should deter blocking and help to reach the Commission's goal of providing consumers with access to their carrier of choice.

46. The Commission will make appropriate use of its forfeiture authority against offending OSPs and aggregators. Under Section 503 of the Communications Act,[85] we can impose substantial forfeitures for willful or repeated violations of the Communications Act or our rules, regulations, or orders; for common carriers subject to the Communications Act, up to $100,000 for each violation or each day of a continuing violation, up to a total of $1,000,000 for a continuing violation; and for others, up to $10,000 for each violation or day of a continuing violation, up to a total of $75,000 for a continuous violation. This Commission will not hesitate to use our forfeiture authority against violators of our rules.

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82 NPRM Comments of OSPA at 21-22.

83 S.Rep. No. 439, 101st Cong., 2d Sess. 17 (1990). See also NPRM, 5 FCC Rcd at 4632 ("Our goal in addressing this problem is to allow all customers access to their carriers of choice through alternative access methods.")

84 The Commission initially proposed that "800," "950," and "10XXX-0+" access codes be unblocked. NPRM, 5 FCC Rcd at 4632-33. Unblocking of "10XXX" access is being considered in a separate proceeding. See note 10, supra.

85 47 U.S.C. § 503(b)(1), (2).

D. Section 64.705 - Restrictions on Charges

47. Proposal. Section 64.705(a)(1) and (2)[86] would prohibit OSPs from billing for unanswered calls in areas where equal access is available and would prohibit "knowingly" billing for such calls where equal access is not available.

48. Section 64.705(a)(3) and (4)[87] would prohibit OSPs from call splashing[88] except when the consumer specifically requests that the call be completed anyway and the consumer is informed that the bill for the call may reflect a different originating location and the consumer consents to having the call splashed. OSPs are prohibited from billing for a call that does not reflect the originating location of the call except when call splashing has been agreed to by the consumer.

49. Under Section 64.705(b),[89] aggregators are prohibited from charging more for access code calls than for calls placed using a presubscribed OSP. Consumers should not incur extra charges at aggregator telephones because they desire to use the carrier of their choice.[90] Prohibiting any additional charges for access code calls furthers this Commission's goals of ensuring consumer choice and consumer access.

50. Comments. CompTel and OSPA request that we clarify that answer supervision is only available for Feature Group (FG) D access and not in all situations from equal access end offices.[91] US West, on the other hand, states that answer supervision is available for FG B, FG C and FG D (trunk-side services), but it is not available with line-side access connections of the type that connect customer premises equipment to the local end office

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86 See 47 U.S.C. § 226(b)(1)(F), (G).

87 See 47 U.S.C. § 226(b)(1)(H), (I).

88 "Call splashing means the transfer of a telephone call from one provider of operator services to another such provider in a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location." 47 U.S.C. § 226(a)(3).

89 See 47 U.S.C. § 226(c)(1)(C). OSPs must ensure compliance with this requirement by contract or tariff. See Section 64.705(a)(5) of the proposed rules.

90 "This provision is intended to ensure that consumers are not discouraged from choosing their desired OSPs through access codes." S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

91 Joint FNPRM Comments of CompTel and OSPA at 3; see also NPRM Comments of International Telecharge, Inc. (ITI) at 30-31.

(e.g., PBX, private pay phone and FG A).[92] The Rock Hill Telephone Co. has argued that these requirements be tied to removal of FG A circuits in a given exchange area.[93]

51. MessagePhone, Inc. (MPI) requests that we clarify that automated message delivery services (AMDS) are permitted to charge for attempting to deliver a message. With AMDS, when a consumer receives a busy signal or no answer, the consumer is given the option automatically to leave a message for subsequent delivery. Where the consumer has accepted the service (the attempt(s) to complete the call), MPI argues it should be allowed to bill for that service.[94]

52. Decision. After review of the record, we believe that Section 64.705 should be adopted as proposed. As answer supervision is available in equal access end offices, we agree that "...there is no reason why a carrier cannot subscribe to a form of access that provides 'answer supervision' capability."[95] OSPs in equal access areas are prohibited from billing for unanswered calls. The rule clearly recognizes, however, that answer supervision is not available in non-equal access areas and requires that OSPs not 'knowingly' bill for unanswered calls in non-equal access areas. With regard to MPI's comments, we agree that a provider of AMDS should be allowed to bill for the provision of AMDS service. We wish to make clear, however, that an AMDS provider may not bill for the initial call when it is unanswered or uncompleted as provided for in Section 64.705.

53. The prohibition of splashing unless the consumer is informed and consents strikes the appropriate balance in protecting consumers from being billed for calls that do not reflect their originating points and allowing consumers to make an informed decision to have calls splashed. Finally, by prohibiting aggregators from imposing surcharges on access code calls that are not charged for calls using the presubscribed OSPs, we further ensure that consumers have the ability to choose their preferred carrier in a competitive marketplace.[96]

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92 NPRM Comments of US West at 9.

