SWIDLER & BERLIN
CHARTERED
3000 K STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20007-3851

ROBERT G. BERGER
ATTORNEY-AT-LAW

DIRECT DIAL
(202) 944-4235
TELEX: 701131
TELECOPIER: (202) 944-4296

March 5, 1990

<u>VIA FEDERAL EXPRESS</u>

Mr. Paul Curl
Secretary
Washington Utilities & Transportation
Commission
1300 South Evergreen Park Drive, S.W.
Olympia, WA 98504

Re: **Docket No. UT-900726**

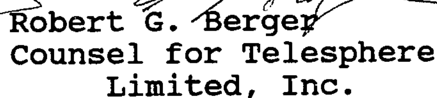
Dear Mr. Curl:

Enclosed herewith is an original and twenty (20) copies of the Comments of Telesphere Limited, Inc. to be filed in the above referenced docket.

Please date stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Robert G. Berger
Counsel for Telesphere
Limited, Inc.

RGB/cpy
Enclosures

Before the
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
Olympia, Washington

In Re Proposed Amendments to WAC 480-120-021, -106, -138, and -141 Relating to Telecommunications Companies -- the Glossary, Alternate Operator Services, Pay Telephones, and Form of Bills	Docket No. UT-900726

COMMENTS OF TELESPHERE LIMITED, INC.

Telesphere Limited, Inc., ("Telesphere"), by its undersigned counsel, hereby submits its Comments in response to the Commission's Supplemental Notice of January 23, 1991 in the above-captioned proceeding.

I. INTRODUCTION

Many of the changes reflected in the proposed revised rules, as discussed in Part III(A), infra, represent a laudable recognition on the part of the Commission as to the technical and economic realities inherent in the current AOS marketplace. Telesphere appreciated the opportunity to work with the Commission during the initial phase of this proceeding last Fall, and is fully cognizant of the Commission's and its Staff's hard work and sensitivity to both consumer and industry needs which

were exhibited throughout the process. The result clearly is that more balanced and workable rules now have been proposed.

At the same time, Telesphere retains concerns as to certain limited aspects of the rules as now proposed. Accordingly, Telesphere generally supports both the broad intent and many of the specifics of the rules proposed by the Commission as reasonable and necessary to protect the public. However, it urges the Commission to consider making further limited changes to ensure that the rules which it adopts fully protect the interests of Washington consumers and, at the same time, are fully practical from both a technical and an economic perspective. Such a careful balance will assure the development of competition in the State of Washington, to the benefit of consumers.

With respect to those changes which Telesphere believes are still necessary to achieve this mutual goal, Telesphere urges that the Commission: (1) adopt safeguards to ensure the proprietary nature of any customer lists which are required to be filed; (2) modify the proposed requirement that AOS providers serve as absolute guarantors of aggregator performance; (3) clarify that the requirement that posted notices contain "dialing directions to allow the consumer to reach the consumer's preferred carrier" is intended to mean that callers are to be informed that to reach their preferred carrier they should dial

that carrier's 800, 950, or 10XXX access code; (4) delete any "re-origination" requirement; (5) hold in abeyance any ruling concerning universal unblocking of 10XXX-0+ pending FCC resolution of the 10XXX access issue; (6) reject an absolute prohibition on AOS providers billing for uncompleted calls; and (7) reject adoption of a rate ceiling.

Telesphere appreciates this chance to provide further comments to the Commission, and will be pleased to continue to work with the Commission to ensure the development of the best possible regulatory framework, including through participation in workshops and public hearings, as was the case in the initial phase.

II. STATEMENT OF INTEREST

Telesphere is an interexchange carrier which offers, in addition to its "1+" and other services, high quality operator assistance services to end users. In particular, Telesphere provides 24-hour long distance operator-assisted services to end users at subscriber locations such as motels, hotels, airports, and educational institutions. Operator services provided by Telesphere permit end users to complete third number billed or collect calls, and to bill calls to calling cards or a variety of commercial credit cards. In addition, Telesphere employs operators who are fluent in languages other than English, and are

fully equipped to deal quickly and competently with end user inquiries and billing requests.

