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STATE OF WASH.
UTIL. & TRANSP.
COMMISSION

March 27, 1991

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

Re: Docket No. UT-900726

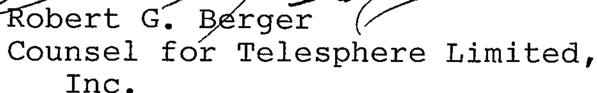
Dear Mr. Curl:

Enclosed herewith is an original plus twenty (20) copies of the Reply Comments of Telesphere Limited, Inc. to be filed in the above referenced docket. These conform to, and should be substituted for, the facsimile copy of this pleading transmitted to you earlier today.

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/tpm
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

REPLY COMMENTS OF TELESPHERE LIMITED, INC.

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

DISCUSSION

As stated in Telesphere's initial Comments, the Commission has made many positive changes in its revised proposed rules, including expanding coverage of the rules to all providers of operator services to aggregator locations. At the same time, certain pragmatic infirmities remain, correction of which would further increase the value of the rules for consumers, while recognizing certain technical and economic limitations of industry members as well as the impact of ongoing federal regulatory developments.

I. All Alternate Operator Services Companies Properly Are Made Subject To The Proposed Rules (WAC 480-120-121)

Telesphere in its initial Comments expressed its strong support of the Commission's inclusion of all entities which provide operator services to the locations of call aggregators, within the definition of "alternate operator services companies." By contrast, those local exchange carriers ("LECs") which filed Comments -- U S West, United Telephone, GTE, plus the Washington Independent Telephone Association -- predictably opposed their inclusion. In support of their position, the LECs raised two principal arguments. First, LECs need not be made subject to regulation as AOS providers due to the fact that they already are subject to Commission regulation. Second, the rules would unreasonably burden LECs by requiring them to provide the Commission with a complete list of all their customers every six months, not just their aggregator customers.[1/] The LEC objections are without merit.[2/]

First, the LECs fail to acknowledge that the regulation to which LECs currently are subject in no way ensures the type of necessary consumer protection embodied in the AOS rules this Commission has proposed, or for that matter, as is embodied in the parallel federal legislation, the Telephone Operator Consumer

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1/ See GTE at 2; United Telephone at 1-2; U S West at 9.

2/ Accord Fone America at 17-18; Intellicall at 4.

Services Improvement Act of 1990 ("the Federal Act")[3]. Current state regulation of LECs does not require that calls to other carriers via 800 or 950 not be blocked. Nor are LECs currently subject to the notice and branding requirements set forth in the proposed AOS rules, that are the only real guarantors that consumers will understand which carrier is servicing a call, the terms of that service, and that they have the option of instead accessing their carrier of choice.

In fact, the only way to ensure that confusion is avoided and that consumers are positioned to make knowledgeable choices, is to require uniformity of information with respect to every aggregator, regardless of the identity of the provider. If the great many aggregator phones served by LECs in Washington lack such important information as posted notices and branded calls, consumers will only suffer confusion as to the identity of the carrier serving such otherwise anonymous phones, and will be unable to make properly informed decisions.

By contrast, the Federal Act specifically includes <u>all</u> carriers which provide operator services for interstate traffic, including all interexchange carriers ("IXCs") and any LECs which provide such service, within its definition of "providers of operator services." [4] As such, under the federal regulatory

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[3] Codified at 47 U.S.C. § 226.

[4] 47 U.S.C. § 226(a)(9).

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scheme all carriers -- regardless of what other manner of regulation they may be subject to -- are required to comply with the specified consumer safeguards, including requirements for posting notices, branding calls, and unblocking "800" and "950" access to other carriers. If consumers are to receive at least equal protection with respect to intrastate traffic, a similar result should attach here and the definition of AOS providers, as proposed, should be adopted.[5]

Second, clearly it is not this Commission's intention to require LECs to provide updated lists every six months of each of their customers, including residential customers, pursuant to the AOS rules. To the extent clarification is needed of WAC 480-120-141(1), it simply should be amended to specify that carriers are required to submit a list of customers that come within the definition of "aggregators." The proper remedy to the LECs' objection, therefore, entails a minor amendment to the proposed

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[5] In addition, if LECs are excluded from the definition of "AOS companies," and hence from corresponding customer notice and information requirements, LECs will obtain a significant economic advantage over all other carriers with respect to the provision of operator services, for they would not have to bear the costs associated with compliance. As a result, LECs would be in position to reduce rates, or alternately to increase their profit margin, not because of efficiencies but rather because of regulatory discrimination. This in turn would result in an artificial distortion of the marketplace.