93 NPRM Comments of the Rock Hill Telephone Company, Inc. at 4.

94 NPRM Reply Comments of MPI at 10-11. MPI also has suggested that when the initial call is not completed, it will not bill for that call. The consumer would only be billed for the AMDS service. Id.

95 S.Rep. No. 439, 101st Cong., 2d Sess. 14 (1990).

96 We note that this prohibition applies to the use of any access code including 10XXX access codes. "This prohibition on charging for the use of access codes also applies to the use of the '10XXX' code and other equal access codes." S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

E. Section 64.706 - Emergency Calls

54. Proposal. Section 64.706[97] of the proposed rules would require OSPs to connect emergency calls to the appropriate emergency service that serves the caller's location. While we have traditionally deferred to the states in this area because of the local nature of emergency calls,[98] the Operator Services Act requires that we establish minimum standards for the efficient routing of emergency calls by OSPs.

55. Comments. Many comments were filed with respect to this proposed rule. The National Association of Regulatory Utility Commissioners (NARUC) asked that we make clear that "alternate or more restrictive" state regulations are not preempted by the Commission's regulation.[99] A number of commenters believe that emergency service number data bases maintained by LECs should be made available to OSPs for a nominal cost[100] or at no charge.[101] In response, a number of LECs have commented that their emergency number data bases are available to OSPs, but LECs have incurred costs for collecting and compiling this information and they should be allowed to

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97 See 47 U.S.C. § 226(d)(4)(A).

98 NPRM, 5 FCC Rcd at 4635 and FNPRM, 6 FCC Rcd at 121.

99 NPRM Reply Comments of NARUC at I(B) and FNPRM Comments of NARUC at II. See also FNPRM Comments of Intellicall, Inc. (Intellicall) at 4-5. The New York Department of Public Service recommends that 911 calls be routed into the local exchange network for immediate connection to the appropriate emergency service provider. FNPRM Comments at 1-2. The Alabama PSC has adopted a rule that requires all emergency calls be routed to the local exchange network. The Alabama PSC believes that this is a better approach than that in the proposed rule. FNPRM Comments at 4. The Public Utilities Commission of Ohio has ordered that OSPs should not receive, intercept, or attempt to process a 911 call. OSPs who do receive such calls must connect the call to a 911 dispatch service center immediately. FNPRM Comments at 2-3. The Nevada Public Service Commission requires that emergency calls be directed to the LEC "...because it will allow the customer to talk to people who are familiar with the area and who traditionally handled these calls." NPRM Comments at 7. See also FNPRM Reply Comments of New York City Department of Telecommunications and Energy at 5-9.

100 Joint FNPRM Comments of the CompTel and the OSPA at 5.

101 See, e.g., FNPRM Comments of NYCOM at 7 (rule is not equitable unless LECs are required to provide free access to emergency number databases because LECs maintain exclusive control over these databases). See also FNPRM Comments of Telesphere Limited (Telesphere) at 8-9; FNPRM Comments of ITI at 4-5; FNPRM Comments of MCI at 2.

recover these costs.[102]

56. A number of commenters requested that we clarify that OSPs should be allowed to refer emergency callers to the LEC operator for emergency services or provide emergency services by accessing the LEC operator.[103] Bell Atlantic disagrees and argues that OSPs should not be allowed to refer emergency calls back to the LEC operator;[104] this transfer would create unnecessary delay in the routing of emergency calls.[105] Additionally, some commenters believe that an OSP operator handling an emergency call should stay bridged on the line until the OSP operator is satisfied that the appropriate emergency service has responded to the call.[106]

57. With regard to the inclusion of certain dialing sequences within the rule, commenters have stated that "911" calls cannot be received by OSPs and are routed to the local network.[107] Others have asked that we include "00-" calls within the rule.[108]

58. The Bell Atlantic Companies ask that we modify the rule to allow for situations where the location from which the emergency call originates

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102 FNPRM Reply Comments of Bell Atlantic at 1-2; FNPRM Reply Comments of US West at 5-6; FNPRM Reply Comments of Ameritech at 4-5; FNPRM Reply Comments of Southwestern Bell at 3-4; FNPRM Reply Comments of GTE Service Corporation at 3-5. United Telecom states that non-LEC entities are currently able to purchase emergency databases from Regional Bell Operating Companies. FNPRM Comments at 3.

103 See, e.g., FNPRM Comments of United Telecom at 2; FNPRM Comments of MCI at 2 (emergency calls should be routed to LECs for handling because it is primarily their responsibility).

