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Seattle, WA 98104-5018

April 26, 1991

To: Bob Wallis - WUTC

From: Ron Gayman - AT&T

Subject: AOS Rulemaking Docket 90-0726

The Commission staff has received numerous comments about the unblocking of 10XXX access and issues of increased toll fraud and economic hardships if and when such 10XXX0 access be ordered. FCC Docket 91-35 was prompted by Congress' directive to the FCC to propose rules to ensure customers' access to their preferred operator services provider. In comments filed April 12, 1991, with the FCC, numerous states, including Missouri's Public Counsel, Missouri Public Service Commission, Alabama Public Service Commission, Texas Public Commission as well as NARUC, supported 10XXX unblocking.

Of particular note was the Texas Public Utility Commission's comments that it (Texas PUC) had ordered unblocking of 10XXX0 calls in late 1989, and "since then, not <u>one</u> waiver request has been filed." Increased toll fraud, and economic hardships for compliance obviously did not exist in the industry.

I am providing you a copy of the Arizona Corporation Commission's order issued April 5, 1991 that also mandated the unblocking of 10XXX0 calls, and provides for a waiver procedure "should compelling evidence to the contrary be found in a detailed cost analysis." (pages 16-17).

Again, to point out, there are techniques that can be used to defraud the telecommunications industry. Stolen credit card numbers are frequently used to bill literally thousands of dollars per month to consumers. Persons roaming with cordless phones bypass physical control of telephone lines and sets. Placing calls to toll-free numbers then allowing the connection to time out and "fall back" to dial tone (a technique known as regenerated dial tone) bypasses controls built into smart sets and allows fraudulent calls to be placed.

The allegations that the 10XXX access code however cannot be unblocked because rampant fraud will occur are not true. There are ways to prevent both 10XXX 1+ and 10XXX 0+ fraud. First, where possible both PBX's and private pay phones should be programmed to block 10XXX 1+ calls while at the same time allowing 10XXX 0+ calls.

For example, all AT&T card caller phones have been programmed in this manner. In some cases, depending upon calling features desired, Local Exchange Carrier (LEC) end offices can be programmed to perform the desired blocking. LEC's use these features in their end offices on their card caller phones. In those cases where the phone or PBX cannot be programmed, an external Toll Restrictor can be installed between the phones and LEC end office to accomplish the same result. The Toll Restrictors currently available are state of the art devices that recover properly from commercial power failures, etc. and are even programmable to periodically call to some prearranged point to report on their health.

In addition to the foregoing, telephone lines can be protected against fraud placed through an operator. For example, someone can gain access to a phone, call the operator, and say "I'm having trouble dialing this call, will you dial it for me?" If there is nothing to alert the operator that the call should not be billed to the originating line the operator will dial it and allow the billing requested. There is an industry standard set of signals that are sent from the originating LEC end office to the carrier operator system that will alert the system that special billing restrictions apply. Those signals are associated with the originating line type. If the proper line type has been ordered the signals are sent regardless of the carrier on the call. It is a requirement that the owners of the phone have ordered the proper line type and all carriers respond properly when those signals are received. All AT&T operator systems are programmed accordingly and the signaling is available to all other carriers.

The point of this memo is to reemphasize the fact that methods and techniques are widely available today to protect both carriers and aggregators from fraud. The methods are reasonably priced. These tools cannot prevent all types of fraud. For example, stolen credit cards appear legitimate until someone receives the bill. However, fraud is not caused or allowed by the unblocking of 10XXX. Fraud is allowed when the available tools are not properly understood and utilized.

Enclosure

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

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Arizona Corporation Commission
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APR 05 1991
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IN THE MATTER OF THE APPLICATION OF TELESPHERE LIMITED, INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE OPERATOR-ASSISTED RESOLD TELECOMMUNICATIONS SERVICES.	DOCKET NO. U-2507-88-045
IN THE MATTER OF THE APPLICATION OF AUTOMATED COMMUNICATIONS, INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE SERVICE IN ARIZONA.	DOCKET NO. U-2517-88-212
IN THE MATTER OF THE APPLICATION OF TRIPLE CROWN INDUSTRIES, INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A RESELLER OF INMATE TELECOMMUNICATIONS SERVICES WITHIN ARIZONA.	DOCKET NO. U-2522-89-014
IN THE MATTER OF THE APPLICATION OF AMERICAN TELECOMMUNICATIONS CORPORATION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY.	DOCKET NO. U-2523-89-065
IN THE MATTER OF THE APPLICATION OF CENTURY NETWORK, INC., FOR AUTHORITY TO OPERATE AS A RESELLER OF INTER-EXCHANGE TELECOMMUNICATION SERVICES WITHIN THE STATE OF ARIZONA.	DOCKET NO. U-2531-89-118
IN THE MATTER OF THE APPLICATION OF PENTAGON COMPUTER DATA, LTD., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A RESELLER OF INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS SERVICE AND A PROVIDER OF ALTERNATIVE OPERATOR SERVICES.	DOCKET NO. U-2534-89-155

IN THE MATTER OF THE APPLICATION OF LONG DISTANCE/USA, INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS AN INTRASTATE RESELLER OF TELECOMMUNICATIONS LONG DISTANCE AND OPERATOR SERVICES WITHIN THE STATE OF ARIZONA.	DOCKET NO. U-2535-89-165
IN THE MATTER OF THE APPLICATION OF U.S. LONG DISTANCE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROVISION OF RESOLD TOLL TELEPHONE SERVICE, INCLUDING OPERATOR SERVICES.	DOCKET NO. U-2541-89-228 DECISION NO. 57339 OPINION AND ORDER

DATES OF HEARING: October 30 and 31, November 1 and 2, 1989 and March 8 1990

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Beth Ann Burns

IN ATTENDANCE: Marcia Weeks, Chairman
Renz D. Jennings, Commissioner
Dale H. Morgan, Commissioner

