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March 5, 1991

OVERNIGHT DELIVERY

Mr. Paul Curl  
Secretary  
Washington Utilitites and  
Transportation Commission  
1300 S. Evergreen Park Drive, SW  
Olympia, Washington 98504-8002

Re: Docket No. UT-900726

Dear Mr. Curl:

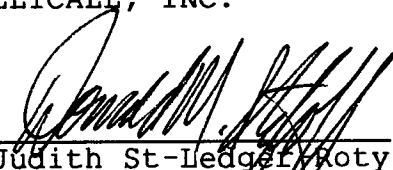
On behalf of Intellicall, Inc. ("Intellicall"), we enclose for filing in the referenced proceeding an original and 19 copies of the Comments of Intellicall in response to the Supplementary Notice of Proposed Rulemaking in the captioned proceeding.

Also enclosed please find an extra copy of Intellicall's Comments which we would appreciate your date stamping and returning to us in the enclosed self-addressed envelope.

Respectfully submitted,

INTELLICALL, INC.

By:

  
Judith St-Iedger, Esq.  
Donald M. Itzkoff

Its Attorneys

DMI:rem  
Enclosures

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COMMUNICATIONS SECTION  
U.S. DEPARTMENT OF TRANSPORTATION



requirements which fairly promote consumer interests without constraining the incentive of new and existing pay telephone providers and alternate operator services companies to invest in innovative services to the public.

#### Introduction and Summary

Intellicall is the largest provider of equipment and services to the non local exchange company ("LEC") owned pay telephone industry and is an acknowledged leader in the manufacture of store and forward "intelligent" pay telephones (its Intelli\*Star product line). Intellicall has manufactured and sold more than 130,000 intelligent pay telephones for use in 46 states, and provides access to billing, collection and validation services for its customers.

In its initial comments, Intellicall described the capability and operation of the store and forward pay telephone technology pioneered through its Intelli\*Star system. (Comments at 4-6). Store and forward pay telephones offer automated alternative billing services (such as calling card and collect call billing options) just as do providers of traditional operator services. As Intellicall has emphasized, the fundamental distinction is that the technology to provide this capability resides in the pay telephone itself through the services provided by pay telephone providers.

In considering the revised rules proposed by the staff, Intellicall urges the Commission to consider the interplay of both the pay telephone rules, WAC 480-120-138, and the alternate

operator service provider rules, WAC 480-120-141, and how these regulations would cumulatively affect providers of store and forward technology. Intellicall believes that many rules appropriate for providers of traditional operator services, including certain consumer safeguards, should rightly be applied to all entities providing alternative billing capability to end users, including store and forward pay telephone providers. These requirements must, however, recognize the unique attributes of store and forward pay telephone technology in order to be applied fairly.

In particular, the Commission must address the prospect of fraud associated with unrestricted interexchange carrier ("IXC") access through 10XXX-0 dialing from pay telephones. The threat of economic liability to pay telephone providers through fraud incurred in providing 10XXX-0+ access and 10XXX-1+ access is real; Attachment A hereto includes letters to victimized pay phone providers in other states from LEC and IXC collection departments threatening legal action over tens of thousands of dollars in fraudulently placed telephone calls.<sup>1/</sup> In its comments herein, Intellicall will summarize the network constraints which impose 10XXX-0 fraud potential on pay telephone providers, and recommend a fair and equitable course of action to the Commission.

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<sup>1/</sup> Materials appended hereto as Exhibit A were incorporated as part of Appendices H, I and K to the Comments of the American Public Communications Council filed September 7, 1990 before the Federal Communications Commission in Docket No. 90-313.

Throughout these comments Intellicall also identifies specific features or unique attributes of intelligent store and forward pay telephone technology and suggest revisions to the proposed rules consistent with the goals contemplated by the staff, as Intellicall understands them. Intellicall addresses each rule section serriatum, concluding with an assessment of the staff's proposed Small Business Impact Statement.

I. WAC 480-120-121 Glossary

Intellicall urges the Commission to consider further refining the definitions proposed in WAC 480-120-121. With respect to the proposed definition of Alternate Operator Services Company, Intellicall supports the staff's inclusion of "any corporation, company, partnership or person" -- including any LEC meeting the stated criteria for classification as an AOS company. The previous proposed exclusion of LECs from the definition of AOS company discriminated unfairly by subjecting only some operator services providers, and not others, to the Commission's AOS rules. As Intellicall noted in its comments (at 7), it is imperative that all entities providing operator services be required to adhere to the same branding, consumer notification and other consumer-oriented regulatory requirements imposed by the Commission. The staff's new proposed definition of "alternative operator services company" corrects this former disparity and should be adopted.

In order to clarify application of the proposed rules herein, Intellicall suggests that the Commission consider adopting a more specific definition of "alternate operator services" in addition

to defining what constitutes a provider of such services. Such a change would ameliorate a problem of regulatory construction inherent in the present proposed rules. WAC 480-120-141, for example, applies to "all telecommunications companies providing alternate operator services (AOS), as defined in WAC 480-120-021," yet only "alternate operator services company" is defined in that section. The Commission should clarify that alternate operator services companies provide a service, not a connection, and may wish to adopt in the Glossary the following proposed definition:

Alternate Operator Service: Any intrastate telecommunications service initiated from a call aggregator location which includes, as a component, any live or automatic assistance to a consumer to arrange for credit billing and/or completion of an intrastate telephone call through a method other than:

(a) automatic completion with billing to the originating telephone and not to the consumer, either directly or indirectly; or

(b) completion through an access code used by the consumer with billing to an account previously established with the provider by the consumer.