III. DISCUSSION

A. The Revised Proposed Rules Contain Numerous Positive Changes

Many constructive revisions have been made to the proposed alternate operator services ("AOS") company requirements as set forth in the Supplemental Notice. In particular, Telesphere strongly supports the revised definition of "AOS company" which encompasses all entities which provide "a connection to intrastate or interstate long-distance or to local services from locations of call aggregators." (WAC 480-120-021.) The revised definition reflects the fact that current Washington regulation of local exchange carriers ("LECs") and interexchange carriers ("IXCs") in no way ensures that consumers receive the type of protections for intrastate calls embodied in the proposed AOS rules. To the extent that IXCs (and, to a lesser extent, LECs) provide interstate operator service, they would be subject to the Telephone Operator Services Improvement Act of 1990 and therefore would be subject to written notice, or branding, and 950/800 blocking prohibitions for interstate calls. 47 U.S.C. § 226. As a practical matter, such carriers will meet those requirements for intrastate calls as well, since it is impossible or impractical to distinguish between inter- and intrastate calls

for purposes of written notice, barring, 950/800 access, and the like. Current state regulation does not require, for example, that calls to other carriers via 800 or 950 access codes not be blocked. Nor are carriers currently subject to notice and branding requirements, which are the only real guarantors that consumers will understand which carrier is servicing a call from a transient location, and that they have the option of instead accessing their carrier of choice. The recently passed federal Telephone Operator Consumer Services Improvement Act of 1990 ("the Federal Act")[1/] similarly includes all IXCs and LECs which offer interstate operator services at aggregator locations within its definition of "providers of operator services"[2/] subject to the Act's consumer safeguards.

The Commission also has taken significant positive steps with respect to eliminating previous proposals for (1) the filing of customer contracts; (2) mandatory re-origination of all calls upon customer request; (3) including the name of the billing agent within the oral brand and posted notice; (4) posting a single, uniform notice stating that "services on this instrument may be provided at rates that are higher than normal"; and (5) mandatory appearance of the carrier's name on LEC bills regardless of whether the LEC is capable of sub-carrier

---

1/ Codified at 47 U.S.C. § 226.

2/ 47 U.S.C. § 226(a)(9).

identification. Telesphere supports these changes from the rules as originally proposed.

Telesphere also supports the Commission's proposal to allow payphone operators to charge twenty five cents per call for sent-paid access to 800 and 950 numbers (WAC 480-120-138(b)(4)), for this will properly compensate instrument providers for providing the telephone equipment and facilitating end-user access to their carrier-of-choice.

In addition, the Commission also has acted positively in revising its proposed requirement concerning call connection time to measure the start of the ten-second period from the time at which the call initially reaches the carrier's switch. (WAC 480-120-141 (5)(D).) This change reflects the fact that the principal means of ensuring compliance with the rule as originally proposed is controlled by the LEC which provides the public access line, not by the AOS provider. The rule as revised properly makes the AOS provider responsible for the performance of only that equipment over which it has control.

B. Certain Provisions Of The Revised Proposed Rules Remain Unduly Burdensome

1. Any Requirement For Filing Customer Lists Must Protect Their Proprietary Nature (WAC 480-120-141(1))

Telesphere does not object generally to the revised proposed requirement that AOS providers file with the Commission lists of customers, including the locations and telephone numbers to which

01174

service is provided, on a semi-annual basis. We remain concerned, however, that the revised proposed rules continue to lack any safeguards whatsoever to protect the confidentiality of such highly sensitive, proprietary information.

Since divestiture, the telecommunications services industry has become intensely competitive. The single most sensitive type of information is information as to each carrier's client base. Anything which might jeopardize the propriety nature of such information and lead to public disclosure should be avoided at all costs, for disclosure would compromise the competitive viability of the provider or providers so affected. Therefore, any requirement for filing client lists with the Commission must be accompanied by appropriate specific safeguards which will guarantee the continuing proprietary nature of such information.