APPEARANCES: REED, SMITH, SHAW & McCLAY, by Ms. Judith St. Ledger-Roty, on behalf of Telesphere Limited, Inc.;

SWIDLER & BERLIN, by Ms. Jean L. Kiddoo and Mr. Peter Concannon, on behalf of U.S. Long Distance, Inc. and Com Systems, Inc.;

Ms. Gretchen P. Hoover, Assistant General Counsel, on behalf of International Telecharge, Inc.;

Mr. William P. Eigles, Attorney, on behalf of AT&T;

SNELL & WILMER, by Mr. Bruce P. White and Mr. Thomas L. Mumaw, on behalf of the Association of Arizona Exchange Carriers;

Mr. Lynwood J. Evans, Chief Counsel, on behalf of US West Communications;

BROWN & BAIN, P.A., by Mr. Lex J. Smith, on behalf of Citizens Utilities Company and Citizens Utilities Rural Company, Inc.;

Mr. Roger A. Schwartz, Chief Counsel, on behalf of the Residential Utility Consumer Office; and

Mr. Christopher Kempley, Assistant Chief Counsel, and Ms. Elizabeth Kushibab and Ms. Cynthia Haglin, Staff Attorneys, on behalf of the Staff of the Arizona Corporation Commission.

BY THE COMMISSION:

During 1988 and 1989, Telesphere Limited, Inc. ("Telesphere"),[1] Automated Communications, Inc. ("Automated"), Triple Crown Industries, Inc. ("Triple Crown"), American Telecommunications Corporation, Century Network, Inc. ("Century"), Pentagon Computer Data, Ltd., Long Distance/USA, Inc. ("LD/USA"), and U.S. Long Distance, Inc. ("USLD") filed with the Arizona Corporation Commission ("Commission") applications for authority to provide alternative operator telecommunications services ("AOS") in Arizona.

By Procedural Orders dated July 24, 1989 and October 11, 1989, the above-captioned matters were consolidated for purposes of hearing and Order with respect to the general issues pertaining to the provision of AOS. The cases were designated to then proceed on a individual basis to address company-specific issues. The July 24, 1989 Procedural Order also scheduled the consolidated hearing to commence on October 30, 1989.

Intervention in these consolidated matters has been granted to the Association of Arizona Exchange Carriers ("AAEC"), AT&T Communications of the Mountain States, Inc. ("AT&T"), Citizens Utilities Company and Citizens Utilities Rural Company, Inc. ("Citizens"), Com Systems, Inc. ("Com Systems"), International Telecharge, Inc. ("ITI"), the Residential Utility Consumer Office

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[1] The application was originally filed by American Operator Services, Inc., doing business as National Telephone Services, Inc. or NTS. The company participated at hearing as NTS. The caption and references herein to the company reflect the recent name change to Telesphere Limited, Inc.

("RUCO"), United Artists Operator Services Corporation, and U S West Communications ("US West").

On October 19, 1989, Century filed a notice of withdrawal of its application in this proceeding. On October 26, 1989, Triple Crown filed a similar notice. On November 19, 1990, Automated filed a request that it be dismissed from the case because it is no longer active in the AOS area. On December 14, 1990, US Sprint Communications Company Limited Partnership ("Sprint") filed a motion to dismiss the application of Long Distance/USA, Inc. ("LD/USA") because Sprint has acquired LD/USA and the authority is no longer needed. These requests are unopposed and should be granted.[2]

The consolidated hearing commenced as scheduled and continued on October 31 and November 1 and 2, 1989.

By Procedural Order dated January 8, 1990, the hearing was scheduled to reconvene on February 1, 1990 to afford the parties an opportunity to cross-examine RUCO witness Shifman on supplemental testimony submitted based upon discovery requests which had been outstanding at the time he originally testified. By Procedural Order dated January 29, 1990, the date for reconvening the hearing was continued to March 8, 1990. The hearing reconvened and concluded on that date.

The parties filed initial briefs in these matters on or about April 20, 1990 and reply briefs on or about May 11, 1990.

[2] The remaining companies with applications pending in these matters will be collectively referred to herein as "Applicants".

DISCUSSION

As a segment of the telecommunications industry, AOS companies[3] typically lease transmission facilities from interexchange ("IEC") and local exchange carriers ("LEC") and provide live and automated operator assistance for the completion of collect, credit card, and third-party calls. The traffic handled by AOS companies originates from presubscribed locations. Hotels, motels, airports, hospitals, universities, and private pay telephones are targeted locations for AOS service because the transient market generates a high volume of calls requiring operator assistance. In exchange for subscribing to a particular AOS provider, the location owner receives a commission based upon the amount of traffic aggregated. It is the location owner who is the subscriber and customer of the AOS company. The end-user of the service has no direct relationship to the provider. Payment of the charges for AOS service may be made by the end-user through a calling card, a commercial credit card, a hotel bill, or a telephone bill if the provider or its billing agent has a billing and collection agreement with the LEC.

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3 The Applicants and other AOS companies participating in these proceedings have generally referred to themselves as operator service providers' ("OSP"). It should be noted, however, that AOS and OSP are not synonymous terms. The OSP group encompasses the traditional carriers, such as AT&T and the LECs, as well as the AOS companies. An important distinction between the traditional carriers and the AOS companies is the relationship between the provider and its customer. In general, the customer of a traditional carrier is the end-user who receives service under a contractual arrangement or service agreement whereas, as discussed below, the customer of an AOS company is the location owner and the actual end-user of AOS service, as a patron of the location owner, has no relationship with the provider. In recognition of this and other differences, this Opinion and Order will utilize 'AOS companies', 'AOS providers', or 'AOS firms' as more being accurate terms of reference for the Applicants and intervening AOS companies. This form of reference also recognizes the fact that the scope of these proceedings includes only service by the Applicants, and not other OSP providers.