rule, not the overly broad "solution" of excluding LECs wholesale from the definition of AOS providers.[6]

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

No Commenter which specifically addressed this issue supported the proposed requirement that AOS providers legally be made policemen and guarantors of call aggregator performance, whereas all Commenters which did address the proposed requirement strenuously opposed its adoption.[7] Furthermore, in light of the fact that aggregators would be subject to Commission jurisdiction, and hence to any applicable requirements concerning, for example, the posting of written notices and the unblocking of access to 800 and 950 numbers,[8] and also that

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6/ In amending WAC 480-120-141(1), Telesphere reiterates the critical importance of further amending the rule to specify that customer lists may be submitted on a proprietary basis. While Telesphere would not go so far as MCI and oppose the filing of customer lists (MCI at 5), it is most concerned that the confidentiality of such sensitive commercial information be assured by the Commission. _Accord_ Fone America at 19; Intellicall at 12.

7/ Fone America at 2; GTE at 2; Intellicall at 12; MCI at 5-6; U S West at 9.

8/ Telesphere at 8-10. Aggregators need not be made subject to formal certification, but rather merely directed to comply with specified information and notice requirements. A similar approach has been adopted, for example, by the Utah Public Service Commission in Docket No. 90-999-05.

(continued...)

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aggregators may be subject to direct enforcement pursuant to the Washington Consumer Protection Act,[9] any arguable need for such vicarious and indirect regulation of aggregators vanishes.

It is uncontroverted that AOS providers have no ongoing control over the activities of aggregators and, in fact, could not practically police all aggregator telephones -- including those in every hotel, motel, hospital and dormitory room in the state of Washington -- on a regular basis to ensure compliance. Rather, Washington should adopt a regulatory structure parallel to that of the Federal Act, pursuant to which AOS providers are (1) obligated to include in contracts or tariffs provisions that call aggregators comply with requirements pertaining to non-blocking and posting of appropriate notices; and (2) precluded from continuing to pay commissions to aggregators once they have knowledge that aggregators are failing to comply. Washington's proposed rule should be similarly modified in order that

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[8](...continued)
Telesphere also notes its disagreement with the Washington State Hotel and Motel Association, which argues that hotels and motels may not properly be included within the definition of "aggregators." (WSHMA at 2.) Not only would the Commission be able to exercise jurisdiction over aggregators including hotels and motels under existing statutes, as Telesphere explained in its initial Comments, but virtually every jurisdiction which has proposed or adopted rules governing the provision of operator services has included hotels and motels within the definition of aggregators. <u>See</u>, <u>e.g.</u>, 47 U.S.C. § 226(a)(2).

[9] Fone America at 2-8.

responsibility for compliance be placed directly with those parties which control the means of compliance: call aggregators.

III. The Issue Of 10XXX Unblocking Should Be Held In Abeyance Pending Resolution Of This Issue In FCC Docket No. 91-35 (WAC 480-120-138(b)(10))

Only one Commenter, AT&T, expressly favored immediate action by this Commission with respect to 10XXX unblocking in advance of the FCC's resolution of this issue on a national basis in its currently pending proceeding, Docket No. 91-35.[10/] Telesphere does not discount the fact that a significant number of consumers are presubscribed to AT&T and ideally should have access to their carrier. The issue, however, is far more complex than AT&T would have this Commission believe.

First, AT&T itself has admitted elsewhere that it too engages in blocking from certain locations due to the continuing problem of fraud; in addition, AT&T has announced the development

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[10/] Those Commenters opposing an immediate 10XXX unblocking requirement included Intellicall at 9-11; MCI at 1-4; Northwest Payphone Association at 11-13; U S West at 7.

By contrast, no Commenter spoke in favor of the proposed requirement that carriers post dialing instructions concerning how to reach all AOS providers by each aggregator telephone. (WAC 480-120-141(4)(b)(iii).) Commenters uniformly recognized that such a posting requirement would be unduly burdensome and virtually impossible of compliance; moreover, Commenters generally agreed that each carrier appropriately should bear the burden of educating its own subscribers on how to access the preferred carrier. See AT&T at 6; Intellicall at 17; MCI at 7-8; U S West at 10. Accordingly, this posting requirement should be rejected as both unnecessary and impractical.