2. AOS Providers Should Not Be Required To Serve As Absolute Guarantors Of Aggregator Performance (WAC 480-120-141(2))

The Commission has retained the proposed requirement that AOS providers serve as absolute guarantors of aggregator compliance with required contract provisions concerning, among other things, limitation on surcharges imposed by the aggregator, unblocking of access to all registered IXCs, and the posting of required notices. Telesphere submits it is unreasonable to require AOS providers to be absolute legal guarantors of aggregator performance practices, since AOS providers do not --

and indeed cannot -- adequately police at all telephones at all times the Commission's notice and other requirements.

Particularly troublesome is the proposed requirement that AOS providers be held responsible for assuring that aggregators do not "impose, implement or allow a surcharge for any operator, toll, or local service above the tariffed rates for the service." (WAC 480-120-141 (4)(e).) It is one thing for the Commission to require that AOS providers not participate in the billing of any such surcharges for the benefit of call aggregators. It is quite another matter, however, to make AOS providers responsible for ensuring that entities such as hotels and motels do not add a surcharge for calls made directly to the room bills of individual customers at the time of check-out or departure. To make AOS providers guarantors of the practices of hotels and motels in rendering their own room bills at the time of check-out would inappropriately intrude on the billing practices of the lodging industry and place AOS providers in the untenable position of prescribing such practices to their customers. Should the Commission decide to regulate the billing practices of hotels and motels, it should do so directly.

Aggregators such as hotels and motels would appear to fall squarely within the definition of "telecommunications company" set forth in the Revised Code of Washington, and therefore would be subject to Commission jurisdiction, including jurisdiction

01176

over rates and services. A "telecommunications company" is defined to include "every corporation, association [etc.] . . . owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state." RCW § 80.04.010. "Facilities," in turn, are defined to include in part "instruments, machines, appliances, instrumentalities, and all devices, real estate, easements, apparatus, property, and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service." Id. Clearly, hotels and motels may provide both property and/or the instruments or apparatus used to "facilitate the provision of telecommunications services." As such, they may fall within the definition of "telecommunications companies" subject to the exercise of the Commission's general powers to regulate in the public interest, RCW § 80.01.040, as well as its specific powers to regulate the rates and services of such companies, unless the action of such aggregators can be considered to constitute merely a "sale, lease, or use of customer premises equipment" not regulated as of July 28, 1985, and hence exempt from regulation under RCW 80.36.370. RCW 80.36.140; see also WAC 480-120-011; WAC 480-120-021.

The Commission has not previously addressed this specific question. However, the Commission has noted that

01177

[t]he statutory definition of "telecommunications" and "telecommunications company" as set forth in RCW 80.04.010 is extremely broad. The breadth of the definition is readily apparent, but it becomes even more apparent when one reviews the categorical exemptions as set forth in RCW 80.36.370.

Re U.S. Metrolink, WUTC Docket No. U-88-2370-J, 130 PUR 4th 194 (May 1, 1989). The breadth of the Commission's jurisdiction, therefore, would seem to encompass the activities of aggregators such as hotels and motels with regard to the telephone services they provide, and, given the Commission's stated concern to assure that guests at such locations be given adequate notice and choice of carriers, this may be a necessary and appropriate issue on which to assert the Commission's jurisdiction. If, however, there is any doubt as to the Commission's jurisdiction, the Commission should seek clarifying authority from the legislature rather than attempting indirectly to regulate aggregators through control over carriers. Direct Commission regulation over aggregators would be fully consonant with the federal regulatory scheme, which imposes certain notice and access requirements directly on aggregators, including hotels and motels. 47 U.S.C. §§ 226(a)(2), (c).