AOS service has been available in Arizona since approximately 1987, although the intrastate aspect of the service has not been subject to state regulation. The purpose of this consolidated proceeding is to determine whether the provision of intrastate interLATA AOS service should be authorized in Arizona and, if so, to establish the regulatory requirements which should generally attach to any authorization granted the Applicants as a result of the company-specific phase of these proceedings.

THE COMMISSION'S JURISDICTION

As the inaugural decision in which the provision of AOS service in this state is being considered, the Commission's jurisdiction over the matter should be clearly set forth. Under Article XV, Section 3, of the Arizona Constitution, the Commission is granted:

> full power to . . . prescribe . . . just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business . . . .

The public service corporations subject to the Commission's jurisdiction are defined in Article XV, Section 2, of the Arizona Constitution. Section 2 provides, in pertinent part, that:

> All corporations other than municipal engaged . . . in transmitting messages or furnishing public . . . telephone service. . . shall be deemed public service corporations.

Applicants are AOS resellers of interexchange long distance service engaged in the business of transmitting messages or furnishing telephone service to the public within the foregoing definition and are, therefore, public service corporations subject to the jurisdiction of the Commission.

THE PUBLIC INTEREST ISSUE

Applicants seek authority to operate in Arizona pursuant to A.R.S. §40-281, et seq., governing the issuance of Certificates of Convenience and Necessity ("Certificate" or "CC&N"). Under case law applicable to A.R.S. §§40-281 and 40-282, Certificates may only be acquired from the Commission upon a showing that issuance would serve the public interest. James P. Paul Water Co. v. Arizona Corporation Commission, 137 Ariz 426 (1983). See also Davis v. Arizona Corporation Commission, 96 Ariz 215 (1964) and Pacific Greyhound Lines v. Sun Valley Bus Lines, 70 Ariz 65 (1950).

In order to establish the requisite public interest, the AOS companies participating in these proceedings have introduced evidence to demonstrate the public benefits of AOS service. The claimed benefits are: competition for operator services; a choice of carriers for operator assisted calls; an upgrade of the services available from the traditional carriers due to competition; service to new locations, such as mobile marine stations and cellular carriers which make operator assistance available for calls placed from ships, taxicabs, and buses; the convenience of placing an interexchange operator assisted call without first dialing an access code; the availability of multilingual operator assistance; improved handling of emergency calls; innovative offerings such as voice mailbox service, voice store and forward services, electronic yellow pages, conference calling, concierge service, translation services for the hearing and speech impaired, and informational services; the placement of additional pay telephones; the capability for non-LEC pay telephone providers to have on-line information, offer call screening, and handle operator assisted international traffic; the

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compensation of traffic aggregators (the location owners) for their investment in the equipment necessary to provide telecommunications services to patrons; an increased menu of billing options for the end-user; and lower rates for operator service due to competition. The AOS companies contend that the record conclusively demonstrates that operator services competition is in the public interest.

Staff has undertaken an analysis of this matter and has found many of the benefits raised by the AOS companies to be unproven, questionable, or only conceptual in nature. Staff has expressed concern for: the poor record of performance by AOS companies in providing service to end-users under reasonable rates, charges, terms, and conditions, which has led to excessive bills and numerous end-user complaints; the multiple billing problems which have occurred; the abusive practices resulting from the provider-subscriber relationship; and the potential revenue erosion for LECs if AOS companies complete unauthorized intrastate intraLATA calls. Nonetheless, Staff has concluded that the Commission should certificate fit AOS firms and impose adequate consumer safeguards on the provision of the service. It reached that conclusion not on the basis that the public interest would be furthered by certification, but because a prohibition of intrastate AOS service may not be possible to enforce and the public interest would be harmed if AOS companies are effectively permitted to operate on their own terms without adequate state regulation.

Citizens shares Staff's reservations over the effectiveness of an intrastate AOS ban and believes it would be in the best interests of the public to provide and require full Commission regulation of

AOS operations in Arizona, including determination of the fitness to operate and regulation of rates, conditions, and terms of service.

AT&T favors competition in the operator services market and supports certification of qualified AOS providers, subject to minimal regulatory requirements.

RUCO is the only party opposed to the operation and regulation of intrastate AOS service in Arizona. Through pre-filed direct testimony, RUCO witness Shifman presented the conclusion that AOS service, as currently offered or proposed, is not in the public interest and should be banned by the Commission. Mr. Shifman listed eight reasons in support of his conclusion: AOS companies provide lower quality and higher priced service than that offered by traditional carriers; many end-users are unaware that an AOS company is processing their call; end-users who wish to instead reach their chosen carrier are likely to experience great difficulty; AOS could threaten the public safety by hindering the completion of emergency calls; end-users of AOS service are more likely to be charged for incomplete or unanswered calls than customers of traditional carriers; locations subscribing to AOS service are likely to block, or charge for, access to toll-free numbers; the provision of AOS service is not economically efficient; and upward rate pressure may be exerted on other telecommunications services if AOS companies do not pay intrastate access charges or compensate LECs for lost intraLATA revenue.

At hearing, Mr. Shifman expressed what he and RUCO have attempted to characterize as a clarification, but what rather appears to be a significant change of position from an absolute ban. In response to the comments and rebuttal testimony of other partes, Mr.

Shifman now believes that "AOS companies may have something to offer as enhanced service providers" and that they should be permitted to operate in Arizona if access to other carriers is not blocked and monopolies are not created. He has suggested that this be accomplished by certificating the AOS companies as enhanced service providers without zero-plus, one-plus, or zero-minus capability. He would route those types of calls only to one interexchange carrier, AT&T.

After carefully reviewing the record compiled in this consolidated matter, the Commission finds that the weight of the evidence establishes that the provision of intrastate, interLATA AOS service in Arizona, subject to the regulatory requirements set forth below, is in the public interest.[4] The evidence demonstrates that, with proper oversight, benefits in the form of innovative or unique service offerings and benefits resulting from competition will accrue to the public through the availability of the service.