## II. WAC 480-120-106

Intellicall commends the Commission for recognizing the constraints in the LEC billing network which may prevent inclusion of the name of the service provider as well as the billing agent on each consumer bill. As noted in its initial comments, Intellicall advocates consumer choice and full disclosure of the carrier carrying consumers' calls, but indicated that the present LEC billing systems which likely exist in Washington State may not

have the capability to indicate both the service provider and the billing agent on the bill.

Intellicall supports the Commission's decision to require a 90-day phase-in of dual bill identification "where feasible" as a reasoned approach to ensuring full consumer disclosure as soon as practicable. This provision, along with the other revised requirements proposed in WAC 480-12-106, should be adopted as written.

### III. WAC 480-120-138

Intellicall submits the following comments on specific subsections of WAC 480-120-138:

(4) As stated in its initial comments, Intellicall believes that a rate cap at AT&T and U S West rates may be reasonable if an opportunity for a hearing to justify a different rate is afforded. That rate, including the surcharge, may in fact be higher than AT&T and/or U S West rates depending on the particular cost structure of the individual provider, including premium rates such providers pay for validation and billing and collection services from LECs, IXC's and clearinghouses. A public utility is entitled to a reasonable rate of return based on its costs, and the hearing procedure contemplated by WAC 480-141(11) <sup>2/</sup> would establish a procedural mechanism to accomplish that objective.

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<sup>2/</sup> Intellicall assumes that this provision, set forth on page 13 of the Supplemental Notice, is intended to be subsection (11) and not subsection (10) as indicated therein.

Intellicall does not fully comprehend the new proposed language in WAC 480-120-138(4) requiring that the "charge for sent-paid access to local exchange, 1-800 and interexchange service shall not exceed twenty-five cents." <sup>3/</sup> To the extent this rule would allow pay telephone providers to earn revenue on 10XXX-0, 1-800 and 950 calls, Intellicall commends the staff for recognizing the pay telephone provider's need to be compensated for the use of its equipment for these types of calls, for which the calling party traditionally incurs no charges at the point of origination. Intellicall believes, however, that the practical reality is that consumers will not likely accept a \$.25 coin charge for the origination of non-sent paid calls. Consumers often place such calls specifically because they do not have coinage to deposit. If assessed such charges, consumers may take out their frustration by inflicting damage to the pay telephone itself. For this reason, pay telephone providers will likely elect not to impose a \$.25 charge for these non-sent paid calls even if permitted by the Commission.

In order to achieve the laudable objective of compensation to pay telephone providers for use of their equipment, Intellicall

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<sup>3/</sup> For example, WAC 480-120-138(4) would appear to permit a charge for accessing local exchange service, without the consumer necessarily completing a call. Such an interpretation would also be potentially inconsistent with WAC 480-120-141(4)(c), which requires that an AOS company, including a provider of Intelli\*Star store and forward service, must provide without charge access to the LEC operator. If it is intended that the maximum permitted charge for a local call is twenty-five cents, then WAC 480-120-138(4) should be redrafted to specifically reflect this intent.



suggests instead that the Commission consider requiring IXCs to compensate pay telephone owners directly for each 10XXX-0, 1-800 and 950 call placed. Mechanisms can be developed which allow, as a practical matter, compensation to be received by the pay telephone provider without the inconvenience to the consumer that coin deposits would inflict.

(6) Intellicall wholeheartedly supports the staff's revision of WAC 480-120-138(6)(a) to mandate without-charge access to rate quotes by "any appropriate method." In Intellicall's view, however, the staff's proposed notice language implementing this requirement is unnecessarily restrictive. With limited space available for informational posting on the faceplate of the typical pay telephone, Intellicall submits that the intended consumer notification requirement could be served adequately by mandating a notice such as "For Rate Quote Dial [appropriate method]" or other similar, general notice. Such an intent-oriented posting requirement would have the further benefit of eliminating a potential conflict with WAC 480-120-141(4)(b)(ii) also applying to intelligent store and forward pay telephones and which requires the aggregator to post unspecified "dialing directions" to reach the "AOS operator" for a rate quote.

(9) With respect to WAC 480-120-138(9), Intellicall urges that LEC pay telephones also be made subject to this section. LEC coin-operated pay telephones, like all other coin-operated pay telephones in use in Washington State, should be required to return coins to the caller in case of an incomplete call and be

capable of receiving nickels, dimes and quarters. Intellicall is aware of no equitable rationale which would permit the perpetuation of this inherently unfair disparity.

(10) As Intellicall noted in its initial comments (at 15-17), permitting 10XXX-0+ access exposes the pay telephone location owner to the prospect of significant fraud. <sup>4/</sup> Requiring the LEC to "supply restriction, where available, which prevents fraud to the 10XXX-1+ codes" does help ameliorate those situations where pay telephones are not capable of deciphering between 10XXX-1 and 10XXX-0. It is not, however, a viable solution. There is no evidence that this technology is available from all LECs, let alone in all end offices as would be necessary. Product would still be made obsolete by such a requirement; other product would still be required to be retrofitted. At a bare minimum, the Commission should not require 10XXX-0 access for those pay telephone models presently incapable of performing same.

The larger problem, however, is the endemic fraud associated with 10XXX-0, precisely because it permits access to a live operator. Live operators assist end users in completing calls placed from pay telephones, which are then billed back to the originating line. Pay telephone providers, however, get no

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<sup>4/</sup> With 10XXX-0+ access, every time a call is placed the network automatically transmits the originating number to the IXC associated with the 10XXX access code. This "automatic number identification" ("ANI") makes it possible for the IXC to identify the line that should be billed for the call. The transient user who places the call will, of course, be long gone by the time the bill arrives.

revenues from these calls. In the absence of specific protections for the pay telephone providers, the threat of incurring these losses is sufficient to cause 10XXX-0 blocking or for providers to exit the market.

