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October 18, 1990

Mr. Paul Curl
Secretary
Washington Utilities and
Transportation Commission
1300 Evergreen Park Dr., SW
Olympia, Washington 98504-8002

Re: Docket Nos. UT-900726 and UT-900733

Dear Mr. Curl:

Enclosed for filing in the above-referenced matters are an original and twenty copies of the Comments of AT&T Communications of the Pacific Northwest, Inc. Please date-stamp one of the copies and return it to me for our files. Thank you.

Very truly yours,

William P. Eigles

WPE/ll
Enclosures

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROPOSED AMENDMENT OF RULES WAC 480-120-021, 480-120-106, 480-120-138, 480-120-140, 480-120-141, and 480-120-142 RELATING TO TELECOMMUNICATION COMPANIES.	)))))))	**DOCKET NO. UT-900726** **DOCKET NO. UT-900733**

COMMENTS OF AT&T

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") hereby submits its comments to the Washington Utilities and Transportation Commission ("Commission") concerning the Commission's proposed amendments to the above-captioned rules of the Washington Administrative Code, pursuant to the Proposed Rulemaking notices issued on September 19, 1990.

Introduction

This rulemaking is partially in response to customer dissatisfaction with the unreasonable and often unscrupulous practices of some operator services providers in Washington. Such practices have generated a number of complaints to many state commissions, as well as to the FCC and Congress. These complaints allege that the rates of some operator services providers are excessive; that customers are unaware of the carrier providing their service; that customers are being prevented from reaching the carrier of their choice through the practice of "call blocking"; and that customers are transferred to carriers at, and

subsequently billed from, a location distant from where their calls originated, through the practice of "call splashing".[1]

Few, if any, of these complaints have been directed at AT&T and other traditional operator services providers.[2] To the contrary, these complaints have generally focussed on the so-called alternative operator services ("AOS") companies.[3] These companies market their services almost exclusively to "call aggregators" (the person or entity controlling the use of the telephone set) rather than the individual end-user customer placing the call. This is accomplished by contracting to provide operator services from that call aggregator's location and agreeing to pay commissions to the aggregator.[4] Because they receive commissions only on traffic delivered to a specific AOS

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1 See, e.g., In the Matter of Telecommunications Research and Action Center and Consumer Action v. Central Corporation, 4 FCC Rcd. 2157 (1989) (hereinafter "TRAC Order")

2 AT&T has provided operator services since 1877 and, in many respects, represents what consumers have come to know and rely on as the "traditional" operator services provider. It offers a full range of operator services (including card calling, third number billing, operator sent-paid, collect calling, and person-to-person calling) to end-user customers at reasonable, tariffed rates. AT&T operators are courteous, knowledgeable, and professional. In an emergency, they are able to assist callers in reaching police, fire, medical, and other essential services.

3 Despite this fact, AT&T and other traditional interexchange carriers with an established, presubscribed end-user customer base are apparently included within the ambit of the revised definition of "alternate operator services company" in WAC 480-120-021 GLOSSARY.

4 In response to its competitors, and because the payment of commissions has become a prerequisite to serving aggregator locations on a 0+ basis, AT&T also enters into such agreements.

company, many aggregators restrict the access of end-users to other operator services providers. As a result, consumers have been deprived of their ability to choose the operator services provider that will handle their calls and have often been subjected to inadequate service at exorbitant rates.

One of the basic goals of this rulemaking is to ensure that consumers are given sufficient information to identify the operator services provider at a particular location and an opportunity to make a competitive choice based on that knowledge. AT&T fully supports this goal and believes that it can and should be achieved in a cost-effective manner through call branding and on-site signage. Providing such information to consumers will be meaningless, however, unless they are thereafter able to select their carrier of choice free of any blocking by the presubscribed operator services provider or the call aggregator itself. They must therefore have access at all times to their carrier of choice using the dialing sequence selected and established by their preferred carrier (i.e., 10XXX access codes, 800 or 950 numbers).

The proposed amendments to the existing rules represent, for the most part, a positive step in embracing pro-consumer principles. The comments that AT&T offers below are intended to preserve the Commission's goal of increasing consumer protection by maximizing the ability of customers to reach their preferred carrier and pay that carrier's tariffed rates. At the same time, they seek to eliminate unduly burdensome and costly operating requirements that serve to hamstring the beneficially competitive

provision of operator services by AOS companies without furthering the welfare of Washington consumers.