THE REGULATORY REQUIREMENTS

The evolution of the AOS industry has thus far been extremely problematic. The benefits from the enhanced service offerings and a competitive market have been overshadowed by end-user confusion, frustration, and, as expressed during the public comments received in this consolidated proceeding, anger over problems such as excessive rates and charges, unreasonable billing delays, and a nonresponsive attitude by the AOS providers. In order for the benefits to be realized and the public interest to be served, these problems must be eliminated. The Commission's authorization of AOS service in Arizona

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4 Whether the provision of AOS service by a particular applicant is in the public interest remains in question and will be addressed in the second phase of the pending matters.

is, therefore, expressly contingent on the implementation of a regulatory framework which adequately addresses the problems associated with the industry.

Staff has submitted a comprehensive proposal for the regulation of interstate, intraLATA AOS service. For eight general categories of problems encountered with AOS service (rates and charges, customer notification and choice, public safety, billing, call splashing, complaint processing, quality of service, and LEC intrastate revenue loss), Staff has developed minimum safeguards as well as stricter, alternative requirements for the Commission's consideration. The summary table of Staff's proposal is attached hereto as Exhibit A and incorporated herein by reference.

The AOS providers participating in this consolidated proceeding have expressed general support for the adoption of reasonable regulations to protect the public. They have, however, each proposed various modifications to the recommendations by Staff.

The safeguards are discussed by category below. In analyzing the regulatory options presented by the parties, the Commission has evaluated each requirement on an individual basis to ensure that it will address the intended problem and on a collective basis to ensure that the requirements adopted will form a fair and reasonable scheme of regulation necessary for end-user protection. To avoid confusion, the discussion of Staff's proposal will be limited to the minimum or alternative requirement it prefers, unless the other option is found to be more reasonable or appropriate.

It must be stressed that these regulatory requirements apply only to the instant Applicants. The suggestion pressed by the AOS participants that the requirements be applied with equal force to all interexchange providers of operator service, including, for example AT&T, MCI, US Sprint, and the LECs, is beyond the scope of these CC&N cases. The service conditions of the other carriers are simply not at issue.

Rates and Charges

It is Staff's recommendation that Applicants' tariffs specify all of the provider's rates and charges, exclusive of the maximum location-specific surcharges which an AOS subscriber, such as a hotel or hospital, may impose. The maximum location-specific surcharges could either be filed with the Commission, since they are not uniform from location to location, or a maximum surcharge could be specified in the tariffs. Staff further recommends that the maximum surcharges be available to the provider's operators and specified in the service contract with the location owner.

The only opposition to the recommendation was expressed by AT&T. AT&T argues that adoption of a maximum surcharge would place billing agents for the AOS companies in an enforcement posture which would be inappropriate and impossible to perform due to a lack of the billing detail needed to determine whether a particular surcharge exceeds a tariffed maximum.

Specifying in Commission approved tariffs the exact rates and charges end-users will be assessed for AOS service, and stating in either tariffs or filings the maximum applicable surcharge, should reduce the possibility for excessive charges to be levied and should enable end-users to verify the accuracy of their bills. Staff's recommendation promotes the public interest and should be adopted. Because the surcharges vary by carrier and location, and due to the lack of detail in the billing data, the Commission recognizes that the LECs and other billing agents do not have the ability to police compliance with stated maximums.

End-user Notification and Choice

Staff's position on end-user notification and choice is premised on the belief that end-users should be made aware that they have reached an AOS company before any charges are incurred and, upon request, should be advised how to access alternative carriers. To this end, Staff has formulated recommendations for branding calls, posting information, providing rate quotations, and furnishing access instructions.

Call branding, as contemplated by Staff, would require a live or automated message at the outpulse of the terminating number which informs the end-user that a named AOS provider has been reached and that the provider's rates and charges apply to the call. At the conclusion of the branding message, the end-user would be permitted to terminate the call at no charge.

Universal support for a branding requirement has been expressed by the AOS participants, but they find objectionable inclusion of a statement in the message that the provider's rates and charges apply. The focus of the objections is on the imposition of a different verbal announcement than already in place, the alleged superfluousness of the additional statement in light of the other branding and posting provisions, and the significant expense claimed to be associated with a two to five second longer holding time for the message of approximately $1.2 to $1.8 million per second annually for ITI, in addition to the cost of increased access time and the cost of system hardware and software modifications which would be necessary to accommodate the new message.

The crux of the branding issue is whether a statement as simple as "our rates apply" should be added to the present salutation which only identifies the carrier, such as "Telesphere". The Commission finds that the salutation should be expanded for all intrastate interLATA calls carried by Applicants. The purpose of a brand is to provide sufficient information for the end-user to make an informed choice whether to complete the call through the presubscribed carrier. Absent an express indication that the rates of the AOS company are applicable, there is no reason to expect the end-user to assume that fact from just the carrier identification, particularly users of calling cards who could reasonably assume that acceptance of the card number renders the call subject to the issuer's rates. The statement that the AOS company's rates apply is a material fact necessary for the end-user to avoid confusion and make an informed choice.

In reaching this determination, the Commission is not unmindful of the type of costs associated with the replacing the brands in use. ITI's $1.2 to $1.8 million per second estimate for increased holding time, however, has neither been substantiated nor shown to be representative for other carriers. The record evidence fails to establish that the cost of including a phrase like "our rates apply" in the brands will be unreasonable.

As a further notification measure, Staff has proposed that rate quotations, including the location-specific or tariffed maximum surcharge, and instructions for accessing alternative carriers, such as the preferred carrier's access code or toll-free customer service number, be furnished to the end-user upon request without charge.