As recognized in the Federal Act, an appropriate balance must be struck between the need to ensure aggregator compliance with the regulations and performance of its duties thereunder, and the inequity of making independent entities -- AOS providers -- absolute guarantors of aggregator compliance and

performance. In the Federal Act, for example, operator services providers are required to "ensure, by contract or tariff, that each aggregator" with which the provider has a contractual relationship "is in compliance with the requirements" pertaining to non-blocking, posting of appropriate notices, and appropriate charges.[3/] Operator services providers are also required to include appropriate contractual provisions that contain notice and access practices, and are required to take certain actions if they learn of a violation of those practices by a customer. However, it is the party controlling the means of compliance (i.e., the aggregator itself) which is responsible for compliance. Thereby, the practical limits of operator services providers are recognized and the burden of compliance assigned directly to the party controlling the means of such compliance.

A similar approach should be adopted here, as has in part been done in the last sentence of WAC 480-120-141 (2), which sets forth the requirement that an "AOS company shall withhold the payment of compensation. . .from an aggregator, if the AOS company reasonably believes that the aggregator is blocking access to interexchange carriers in violation of these rules."

[3/] 47 U.S.C. § 226(b)(1)(D).

(Emphasis added.)[4] This provision has two components which strongly recommend it. First, the AOS provider only is required to act within the framework of its contract with the aggregator; the provider, however, is not forced into an inappropriate, regulatory role. Second, the responsibility of the AOS provider to act is qualified by the provision that it only do so upon actual knowledge or "reasonable belief."

As a practical matter, AOS providers cannot police all aggregator telephones on a daily basis to ensure that Commission requirements are being met. It would be highly inappropriate to subject AOS providers to penalty for failure to police separate corporate entities over which they have no ongoing control for activities of which they are not aware.

3. AOS Providers Should Not Be Required To Post A List Of All Carriers And Their Access Codes At Every Instrument (WAC 480-120-141 (4)(b)(iii))

It is unclear to Telesphere whether, in order to comply with the mandate of WAC 480-120-141 (4)(b)(iii) that posted notices contain "dialing directions to allow the consumer to reach the consumer's preferred carrier," it will be sufficient to inform consumers that to reach their preferred IXC they should dial that

---

[4] The Federal Act, 47 U.S.C. § 226 (b)(1)(E), similarly precludes AOS providers from continuing to pay commissions to aggregators once they have knowledge that aggregators are failing to comply with such contract or tariff provisions. At the same time, however, responsibility for compliance is placed directly on the aggregators, where it belongs.

carrier's 800, 950, or 10XXX access code. If this interpretation is what is intended, then Telesphere supports the proposed requirement.

If, however, it is intended that the posted notice contain a list of all carriers and their access codes which could be accessed from that location, then Telesphere submits that the proposed requirement would constitute an unreasonable burden. As a practical matter, it would be virtually impossible to collect and update the data on each available IXC needed for such a notice. Moreover, the size of any such notice, absent extraordinarily small type size, at a minimum would be highly cumbersome. In conjunction with all the other information already required to be posted, the result would be to significantly increase provider expense (which ultimately will be borne by users) and to increase consumer confusion unnecessarily, since IXC calling cards uniformly instruct the subscriber how to access their services from non-presubscribed locations.

4. The Re-origination Requirement Should Be Eliminated In Its Entirety (WAC 480-120-141 (5)(c)

Telesphere strongly endorses the Commission's action in dropping the unqualified re-origination requirement contained in the rules as originally proposed. The qualifications placed on the modified re-origination requirement -- requiring re-origination only where it is technically feasible and where originating line screening will permit accurate rating and

01181

billing of the call -- represents a constructive response to inherent technical limitations. At the same time, however, retention of even such a limited re-origination requirement is unnecessary, will prove unfair to payphone providers, and will serve to discriminate among IXCs.