WAC 480-120-141 ALTERNATE OPERATOR SERVICES

The most important way to reduce customer confusion and frustration with some AOS companies is to ensure that consumers (i) are made aware of the identity of the particular AOS selected by the call aggregator to serve the telephone being used, (ii) have the ability to select an alternative carrier of their choice, and (iii) have the opportunity to request rate information of any available carrier before they make their calls. Although many of the proposed revisions to this rule serve to further these goals, some would operate to burden the provision of services by AOS companies in Washington without any commensurate benefit to consumers.

Subsection (1)

This subsection mandates that an AOS company must conclude a contract for the provision of AOS services with each and every call aggregator "customer". Moreover, all such contracts would have to be filed with the Commission or, alternatively, if a master contract is used, a copy of the master contract would have to be filed together with a current customer list for that contract, effective dates of service, and all locations served. Implementation of this requirement suffers from several infirmities.

First, as a traditional operator services provider, AT&T provides all of its operator services in Washington--whether to

end-user customers or to call aggregators--pursuant exclusively to price lists that are on file with the Commission; AT&T does not use contracts, standardized or customized, for this purpose. AT&T concludes contracts with call aggregators principally for the payment of commissions to these entities on the AT&T toll traffic that originates from their locations.

For the Commission to require that contracts be concluded for the provision of operator services per se, with every potential presubscribed call aggregator, regardless of whether or not commissions are to be paid, would impose enormous expense and burden on AT&T, without any measurable offsetting benefit to consumers. The reasons are: (i) Such contracts would be superfluous where no commissions are to be paid (given AT&T's provision of services pursuant to standardized price lists) and (ii) the number of, and the costs of administering, such contracts would multiply dramatically. AT&T would additionally be tasked with the difficult responsibility of having to distinguish, for purposes of determining whether a contract needed to be concluded, between bona fide call aggregator "customers" (e.g., hotels) and mere presubscribed businesses that do not aggregate calls (e.g., convenience stores).[5]

Second, the requirement that such contracts all be filed and kept current with the Commission will be onerous to meet and will cause carriers to incur significant additional expenses,

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[5] The latter group would not constitute "customers" as defined in the Subsection (3) of the rule.

given the increasing market for AOS services at call aggregator locations. Third, because operator services are provided to call aggregators in Washington today in a highly competitive market, each AOS company has an important interest in safeguarding the proprietary nature of the commission incentives it offers call aggregators in order to procure their business. The heightened risk of disclosure of such confidential, market-sensitive information that would accompany the comprehensive filing of contracts with the Commission militates against adoption of this proposed requirement.[6]

Subsection (2)

This subsection imposes responsibility on AOS companies for "assuring [sic] that each of its customers complies fully with contract provisions which are specified in these rules." This subsection is troublesome for several reasons: First, its reference to "contract provisions which are specified in these rules" is vague and unspecific; as such, the scope of AOS companies' obligations under this rule is unclear. Second, and just as important generally, it is impractical to require AOS companies to monitor and police the activities and practices of their call aggregator customers. AT&T simply does not have the resources or ability to monitor actively and independently the compliance vel non of its customers with the proposed revised

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6 This would be true even if the proposed rule revision were modified to require the filing of only those contracts that AOS companies conclude with call aggregators with respect to the payment of commissions on traffic carried from their locations.

rules of the Commission.[7] Third, it is fundamentally unfair to hold an AOS company in violation of the Commission's rules for the noncompliance with certain provisions by an independent person or entity (i.e., the call aggregator) over which the AOS company has no management control. Without such control, AOS companies are without effective means to discourage errant conduct on the part of call aggregators.

Subsection (3)

This subsection defines "customer" of an AOS company as a call aggregator, but without specifying the distinct attributes that distinguish call aggregators from other customers of interexchange operator services. AT&T submits the following suggested language for consideration and adoption by the Commission for this purpose:

> "Customer" means a call aggregator, i.e., any person or entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for telephone calls, using a provider of operator services, and receives from an operator services provider by contract, tariff, or otherwise commissions or compensation for calls delivered from that aggregator's location

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[7] Although AT&T stands ready to respond to any Commission order or directive requiring the termination of operator services to any call aggregator who is found to have violated specific Commission mandates and/or prohibitions, it would object to the imposition of a requirement that it make determinations of compliance with Commission rules or act upon allegations by consumers of noncompliance which have not been verified by the Commission or its Staff. Of course, AT&T fully accepts responsibility for administering and requiring compliance with its own tariffs and of investigating and responding to complaints that customers may have relative to its services and/or its telephone instruments.

to that operator services provider. Examples are hotels, hospitals, and colleges.