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ITI and Telesphere object to providing access instructions to end-users as being an expensive, burdensome, and administratively difficult requirement. The AOS companies allege that they would encounter problems in maintaining an up to date list of the other carriers authorized in Arizona and the correct access codes or customer service numbers for those carriers.

The Commission will accept the rate quotation requirement proposed by Staff, but will adopt a modified provision on furnishing access information. Requiring a presubscribed carrier to provide the access code or customer service number of another carrier would exceed the scope of open access requirements and the informational responsibility of an AOS company and would impermissibly intrude on competition. It will be sufficient for an AOS company to inform the end-user that the preferred carrier can be reached by an access code or toll-free customer service number. As AT&T has recognized, "[i]t should be each carrier's responsibility, as a competitive service provider, to inform its customers on how to reach its operators where it is not the presubscribed '0+' carrier."

Staff has proposed that the notification measures also include posting information for end-users through the use of tent cards and stickers on or near the telephone instrument. The information to be posted would include the name of the AOS provider, an indication that the provider's rates apply, location-specific surcharges, a statement that the calling card carrier will not carry the call, dialing instructions, a toll-free number for billing inquiries, and a description of complaint procedures. The provider's tariffs would describe the precise contents and methods of posting, as established in the second phase of these proceedings, and would require the disconnection of a subscriber for failing to continuously meet the posting requirements.

The only objection raised to Staff's proposal is the inability of an AOS company to police the premises of its subscribers to ensure compliance with the posting requirement. As noted by Staff, however, enforcement efforts will depend on end-user inquiries and complaints. Staff's recommendation is reasonable and should be adopted.

The Commission is also concerned with the impact on consumers of collect calls received through AOS providers. As the called party is the end-user and customer of record they should receive the same notification as other end users. That notification should include, but not be limited to the clear identification of the AOS provider, and a statement of the rates that apply. The called party should also be afforded the opportunity to inform the caller that the call is being refused due to the carrier.

As the final provision in the end-user notification and choice category, Staff has recommended that the Applicants' tariffs and contracts dictate that neither the AOS provider nor the subscriber shall require or participate in blocking any end-user's access to a preferred carrier. The tariffs would additionally list a toll-free customer service number for all certificated IECs.

The AOS participants generally agree with a prohibition against blocking[5], but are concerned that it could create a significant risk of fraud because the subscriber equipment at some locations would allow end-users to complete "10XXX" access code calls which would be

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5 ITI supports blocking "10XXX+1" calls and "10XXX+0" calls originating from equipment which cannot be modified to prevent fraud, from prisons, and from areas where line screening is not available from the LEC.

billed to the subscriber rather than the end-user. Other equipment is unable to accept "10XXX" access codes or cannot distinguish between "10XXX+1" and "10XXX+0" calls. Staff has responded to this concern with detailed instructions for the Applicants to follow in the second phase of these matters in requesting a waiver from the prohibition for those locations with limited equipment capabilities.

Blocking access to other IECs from presubscribed locations is inapposite to an open access network and a competitive market for operator services. It has also been a particular source of end-user confusion and frustration. Adoption of a prohibition against blocking is certainly justified. In order to ensure that subscribers comply with the blocking prohibition, an additional requirement is warranted. Applicants should be required to withhold on a location specific basis the payment of any compensation, including commissions, to an aggregator which the provider believes is blocking end-users' access to preferred carriers. Specific waivers from the blocking ban and any conditions which should attach to such waivers are hereby deferred to the second phase in which they can be more meaningfully assessed.

The Applicants are hereby placed on notice that waivers from the blocking ban will be considered only if accompanied by the type of detailed cost/benefit analysis outlined by Staff and will be granted only if the evidence compels a finding that without blocking the risk of fraud and revenue erosion to the provider would be significant. The Applicants are further placed on notice that the pervasiveness of the blocking needed for deficiencies in customer premises equipment will be a factor taken into consideration in determining whether it is in the public interest for the Applicant to be certificated.

For the reasons previously discussed, the Commission will not adopt a requirement that toll-free customer service numbers for all other certificated carriers be included in Applicants' tariffs.

Public Safety

In order to protect the public safety in emergency situations, Staff has proposed a requirement that Applicants route all zero-minus calls immediately to the LEC unless, in the second phase of these matters, the provider clearly and convincingly demonstrates that it has the capability to process such calls as with equal quickness and accuracy. At the time reply briefs were filed, no opposition to this requirement remained. It should be adopted.

Billing

In the billing category, Staff has proposed regulations to govern provider identification, the acceptance of calling cards, uncompleted calls, billing delays, and the disconnection of service for non-payment.

Staff recommends that the bills issued for the intrastate interLATA AOS service provided by Applicants include the minimum information required by A.A.C. R14-2-508(B) as well as the name of the AOS provider(s) and each company's toll-free customer service number so that the end-user has the information needed to pursue a billing inquiry or complaint. According to Staff, US West has the ability to accommodate the identification of the individual providers, but further evaluation of the requirement and possible waivers from it may be necessary in the second phase for the bills rendered by the independent LECs which have billing arrangements with the National Exchange Carrier Association.

The AOS companies and US West have challenged the provision which would require the identification of AOS providers on end-user bills primarily because US West and the independent LECs do not have the technical capability to list the identity of the underlying provider if it uses a clearinghouse to submit billing data. They claim that the cost of implementing such capability would be exorbitant and would be passed on the AOS providers. It has been suggested that the end-user's bill could instead identify the billing agent or clearinghouse since they are authorized by the provider to handle billing disputes.

According to the evidence, no LEC in Arizona has sub-carrier identification capability, with the possible exception of US West and there is a conflict in the record over its technical abilities. As a consequence, mandating AOS provider identification on end-user bills would serve little purpose if the requirement is impossible to effectuate. In order to provide end-users with a feasible avenue to pursue billing matters, the provision should be modified to require the identification of the AOS provider(s) to the extent that the LEC has the capability to do so and, in the absence of that capability, the identification of the billing agent or clearinghouse and its toll-free customer service number shall be required. The claims that sub-carrier identification would be prohibitively expensive have not been substantiated for Arizona and have, therefore, been rejected.