This threat is not merely illusory or of manageable proportions. As indicated supra at page 3, Exhibit A hereto highlights illustrative collection efforts by LECs and IXCs demanding immediate payment such as one letter from AT&T to North American Industries requesting a total of \$266,662.50 for disputed phone charges. Another letter from Southern Bell dated October 30, 1990 to Communications Central, Inc. disclaims all Southern Bell responsibility for the disputed fraudulent charges and indicates that if payment is not made, "it would be incumbent upon Southern Bell to initiate further collection activity up to and including denial of service for the outstanding amount of the bill."

Cessation of service is not the only remedy being pursued by LEC and IXC collection departments; Exhibit A also includes a copy of a suit filed in the Southern District of New York by attorneys for AT&T, seeking \$1,095,563.98 in disputed phone charges due to fraud.

These aggressive collection efforts, documented in hundreds of pages of exhibits in a filing before the FCC by the American Public Communications Council, underscore the magnitude of the potential exposure to pay telephone providers from 10XXX-0 access fraud. Accordingly, if 10XXX-0 access is required without adequate fraud protection, private pay telephone operators will

quickly cease investment in new products and services in Washington State, to the detriment of all consumers.

In a Memorandum dated March 4, 1991 to participants in the COPT Workshop sponsored by the California Public Utility Commission, B. Reid Presson, vice president of Intellicall, summarized potential remedies to prevent fraud associated with 10XXX access. This memorandum concludes that IXCs and other LECs must accept the responsibility for verifying billing restrictions before permitting call placement through 10XXX-0+ access and incurring associated call charges which cannot be collected.

The Texas Public Utility Commission has recognized the need for such indemnification and accordingly has adopted rules that pay telephone providers should not have any responsibility beyond subscribing to call screening services and that such providers should be absolved from all liability for calls billed in violation of call screening. See Tex. Admin. Code § 23.54(f) attached hereto as Exhibit C. Intellicall urges the Commission to craft similar rules which permit consumer access, but at the same time protect pay telephone providers from unwarranted liability.

Alternatively, a simple solution in finalizing these rules would be to require all IXCs to permit access via 950 or 1-800 codes where the potential for fraud is minimal.

(14) In the interest of clarification, Intellicall submits that WAC 480-120-138(14) be revised to require that "Commercial credit card operated pay telephones shall clearly identify all commercial credit cards that will be accepted."

IV. WAC 480-120-141

Intellicall submits the following comments on subsections of proposed WAC 480-120-141:

(1) Intellicall supports the staff's elimination of the previous proposed requirement of filing with the Commission copies of contracts between AOS companies and call aggregators. Such a requirement would have been unduly burdensome without serving any significant public interest purpose.

Intellicall believes that the staff's proposal instead to require the filing of a current customer list every six months will enable the Commission to monitor AOS companies without intrusive regulation. Intellicall urges the Commission, however, to modify the staff's requirement to provide that all such information will be deemed proprietary and be submitted only on a confidential basis. Customer lists are the lifeblood of any AOS company or payphone provider, and should not be subject to access or review by competitors.

(2) Intellicall believes it unreasonable for the Commission to require an AOS company to ensure compliance of its customers with the contract and tariff provisions of this subsection. Intellicall believes this provision places an unfair burden on centralized AOS companies which may provide service to dozens of aggregators. Intellicall suggests that the standard be revised to require that "Each AOS company is responsible for using its best efforts for assuring . . ." compliance.

(4) Intellicall urges the Commission to reconsider the notice provisions contemplated by the staff prior to adopting WAC 480-120-141(4). Intellicall believes that the detailed prescription of the use of red ink in a particular typeface, along with the exact text of the informational message, may overburden both the consumer and the pay telephone provider. Consumers may be at least as well off with a lower total information load, since the cumulative posting requirements for both alternative operator services companies and pay telephone providers, when applied to intelligent store and forward pay telephones such as the Intelli\*Star, may be overwhelming. The effect of a crowded pay telephone faceplate, together with red ink for parts of the message, may produce an unreadable morass of little or no focused impact.

Intellicall urges the Commission to consider what information is necessary for consumer protection, require provision of that information, and eliminate other duplicative posting requirements. As a guide, Intellicall suggests that the Commission consider adopting in Washington State posting standards similar to new proposed rule 47 C.F.R. § 64.703(b), promulgated by the FCC for comment in Docket 90-313. This rule would require that

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.

By integrating these federal standards for operator services providers with the Commission's own intrastate rules for pay telephone providers, the Commission could adopt a unified body of posting and notice regulations. Such a single, comprehensive posting requirement might include the above FCC standards, together with the Commission's own rules requiring the pay telephone provider's name, number for repair, and specific language for 911 access.

Prior to adopting the staff's proposed rate characterization notice, Intellicall implores the Commission carefully to consider the implication of requiring any description of rates which are "higher than normal" such as that contemplated in proposed subsection (4)(a)(i). This language unfairly conveys the message that any rate at variance with AT&T or U S West charges is excessive, when in fact different IXCs and AOS companies will have different cost structures. The staff recognizes this variable explicitly in WAC 480-120-141(11), which provides for rates above "prevailing rates" if shown to be fair, just and reasonable compared with the carrier's costs.

If a two-tier posting system must be imposed, Intellicall urges the Commission to modify the staff proposal to indicate only

that rates "may vary from AT&T and U S West rates." Such a notice would accomplish the primary objective of alerting the consumer, who could then decide to ask for a rate quote before initiating a call.