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of new software at a cost of approximately seven million dollars in direct response to the fraud problem, which it intends to make available to LECs at some time in the future.[11] Moreover, U S West has asserted that it currently is not able to block 10XXX-1+ while allowing 1+ or 1-800 calls to proceed.[12] Accordingly, for this Commission to say that while 10XXX-1+ may be blocked, callers otherwise must have unrestricted 10XXX access ignores the technical realities associated with 10XXX unblocking, including but not limited to the significant problem of fraud.

Numerous other technical and economic issues also must be resolved prior to imposing any 10XXX access requirement. For example, any proposed rule must take into account that much of the older equipment which currently is installed in the marketplace was not designed to, and cannot, provide access to 10XXX numbers. Other complexities would include international dialing considerations (10XXX011 and 10XXX01), call accounting system limitations, least cost routing software restrictions, and BellCore's proposed modification of the 10XXX dialing plan to 101XXXX.

Second, AT&T has long had the means of resolving this problem, for it could choose to offer its subscribers 800 or 950 access, as does every other carrier. Ironically, even while

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[11] See Telesphere at 18.

[12] U S West at 7.

disclaiming its ability, or the desirability, of offering an 800 alternative (as it has done in this proceeding), AT&T has conceded that it offers 800 access to certain select customers.[13] The question therefore is not whether AT&T is capable of implementing an 800 alternative, nor whether an 800 alternative would be a valued option, but rather whether AT&T considers ensuring that its subscribers have access to be of sufficient importance to offer such an alternative. Absent pendency of the FCC proceeding on this issue, the preferable course would be simply to require AT&T to offer an 800 or 950 alternative, rather than to expose all other members of the industry to a significantly increased risk of fraud. All such questions, however, uniformly should be held in abeyance.

Accordingly, given the equities involved, the significant fraud problem, and the technical complexities, Telesphere believes the preferable course would be for this Commission to hold the issue of 10XXX unblocking in abeyance pending FCC resolution of the issue on a national basis, and then to adopt regulatory measures which are consistent with the federal requirements.

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[13] The AT&T admission came in testimony given during public hearing in the ongoing, parallel AOS proceeding in Minnesota ("the Minnesota Proceeding"). In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, MPUC Docket No. P-999/CI-88-917/OAH Docket No. 6-2500-2889-2, Testimony of Mr. Bell, Vol. 13 at 39-40; Testimony of Mr. Ricca, Vol. 3 at 34.

IV. Branding Requirements Should Be Made Consistent With The Federal Requirements (WAC 480-120-141(5)(a)(iii))

Several parties properly pointed out the difficulties inherent if this Commission (or any other state commission) specifies unique branding which differs from that under the Federal Act or adopted in other jurisdictions.[14] No party which raised the issue of branding consistency objected generally to the proposed branding requirements, nor did any Commenter object to the proposed brand language per se. Rather, the problem is the technical infeasibility of separately branding intra- and interstate calls; moreover, for those carriers such as Telesphere which utilize regional operator centers to service more than one jurisdiction, it is not technically feasible to separately brand calls on a state by state basis.

The Federal Act specifies only that the carrier be clearly and distinctly identified, without imposing specific qualifying words. At the same time, just as Washington has proposed a unique branding statement, so too other states (for example, Arizona) have proposed conflicting language. It is, however, not technically possible to comply with each different variation. Moreover, the critical factor is not that a specific brand be employed, but rather that consumers reap the benefits of uniformity in the provision of information, including carrier

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[14] AT&T at 4-6; Fone America at 18-19; U S West at 10-11.

identification. Accordingly, in order to avoid potential problems of compliance or of jurisdictional conflict, Washington should adopt a branding requirement which mirrors that of the Federal Act and allows for the brand to consist simply of the recitation of the carrier's name.

V. Rate Caps Have Been Rendered Unnecessary By Passage Of The Federal Act

Those Commenters that addressed the proposed rate cap generally spoke in opposition both on substantive and procedural grounds.[15] As noted in Telesphere's initial Comments, since 1988 there has been a rapid diminution nationwide in the number of consumer complaints as competition has driven prices down. Much of this reduction in rates is traceable to the effects of competition and of the industry's own efforts. In addition, the effects of both the TRAC Order[16] and the Federal Act, have contributed significantly to ensuring the consumers are informed, and receive the benefits of a truly competitive marketplace.

It is critical to note that this marked decrease in rates has occurred not just with respect to intrastate traffic, but also with respect to interstate traffic, where a rate cap has never been applied. Rather, the natural workings of competition, in conjunction with strong federal notice and information

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[15] See Fone America at 8-17; U S West at 8-9.