Staff has developed several safeguards to protect the end-user who wishes to use an IEC calling card for purposes of billing AOS charges. Staff recommends that: Applicant's tariffs specify rates for calls charged to calling cards; the end-user be informed, at no charge, that the card issuer will not carry the call and that different rates may apply; and the AOS provider instruct the end-user on how to access the issuer upon request.

Since the branding requirement established above will advise the card holder that a provider other than the issuer has been reached and that its rates apply and since a requirement to provide access codes or information numbers for other carriers has previously been rejected, the only aspect of Staff's recommendation remaining to be addressed is the inclusion of the rates for calling card calls in Applicants' tariffs. That provision is reasonable and should be adopted.

In instances where calls have not been completed, Staff recommends that Applicants be prohibited from billing for such calls and be required to refund, with interest, any such charges which have been inadvertently billed. The stated purpose of the interest provision is to compensate end-users for the inconvenience of the overcharge and to serve as an incentive for the Applicants to prevent incorrect billings.

The AOS companies disagree with the imposition of interest on the overcharge. They argue that billing for uncompleted calls results from a problem with answer supervision signalling and is not unique to, or intentional by, the AOS industry. They further argue that the inadvertent charges are measurable in terms of pennies upon which interest would not be perceptible.

For the reasons articulated by the AOS companies, the Commission is persuaded that a full refund of any charge levied for an uncompleted call is sufficient to protect the end-user without imposing interest on the amount of the overcharge.

In order to ensure the timely rendering of bills for AOS service, Staff has recommended that Applicants, or their billing agents, be prohibited from billing for calls which occurred more than 60 days prior to the billing date. Staff's motivation for this proposal is to conform to the public expectation of prompt billing and to allow the end-user to readily verify the accuracy of the charges and avoid budgeting constraints.

In opposition to the requirement, the AOS companies argued that rendering bills requires additional time due to LEC billing cycles and occasional difficulties or delays in processing charges. It was suggested that 90 or 120 days would be a more appropriate billing periods. Establishing any billing period is unacceptable to US West if it would be expected to enforce the deadline, which it claims would necessitate software changes and create an administrative burden.

The mere fact that the AOS companies occasionally encounter difficulties or delays in processing charges does not dissuade the Commission from finding that a 60-day billing period is reasonable. The AOS companies have presented no evidence that the incidence of such difficulties or delays is of such frequency, duration, or scope that achieving the deadline is unrealistic. To the contrary, the typical processing cycle recited by the companies fits well within the 60-day period and allows for a cushion of several days to accommodate processing problems.

The final Staff recommendation in the billing category addresses service disconnection. Staff recommends that, as a transitional measure, Applicants' tariffs and contracts prohibit the disconnection of an end-user's local service for failing to pay AOS charges. It is

Staff's suggestion that, upon application by a certificated provider, this prohibition be reconsidered in approximately one year, after the Commission's regulation of intrastate interLATA AOS has been established and compliance with the other requirements is attained.

The AOS participants, Citizens, and the AAEC oppose the prohibition as being unnecessary. As several providers noted, in the event a customer disputes AOS charges by filing a complaint with the Commission, a LEC can not terminate service pursuant to A.A.C. R14-2-509(A)(1)(f). Telesphere claims that the inability to terminate the local service of end-users for non-payment of AOS charges will subject the AOS providers to a significant amount of fraud. ITI sees no useful purpose in including the provision in its service contracts since the prohibition does not affect the contractual relationship with the subscriber.

The Commission finds that the minimum requirement proposed by Staff will most appropriately balance the interest of protecting the end-user from abusive practices and overcharges by the AOS industry with the interest of the Applicants in being able to collect legitimate charges for the service rendered. Under this provision, the disconnection of local service for the non-payment of intrastate interLATA AOS charges would be permitted, but only in accordance with the detailed procedures set forth in the Commission's rule on termination for telephone utilities, A.A.C. R14-2-509. Disconnection would be unlawful if a bill dispute existed or if the charges had not been calculated in accordance with authorized rates. Rejection of the prohibition is consistent with <u>Mountain States Telephone and Telegraph Co.</u>, Decision No. 54843 (January 10, 1986), at 60.

Call Splashing

Call splashing occurs when an AOS provider which has an out of state operator service center transfers a call to the closest location of a preferred IEC and that carrier is unwilling or unable to identify the origination of the call so it applies interstate rates for a call from the geographic point of the transfer to the point of termination rather than its intrastate rates for a call from the point of origin to the point of termination. For example, an end-user placing a call from Phoenix to Tucson, Arizona which has been splashed to AT&T in Denver, Colorado would be charged by AT&T for a Denver to Tucson call rather than for a Phoenix to Tucson call.

To address this problem, Staff has recommended that Applicants' tariffs require the transfer of calls to other carriers at no charge so that rating and billing properly reflect the originating and terminating points. When such transfers are not possible, the tariffs would require the provider to inform the end-user that the call cannot be completed and to provide instructions on how to reach the preferred carrier.

The AOS participants have not objected to the tariff language. AT&T, however, contends that the most equitable method of dealing with call splashing is prohibiting those types of transfers, even for the purpose of connecting the end-user to a preferred carrier.

Adoption of a blocking prohibition which will allow the end-user to directly access the preferred carrier, and these tariff provisions suggested by Staff, should virtually eliminate the problem of call splashing. Staff's recommendation should be adopted, as modified for the reasons discussed above, to require Applicants to inform end-users whose calls cannot be completed that the preferred carrier may be reached by access code or toll-free customer service number.