Subsection (4)

This subsection requires AOS companies to impose various obligations on their call aggregator customers via both the contracts they conclude with them and "as a term and condition of service" stated in their tariffs. AT&T objects to some of these obligations, as follows:

Paragraph (a) The notice that is proposed for posting on telephone instruments is unwarranted and should be deleted for the following reasons:[8] The initial sentence states that "[s]ervices on this instrument may be provided at rates that are higher than normal," without any explanation as to what constitutes a "normal" rate. As such, it will needlessly confuse and intimidate consumers, possibly causing them to avoid using the telephone altogether for their calling needs. In addition, this sentence would not apply in particular to any telephone instrument presubscribed to AT&T--and would thus be untruthful--because (i) AT&T's operator services are uniformly charged for at the rates contained in AT&T's price lists, regardless of the location--business, residence, or call aggregator--from which consumers' calls are originated and (ii) AT&T's rates are being proposed in these rule revisions as the "benchmarks" by which the Commission

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[8] The signage required by subsection 4(b)(i) and (ii) adequately informs consumers of the identity of the AOS company serving the telephone instrument being used, and enables consumers to request and receive accurate rate information for the calls they desire to make.

will determine whether or not other AOS companies' rates are consonant with the "public convenience and advantage". [See Subsections 9(b) and 10 below]

Second, the last sentence tells consumers that they have "the right to request that the operator connect [them] with the carrier of [their] choice at no charge". As explained below in connection with Subsection 5(c), AT&T's operators are technically incapable of connecting end-user customers to another carrier of their choice. In order to avoid the practice of "splashing" and all of the consumer complaints that this practice engenders, AT&T recommends that, if a consumer chooses not to use the presubscribed AOS company's services, and the telephone that the consumer is using is unblocked, the AOS company operators should be required to instruct the consumer to hang up and dial his/her preferred carrier directly using the dialing sequence chosen by the carrier (i.e., 10XXX-0+, 800, or 950-XXXX).[9]

Paragraph (b)(i) The AOS company is required by this provision to post on or near the telephone, inter alia, the name of the AOS company's billing agent, if the AOS company uses such an entity. Such a requirement, if promulgated, would impose an unduly burdensome and discriminatory hardship on AT&T. Unlike

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9 The FCC's TRAC Order recognized that the AOS companies (i.e., other than AT&T and other traditional operator services providers) were the source of the call splashing problem and ordered the discontinuance of this practice. Because of the widespread consumer confusion and frustration that call splashing has caused, it should be prohibited in Washington altogether. As Subsection (6) implicitly recognizes, allowing the transfer of calls to another carrier, even at the consumer's request, may result in calls that are billed from a point different from where they are originated.

other AOS companies, which often use only one national firm to bill and collect all of their revenue from call-aggregator-originated calls nationwide, AT&T uses virtually every local exchange company in the United States as its billing agent, for customers who live in each such company's respective local exchange serving area. Because the number of local exchange companies performing these functions for AT&T is quite large, identifying the billing agent for any given caller (who might be an out-of-state resident, or using a bank credit card to bill the call) would simply be an insurmountable task. Thus, with respect to the provision of operator services by AT&T at least, no signage could properly inform all customers of the identity of their billing agent. In order to rectify this difficulty, AT&T recommends the following modification to this requirement:

> The name, address, and toll-free number of the alternate operator services company, as registered with the commission and, if the AOS company uses a billing agent **other than a local exchange company**, the name of the billing agent; [new language in bold]

[See the comments concerning Subsection (5)(a)(ii) as well.]

Paragraph (b)(iii) The requirement that dialing directions be posted and maintained on or near the telephone to "allow the customer to dial through the [sic] local telephone company and to make it clear that the consumer has access to the other providers" is vague with respect to the first part and should be clarified as to its meaning. If the Commission's goal is to ensure consumer access to the local exchange company

operator, then the wording can easily be changed to reflect that purpose. With respect to the second requirement, AT&T submits that it is unnecessary and would only be a burden to implement. Because the operator services marketplace in Washington, like the market for interexchange toll services in general, is widely known to be competitive and most consumers are familiar with having a presubscribed carrier of their choice at their homes and businesses, the second requirement will not serve to provide them with any additional protection.