In this connection, Intellicall observes that the "operator" referenced in the notice mandated by WAC 480-120-141(4) will not necessarily have information available concerning the rates charged by the carrier. For all AOS providers, the posted message should instead direct the caller to obtain a rate quote by the method indicated in compliance with WAC 480-120-141(4)(b)(ii), and 480-120-138(6)(a) for pay telephones.

Similarly, information on reaching the consumer's "preferred carrier" may not be available from the "operator" as assumed by WAC 480-120-141(4)(b)(iii), nor may that carrier even be available in that particular area. It is the IXC's responsibility to educate its customer base on preferred methods of access, and consumers are aware of these methods.

In summary, Intellicall requests that the Commission impose result-oriented posting requirements to convey to consumers essential information without specifying specific language or type-face standards. The key to consumer awareness is short, concise notification; if too much information is required to be posted the impact of all of it will be lost.

(5) Intellicall supports the concept of "double branding" as providing a valuable informational service to consumers.

Intellicall objects, however, to the staff's proposed requirement



of a specific branding message. In particular, the announcement to be conveyed at the beginning of the call, "You are using (name of AOS company)" is too long and inconsistent with current industry practice. Numerous carriers, including AT&T, simply announce the name of the carrier at call initiation, and the Commission should sanction this practice for intrastate Washington calls as well. The FCC has proposed requiring calls to be branded twice, but has not specified the specific content of the identification other than to require that the operator services provider "identify itself audibly and distinctly to the consumer." See proposed new 47 C.F.R § 64.703.

In the case of the Intelli\*Star system, moreover, requiring the specific pre-call message contemplated by the staff would require revising the speech file of each and every Intellicall pay telephone in the state. This would impose a significant and unwarranted additional expense which Intellicall estimates at \$350.00 per provider to redesign the speech file solely for Washington State applications and incorporate the revised operating program into the limited remaining space within Intellicall pay telephone computer memories. This estimate does not incorporate the further expense associated with downloading this revised program into existing product in the field. Given the potential cost of the staff's proposed branding requirements, and the fact that Intellistar pay telephone providers have recently reconfigured their speech files to comply with the new Federal branding requirements, Intellicall urges the Commission to impose a dual notice requirement which specifies only that the alternate

operator services company identify itself twice audibly and distinctly.

With respect to WAC 480-120-141(5)(c), Intellicall supports the staff's recognition that reorigination may not be technically possible absent implementation of specific equipment in the network. Intellicall urges the Commission to note that the carrier may not be able to provide dialing instructions for the consumer's preferred carrier as previously explained. Accordingly, Intellicall suggests that WAC 480-120-141(5) be amended to require provision of such information "where possible."

(10) Intellicall continues its objection to the staff's characterization of "industry standard" as equivalent to the level of services offered by AT&T and U S West. The staff proposes, at subsection (10)(a), that "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 . . . ." Such information is not publicly available, and there is no way to ascertain whether these levels of service are good, bad or indifferent. To avoid raising unjustified due process hurdles to potential applicants for certification, Intellicall urges the Commission not to adopt this portion of the definition of public convenience and advantage.

Intellicall also questions the staff's proposal to limit "commissions, charges or fees" as proposed in subsection (10)(c). As drafted, this subsection can be interpreted two ways, one

imposing a cap of \$.25 per call on the amount a pay telephone or AOS provider can pay to an aggregator as a commission or fee; the other imposing a surcharge limit of \$.25 per call under the assumption that that surcharge represents the commission payment to the aggregator.

In either event, the proposed rule ignores the economic realities associated with the provision of pay telephone services. Commission payments to location owners or aggregators are not new, and serve as incentive to the location owner to install and maintain pay telephones on its premises. The amount of the commission paid reflects the economic costs of the space the phone occupies to the location owner. For example, if a convenience store owner can generate more net revenue from the placement of a cigarette machine instead of a pay telephone, his economic incentives dictate installing a cigarette machine. Commissions are market driven -- what one location owner can get for "space rental" will differ markedly from another. There is no one reasonable amount, e.g. \$.25 per call which makes economic sense.

Furthermore, all pay telephone commissions are often not paid on a per call basis. For airports, commissions may be on a "per passenger" basis, consistent with established practices at transportation facilities. Commissions may also be paid based on net or gross revenue to a particular AOS company or payphone provider, again reflecting economic market realities.

Intellicall believes the staff's proposal to impose rate caps (with the opportunity for hearing if the provider believes higher

rates are necessary to cover its costs) will exert substantial downward pressure on rates. A limitation on commission payments which bears no relationship to marketplace incentives will not add any further moderating influence, but will instead reduce the economic incentives to add alternate operator and pay telephone services to areas not now adequately served.

(11) Intellicall strongly supports the opportunity for providers to offer varied rate levels and surcharges to consumers so long as they are "fair, just and reasonable" based on the specific, individual cost structure of the particular AOS company. Intellicall believes that each AOS company should be permitted to demonstrate to the Commission that a particular tariffed rate is just and reasonable, and believes that the Commission should adopt this provision as drafted.

#### V. Small Business Impact Statement

Exhibit D contains a revised Small Business Impact Statement prepared by Intellicall for the Commission's consideration. Intellicall's revised statement presents its perception of the Commission's proposed rules on pay telephone providers. Intellicall has defined small pay telephone providers as those having on average fifty phones; medium as those having on average 200 phones, and large as those having on average 750 phones.

Intellicall's analysis demonstrates that the proposed rules will have an inordinate impact on both the one-time and on-going revenues of pay telephone providers, absorbing approximately 40

percent of gross revenues. Intellicall is aware of no pay telephone provider which could remain profitable under these conditions. Intellicall therefore submits that the Commission's proposed rules in the aggregate will have a negative impact on the provision of pay telephone services within the State. It notes that its own analysis contains no revenue assumption for reorigination, or for retrofitting that product which would require same, or for the unlimited fraud potential which pay telephone providers would face and incur as a cost of doing business. Thus its revenue calculations as presented herein are conservative estimates of the impact on the pay telephone industry. The following paragraphs explain certain assumptions used in Intellicall's revised impact statement which are not detailed within the statement itself.