Complaint Processing

Staff believes that the determination of each Applicant's fitness to receive certification in Arizona should be based in part upon an evaluation of its complaint processing procedures. Staff has, accordingly, recommended that Applicants be directed to submit a detailed description of such procedures for the Commission's consideration in the second phase of these proceedings, along with the name, address, and telephone number of a representative for complaint matters. Staff further recommends that certificated Applicants be directed to semiannually submit a list of subscribers and locations served.

Other than noting the confidentiality of subscriber lists, the AOS participants have not objected to providing the suggested information. Staff's recommendations should be adopted.

Quality of Service

As another aspect of the certification process, Staff believes that the provider's quality of service should receive consideration. To that end, Staff has recommended that Applicants be directed to develop and submit for review standards for operator response time and call processing time. Upon certification, Applicants would be required to submit semiannual reports comparing the company's actual monthly performance with the standards.

ITI has noted the proprietary nature of performance data, but does not object to Staff's recommendation. Telesphere does. It is Telesphere's position that regulatory performance standards are not needed because competition in the market and end-user dissatisfaction with response times provide sufficient impetus for improvement.

The quality of AOS service, in terms of the length of time it takes to place a call, has been the source of end-user complaint. Establishing performance standards for each provider and comparing actual monthly data to the standards will enable the Commission to effectively monitor the quality of service and ensure that it is maintained at a reasonable and acceptable level.

Intrastate Revenue Loss

Since the Commission has not yet determined whether competition for the provision of intraLATA interexchange service is in the public interest, Staff recommends that AOS firms be authorized to provide only interLATA operator services. The evaluation of Applicants' fitness for certification would then include either an assessment of the firm's ability to restrict intraLATA traffic or proof that the volume of intraLATA calling will be insignificant, for which the LEC would not be compensated. Staff further recommends that Applicants be directed to specify in their tariffs the access charges to be paid for all intrastate interLATA calls.

ITI disagrees with a restriction on carrying intraLATA interexchange calls and with any compensation scheme which fails to offset the loss of intraLATA revenues to the LECs with their avoided costs of not handling the calls. Citizens, on the other hand, urges the Commission to require Applicants to refer unauthorized intraLATA toll calls to the appropriate LEC. The AAEC supports a requirement that the AOS provider pass off all intraLATA calls to the LEC for the reasons that: it is technologically and economically possible; it is unreasonable to expect the AAEC or individual members to participate in each AOS certification proceeding to pursue adequate compensation; evaluating the effect of revenue diversion on a carrier by carrier basis ignores the cumulative impact on LECs; and an 'insignificant' level of intraLATA calling has not been quantified.

The question whether competition for the provision of intraLATA interexchange service is in the public interest exceeds the scope of this proceeding. At present, intraLATA competition has not been authorized in Arizona and we will not permit the AOS industry to make inroads into that market. Even an 'insignificant' or 'incidental' volume of intraLATA traffic carried by an AOS company will erode the revenues of the LEC and could cumulatively create a serious revenue diversion problem for which the LEC would seek rate relief from jurisdictional customers. We will not tolerate the expansion of AOS service in Arizona at the expense of the LECs and their customers. The Commission, therefore, agrees with the AAEC and Citizens that Applicants should be required to transfer all intraLATA toll calls to the appropriate LEC.

FURTHER COMMISSION ACTION

Phase II

Having determined that the provision of intrastate interLATA AOS service, subject to the regulatory requirements set forth above, is in the public interest, these matters may now proceed on an individual basis to the second phase, in which the fitness of each Applicant for certification will be evaluated. In the second phase of these proceedings, the Commission's evaluation of each application will include, but not be limited to, the following: the proposed level of the rates and charges; the technical capability to provide the proposed services, including the ability to handle emergency calls; the firm's financial structure; the proposed terms and conditions for service; the adequacy of the branding and posting methods; the proposed quality of service standards; the complaint processing procedures; the ability to transfer intraLATA toll calls; and the willingness of the provider to comply with Commission rules and regulations, including the regulatory requirements adopted herein. As recommended by Staff, Applicants should be directed to supplement their applications, as needed, to incorporate the regulatory requirements and to offer any additional information which will assist the Commission's evaluation.

From the testimony at hearing and the arguments raised on brief, it appears that the AOS participants are under a misapprehension that waivers from the regulatory requirements can be pursued and easily obtained during the second phase. The parties are hereby placed on notice that the second phase of these proceedings will not include an opportunity to re-litigate the regulatory requirements just adopted. In the interest of uniformity and to avoid discriminatory treatment between Applicants, the requirements will be accorded the force and effect of Commission rules from which waivers will be granted only upon a clear and convincing demonstration that a particular safeguard is inapplicable to the service being offered or in a very specific and unusual situation is inappropriate. This includes the blocking provision discussed above.

<u>Notice to Non-Applicant AOS Providers</u>

In addition to the Applicants, other companies, such as intervenors ITI and Com Systems, are providing intrastate interLATA AOS service in Arizona. As a result of the Commission's finding herein that AOS providers are public service corporations within the meaning of Article XV, Section 2, of the Arizona Constitution, those other companies must submit applications for certification.

To this end, Staff has recommended that the LECs which offer billing and collection service to AOS companies notify each provider that it must file an application for a CC&N within a reasonable period and that billing and collection service will not be provided for non-certificated carriers. The recommendation is unopposed.

Staff's recommendation should be adopted as a reasonable and effective means of ensuring that the AOS companies operating in Arizona submit to the Commission's jurisdiction. The LECs participating in these consolidated proceedings[6] should provide the notice by first class U.S. mail within 15 days of the effective date of this Decision. The AOS companies should be given until May 24, 1991 to file the applications and serve an affidavit of filing on the LEC. Absent a pending application for a CC&N, the participating LECs should effective with the first billing cycle after June 1, 1991 cease providing billing and collection service for intrastate calls carried by unauthorized AOS providers operating unlawfully in the state.

