November 3, 1990

Paul Curl
Executive Secretary
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
1300 South Evergreen Park Drive, S.W.
Olympia, WA 98504

Re: Docket Nos. UT 900726 and UT 900733

Dear Mr. Curl:

Enclosed please find the original and nineteen copies of the Reply Comments of International Telecharge in the above-referenced Docket.

Since ITI filed its intial comments late, ITI will Federal Express its intial comments and reply comments to all parties of record.

If you have any questions, please contact me at (214) 653-4415.

Sincerely,

Eddie M. Pope

Eddie M. Pope

Enclosure

cc: Art Butler, Esq.
Parties of Record

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROPOSED AMENDMENT OF RULES WAC 480-120-021, -106, -138 AND -141 RELATING TO TELE-COMMUNICATIONS COMPANIES	}	DOCKET NO. UT-900726 DOCKET NO. UT-900733

REPLY COMMENTS OF INTERNATIONAL TELECHARGE, INC.

International Telecharge, Inc. welcomes the opportunity to provide a reply to the comments of the other parties[1]. Generally, ITI believes there is a consensus view that the rules as proposed reflect goals which all parties support, but that technical corrections may be necessary in order to match those goals to network realities. Some of the Staff proposals also do not comply with current Washington statutes, the Washington Constitution or the U.S. Constitution. ITI is optimistic that the scheduled workshops and comment period will allow the creation of rules that both protect consumers and allow competition in the operator service marketplace to flourish.

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[1]ITI has received copies of the comments from the Attorney General of Washington ("Attorney General"); AT&T Communications of the Pacific Northwest ("AT&T); Warren Bovee; Lisa Bergman, Bruce Bennett; Elaine Britt; William J. Clancy; Fone America, Inc. ("Fone America"); David Fluharty; The Friedrich Group; GTE Nortwest Incorporated ("GTE"); Intellicall, Inc. ("Intellicall"); International Pacific; Dean S. Johnson; Jim Lazar; MCI; Northwest Payphone Association ("NWPA"); Operator Assistance Network and Zero Plus Dialing, Inc. ("OAN"); The Park Lane motel, suites and R.V. park ("Park Lane"); Public Communications of America, Inc. ("PCA"); Douglas R. Syring; U.S. Long Distance, Inc., International Pacific, Inc. and National Technical Associates ("USLD"); United Telephone Systems ("United"); U.S. West Communications ("USWC"); and Washington Independent Telephone Association ("WITA").

GENERAL COMMENTS

Several parties have brought to the Commission's attention the fact that the United States Congress has recently passed legislation relating to operator services, and that the Federal Communications Commission ("FCC") is also considering rules and regulations relating to operator service. ITI agrees that the final rules adopted by this Commission should reflect, to the greatest extent possible, the federal law and decisions made by the FCC (Comments of USLD, p. 9). Reflecting those rules would require the Washington Commission to await the outcome of decisions being made in Washington, D.C. ITI agrees with U.S. West (Comments, USWC, p. 2-3) that such a delay will be in the best interest of Washington consumers.

ITI would first note that Washington state already has a comprehensive set of rules regulating operator service providers (OSPs)[2]. In fact, the Washington Commission just designated new clusters of existing rules that OSPs must follow. When dovetailed with the requirements of the new federal legislation, Washington consumers will be amply protected during the pendency of the FCC's rulemaking.

FCC decisions may resolve several of the technical difficulties with the currently proposed rules. For example,

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[2]ITI prefers the term "OSPs" to AOS, especially in Washington. As ITI reads the Washington law, all providers of operator services to call aggregator locations - including LECs and AT&T - are "AOS" companies. As such, all carriers are "alternate" to each other.

several parties have noted difficulties with the opening of 10XXX dialing on an unlimited basis (e.g. Comments of Intellicall, pp. 12 -16). The FCC is considering comments from over two hundred parties, many of whom focused on the extreme costs and difficulties associated with unblocking 10XXX. Many of those commentors proposed a solution originally urged by ITI - that AT&T be required to obtain a 1-800 number like all other carriers. Some local exchange companies have proposed a system of "Billed Party Preference." As noted in ITI's original comments, such a system has major expenses and flaws, but it would achieve some of the Commission's apparent goals. Were the FCC to mandate either a 1-800 number for AT&T or Billed Party Preference, it would have a dramatic impact on the rules ultimately adopted by this Commission.