104 FNPRM Reply Comments of Bell Atlantic at 2; see also FNPRM Reply Comments of Ameritech at 2-3.

105 FNPRM Reply Comments of Bell Atlantic at 2; see also FNPRM Reply Comments of US West at 3.

106 See, e.g., FNPRM Comments of Telesphere at 7-8; FNPRM Comments of Alabama PSC at 4; FNPRM Reply Comments of USTA at 6.

107 FNPRM Comments of US West at 4.

108 FNPRM Comments of Bell Atlantic at 2 ("because '00' calls bypass the exchange carrier's operators...and connect to the operators of the presubscribed OSP, these are the calls for which it is most important that specific handling requirements be established."); FNPRM Comments of US West at 5 ("It is conceivable that a frantic caller faced with an emergency might hit the '0' key twice and be routed to the presubscribed carrier's operator service system.").

is different from the location of the emergency.[109]

59. Decision. We reiterate that the subject of emergency calls is an area that the Commission has traditionally left to the states. We stress that we are adopting a minimum standard that is not intended to preempt state requirements.[110] Our goal in adopting a minimum standard is to ensure that OSPs receiving emergency calls efficiently route those calls to the appropriate emergency service provider. We note that this standard applies to "store-and-forward," "bong-in-a-box" and other automated technologies.

60. As a preliminary matter, we believe there is merit in the request that we modify the rule to require that, in instances where the originating call location is different from the site of the emergency and the site of the emergency is known, the call be connected to the appropriate emergency service for the reported site of the emergency. Section 64.706 will be adopted with this requested modification.

61. Many commenters have asked us to prescribe very specific requirements for OSPs handling emergency calls. The purpose of our rule is to provide a minimum standard to ensure that OSPs handle emergency calls appropriately. We require OSPs (i) to immediately connect an emergency call (ii) to the emergency service provider that responds to the type of reported emergency (iii) at the site of the emergency, if known, or, if not known, to the originating location of the emergency call. It is not necessary to prescribe specific rules for an OSP to meet its responsibilities. We note that some commenters have stated that emergency number databases are available from LECs; one commenter has even stated that it has developed its own database.[111] While not reaching the issue of charges by LECs for emergency number databases and updates to such databases, we believe that provision of these databases by LECs to others is important. States may adopt rules that go beyond our standard.

62. We have modified the rule to exclude specific examples of dialing sequences that might initiate an emergency call. All emergency calls, no matter how initiated, are covered by our rule. It is important that OSPs receiving an emergency call be able immediately to connect that call to the appropriate emergency service at the appropriate location.

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109 For example, "a call from a cellular customer reporting an emergency ... passed on the road." FNPRM Comments of Bell Atlantic at 2; accord, FNPRM Reply Comments of USTA at 6-7.

110 See S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990). ("The purpose of this provision is simply to ensure that the telephones supplied by aggregators allow the consumer to obtain access to all the emergency services provided according to State regulation or practices. This provision is not intended to preempt State authority over the routing and handling of emergency calls.")

111 FNPRM Comments of CNS at 7.

F. Section 64.707 - Public Dissemination of Information

63. Proposal. We proposed in Section 64.707[112] that each OSP make available, upon request, written information that describes its own services, recent changes to those services, and services and trends in the industry as a whole. Descriptions of any recent changes in the choices available to consumers in the operator services market and the methods by which consumers may exercise those choices were to be included in the information.

64. Comments. Many parties are concerned that our requirement for the inclusion of descriptions of services and trends in the industry as a whole will subject them to a panoply of legal problems. For example, parties contend that the provision of this information 1) could subject them to potential liability for libel, misrepresentation, and other business torts;[113] 2) could subject them to allegations of anticompetitive activity, trade libel, or other actionable wrongs;[114] and 3) is a prohibited information service under the Modification of Final Judgment.[115] Instead, commenters believe that they should provide information only with respect to their own services and that the Commission should provide information with respect to the industry as a whole.[116] Still other parties have stated that the rule is vague and that the Commission should prescribe the information that should be made available by OSPs to consumers.[117] Intellicall requests that the Commission adhere to its "traditional practice of imposing reporting and dissemination requirements only on carriers of a certain size."[118] Smaller OSPs should not be required to comply with Section 64.707, it argues.

65. Decision. After a complete review of the record, we adopt Section 64.707 as proposed. The Act requires that this Commission "establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market."[119] We note that Congress requires that we establish a policy that requires OSPs to inform consumers about the "market"

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112 See 47 U.S.C. § 226(d)(4)(B).

113 FNPRM Comments of NYCOM at 5.

114 FNPRM Comments of MCI at 3.

115 FNPRM Comments of Southwestern Bell at 5.

116 See, e.g., FNPRM Comments of MCI at 3; Joint FNPRM Comments of CompTel and OSPA at 5-6; FNPRM Comments of NYCOM at 5-7.