Intellicall's calculations assume that the average pay telephone completes two local and one intrastate toll call per day. Intellicall uses per call assumptions, as there is no other way to calculate the annual surcharge loss, or the annual revenues to the pay telephone provider. These call assumptions are based on local and toll call information which Intellicall has reviewed in other states. Assuming three calls per day the average pay telephone generates 1,095 calls per year.

The revised statement does not include certain revenues to the pay telephone provider, including the \$.25 access fee which the Commission appears to believe potentially available to the pay telephone provider. Intellicall's assumptions are based on its vendors' experience in California and North Carolina, states which

have permitted charging \$.25 for 1-800 and 950 access. The experience in those states has been that permitting the charging of coin for the origination for non-sent paid call has no practical application as consumers decline to place calls under such circumstances.

As noted above, based on Intellicall's revised calculations it believes that the Commission must reformulate the staff's proposed rules to ameliorate the total impact on pay telephone providers, both large and small, as the impact on either size provider is unreasonable. The most obvious rule change which the Commission could make to reduce the enormous impact would be the eliminate the proposed restriction of surcharges to \$.25.

Intellicall therefore respectfully requests the Commission to reconsider that proposal based on the economic costs to pay telephone providers, and instead leave the surcharge permitted at the present rate. As consumers will have substantial knowledge that the rates may differ from those of AT&T or U S West, as well as the opportunity to ascertain the exact rate, leaving the surcharge at its present level should have no actual or perceived negative impact on consumer unwilling to pay the rates charged by pay telephone providers.

Conclusion

As set forth in these comments, Intellicall has suggested a number of rule revisions which take into account the cumulative effect of both the proposed pay telephone and alternative operator services rules on providers of "smart" store and forward pay telephone providers. These store and forward services, such as the Intellicall Intelli\*Star system, provide new and innovative benefits for the consumers of Washington State. Intellicall urges the Commission to adopt the suggested revisions herein in order to enhance the market incentives for private providers further to expand the services offered to the user public.

Respectfully submitted,  
INTELLICALL, INC.

By: 

Judith St. Ledger-Roy  
Donald M. Itzkoff

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-6100

Its Attorneys

March 5, 1991

EXHIBIT A

01137





Account Inquiry Center

5500 Corporate Drive  
Pittsburgh, PA 15237  
412 369-3000

April 17, 1990

North American Industries  
Attn: Joy Smith  
185 Great Neck Road  
Suite 240  
Great Neck, NY 11021

Dear Ms. Smith:

We have been informed by New York Telephone, that charges for alleged unauthorized calls billed to your accounts listed on the attached page, et al, have been removed from your bills and recoured back to AT&T.

As New York Telephone has informed you, AT&T has the right to rebill recoured charges to the customer.

Customers are responsible for the payment of bills for Long Distance Message Telephone Service (LDMS). This includes payment for LDMS calls or services originated at the customer's numbers or accepted at the customer's numbers (e.g. collect calls).

Reference to the above as well as additional information can be found in Tariff F.C.C. No. 1, Section 2.4 Responsibilities Of The Customer.

It is the Policy of AT&T as well as our responsibility under the Tariff and the Communications Act to hold customers responsible for all such calls because it is the customer, not AT&T;

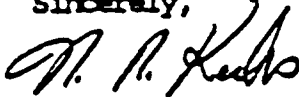
- (A). Who controls the security of access to the customer's telephone equipment or systems(s). Unauthorized calls delivered to AT&T by Local Exchange Companies are indistinguishable from legitimate calls and AT&T has the common carrier duty to complete them. Customers, on the other hand, may prevent these calls by restricting or controlling access to and egress from their premises equipment.
- (B). Who decides whether to accept the callers' collect calls. If a customer wishes to prevent users from accepting collect calls at the customer's telephones, the customer may 1) request its telephone equipment vendor to install an announcement to alert operators not to complete incoming collect calls, or 2) except for international calls, request toll billing exceptions from the Local Exchange Company.

01138

The attached special bill for \$266.662.50 represents the charges New York Telephone originally billed on the statements as indicated and subsequently removed from your regular bills. Payment is due within (30) days and should be remitted as shown on the remittance document.

AT&T is willing to discuss a payment plan for these charges. If there are additional questions regarding this bill, please call Steve Anderson, Recourse Representative, at 1-800-325-0138, extension 4297. Thank you for your attention of this matter.

Sincerely,



N.R. Kecks  
Manager-AIC

cc: Law Department  
S. Anderson  
E. Herman

Attachments:

NRK/jk



Account Inquiry Center

5500 Corporate Drive  
Pittsburgh, PA 15237  
412 369-3000

**Special Bill in  
Connection with Dispute**

**Bill Date: 04/17/90**

**North American Industries  
Attn: Joy Smith  
185 Great Neck Road  
Suite 240  
Great Neck, NY 11021**

**For Inquiries Call:  
1-800-325-0138**

**Fred Irion**

**Total Charges Due: \$266,662.50**

**Detail of Charges: See details attached**

**Bills rendered from NYT**

**Total Amount Due: \$266,662.50**

01140



Account Inquiry Center

5500 Corporate Drive  
Pittsburgh, PA 15237  
412 366-3000

REMITTANCE DOCUMENT

AT&T  
Special Bill in Connection with Dispute

North American Industries  
Attn: Joy Smith  
185 Great Neck Road  
Suite 240  
Great Neck, NY 11021

Total Amount Due: \$266,662.50  
Date Due: May 18, 1990

Please return this remittance document with your payment.