First, re-origination unfairly penalizes payphone providers, whose instruments will be tied up for the duration of re-originated calls by activities which produce revenue solely for corporate entities other than the instrument providers themselves. Moreover, the instrument providers remain responsible for paying access charges to the LECs for the entire duration of the re-originated calls, for which they are never compensated. As the revised rules indicate, pay phone providers should be permitted to assess a nominal $.25 charge for access to the dialing codes of non-prescribed carriers. Re-origination would eliminate the payphone provider's ability to collect such a fee.

Second, even where equipment which is capable of receiving a tone and re-originating a call to another carrier, it can only be configured to do so for two or three carriers at most (and often for only a single carrier). Accordingly, at most only two or three other IXCs could be the recipients of such re-originated calls. Re-origination cannot be implemented in a way which would permit a caller to be transferred to the customer's carrier-of-

choice unless that IXC happened to coincide with the carriers selected to receive such calls. The implementation of a re-origination requirement would necessarily be discriminatory in favor of a small number of competitors (or a single competitor) of the presubscribed IXC. Moreover, consumers likely would be confused by the fact that the re-origination capability was provided only at certain locations and that, where available, their carrier might not always be among the selected transferee carriers.

Third, given the requirement in the Federal Act that neither aggregators nor AOS providers may engage in call blocking with respect to 950 or 800 access codes, and the fact that 10XXX access is available at many, if not most, locations, the ability to re-originate calls to carriers having the appropriate access is unnecessary, since callers can dial the appropriate access code directly and therefore would not need to be transferred by the operator service provider to another carrier. Accordingly, since all IXCs other than AT&T have made 950 and/or 800 access arrangements available to their customers, and 10XXX access is available from most locations, a requirement that AOS providers re-originate calls wherever possible is unnecessary.

Rather than adopting a requirement that carriers re-originate a call upon request and as feasible, the Commission should require that carriers uniformly instruct callers seeking

to access other carriers to hang up and dial their preferred carrier's access code. This modification would avoid a requirement that carriers re-originate calls wherever possible, with the undesirable consequences discussed above, but would ensure that consumers are aware that they have a right to access their carrier-of-choice.

5. The Commission Should Hold In Abeyance Any Decision Concerning 10XXX-0 Unblocking Pending Resolution Of This Issue By The FCC (WAC 480-120-138 (b)(10))

Telesphere recognizes that legitimate consumer concerns may arise at locations where, because of technical limitations or the possibility of fraud, 10XXX is not available. These concerns arise only because a single carrier, AT&T, has not made 950 or 800 access options generally available to its customers, and has instead chosen to rely exclusively on 10XXX access. However, as the Federal Act recognizes, the issues which must be resolved prior to mandating universal 10XXX access are complicated ones which must be thoroughly investigated. To require that, in the interim, aggregators bear the risk of 10XXX unblocking as a direct result of AT&T's failure to make other forms of access available would be unreasonable and confiscatory, particularly where AT&T would reap the benefit without sharing the burden.[5]

---

[5] The proposed rule does provide that the LEC, upon request, shall provide restriction to prevent fraud to 10XXX-1+, when restriction is available. (Telesphere is not aware that only LEC (continued...)

The proposed rule fails to take into account that certain PBX and call accounting equipment currently in use is incapable of distinguishing between 10XXX-0+ and 10XXX-1+ calls for blocking purposes. Many owners of such equipment have, consequently, blocked 10XXX-0 dialing access in order to prevent users from utilizing the 10XXX-1 dialing pattern to fraudulently bill calls to the equipment rather than to their own billing numbers. Given the practical limitations of certain existing equipment, the Commission should refrain from imposing a blocking prohibition which would force equipment owners to choose between two unsatisfactory alternatives, i.e., either to bear (1) the potential losses from fraudulent calling practices, or (2) the often significant expense of replacing or upgrading, if possible, existing equipment.

