COMMENTS OF MICHAEL C. DOTTEN

ON BEHALF OF FONE AMERICA, INC.

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ON DOCKET UT 900726

DECEMBER 12, 1990

I. I am Michael C. Dotten of the law firm, Heller, Ehrman, White & McAuliffe and I am here today representing Fone America, Inc.

II. Fone America appreciates the opportunity to comment on the revised proposed rules and is today, filing with the Commission 23 pages of specific comments on the rules. Fone America previously filed opening and reply comments on the original version of the rules.

III. We appreciate the opportunity to work with the staff on the proposed rules. The revised rules remedy many of the problems raised in the initial draft of the rules. However, the revised draft is still plagued with many problems that render the rules unlawful--for the detailed reasons set forth in the comments Fone America is filing today. In the brief time that I have, I would like to focus on a number of critical, unanswered questions posed by the revised rules. Combined with the fundamental problems we see that remain in the rules, we believe that the Commission should postpone final adoption of the rules, renotice the rules for comment, and continue the process of working with the affected parties to eliminate the deficiencies in the rules.

IV. The unanswered questions are:

1. Do the new rules apply to existing tariffs and contracts? The staff commentary says that they should not, but the rules themselves are silent on this point.

2. The revised rules require that bills rendered to the ultimate consumer contain the name of both the billing agent and the AOS company providing the service "where feasible." The rule does not answer the question feasible to whom? If the local exchange company has the ability to print both pieces of billing information does that alone constitute feasibility? Or must the billing agents have the ability to transmit both pieces of information to the LEC before it is "feasible?" Does reasonableness of cost to the AOS company, and hence to the consumer limit feasibility? The rule permits a LEC to seek a waiver of the dual billing identification requirement if it lacks the technical ability to print both pieces of information (in fact no LEC presently has this ability, although U.S. West indicates that it will in January). The rule seems to suggest that the AOS company is subject to sanctions for failure to print both pieces of data on the bill that the LEC generates. Does the Commission intend the AOS companies to be subject to sanctions for matters outside their control?

3. Did Commissioner Pardini's amendments to the rule at

the last meeting intend to permit a call aggregator to charge 25 cents per call for providing access to alternative carriers for use of the payphone or hotel phone?

4. Did Commissioner Pardini's amendments intend to permit the AOS to collect an additional 25 cents for connecting calls to alternative carriers for use of the AOS' system?

5. There is no provision for a call aggregator to apply for aHcharge higher than the 25 cent per call charge. Does the Commission intend that a call aggregator seek higher fair, just and reasonable rates through a filing made by the AOS?

6. If an AOS seeks higher than "prevailing rates", what is the process for doing so? When would the higher rates go into effect?

7. Does the Commission intend to limit AOS companies to collecting the 55 cent "prevailing" charge for intra-state long distance information, even if the AOS company must pay in excess of that amount to the LEC for obtaining the information? Or do Commissioner Pardini's amendments permit the AOS to collect an additional 25 cent charge to compensate it for the use of its equipment and billing costs?

8. For purposes of posting required information at each aggregator's telephone, the revised rule would require one of two

notices--one indicating that charges are at prevailing rates, or the other notice indicating that rates are higher than prevailing rates. If a call aggregator or an AOS company cost justifies a higher fair, just and reasonable rate, does it qualify for the "prevailing rate" notice? What if the call aggregator decides to live with the "prevailing rate" but the AOS company seeks to cost justify a higher rate, or vice-versa, which notice is to be posted?

9. Does the Commission intend to publish other "prevailing rates" than just those of AT&T or U.S. West? If AT&T or U.S. West reduce their rates for services where they constitute the prevailing benchmark rate, and the other companies have justified a higher rate, or are collecting the old "prevailing rate", does that immediately render AOS or call aggregator's rate higher than the prevailing rate? And if the AOS has posted the notice indicating that its rates are at the prevailing rate, does the reduction in U.S. West or AT&T rates require complete reposting?

10. The revised rules require that the new "prevailing rates" or "higher than prevailing rates" postings begin in 60 days and be completed in 90 days. Do new postings have to be made at locations subject to existing approved tariffs? The staff commentary indicates that the new rules would not affect existing tariffs--but neither the staff commentary nor the proposed rules answer the question whether existing tariffs will be treated as "prevailing rates" for purposes of posting notices.

11. The revised rules require an AOS to reoriginate a call at the request of a consumer when that can be accomplished "with screening". Does this mean that an AOS would be relieved of the obligation to reoriginate if the reorigination to the 1EC would permit consumer fraud?

We have carefully reviewed the revised proposed rules to try to determine the answers to the foregoing questions. Definite answers to the questions are critical because failure to comply with the rules constitute acts that could lead to suspension. Because of these unanswered questions, and because of substantial Federal pre-emption questions and concerns about the lawfulness of the rules, we strongly urge that the Commission defer adoption of the rules until after the FCC has provided notice of its intent, and until after each of the questions raised above can be determined from the text of the rules.

Thank you for the opportunity to make these comments.