Make checks payable to: AT&T

Remit to:

AT&T  
Recourse Billing Department  
5500 Corporate Drive  
Pittsburgh, PA 15237

01141



**Southern Bell**

Richard L. Thomas  
Manager  
Customer Owned Pay Telephone Service Center

6588 Southern Bell Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375  
404 420-0087

COPIED: R Bergmann  
T Colbert  
T Luchtefeld  
B Roberts

October 30, 1989

Communications Central Inc.  
c/o Jim Beary/Vice-President Operations  
1150 Northmeadow Parkway  
Suite 118  
Roswell, Georgia 30076

Dear Mr. Beary:

This letter is in response to your letter to Mr. Fletcher,  
General Manager, dated October 9, 1989.

In your letter you advised Southern Bell that under no  
circumstances should international calls be made from any of  
your payphones and that it is your intention to contest all  
such charges.

As you are aware, Southern Bell has no control over calls  
placed at your stations using a carrier other than your (PIC)  
Presubscribed Interexchange Carrier. Subscribers choosing  
to use casual calling features via 10XXX are not blocked by  
our central offices. Therefore, unless total central office  
blocking is offered to COCOT vendors as a tariffed option by  
the Georgia Public Service Commission (for all international  
DDD calls) we must continue to connect them as appropriate.

In addition, you state that CCI intends to pay in full all  
legitimate charges for services provided by Southern Bell  
and further that any dispute between your company and an  
Interexchange Carrier should not effect Southern Bell's  
position of providing local service to CCI.

This is another incorrect assumption on CCI's part since  
we bill and handle inquiries for numerous Interexchange  
Carrier's. Southern Bell currently has two types of  
billing arrangements ie; with/without inquiry. The  
difference being all disputed amounts between CCI and  
an Interexchange Carrier such as AT&T (without inquiry)

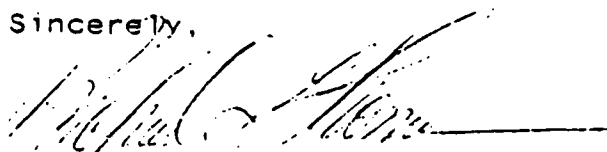
would be handled directly between CCI and that Interexchange Carrier and your local service would be so noted and continue to be furnished. However, should your dispute be with an Interexchange Carrier (with inquiry) such as MCI, then Southern Bell would not only have the billing responsibility but investigative responsibility as well. This means that once Southern Bell receives all the data required from the Interexchange Carrier to sustain the calls as placed (correctly charged), the total amount would be due.

If CCI chose at that point not to remit the full amount of the bill then it would be incumbent upon Southern Bell to initiate further collection activity up to and including denial of service for the outstanding amount of the bill.

In summary, our only recommendation to CCI for the elimination of international DDD calls placed through your sets is that you pursue proper tariff relief for proper blocking via our central office (as in Florida) through the Georgia Public Service Commission. Otherwise we have no choice but to complete the calls through our network and bill CCI as appropriate.

Should you have any further questions, please advise.

Sincerely,



Richard L. Thomas  
Manager - COPTSC

cc: T. C. Fletcher, III

01143

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
AMERICAN TELEPHONE AND TELEGRAPH :  
COMPANY, :

Plaintiff, :

90 Civ. 5198 (MBM)

-against- :

COMPLAINT

NORTH AMERICAN INDUSTRIES OF :  
NEW YORK INC., :

Defendant. :

----- X

Plaintiff American Telephone and Telegraph Company ("AT&T"), by its attorneys Kleinberg, Kaplan, Wolff & Cohen, P.C., as and for its Complaint herein alleges as follows:

1. AT&T is a New York corporation licensed to do business in New Jersey with its principal place of business located at 550 Madison Avenue, New York, New York 10022-3297.

2. Upon information and belief, defendant North American Industries of New York Inc. ("North American") is a New York corporation with its principal place of business located at 185 Great Neck Road, Great Neck, New York 11021.

3. This Court has jurisdiction over this claim under 28 U.S.C. § 1331. Venue is proper under 28 U.S.C. § 1391(c).

4. The Interstate Division of AT&T is an interstate common carrier that provides interstate and foreign communications services under tariffs filed with the Federal

01144

Communications Commission (the "F.C.C."). Such tariffs have the force of law.

5. At all times relevant to this action, AT&T provided Long Distance Message Telecommunications Service ("LDMTS") to North American pursuant to AT&T Tariff F.C.C. No. 1. Under §2.4.1.A. of that Tariff, North American is responsible for the payment of bills for LDMTS calls or services originated or accepted at North American's telephone numbers. Pursuant to §2.5.3. of that Tariff, payment is due upon presentation of each bill.

6. Pursuant to contractual arrangements entered into with AT&T, New York Telephone Company (the "Local Exchange Company") had the responsibility to record and bill LDMTS calls on AT&T's behalf. During the period November 1987 through May 1990, the Local Exchange Company recorded that certain calls (the "Disputed LDMTS Calls") originated or were accepted at North American's telephone numbers. The Local Exchange Company billed North American for those calls on its regular monthly bills at the rates set forth in AT&T Tariff F.C.C. No. 1 for a total the exact amount of which is unknown but is reasonably believed to be in excess of \$1,095,563.98.

7. North American failed and refused to pay the charges due for the Disputed LDMTS Calls.

8. Starting in or about January 1989 and continuing to date, the Local Exchange Company has regularly removed the

01145



charges for the Disputed LDMTS Calls from the bills it rendered to North American on AT&T's behalf and informed North American that AT&T would be responsible to reissue bills for the charges and further pursue collection.