* ∴ Applies to all AOS Companies

Rulemaking

The unique market structure occupied by the AOS industry, the problems which it has spawned, and the need for strict regulation of AOS service to protect the public interest has led the Commission to conclude that the provision of intrastate interLATA AOS service in Arizona should be governed by formal rules and regulations rather

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6 Not all of the LECs authorized to conduct business in Arizona are participants in these consolidated proceedings. Rio Virgin Telephone Company and South Central Utah Telephone Association have neither sought intervention nor are represented by the AAEC.

than by requirements attached to individual Certificates.[7] A rulemaking proceeding should be initiated. Staff should develop and submit to the Commission proposed rules which are not inconsistent with the regulatory requirements adopted herein, with additional provisions as it believes are necessary, and should request authority to submit a notice of proposed rulemaking to the Office of the Secretary of State.

* * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Applicants are AOS resellers of interexchange long distance service engaged in the business of transmitting messages or furnishing telephone service to the public and are seeking authority to operate in Arizona.

2. By Procedural Orders dated July 24, 1989 and October 11, 1989, the above-captioned matters were consolidated for purposes of hearing and Order with respect to the general issues pertaining to the provision of AOS and were designated to then proceed on a individual basis to address company-specific issues.

3. The consolidated hearing commenced as scheduled on October 30, 1989 and concluded on March 8, 1990.

4. Notice of hearing was duly provided.

5. The evidence demonstrates that, with proper oversight, benefits in the form of innovative or unique service offerings and

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7 Upon implementation, the rules will supersede the regulatory requirements and will be equally applicable to Applicants and other AOS providers.

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benefits resulting from competition will accrue to the public through the availability of AOS service.

6. The authorization of AOS service in Arizona is expressly contingent on the implementation of a regulatory framework which adequately addresses the problems associated with the industry.

7. The regulatory requirements adopted herein will, on an individual basis, address the intended problem and, on a collective basis, form a fair and reasonable scheme of regulation necessary for end-user protection.

8. In addition to the Applicants, other companies, such as intervenors ITI and Com Systems, are providing intrastate interLATA AOS service in Arizona.

9. As a result of the Commission's finding herein that AOS providers are public service corporations within the meaning of Article XV, Section 2, of the Arizona Constitution, the other companies must submit applications for certification.

10. Because of the unique market structure occupied by the AOS industry, the problems which it has spawned, and the need for strict regulation of AOS service to protect the public interest, the provision of intrastate interLATA AOS service in Arizona should be governed by formal rules and regulations rather than by requirements attached to individual Certificates.

<u>CONCLUSIONS OF LAW</u>

1. Applicants seek authority to operate as public service corporations within the meaning of Article XV, Section 2, of the Arizona Constitution.

2. The Commission has jurisdiction over the Applicants and the subject matter of the applications.

3. The requests by Automated, Century, LD/USA, and Triple Crown to withdraw their applications are unopposed and should be granted.

4. The provision of intrastate interLATA AOS service in Arizona, subject to the regulatory requirements set forth above, is in the public interest.

5. The regulatory requirements adopted herein are fair, just, and reasonable.

6. Applicants should be directed to supplement their applications, as needed, to incorporate the regulatory requirements adopted herein and to offer any additional information which they believe will assist the Commission's evaluation.

7. The LECs participating in these consolidated proceedings which offer billing and collection service to AOS companies should be directed to notify each provider by first class U.S. mail within 15 days of the effective date of this Decision that, no later than May 24, 1991, it must file an application with the Commission for a CC&N and an affidavit of filing with the LEC and that, absent a pending application, billing and collection service will not be provided for intrastate calls carried by unauthorized AOS providers operating unlawfully in the state.

8. Absent a pending application by an AOS provider for a CC&N, the participating LECs should be directed to cease providing billing and collection service effective with the first billing cycle after June 1, 1991 for intrastate calls carried by unauthorized AOS providers.

9. Staff should develop and submit to the Commission proposed rules which are not inconsistent with the regulatory requirements

adopted herein, with additional provisions as it believes are necessary, and should request authority to submit a notice of proposed rulemaking to the Office of the Secretary of State.

ORDER

IT IS THEREFORE ORDERED that the requests by Automated, Century, LD/USA, and Triple Crown to withdraw their applications are hereby granted without prejudice.

IT IS FURTHER ORDERED that the provision of intrastate interLATA AOS service in Arizona, subject to the regulatory requirements adopted herein, is in the public interest.

IT IS FURTHER ORDERED that the regulatory requirements set forth above are hereby adopted and shall be attached to any authorization which is granted Applicants in the second phase of these matters.

IT IS FURTHER ORDERED that Applicants shall supplement their applications, as needed, to incorporate the regulatory requirements adopted herein and to offer any additional information which they believe will assist the Commission's evaluation.

IT IS FURTHER ORDERED that the LECs participating in these consolidated proceedings which offer billing and collection service to AOS companies shall notify each provider by first class U.S. mail within 15 days of the effective date of this Decision that, no later than May 24, 1991, it must file an application with the Commission for a CC&N and an affidavit of filing with the LEC and that, absent a pending application, billing and collection service will not be provided for intrastate calls carried by unauthorized AOS providers operating unlawfully in the state.

IT IS FURTHER ORDERED that, absent a pending application by an AOS provider for a CC&N, the participating LECs shall cease providing billing and collection service effective with the first billing cycle after June 1, 1991 for intrastate calls carried by unauthorized AOS providers.

IT IS FURTHER ORDERED that Staff shall develop and submit to the Commission proposed rules which are not inconsistent with the regulatory requirements adopted herein, with additional provisions it believes are necessary, and should request authority to submit a notice of proposed rulemaking to the Office of the Secretary of State.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5 day of April, 1991.

James Matthews
JAMES MATTHEWS
EXECUTIVE SECRETARY

DISSENT Dale H. Morgan
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