117 See, e.g., FNPRM Comments of Telesphere at 11; FNPRM Comments of Intellicall at 7.

118 FNPRM Comments of Intellicall at 8.

119 47 U.S.C. § 226(d)(4)(B).

in general. In order that consumers are aware of changes in the marketplace and "do not become victims of future changes in the operator services market,"[120] we believe it is necessary for each OSP to provide information not only about itself, but about the market within which it is providing service. Accordingly, OSPs will be required to disseminate information, upon request, that describes their own services, recent changes in those services, and services and trends in the industry as a whole. As we stated in the FNPRM, "we do not intend that OSPs be required to publish lengthy details about their competitors' rates and services."[121] Detailed descriptions of rates, charges, and offerings of competitors were never contemplated by the Commission. Rather, the Commission would expect OSPs to make available generic descriptions of any recent changes or innovations in operator services. We believe such descriptions may be done in a fashion that complies with other applicable legal requirements.[122]

66. OSPs are more quickly aware of changes in their market than is the Commission and the requirement that they educate consumers about such changes is appropriate. It is in the interest of OSPs to provide accurate and complete information to consumers, and we do not believe that it is necessary, at this time, to dictate exactly what information should be disseminated, beyond what we have already discussed.

67. We see no reason to adopt an exception for smaller OSPs as requested by some parties. Consumers using even the smallest OSPs have the right to request and receive information regarding that OSP's own rates and services as well as general information regarding the operator services market.

G. Section 68.318 - Equipment Capabilities

68. Proposal. Section 68.318(d) of the proposed rules[123] would require

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120 S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990). Congress is concerned that "there is a danger that future changes in the operator services market once again may cause confusion to the detriment of the public." Id. at 18-19.

121 FNPRM, 6 FCC Rcd at 121.

122 With respect to the argument that the requirement would violate the information services restriction of the MFJ, we note that matters requiring interpretation of the MFJ are properly within the jurisdiction of the district court. See NYSMSA Limited Partnership, 58 RR 2d 525, 530 (1985). However, since no use of transmission capability would be required to comply with the Act, it is unclear how the MFJ is implicated.

123 The rule as originally proposed in the NPRM would have required both new equipment and existing equipment to provide access via all access methods (Section 68.318(d)(1) and Section 68.318(d)(2), respectively). We considered those NPRM comments addressing the original Section

that aggregator equipment or software manufactured or imported on or after April 17, 1992, be technologically capable of providing access to OSPs via equal access codes, that is, via 10XXX access codes.[124]

69. Comments. Commenters were generally supportive of the proposed rule.[125] CompTel stated that this requirement should be subject to a fraud investigation under Section 226(g) of the Act.[126] The North American Telecommunications Association (NATA), while supporting the proposed rule, suggested that we limit the requirement to the 10XXX access code for the April 17, 1992 deadline and not include access codes that have not been approved by the Commission.[127]

70. Decision. The Act mandates that aggregator software and equipment manufactured or imported on or after April 17, 1992, be technologically capable of providing access to OSPs via equal access codes. The Commission finds merit in the request that it limit the equipment capabilities requirement to 10XXX capability for the 1992 deadline. The Commission expects aggregator equipment that is the subject of the rule to be technologically capable of providing access via the 10XXX access code. The Commission will address issues relating to fraud and unblocking of the 10XXX access code in a separate proceeding.[128]

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

71. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

72. Need and purpose of this action. This Report and Order adopts regulations to implement the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990). The adopted rules

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68.318(d)(1), as that section is similar to the proposal for equipment capabilities contained in the FNPRM.

124 See 47 U.S.C. § 226(f). An 'equal access code' "means an access code that allows the public to obtain an equal access connection to the carrier associated with that code." 47 U.S.C. § 226(a)(6).

125 See, e.g., NPRM Comments of APCC at 87; NPRM Comments of CNS at 18; NPRM Comments of American Telephone and Telegraph Company at 10-11; NPRM Comments of ITI at 25-26; Joint NPRM Comments of Telesphere and NTS at 82; NPRM Comments of United Telecom at 10-11; FNPRM Comments of American Hospital Association.

126 NPRM Reply Comments of CompTel at 7.

127 NPRM Reply Comments of NATA at 5-8.

128 Access/Compensation NPRM, CC Docket No. 91-35, FCC 91-53, 56 Fed. Reg. 11,136 (1991).

are intended to protect consumers from unfair and deceptive practices related 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.

73. Summary of the issues raised by the public comments in response to the Initial and Further Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial or Further Regulatory Flexibility Analyses that are relevant to the rules adopted herein.