9. On or about February 13, February 20, February 28, March 12, April 9, April 17, April 18, July 27 and August 6 1990, AT&T mailed North American reissued bills for \$1,068,024.24 of the charges for the Disputed LDMTS Calls. Copies of these reissued bills are attached hereto as Exhibit A. The reissued bills summarize and demand payment for the Disputed LDMTS Call charges originally set forth on Local Exchange Company bills dated May 1988 through May 1990.

10. North American failed and refused to pay the \$1,068,024.24 in charges demanded in the reissued bills.

11. AT&T has received notice from the Local Exchange Company of an additional \$27,539.74 in LDMTS charges that North American has failed and refused to pay and that AT&T is now responsible to collect.

12. There remains unpaid a balance due and owing to AT&T for LDMTS the exact amount of which is unknown but is reasonably believed to be in excess of \$1,095,563.98.

13. On information and belief, North American continues to fail and refuse to pay for additional LDMTS calls and services originated or accepted at North American's telephone numbers.

01146

WHEREFORE, AT&T prays that Judgment be entered as follows:

1. Awarding AT&T damages in an amount as yet unknown but reasonably believed to be in excess of \$1,095,563.98 in tariffed charges for LDMTS, plus interest.
2. Awarding AT&T additional unpaid tariffed charges for LDMTS in an amount to be proven.
3. Awarding AT&T its costs and disbursements, including reasonable attorneys' fees, of prosecuting this action.
4. Granting to AT&T such other and further relief as this Court may deem just and proper in the circumstances.

Dated: New York, New York  
August 8, 1990

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.

By \_\_\_\_\_  
David Parker (DP 1075)  
Attorneys for Plaintiff  
AMERICAN TELEPHONE AND TELEGRAPH  
COMPANY  
522 Fifth Avenue, 22nd Floor  
New York, New York 10036  
Tel: 212-382-0080  
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01147

EXHIBIT B

March 4, 1991

TO: WORKSHOP PARTICIPANTS  
FROM: REID PRESSON   
SUBJECT: 10XXX ACCESS AND FRAUD PREVENTION

As promised at the last workshop, I am enclosing materials that describe how the Texas PUC has addressed the related issues of 10XXX+0 access and fraud protection.

To summarize, fraud occurs when the calling party is able to have charges for calls placed through 10XXX dialing billed by the DXC to the originating line even though the line has been subscribed to Originating Line Screening (OLS or SCOCs). With OLS, the existence of billing restrictions is denoted by the LEC by appending information digits (II digits) to the ANI for calls originating through equal access end offices.

Typically, intelligent CPE incorporates technology that permits 10XXX+0 access while blocking 10XXX+1 dialing. Many hotel/motel PBX's do not incorporate this capability and thus open themselves up to massive fraud if forced to open access to 10XXX dialing. AT&T has recently announced the availability to LECS of what is termed "split 1+" software that is purported to solve this problem by selectively blocking 10XXX+1 access at the end office. It is unknown at this point which LECS will utilize this software and whether is compatible with all available switches.

Further, as documented by the Public Telecommunications Council to the FCC, certain older payphone models (of several manufacturers) are not programmable to unblock 10XXX+0 dialing generally, but only one and on some phones four specific DXC's. In a report, AT&T attempts to demonstrate that its tests of several manufacturers phones indicate that all intelligent payphones can be programmed to unblock 10XXX+0. Their tests did not include these older model phones and thus presents incorrect conclusions.

01149

**Page Two  
March 4, 1991**

**Assuming ubiquitous 10XXX+1 blocking (either in the CPE or in the network), the possibility of fraud perpetrated through 10XXX+0 access still exists albeit significantly more limited than through 10XXX+1 access. To prevent this type fraud, LECs typically offer a network service called "originating line screening" (OLS) to aggregators as a tarified service. The service consists of adding to the ANI when transmitted two "information" or "II" digits that signify to LEC and IXC operators that a restriction exists against billing outgoing call charges to the originating line. However the LEC tariff typically limits its liability against billing such charges to those placed by its own operators and provides no protection to the subscriber against charges for calls placed by IXC operators who may or may not honor the billing restrictions denoted by the II digits.**

**The Texas PUC has recognized that in subscribing to OLS the payphone owner has done all it can do. It has no control over the actions of the LEC and of IXCs who are accessed via 10XXX+0 dialing. I've enclosed a copy of amended Rule 23.54 recently adopted by the Commission. Section (f) describes fraud protection for both originating and terminating line screening (generally termed Billed Number Screening or BNS). I've also enclosed pages 19 - 21 of the Staff Recommendation that outlines the rationale for recommending adoption of the proposed language.**

**Finally, I've enclosed copies of Southwestern Bell's proposed changes to its Selective Class of Call Screening and Billed Number Screening tariffs that would implement terms of Rule 23.54.**

**In summary, if the aggregator subscribes to originating and/or terminating line screening, the LEC must remove any such charges upon identification and bill them back to the offending IXC. The IXC is prohibited from billing the aggregator directly.**

**Note that the Rule also addresses collect calls billed in violation of BNS restrictions and provides similar protection to the subscribing payphone owner.**

**The key issue is an acknowledgement that in accepting calls placed via 10XXX+0 access and in placing collect calls, IXCs and other service providers must accept the responsibility for verifying billing restrictions before permitting call placement and incurring associated call charges which cannot be collected. The responsibility is placed directly on the service provider, not the line subscriber.**