The Federal Act recognizes that complicated technical and economic issues must be resolved prior to mandating universal 10XXX-0 access. In recognition of these complex (and unresolved) matters, the Federal Act requires the FCC to adopt regulations within nine months of the date of enactment which ensure consumer access to the carrier of choice, either by requiring all carriers including AT&T to provide a 950 or 800 alternative, or by

---

[5/] (...continued)
is currently able to provide such service.) No allowance, however, is made for fraud problems or incorrect billing problems associated with the unblocking of 10XXX-0+ where LEC restriction is not available.

requiring the universal unblocking of 10XXX-0, or both.[6] At the same time the Act requires that the FCC temper its deliberations with the need "to ensure that aggregators are not exposed to undue risk of fraud." 47 U.S.C. § 226(g).

Moreover, AT&T itself implicitly has acknowledged the continuing serious problem of fraud associated with 10XXX-0 unblocking, for it recently announced the development of new software for use in LEC central offices which would enable LECs to perform selective 10XXX blocking.[7] If anything, AT&T's willingness to expend $7,000,000 on this project indicates that the problems with universal unblocking as called for by the proposed rules are not insubstantial.[8]

Accordingly, given the implications of AT&T's newly-unveiled software proposal, and the significant concurrent federal action

---

[6] 47 U.S.C. § 226 (e)(1)(A)-(C). On February 13, 1991, the FCC issued a Public Notice announcing its proposed rules on the 10XXX access issue. Public Notice, FCC Mimeo No. 11797, Report No. DC-1800, CC Docket No. 91-35 (released Feb. 13, 1991).

[7] See Attachment 1. Even assuming that LECs agree to put the new software into effect in their central offices, to bear the associated costs, and that the software performs as promised, it will only apply to at most 80% of all access lines and will not eliminate the problem of existing equipment which does not accommodate 10XXX access at all. Moreover, there is no indication yet as to a firm implementation schedule for AT&T's new software.

[8] In fact, in a parallel proceeding in Minnesota, AT&T's witness Dr. Howard Bell admitted that AT&T itself continues to engage in 10XXX blocking from certain locations where it is the presubscribed carrier, in response to the fraud problem.

01186

with respect to unblocking issues, Telesphere respectfully requests that any action of this Commission with respect to 10XXX unblocking be held in abeyance pending final determination of the federal regulatory scheme.

6. The Commission Should Reject An Absolute Prohibition On AOS Providers Billing For Uncompleted Calls (WAC 480-120-141(6))

Under the Federal Act, AOS providers are required to "not bill for unanswered telephone calls in areas where equal access is available" and "not knowingly bill for unanswered telephone calls where equal access is not available."[9] These provisions in the federal legislation reflect a proper balance between protecting consumers against billing for unanswered calls, and current technological limits in non-equal access areas on the ability of a provider to determine whether or not a call has in fact been answered. Telesphere believes, therefore, that the Commission should not adopt an absolute prohibition against billing for unanswered calls at this time.[10] It would,

---

[9] 47 U.S.C. §226(b)(1)(F),(G) (emphasis added).

[10] The FCC had previously found that billing for uncompleted calls is not an unreasonable practice where: (1) the carrier has taken measures to avoid incorrect billing; (2) erroneous billing is unintentional; and (3) the carrier adjusts improperly billed amounts upon notice by the consumer. Bill Correctors, Ltd. v. United States Transmission Systems, Inc., File No. E-84-6 (November 8, 1984); see also, Certified Collateral Corp. v. AllNet Communications Service, Inc., 2 FCC Rcd. 2171 (1987).

however, be fully appropriate for the Commission to adopt a prohibition on billing for unanswered calls with respect to providers of intrastate service that mirrors the Federal Act.

It is undisputed that hardware answer supervision, which enables carriers to know whether calls have been answered, is not universally available at this time. Where such answer supervision is not available, IXCs have been compelled to use alternative methods to determine whether a call has been answered and therefore whether to commence billing. In particular, absent Feature Group D access and associated answer supervision information, IXCs use a combination of means to determine whether a call is answered. Most commonly, IXCs generally employ a timing surrogate to prevent users from being charged for unanswered calls. Other IXCs have developed equipment which can distinguish voices, busy signals, ringing, error tones and the like to determine whether a call has been answered.