74. Significant alternatives considered and rejected. The Notice of Proposed Rule Making (NPRM) and Further Notice of Proposed Rule Making (FNPRM) in this proceeding offered many proposals. The commentors supported the basic thrust of this proceeding, with many suggesting modifications to the Commission's proposals. The Commission considered all of the alternatives presented in the proceeding and considered all of the timely filed comments directed to the various issues in the NPRM and FNPRM. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action under the mandate of the Operator Services Act.

VII. ORDERING CLAUSES

75. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 226, 303(r), that Parts 64 and 68 of the Commission's Rules, 47 C.F.R. Parts 64 and 68, ARE AMENDED as set forth in Appendix C.

76. IT IS FURTHER ORDERED that the Motion for Supplemental Notice of Proposed Rulemaking filed on August 14, 1990 by the American Public Communications Council IS DENIED; the Request for Short Extension of Time filed on October 3, 1990 by the American Public Communications Council IS DENIED; the Request for Extension of Time filed on October 4, 1990 by the Operator Service Providers of America IS DENIED.

77. IT IS FURTHER ORDERED that the Motion to Accept Late-Filed Comments filed on September 10, 1990 by the People of the State of California and the Public Utilities Commission of California IS GRANTED; the Motion to Accept Late Filing filed on October 1, 1990 by the American Public Communications Council IS GRANTED; the Motion to Accept Late Filed Comments filed on January 23, 1991 by International Telecommunications Service, Inc. IS GRANTED.

78. IT IS FURTHER ORDERED that this Report and Order will be effective thirty (30) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

List of Commenters

NPRM Comments

1. Alabama Public Service Commission
2. Americall Systems of Louisville and First Phone of New England, Inc.
3. American Council on Education and National Association of College and University Business Officers
4. American Cyanamid Company
5. American Hospital Association
6. American Hotel and Motel Association
7. American Public Communications Council
8. American Telephone and Telegraph Company
9. Ameritech Operating Companies
10. Arkansas Public Service Commission
11. Association of College & University Telecommunications Administrators
12. ARCO
13. Baylor University Medical Center
14. Bell Atlantic Telephone Companies
15. BellSouth Telephone Companies
16. Call Technology Corporation
17. Capital Network System, Inc.
18. Central Telephone Company
19. Clearltel Communications, Inc.
20. Colorado Office of Consumer Counsel and National Association of State Utility Consumer Advocates
21. Colorado Public Utilities Commission
22. Colorado State University
23. Communications Workers of America
24. Competitive Telecommunications Association
25. ComTel Computer Corp.
26. Com Systems, Inc.
27. Consolidated Papers, Inc.
28. Contel Asc
29. Contel Corporation
30. Credit Card Calling Systems, Inc.
31. Dallas-Fort Worth Hospital Council
32. Robert H. Daniels
33. John M. Dollar
34. Emerson
35. Federation of American Health Systems
36. Fisher-Titus Medical Center
37. Florida Public Service Commission
38. Georgia Hospital Association
39. Edmund Coppelt
40. GTE Service Corporation
41. Healthcare Information and Management Systems Society
42. The Hertz Corporation
43. Hewlett Packard Company
44. Holiday Inn Airport/South

45. Holiday Inn Dallas Downtown
46. Holiday Inn-Downtown
47. Holiday Inn North (Colorado Springs, CO)
48. Holiday Inn North (Jackson, MS)
49. Holiday Inn-Park Central
50. Holiday Inn Powers Ferry
51. Holiday Inn Scottsdale
52. Holiday Inn Southwest
53. Holiday Inn I-10 West/Gessner
54. Hospital Corporation of America
55. Independent Coin Payphone Association
56. Independent Telecommunications Network, Inc.
57. International Communications Association
58. International Operators, Inc.
59. International Telecharge, Inc.
60. Robert V. Lang
61. Mankato Citizens Telephone Company
62. Maryland People's Counsel
63. MCI Telecommunications Corporation
64. MessagePhone, Inc.
65. Gerald A. Michaelson
66. Millicom Telecommunications Services, Inc.
67. Missouri Office of Public Counsel
68. Missouri Public Service Commission
69. Missouri Telephone Company
70. Mr. Pride Car Wash
71. MLD Long Distance, Inc.
72. National Association of Regulatory Utility Commissioners
73. National Telephone Cooperative Association
74. Ken Nelson & Company
75. Nevada Public Service Commission
76. New York City Department of Telecommunications
77. New York State Department of Public Service
78. New York University
79. North American Telecommunications Association
80. NYCOM Information Services, Inc.
81. NYNEX Telephone Companies
82. Ohio Hospital Association
83. Operator Service Providers of America
84. Pacific Bell and Nevada Bell
85. Parkland Memorial Hospital
86. People of the State of California and the Public Utilities Commission of the State of California
87. Public Service Commission of Wyoming
88. Public Telecommunications Council
89. Public Utility Commission of Texas
90. Debra M. Riggenbach
91. Roanoke & Botetourt Telephone Co.
92. Rock Hill Telephone Company, Inc.
93. Rodeway Inn-Jacksonville, FL
94. Southwestern Bell Telephone Company
95. Stanford Telephone Service Consumers and Jotham S. Stein