Paragraph (c) This provision requires AOS companies to "provide, without charge, access to any registered interexchange carrier", in an attempt to prohibit the practice of some AOS companies and call aggregators of blocking consumer access to carriers other than the presubscribed AOS company. AT&T strongly supports the Commission's intention in this regard; however, because an unscrupulous call aggregator could unblock only one of several telephones that may exist on its premises and still be in technical compliance with the revised rule (while violating the underlying intent thereof), AT&T recommends that the rule be modified to ensure that every publicly available telephone instrument at call aggregators' locations be unblocked. The following language would be suitable for such purpose:

> Provide **consumers**, without charge, access to any registered interexchange carrier **from every telephone instrument that is available for public use, via the access method established by such carrier(s) (e.g., 10XXX-0+, 800 number, or 950-XXXX)**. [new language in bold]

Subsection (5)

Paragraph (a) This paragraph mandates double branding of AOS company calls, which AT&T performs itself on most of its calls at the present time. In order to ensure, however, that consumers know the identity of the AOS company providing service before the billing of their calls begins, the second branding should take place before calls are actually connected (i.e., after consumers' billing information has been entered) rather than at call completion (i.e., disconnection). For this reason, the word "completed" should be replaced with the word "connected".

Paragraph (a)(ii) This paragraph, in specifying the actual language to be used at the beginning of each call and in mandating the inclusion of the name of the billing agent (in the case of AT&T, U S WEST Communications), would require highly expensive and time-consuming changes to the format currently used by AT&T on a nationwide basis, and would serve only to confuse consumers as to which company was actually providing their service.[10] Because such changes would result in no demonstrable

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10 With respect to the second requirement to brand calls with the name of the AOS's billing agent, AT&T at present does not, and cannot, know in advance which local exchange company will be billing any given consumer who chooses to use a calling card to charge his/her call in Washington. For example, a New Jersey resident who originates an AT&T toll call in Seattle using an AT&T/New Jersey Bell calling card would be billed for the call by New Jersey Bell, not U S WEST Communications, even though the latter company is AT&T's billing agent in Washington for most of this State's residents. In that numerous possible billing agents exist for resident and nonresident consumers originating calling-card calls in Washington, requiring AOS companies to identify dynamically the name of the appropriate billing agent for every call and then brand the same (continued next page)

benefit to consumers, this requirement of specific language content should be deleted in its entirety. The requirement of double branding, however, at the beginning of each call and again after the entry of billing information (but before billing begins), should be retained.

Paragraph (c) This paragraph requires that AOS companies "re-originate calls to another carrier upon request by the caller and without charge". AT&T could not comply with this requirement because the capabilities of AT&T's operator services network in Washington simply do not permit the transfer of a call to another operator services provider, including the serving local exchange company.[11]

(continued from last page) accordingly (as well as with the name of the serving AOS company) would entail major network and systems redesign, a project of obviously herculean proportions in terms of both time and cost.

11 "Reorigination" is generally understood to refer to a technical process whereby a call that reaches an operator services provider is sent back to the customer premises equipment ("CPE") from which the call originated in order to be routed to another operator services provider. It is accomplished, technically, in the following manner: On verbal request by the calling party, the AOS operator would cause a unique tone to be sent back to the CPE (a pay telephone or, in the hotel context, a PBX). The CPE is programmed to recognize that upon receipt of this tone, the call in progress should be "reoriginated" by a predetermined dialing sequence (e.g., 10XXX-0+, 800 number, or 950-XXXX) to a particular operator services provider. Two major hurdles that must initially be crossed, therefore, before re-origination could be implemented are the design and collective adoption of a standard series of unique tones, each one identifying an operator services provider serving in Washington, and the subsequent incorporation of a tone-generating capability into all operator services providers' stations. As to the first matter, AT&T is unaware of the existence of any such standardized series of AOS-identifying tones today. Even if appropriate tones were established and all AOS companies' stations were made "tone-generation-capable", however, the intercompany (continued next page)

Although AT&T can "connect" a call to the local exchange company operator, the call would nevertheless remain on AT&T's network for its entire duration. As such, even if another AOS company were ultimately to handle the call, AT&T would continue to pay access charges to the local exchange company for the entire length of the call. That is, the second AOS company would collect the total revenues for such calls but, because the call would remain on AT&T's network, AT&T would pay the associated originating access charges from the local exchange company's originating central office to AT&T's point of presence and from AT&T's point of presence back to the local exchange company. Obviously, AT&T would be seriously harmed if the Commission were to require the connection of calls under these circumstances. AT&T's payment of access charges for such calls would be especially egregious given that customer access to the second AOS company's operator services could more easily be provided by the AT&T operator directing the customer to hang up and redial his/her preferred carrier using that carrier's established dialing sequence.