**Please call if you have questions - otherwise I'll see you at the next workshop.**

01150

EXHIBIT C

- (1) The commission may approve applications for modification of the requirements contained in subsection (d)(1)(B) and (C) of this section upon showing of good cause. Applications for modification may be filed by the private pay telephone provider. The commission shall process applications for modification using the criteria and procedures set forth in §23.55 (d)(4) of this title (relating to Operator Services).
- (2) The commission may approve waivers to the access requirements of subsection (d)(4)(B) of this section to prevent fraudulent use of telephone services or for other good cause. Applications for waiver may be filed by the private pay telephone provider. The commission shall process such applications for waiver using the criteria and procedures set forth in §23.55 (1)(3)(B) of this title (relating to Operator Services).
- (f) Fraud protection.
- (1) Notwithstanding the provision of §23.55 (1)(1)(C)(ii) of this title (relating to Operator Services) that would otherwise require notice to interexchange carriers, an OSP must not bill the private pay telephone provider for charges for calls billed to a private pay telephone line where the call(s) originated at that private pay telephone by use of "10XXX+0", "10XXX+01", "950-XXX", or "1-800" access codes, or where the call(s) originated at that private pay telephone and otherwise reached an operator position, if the originating telephone line was subscribed to outgoing call

- screening, and the call was placed after the effective due date of the outgoing call screening service order.
- (2) An OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls must not bill charges for any collect or third number billed call to the private pay telephone provider if the private pay telephone line to which the call was billed was subscribed to incoming call screening and the call was placed after the effective due date of the incoming call screening service order.
- (3) Any calls billed through the local exchange carrier in violation of paragraphs (1) and (2) of this subsection must be removed from the private pay telephone provider's bill by the local exchange carrier upon identification. Upon investigation by the local exchange carrier serving the exchange where the call was billed, if it is determined that the appropriate incoming or outgoing call screening was available to the OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls at the time of the call, the local exchange carrier may return the charges for the call billed in violation of paragraph (1) or (2) of this subsection to the OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls as unbillable.



(4) Any calls billed directly by an OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls in violation of paragraph (1) or (2) of this subsection must be removed from the private pay telephone provider's bill by the OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls upon identification. The OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls may request an investigation of such a call by the local exchange carrier serving the exchange where the call was billed. Upon investigation by the local exchange carrier, if it is determined that the appropriate incoming or outgoing call screening was not available to the OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls at the time of the call, the OSP or private pay telephone provider that uses automated call completion technology to complete operator service calls may bill the charges for the call billed in violation of paragraph (1) or (2) of this subsection to the local exchange carrier serving the exchange where such a call was billed.

~~(g) Local exchange carrier responsibilities.~~

~~(1) A listing in the local telephone directory must be provided to the private pay telephone provider on request.~~

EXHIBIT D

**Revised Small Business Impact Statement**

Item	SMALL COPT (50 PH)	MEDIUM COPT (200 PH)	LARGE COPT (750 PH)
BILLING LIST	N/A	N/A	N/A
NOTICES SET-UP	\$500	\$500	\$500
INST	\$781	\$3,125	\$11,719
PRINT @1.50 EA	\$75	\$300	\$1,125
BRANDING FILE	\$350	\$350	\$350
DOWN LOAD@5\$	\$250	\$1,000	\$3,750
RATE QUOTE			
RATESTAR	\$2,700	\$2,700	\$2,700
COMPUTER	\$1,500	\$1,500	\$1,500
QUOTES/YR10L, 20T	\$1,353	\$5,412	\$20,295
REORIGINATION			
ACCESS UPGRADE			
FRAUD			
ACCESS REVENUE			
SURCHARGE	\$41,063	\$164,250	\$615,938
NR COST	\$6,156	\$9,475	\$21,644
REC COST	\$42,416	\$169,662	\$636,233
ANNUAL COST	\$48,572	\$179,137	\$657,876
ANNUAL REVENUES	\$104,950	\$419,800	\$1,574,250
% OF REV			
ONETIME	46.28%	42.67%	41.79%
ONGOING	40.41%	40.41%	40.41%

**ASSUMPTIONS**

1. CALLS PER YEAR PER PHONE 3\*365 = 1095
2. CURRENT SURCHARGE = 1.00
3. REVENUE PER YEAR/PHONE
  - 1.25+.25=1.5 (LOCAL)
  - 2.50 +.25 = 2.75 (TOLL)
  - LOCAL = 2\*1.50\*365 = \$1,095
  - TOLL = 1\*2.75\*365 = \$1,004
  - TOTAL/PHONE/YEAR \$2,099
  - SMALL (\*50) \$104,938
  - MED(\*200) \$419,750
  - LGE(\*750) \$1,574,063
4. RATE QUOTES
  - 3/100 CALL ATTEMPTS
  - 2 ATTEMPTS/COMPLETED CALL
  - 1095 COMPLETED CALLS
  - THEREFORE 2\*1095 ATTEMPTS
  - 2190/100\*3 RATE QUOTES (OR 66/YR)
  - 1 LOCAL @ .05
  - 2 TOLL @ 2 MIN @ .18/MIN
  - OR EA 3 QUOTES = .41
  - OR .41\*66/PHONE

CERTIFICATE OF SERVICE

I, Richard Manuel, a secretary with the law firm of Reed Smith Shaw & McClay, do hereby certify that on this 5th day of March, 1991, I will cause a copy of the foregoing "Comments of Intellicall, Inc." dated March 5, 1991 to be mailed first class, March 6, 1991 to the following:

  
Richard E. Manuel

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

Michael C. Dotten  
Heller, Ehrman, White &  
McAuliffe  
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1300 S.W. Fifth Avenue  
Portland, Oregon 97201-5696

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

Sue E. Weiske  
MCI Telecommunication Corp.  
Arco Tower, Suite 3900  
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R. Terry Lynch, CHA/Owner  
The Park Lane Motel & R.V. Park  
The Shamrock Motel  
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