96. The Stanley Works
97. B.T. Stimmel
98. Strategic Telecom, Inc.
99. Telecommunications Research and Action Center and Consumer Action
100. Telesphere Communications, Inc. and National Telephone Services, Inc.
101. Texoma Medical Center
102. United Artists Payphone Corporation
103. United Inns, Inc. (Electronics Division)
104. United Inns, Inc. (Far West Regional Office)
105. United Inns, Inc. (Gary Hotels Courts, Inc.)
106. United Inns, Inc. (Kizer Motel Courts, Inc.)
107. United Inns, Inc. (Transcontinental Motor Hotels, Inc.)
108. United States Telephone Association
109. United Telecommunications, Inc.
110. University of Missouri
111. University of Pittsburgh
112. U.S. Fiberline Communications, Inc.
113. U.S. Intelco Networks, Inc.
114. U.S. Long Distance, Inc.
115. U S West Communications
116. Various Individuals
117. Washington University
118. Washington Utilities and Transportation Commission
119. Wisconsin Hospital Association

NPRM Reply Comments

1. Air Line Pilots Association
2. American Airlines
3. American Federation of Grain Millers
4. American Hotel & Motel Association
5. American Public Communications Council
6. American Sterling
7. American Telephone and Telegraph Company
8. Ameritech Operating Companies
9. Arvig Telephone Co.
10. Ashland Chemical, Inc.
11. Asten Forming Fabrics, Inc.
12. Association of Independent Airmen
13. Bell Atlantic Telephone Companies
14. Baylor Medical Center at Waxahachie
15. BellSouth Telephone Companies
16. The BFGoodrich Company
17. California State University
18. Capital Network System, Inc.
19. Caterpillar Inc.
20. Central Telephone Company
21. Children's Medical Center of Dallas
22. ClearTel Communications, Inc., Call Technology Corporation, U.S. Long Distance, Inc. and ComTel Computer Corp.
23. The Coleman Company, Inc.

24. Colonial Insurance Company of California
25. Colorado Office of Consumer Counsel and National Association of State Utility Consumer Advocates
26. Competitive Telecommunications Association
27. Communication Workers of America
28. Concord Telephone Company
29. Cowen & Company
30. Credit Card Calling Systems, Inc.
31. CyCare Systems, Inc.
32. Cypress Industrial Minerals Company
33. Dallas Rehabilitation Institute
34. Denison University
35. Dewey Electronics Corporation
36. Dow Chemical U.S.A.
37. 800-Cocaine
38. Ellensburg Telephone Company
39. Frederick & Warinner
40. GenCorp.
41. Good Samaritan Hospital
42. H&C Road Boring & Tunneling, Inc.
43. Hadson Power Systems
44. HF Communications Corporation and Value-Added Communications, Inc.
45. Hubinger
46. Huguley Memorial Medical Center
47. Independent Coin Payphone Association
48. Integon Insurance
49. International Brotherhood of Electrical Workers
50. International Communications Association
51. International Telecharge, Inc.
52. Iowa Utilities Board
53. Kimberly-Clark Corporation
54. Kintronix, Inc.
55. Lorain Community Hospital
56. John P. McGuffee and Associates
57. MCI Telecommunications Corporation
58. MessagePhone, Inc.
59. Michigan Public Service Commission Staff
60. Millicom Telecommunications Services, Inc.
61. Missouri Office of the Public Counsel
62. Missouri Public Service Commission
63. Mitel, Inc.
64. MLD Long Distance, Inc.
65. Molalla Telephone Company
66. Monitor Cooperative Telephone Co.
67. National Association of Regulatory Utility Commissioners
68. National Telephone Cooperative Association
69. NatureMost Laboratories
70. NCR Corporation
71. Nihon Kohden America, Inc.
72. North American Telecommunications Association
73. NYNEX Telephone Companies

74. Operator Service Providers of America and NYCOM Information Services, Inc.
75. Pacific Bell and Nevada Bell
76. Pacific Lutheran University
77. Public Service Commission of Wisconsin
78. Public Telecommunications Council
79. Public Utility Commission of Oregon
80. St. Paul Medical Center
81. Scio Mutual Telephone Association
82. The 1625 Massachusetts Avenue N.W., Corp.
83. Southwestern Bell Telephone Company
84. Stanford Telephone Service Consumers and Jotham S. Stein
85. Stanford University
86. Telesphere Communications, Inc.
87. Textron
88. Trumball Memorial Hospital
89. Trustees of the University of Pennsylvania
90. Unisys Corporation
91. United Artists Payphone Corporation
92. United States Telephone Association
93. United Telecommunications, Inc.
94. Various Individuals
95. Vencor Hospital Dallas
96. Weight Watchers International, Inc.
97. Wetterau Incorporated
98. Yelm Telephone Company