Indeed, whenever a consumer who has reached a presubscribed AOS company's operator desires to use another carrier, or the presubscribed AOS company is unable to complete the consumer's call, AT&T submits that the optimal solution in all cases is for the AOS company's operator to instruct the consumer

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(continued from last page) call transfers necessitated by "reorigination" still could not be effectuated unless special trunks interconnecting each AOS company with every other AOS company were put in place.

to hang up and redial his/her preferred carrier directly using the dialing sequence or sequences chosen by the carrier (i.e., 10XXX-0+, 800, or 950-XXXX). Assuming that all call-aggregator and pay telephones are unblocked, this will have the benefit of ensuring consistency in the practices of all AOS companies relative to end-user customers in Washington, further reducing the likelihood of consumer confusion.

Subsections (9) and (10)

Under these subsections, it is proposed to use AT&T's rates as benchmarks against which other AOS companies' interLATA operator services rates will be measured in determining whether they are "for the public convenience and advantage". Initially, such a proposal is troublesome because it appears to create a double standard of regulation as between AT&T (and U S WEST, for intraLATA operator services) and other AOS companies. That is, although these subsections establish a standard for determining the acceptability of all other AOS companies' rates, they do not indicate what AT&T would have to demonstrate in order for its own operator service rates to be presumptively valid under the "public convenience and advantage" criterion.

AT&T's operator service rates should not be used as a benchmark for the prima facie validation of other AOS companies' rates for another reason: Competition works to drive AOS prices towards cost and fosters innovation in the provision of operator services, advantages which are clearly in the public interest. However, in order for the benefits of competition--lower prices and new services--to reach consumers, the rates of AOS companies

must be able to reach their own levels, free of any constraint that might artificially distort the pricing of calls. Second, AOS companies' rates need to reflect these companies' unique costs in providing their services. Any arbitrary capping of their rates, however indirect, could force these companies either to offer services below cost or withdraw entirely from the AOS business, even though they may be offering types and qualities of services that Washington consumers find attractive, even at higher rates. Because the public interest in maximizing consumer choice mandates that market forces be allowed to determine the rates of AOS companies, these subsections should be modified to exclude reference to AT&T's and U S WEST's rates as the benchmark "prevailing rates".

WAC 480-120-138 PAY TELEPHONES--LOCAL AND INTRASTATE

Subsection (4) This section states that AT&T's rates for interLATA directory assistance shall be used as the "prevailing charges", or prima facie price ceiling, absent "persuasive contrary evidence". AT&T objects to any such use of its rates as a benchmark for competitors' rates, for the same reasons as presented under Sections 9 and 10 of WAC 480-120-141, above.

Subsection (6)(b) This subsection requires the posting, on or adjacent to a pay telephone, of "[t]he notice required by WAC 480-120-141(1)". However, the referenced section as revised does not contain any notice. If the notice sought to be referenced is that which now appears in WAC 480-120-141(4)(a),

AT&T objects to this proposed revision for the same reasons presented above relative to the latter subsection.

Subsection 10 The first sentence of this section should be modified to clarify the obligation of pay telephone owners to provide universal access to interexchange carriers, where such access is feasible. AT&T suggests the following language:

> All pay telephones must be capable of providing access to all interexchange carriers **through the carriers' selected dialing sequences (e.g., 10XXX-0+, 800 number, 950-XXXX), in equal access areas.** [new lanaguage in bold]

Section 12 This section mandates that local exchange companies not maintain a connection to a public access line for any pay telephone that, inter alia, "does not allow users without-charge access to all available interexchange carriers". AT&T recommends that this sentence be modified in accordance with AT&T's suggested language for Subsection (4)(c) of WAC 480-120-141, above; viz.:

> (a) That does not allow **consumers** without-charge access to all available interexchange carriers **via the access method established by such carrier(s) (e.g., 10XXX-0+, 800 number, 950-XXX); and/**or [new language in bold]

Conclusion

The conduct of some unscrupulous AOS companies has resulted in a legitimate public outcry, making appropriate the adoption of revised rules by the Commission to protect consumer interests. By adopting its revised proposed rules, modified in

accordance with the changes suggested herein, the Commission can optimize the benefits to consumers of the provision of operator services at call aggregator locations throughout Washington.

Respectfully submitted this 18th day of October, 1990.

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