These alternative means allow IXCs to detect when a call has been answered and that billing is appropriate. In Telesphere's experience, however, it is currently possible, albeit infrequent, that an IXC would perceive that a call has been answered when, in fact, it was not. Clearly, given the current impossibility of determining with absolute certainty that a call has been answered, it would be impossible to comply with an absolute prohibition against inadvertent billing for uncompleted calls as

01188

envisioned by the proposed rules. Hence, absent a universally available mechanism for carriers to prevent such billing, an absolute prohibition on AOS provider billing for unanswered calls would be unreasonable.

7. The Commission Should Not Impose A Rate Ceiling On AOS Rates (WAC 480-120-141(10)(b))

The active working of the competitive marketplace, which during the last three years has served to rapidly decrease charges and reduce consumer complaints, in combination with consumer education and information, is the best guarantor of consumer choice and satisfaction. Of course, at first blush, the imposition of a rate ceiling at the level of charges by U S West for intraLATA and AT&T for interLATA calls may appear a reasonable response to the problem of consumer frustration reflected in various consumer complaints previously received by the Commission. Moreover, imposition of a rate ceiling seemingly would allow the Commission in the first instance to avoid the highly burdensome, onerous task of conducting individual rate proceedings for each AOS provider, while at the same time assuring consumers that charges would be within a certain range of expectations.

However, imposition of a rate ceiling based on an arbitrarily selected benchmark which may bear little or no relationship to costs of capital and operating costs of individual AOS providers, as is proposed in this proceeding, is

01189

arbitrary and unfair. Such a rate ceiling would fail to take into account the varying sets of economic circumstances under which different AOS providers must conduct business, as well as value-added services, such as multilingual operators, offered by AOS providers. Nor would the proposed "escape clause" which would allow AOS providers to charge higher rates upon meeting the burden of presenting "persuasive contrary evidence" to the Commission, resolve the problem. Rather, the availability of such an option may well encourage a spate of individual rate cases, thereby significantly increasing the Commission's burden and obviating the administrative benefits of a rate cap in the first place.

It should be remembered that the AOS provider industry has only had a brief history. Providers which did not have the inherent advantages of the former members of the AT&T system initially had significantly different capital and operating cost requirements than U S West and AT&T. In consequence, there was a "shake out" or transition period, which saw a number of consumer complaints about costs.

There has now, however, been a rapid diminution nationwide in the number of consumer complaints as the imperative of competition has taken hold and begun to drive prices down.[11]

---

[11] This decrease was already evident as of February 1989, when a NARUC study determined that at least 64 percent of the 42 (continued...)

Moreover, expanded efforts by both private industry and regulators towards consumer education and information are being made and benefits realized accordingly.

In this dynamic atmosphere, therefore, it would be counterproductive to arbitrarily adopt a rate ceiling which may or may not reflect the fiscal requirements of an individual carrier. It would make far more sense for this Commission to forestall any urge to act precipitously; permit the workings of the marketplace to take place; and focus its resources on facilitating consumer information and education, as the majority of the proposed rules would do.

In addition to a rate ceiling, the Commission has proposed that consumer notices disclose "the basis for its calculation" with respect to certain permissible incremental charges. (WAC 480-120-141(10)(c)). This notice requirement is likely to be confusing to consumers and have the undesirable effect of overloading the information provided to consumers, such that they do not read the valuable and important information which otherwise is called for by the Commission's proposed rules and by the Federal Act. It is sufficient that, prior to incurring any

---

[11/] (...continued)
jurisdictions surveyed had experienced a leveling off or decrease in the number of consumer comments or complaints received concerning operator services providers, since completion of the initial NARUC study in June 1988. Similarly, a more recent study by Market Intelligence Research Company confirmed the significant decline in consumer complaints since 1988.