FNPRM Comments

1. Alabama Public Service Commission
2. Americall Systems of Louisville, Cleartel Communications, Inc., First Phone of New England, Inc. and Long Distance Service of Washington, Inc.
3. American Hospital Association
4. American Public Communications Council
5. American Telephone and Telegraph Company
6. Bell Atlantic Telephone Companies
7. Capital Network System, Inc.
8. Central Telephone Company
9. Competitive Telecommunications Association and Operator Service Providers of America
10. Equicom Communications, Inc.
11. Federal Executive Agencies
12. Gateway Technologies, Inc.
13. Healthcare Information and Management Systems Society
14. Intellicall, Inc.
15. International Telecharge, Inc.
16. International Telecommunications Service, Inc.
17. MCI Telecommunications Corporation
18. National Association of College and University Business Officers
19. National Association of Regulatory Utility Commissioners

20. National Telephone Cooperative Association
21. New York State Department of Public Service
22. NYCOM Information Services, Inc.
23. NYNEX Telephone Companies
24. Public Utilities Commission of Ohio
25. RCI Network Services, Inc. and RCI Long Distance, Inc.
26. Southwestern Bell Telephone Company
27. Telesphere Limited
28. Various Individuals
29. United States Telephone Association
30. United Telecommunications, Inc.
31. University of Wisconsin-Stevens Point
32. U S West Communications, Inc.

FNPRM Reply Comments

1. Americall Systems of Louisville, Cleartel Communications, Inc., First Phone of New England, Inc. and Long Distance Service of Washington, Inc.
2. American Public Communications Council
3. American Telephone and Telegraph Company
4. Ameritech Operating Companies
5. Association of College and University Telecommunications Administrators
6. Bell Atlantic Telephone Companies
7. BellSouth Telephone Companies
8. Capital Network System, Inc.
9. Robert Cefail & Associates American Inmate Communications Inc.
10. Chillicothe Telephone Company
11. Equicom Communications, Inc.
12. HF Communications Corporation
13. GTE Service Corporation
14. International Telecharge, Inc.
15. MCI Telecommunications Corporation
16. New York City Department of Telecommunications and Energy
17. Rochester Telephone Corporation
18. Southwestern Bell Telephone Company
19. Telesphere Limited, Inc.
20. Various Individuals
21. United Methodist Church-Wisconsin Conference (Southwest District)
22. United States Telephone Association
23. U S West Communications, Inc.

APPENDIX B

THE TELEPHONE OPERATOR CONSUMER SERVICES IMPROVEMENT ACT OF 1990, as amended

Pub. L. No. 101-435, 104 Stat. 986 (1990)

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SEC. 3. AMENDMENT.

Title II of the Communications Act of 1934 is amended by inserting immediately after section 225 (47 U.S.C. § 225) the following new section:

"SEC. 226. TELEPHONE OPERATOR SERVICES.

"(a) Definitions.--As used in this section--

"(1) The term 'access code' means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

"(2) The term 'aggregator' means 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.

"(3) The term 'call splashing' means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

"(4) The term 'consumer' means a person initiating any interstate telephone call using operator services.

"(5) The term 'equal access' has the meaning given that term in Appendix B of the Modification of Final Judgment entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia), as amended by the Court in its orders issued prior to the enactment of this section.

"(6) The term 'equal access code' means an access code that allows the public to obtain an equal access connection to the carrier associated with that code.

"(7) The term 'operator services' means any interstate telecommunications service initiated from an aggregator location 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--

"(A) automatic completion with billing to the telephone from which the call originated; or

"(B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

"(8) The term 'presubscribed provider of operator services' means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

"(9) The term 'provider of operator services' means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

"(b) Requirements for Providers of Operator Services.--

"(1) In general.--Beginning not later than 90 days after the date of enactment of this section, each provider of operator services shall, at a minimum--

"(A) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

"(B) permit the consumer to terminate the telephone call at no charge before the call is connected;

"(C) disclose immediately to the consumer, upon request and at no charge to the consumer--

"(i) a quote of its rates or charges for the call;

"(ii) the methods by which such rates or charges will be collected; and

"(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

"(D) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of subsection (c) and, if applicable, subsection (e)(1);

"(E) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator (i) is blocking access by means of "950" or "800" numbers to interstate common carriers in violation of subsection (c)(1)(B) or (ii) is blocking access to equal access codes in violation of rules the Commission

may prescribe under subsection (e)(1);

"(F) not bill for unanswered telephone calls in areas where equal access is available;

"(G) not knowingly bill for unanswered telephone calls where equal access is not available;

"(H) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

"(I) except as provided in subparagraph (H), not bill for a call that does not reflect the location of the origination of the call.