Coordinating the federal rules and Washington rules will also benefit consumers, who will be able to develop a consistent set of expectations wherever they may be in the country. The alternative of state-specific branding or posting requirements will result in information overload to consumers, and impose significant costs on all providers.

Coordination of regulations will also help the Commission's enforcement efforts. For example, ITI currently produces a state-specific sticker for its Washington subscribers. ITI is also in the process of developing a new sticker for subscribers in states without special posting requirements. It is inevitable that some subscriber, somewhere, will post the national sticker in Washington, as opposed to the state-specific sticker. As the rules

are currently written, ITI (and possibly the local exchange company) would be liable for the error of this subscriber. The easiest solution to this enforcement difficulty is for Washington to establish rules that reflect the final federal rules.

Delaying the establishment of additional Washington rules would also have the interesting side-effect of reducing some of the other objections to the rules. For example, USWC has indicated that it can have sub-carrier billing by February, 1991 (Comments of USWC, p. 4). A delay in promulgating new rules will enable this major player to have more capacity to comply with the new rules.

ITI also agrees with Intellicall (Comments of Intellicall, p. 25) that the Commission will need to have some period to allow carriers to come into compliance. It takes time to print new stickers and tent cards, and send them into the field. As noted below, some of the Staff's proposals would require the development of whole new technologies.

ITI also agrees with United (Comments of United, p. 1-2) that this Commission should not use U.S. West and AT&T as the named standard bearers in the rules. As pointed out in ITI's original comments, and the comments of others, these carriers have technological and contractual advantages that are not shared by any other carrier - LECs or long distance providers.

Thus, ITI urges the Commission to adopt rules that will provide practical consumer protection in a coordinated effort with the FCC.

THE COMMISSION SHOULD NOT ATTEMPT TO AMEND STATUTES THROUGH A RULEMAKING (WAC 480-120-021)

The current rule's definition of an "AOS" company is drawn directly from the still currently effective Washington statute. That definition states that an AOS company is "any corporation...providing a connection to intrastate or interstate long-distance or to local services from...hotels, motels, hospitals, campuses, and...pay telephones."

As noted in ITI's initial comments, amendments of that definition was considered by the recent session of the Washington Legislature. ITI was active in working with the Washington Legislature to make sure the law remained non-discriminatory. The Legislature rejected amendments that would have exempted the LECs, and this Commission does not have the power to amend that which the Legislature chose not to change.

Even if the Commission did have the power to amend the statute, it should not do so based on the arguments of the parties in this case. Most of the commentors on this issue agreed that the rules should not be amended to exclude local exchange companies (Comments of Fone America, p. 27; Comments of Intellicall, p. 7; Comments of NWPA, p. 19-20). As Intellicall noted, exempting LECs would mean that some calls might not be branded, while branding was required for all other carriers. ITI agrees that such an exemption would give LECs an economic advantage, with no corresponding benefit in consumer protection (Comments of Intellicall, Id.).

USWC argues that the exemption for LECs is "absolutely necessary" (Comments of USWC, p. 3). Of course, USWC is attempting

to win before this Commission an amendment that the Legislature explicitly rejected. Furthermore, the reasons given by USWC do not serve to distinguish LECs from other Washington providers. USWC argues that "a LEC is pervasively regulated with respect to the statutes and rules relating to its operation, together with tariffs on file..." On October 31, this Commission extended a whole host of regulations to operator service companies. In some senses, OSPs are more closely regulated than the LECs. Furthermore, OSPs like ITI have tariffs on file with the Commission, in the same manner as the LECs. While some rules may require a modification or interpretation when they are applied to LECs, the Commission should not adopt a wholesale exemption.

Similarly, the Commission should reject MCI's brief attempt to exempt all "competitive telecommunications compan[ies]" (Comments of MCI, p. 1). MCI notes that it files a price list with the Commission, without recognizing that ITI does the same. MCI does not point out to the Commission that it also serves call aggregator locations; that it pays commissions to those locations; that at those locations, end users subscribed to many other carriers may seek to utilize their preferred carrier, but can only do so if they know that the call aggregator's carrier differs from their own; and that MCI calls may be billed by a billing agent. From an end-user's perspective, there is no difference between a location

served by MCI and one served by ITI[3]. Under the statute and common sense, the Commission should not adopt MCI's proposed amendment.