[16] Telecommunications Research and Action Center, 4 FCC Rcd. 2157 (Common Carrier Bureau) (1989).

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requirements now codified in the Federal Act, collectively have served as the best guarantor of fairness to consumers. In particular, uncontroverted evidence presented in similar proceedings currently in progress in other states, such as in Minnesota, have demonstrated the dramatic growth in calling card use, access code use, and in carrier efforts to inform consumers as to the availability of, and ways to use, access codes from transient locations. For example, in the current Minnesota OSP proceeding testimony demonstrated that between sixty five and seventy five percent of MCI customers currently have calling cards, and that a significant percentage of carrier revenue is derived from access code usage.[17] There also was evidence that with respect to one major aggregator location, Atlanta's Hartsfield Airport, a significant percentage of consumers dial around the presubscribed carrier.[18] Clearly, in the past two years consumers have become aware of carrier alternatives, of the means of reaching their preferred carrier, and are exercising that choice in significant and increasing numbers. The Federal Act's requirement that 800 and 950 access not be blocked,[19] and FCC consideration of the 10XXX unblocking issue in its current

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[17] Minnesota Proceeding, Testimony of Ms. Bennett, Vol. 7 at 58-59; Testimony of Mr. Pelzel, Vol. 1 at 90-91; U S West Exh. 8 at 4.

[18] Minnesota Proceeding, Testimony of Mr. Vinall, Vol. 6 at 26.

[19] 47 U.S.C. § 226(c)(1)(B).

Docket No. 91-35, further ensures that consumers have both the knowledge and the ability to reach their preferred carrier, and thereby to make informed decisions as to price and service.

Moreover, because telephones at aggregator locations are used for both intra- and interstate calls, the notices required by the Federal Act to be posted at each instrument are visible to consumers regardless of the nature of their call, just as double branding necessarily will be applied to all calls, because it is not technically feasible for resellers to distinguish intra- from interstate calls for branding purposes. Accordingly, as a practical matter, the Federal Act in combination with the notice and information requirements proposed in this docket, will ensure that consumers in Washington have ample information necessary to make wise economic choices, without necessitating resort to a rate cap and the burdensome waiver procedures it would entail.[20/]

[20/] The Federal Act also required the FCC to institute a proceeding to monitor operator service provider service practices, rates, and the incidence of complaints. Accordingly, on December 21, 1991, the FCC issued a Further Notice of Proposed Rulemaking in Docket No. 90-313 which in part requires all providers to file (1) "informational tariffs" listing their interstate rates, (2) a statement of the number of complaints each provider has received (both interstate and intrastate), and (3) cost data relating to the effects of costs of business on overall rates charged to the consumer. The FCC in turn will use this information to prepare three separate reports to Congress to determine whether the Act's regulatory objective -- protecting consumers from unfair and deceptive operator service practices -- is being achieved. 47 U.S.C. § 226 (h)(3).

Given the vast changes in the operator services industry in the last several years, these reports will constitute important (continued...)

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CONCLUSION

In sum, Telesphere urges the Commission to adopt the rules proposed in this docket once the modifications and deletions to those rules which have been addressed in Telesphere's initial and reply Comments have been incorporated.

Dated: March 27, 1991

Respectfully submitted,

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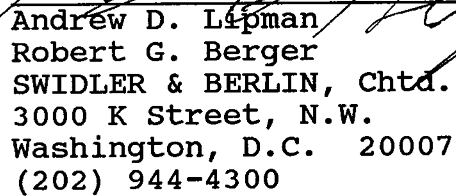
[20] (...continued)
and significant new information on the state of the resold telecommunications services provided from aggregator locations. Moreover, these reports will reflect not only service rates and incidence of complaints, but also the costs of providing services from aggregator locations.

In sum, the reports will provide regulators with an accurate picture of the costs of providing competitive resold aggregator services, including validation and billing and collection costs. Telesphere expects that the FCC's reports to Congress will confirm that during the last two and a half years rates charged by AOS providers have been driven toward costs and that AOS providers currently are operating at margins similar to, if not below, the margins of the dominant carriers, including the LECs and AT&T.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Reply Comments of Telesphere Limited, Inc. upon all parties to this docket by depositing same in the United States mail, postage paid, and addressed to the parties or their counsel of record.

This the 27th day of March, 1991.



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