"(2) Additional requirements for first 3 years.--In addition to meeting the requirements of paragraph (1), during the 3-year period beginning on the date that is 90 days after the date of enactment of this section, each presubscribed provider of operator services shall identify itself audibly and distinctly to the consumer, not only as required in paragraph (1)(A), but also for a second time before connecting the call and before the consumer incurs any charge.

"(c) Requirements for Aggregators.--

"(1) In general.--Each aggregator, beginning not later than 90 days after the date of enactment of this section, shall--

"(A) 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; and

"(iii) the name and address of the enforcement division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services;

"(B) ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and

"950" access code numbers to obtain access to the provider of operator services desired by the consumer; and

"(C) ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

"(2) Effect of state law or regulation.--The requirements of paragraph (1)(A) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (1)(A).

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"(4) Additional requirements to be implemented by regulations.--The regulations prescribed under this section shall, at a minimum--

"(A) establish minimum standards for providers of operator services to use in the routing and handling of emergency telephone calls; and

"(B) establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market.

*****

"(f) Technological Capability of Equipment.--Any equipment and software manufactured or imported more than 18 months after the date of enactment of this section and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes.

"(g) Fraud.--In any proceeding to carry out the provisions of this section, the Commission shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud.

APPENDIX C

RULES

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 is amended 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, 48 Stat. 1070, as amended, 1077, 47 U.S.C. §§ 201, 218, 226, unless otherwise noted.

2. A new Section 64.703 is added to read as follows:

§ 64.703 Consumer information.

(a) Each provider of operator services shall:

(1) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for 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,

(A) a quotation of its rates or charges for the call;

(B) the methods by which such rates or charges will be collected; and

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

(b) Each aggregator shall post on or near the telephone instrument, in plain view of consumers:

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

(2) 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; and

(3) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission (FCC, Enforcement Division, CCB, Room 6202, Washington, D.C. 20554), to which the consumer may direct

complaints regarding operator services.

(c) Additional requirements for first 3 years. In addition to meeting the requirements of paragraph (a), each presubscribed provider of operator services shall, until January 15, 1994, identify itself audibly and distinctly to the consumer, not only as required in paragraph (a)(1), but also for a second time before connecting the call and before the consumer incurs any charge.

(d) Effect of state law or regulation. The requirements of paragraph (b) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (b).

(e) Each provider of operator services shall ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b).

3. A new Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a) Each aggregator shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer.

(b) Each provider of operator services shall:

(1) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (a); and

(2) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to interstate common carriers in violation of paragraph (a).

4. A new Section 64.705 is added to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

(a) A provider of operator services shall:

(1) not bill for unanswered telephone calls in areas where equal access is available;

(2) not knowingly bill for unanswered telephone calls where equal access is not available;

(3) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred;

(4) except as provided in paragraph (3), not bill for a call that does not reflect the location of the origination of the call; and

(5) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b).

(b) An aggregator shall ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

5. A new Section 64.706 is added to read as follows:

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls. Upon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

6. A new Section 64.707 is added to read as follows:

§ 64.707 Public dissemination of information by providers of operator services. Providers of operator services shall regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

7. A new Section 64.708 is added to read as follows:

§ 64.708 Definitions. As used in sections 64.703 through 64.707 and 68.318, 47 C.F.R. §§ 64.703-64.707, 68.318:

(a) the term "access code" means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence;

(b) the term "aggregator" means 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;

(c) the term "call splashing" means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or

unwillingness, is prevented from billing the call on the basis of such location;

(d) the term "consumer" means a person initiating any interstate telephone call using operator services;

(e) the term "equal access" has the meaning given that term in Appendix B of the Modification of Final Judgment entered by the United States District Court on August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (D.D.C. 1982), as amended by the Court in its orders issued prior to October 17, 1990;

(f) the term "equal access code" means an access code that allows the public to obtain an equal access connection to the carrier associated with that code;

(g) the term "operator services" means any interstate telecommunications service initiated from an aggregator location 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:

(1) automatic completion with billing to the telephone from which the call originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(h) the term "presubscribed provider of operator services" means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code;

(i) the term "provider of operator services" means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 68 is amended to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. §§ 154, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

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(d) Requirement that registered equipment allow access to common carriers. Any equipment or software manufactured or imported on or after April 17, 1992, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes. The terms used in this paragraph shall have the meanings defined in Section 64.708, 47 C.F.R. § 64.708.

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