The Commission does need to resolve what regulations apply when the call aggregator is also the provider of some operator services. This problem was raised in different way by Intellicall (store and forward units), Park Lane (hotel PBXs), and USWC (LEC public phones). Obviously, the requirement of a contract between the OSP and the call aggregator (if retained by the Commission at all) should not apply to the situation of where the aggregator and the OSP are the same.

ITI agrees with NWPA that the Commission should "regulate with an even hand" (Comments of NWPA, p. 19), and should not amend the current glossary definition of operator service provider.

THE COMMISSION SHOULD NOT REQUIRE THE CARRIER AND BILLING AGENT'S NAME TO BE PLACED ON THE BILL IF THE LEC DOES NOT HAVE THAT CAPABILITY (WAC 480-120-106)

As noted in its initial comments, ITI generally does not utilize billing agents. ITI has direct contracts with US West, GTE, United and numerous other local exchange companies. However, even ITI must utilize billing agents like NECA and Washington-based US Intelco for small LECs. This is also true of every carrier - including MCI and US Sprint - other than AT&T.

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[3]In fact, since ITI provides operators under contract to MCI for hospitality services, there is no difference on some calls - except in the brand the end user hears.

Many of ITI's smaller competitors rely on billing agents. For example, International Pacific reported that it utilizes six different billing agents, and changing billing agents is a "common occurrence in this industry." (Comments of International Pacific, p. 4). As explained in detail by the comments of OAN, it is not currently possible for all local exchange carriers to list both the carrier and the billing agent (see also Comments of Fone America, p. 18; Comments of Intellicall, pp. 8 - 10; Comments of International Pacific, p. 4). USWC reported it "is unable to provide this service to carriers who bill through a bill clearing house," (Comments of USWC, p.4) USWC indicates that it will have this capability in 1991, but does not state the cost (Id.).

United pointed out that the amended rule could result in "both massive bills and massive customer confusion" (Comments of United, p. 3). United proposed a small amendment to the rule, pointing out that "[i]f the customer can easily get the full information he [sic] needs, have his complaint resolved and his refund (if appropriate) made, he simply does not need more..."(Id.).

While USWC may have sub-carrier capability in the near future, ITI would be surprised if <u>every</u> LEC in Washington would have the capability in the same time frame. ITI strongly agrees with Fone America that OSPs should not be penalized for a failure of the local exchange company to provide a mandated service (Comments of Fone America, p. 27). Similarly, this Commission should not adopt a rule that would wipe out store and forward capabilities (Comments

of Intellicall, p. 9) or impose significant costs on smaller OSPs (Comments of International Pacific, p. 4)

The current rule allows consumers to receive the attention and adjustments they may need, while also allowing competition to flourish. It should not be altered without careful consideration.

THE COMMISSION SHOULD NOT CAP DIRECTORY ASSISTANCE RATES BELOW DIRECTORY ASSISTANCE COSTS (WAC 480-120-138 (4))

ITI did not comment on the proposed cap on directory assistance rates from pay telephones because ITI read those rules to apply to situations where the caller dials "411" or "1+411" or "(Area Code) 555-1212." ITI does not provide directory assistance from any phone if those numbers are dialed. However, if a caller dials "0" and a directory assistance number, or requests directory assistance, ITI will connect that caller to the appropriate directory assistance provider (LEC or AT&T), and charge ITI's tariffed rates for that call. Since ITI incurs the operator cost, the access and transport costs, and the cost of the directory assistance provider, ITI's rates for such a call cannot match what a caller would be billed by US West for a simple 411 call. In fact, ITI knows that several local exchange providers charge operator assistance rates if the caller dials "0" for directory assistance. (ITI does not currently know the practice of US West or other Washington LECs).