01191

such charge, the consumer be notified as to the existence of the charge and its maximum amount. Knowing such, the consumer is in a position to make a reasonable, pragmatic decision as to whether he or she wishes to go forward, utilize the instrument in question, and incur the charge.

The proposed requirement of disclosure as to the basis for calculating commissions or surcharges represents a crossing of that fine but important line between providing consumers with full and sufficient information necessary to an informed choice, and providing so much information as to make an informed and, at the same time, expeditious decision impossible.

IV. CONCLUSION

Telesphere fully supports the Commission in its efforts to adopt rules and policies intended to promote a more competitive AOS provider marketplace while permitting end-users to select among providers and services based on complete consumer information. Telesphere nevertheless urges the Commission to incorporate certain specific clarifications, modifications, and deletions to the proposed rules.

In particular, for the reasons set forth above, Telesphere urges that the Commission: (1) adopt safeguards to ensure the proprietary nature of any customer lists which are required to be filed; (2) modify the proposed requirement that AOS providers

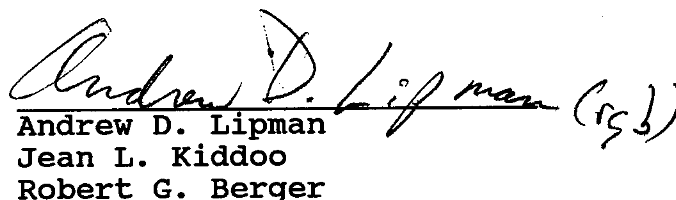
01192

serve as absolute guarantors of aggregator performance; (3) clarify that the requirement that posted notices contain "dialing directions to allow the consumer to reach the consumer's preferred carrier" is intended to mean that consumers are to be informed that to reach their preferred carrier they should dial that carrier's 800, 950, or 10XXX access code; (4) delete any re-origination requirement; (5) hold in abeyance any ruling concerning universal unblocking of 10XXX-0+ pending FCC resolution of the 10XXX access issue; (6) reject an absolute prohibition on AOS providers billing for uncompleted calls; and (7) reject adoption of a rate ceiling.

Such changes will in no way compromise the Commission's legitimate policy objectives; at the same time they will lead to a minimum of consumer confusion and increased costs.

Dated: March 6, 1991

Respectfully submitted,



Andrew D. Lipman
Jean L. Kiddoo
Robert G. Berger

SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 944-4834

Counsel for Telesphere Limited, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of March, 1991, true and correct copies of the Comments of Telesphere Limited, Inc. were served to the following:

Charles F. Adams
Assistant Attorney General
Public Counsel Section
Attorney General of Washington
Corrections Division - FZ-11
Olympia, Washington 98504-8076

William P. Eigles, Esq.
AT&T Communications
Room 1575
1875 Lawrence Street
Denver, Colorado 80202

Donald M. Itzkoff
Counsel for Intellicall
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

Michael C. Dotten
Counsel for Fone America, Inc.
Heller, Ehrman, White & McAuliffe
3505 First Interstate Bank Tower
1300 S.W. Fifth Avenue
Portland, Oregon 97201-5696

Fred Logan
Director, Regulatory Affairs
GTE Northwest Incorporated
P.O. Box 1003
Everett, Washington 98206-1003

Terry Vann
Executive Vice President
WITA
P.O. Box 2473
Olympia, Washington 98507

Glenn Harris
Regulatory Relations Administrator
United Telephone Company
of the Northwest
902 Wasco Street
Hood River, Oregon 97031

Clyde H. MacIver
Counsel for Northwest Payphone Association
Miller, Nash, Wiener, et al.
4400 Two Union Square
601 Union Street
Seattle, Washington 98101-2352

John S. Fletcher
Public Communications of America
963 6th Street South, #262
Kirkland, WA 98033

Mark Roellig, Esq.
U S West Communications
P.O. Box 21225
Seattle, Washington 98111

Sue E. Weiske
William Levis
Counsel for MCI
Suite 4200
707 17th Street
Denver, Colorado 80202

Robert G. Berger