Thus, ITI agrees with the commenting parties that urge this Commission to reject the Staff rule that would require rates below costs. Fone America cited that its costs for a directory

assistance call would be $1.40 to $1.50 (Comments of Fone America, p. 28.) NWPA pointed out that callers would be subsidized $.29 on each directory assistance call (Comments of NWPA, p. 10). It would not take a lot of directory assistance calls to wipe out any profit the private pay telephone owner may have.

ITI endorses the concept proposed by Intellicall, that the LECs should not be allowed to charge COCOTs more than they charge end users from their pay telephones. The Texas Commission has adopted a similar rule, which has meant "free" directory assistance from both COCOTs and public pay telephones. As Mr. Douglas R. Syring notes, directories can be missing or damaged at pay telephones.

It is clear that the Commission cannot lawfully or logically adopt a rule that requires providers to charge less than the cost of their supply. The Commission should set the Intellicall proposal for further comment.

THE COMMISSION SHOULD NOT ADOPT RULES REQUIRING THE UNBLOCKING OF 10XXX CODES UNTIL AFTER THE FCC RESOLVES THE BLOCKING ISSUES

Each of the consumers that wrote comments about being unable to reach their preferred carrier are subscribers to one carrier - AT&T (Bergman; Bennett; Britt). The Commission should note that there are no similar comments from the subscribers of any other carriers. There is a simple reason - only AT&T has chosen to rely solely on 10XXX dialing as its only access code. This business decision of AT&T has meant that its subscribers often cannot reach

their preferred carrier when on the road. In fact, AT&T has revealed to the FCC that it has manufactured PBX's that do not allow 10XXX dialing. In other words, AT&T makes equipment that "blocks" access to AT&T.

The new legislation mandates that the FCC consider requiring AT&T to have a 1-800 access code. An overwhelming number of parties to the FCC's proposed rulemaking also advocated that AT&T be required to adopt such a code. The alternative - allowing AT&T to dictate to the entire country - has been estimated to cost billions to implement. Intellicall explains in detail how devastating unlimited access would be to the pay telephone industry (Comments of Intellicall, pp. 12-16).

The question of blocking is a complex one, which will require a national solution. The Washington Commission should not attempt to resolve the issue at this time.

THE COMMISSION SHOULD RE-EXAMINE THE COSTS AND BENEFITS OF REQUIRING ALL CONTRACTS TO BE FILED (WAC 480-120-141 (1))

ITI agrees with AT&T on the proposed amendment regarding filing of contracts. Such a requirement will create an "enormous burden and expense" (Comments of AT&T, p. 5). Like AT&T, ITI serves some locations without contracts (e.g. allocated public phones). Other commentors recognized the rule would place an administrative burden on the Commission (Comments of Intellicall, p. 21) and would be time consuming and costly for OSPs (International Pacific, p. 1)

Virtually every carrier emphasized the highly proprietary and sensitive nature of the subscriber lists required by the proposed rule (Comments of AT&T, p. 6; Comments of Fone America, p. 29; Comments of Intellicall, p. 21; Comments of USLD, p. 3). The Commission will have to have special procedures for the safeguarding of these lists. Since subscribers change carriers on a daily basis, the lists received by the Commission will be out of date as soon as it is received.

ITI reiterates its recommendation that the Commission carefully consider the limited consumer benefits from the Staff rule as proposed, and the enormous burden the rule will place on all parties. ITI urges the Commission to seek a less burdensome way to achieve whatever consumer goal is sought to be satisfied by the proposed rule.

THE COMMISSION SHOULD NOT IMPOSE VICARIOUS LIABILITY ON LECS OR OTHER OSPS (Several Sections and WAC 480-120-141(2))

USWC stated its "major objection" to the proposed rules was that they impose upon LECs enforcement responsibilities (Comments of USWC, pp. 1-2). Similarly, AT&T protested that it was impractical for the Commission to require AOSs to monitor and police call aggregators (Comments of AT&T, p. 6), and that it was unfair to hold OSPs in violations of rules when they had no control over the behavior of the actor (Id, p.7).

All of the smaller participants in the industry had similar reactions to the requirement to be "phone police." Fone America

protested liability over actions over which it had no control (Comments of Fone America, p. 29). GTE pointed out that it was inappropriate to impose a pro-active enforcement duty on it (Comments of GTE, p. 1). NWPA pointed out that the Staff draft constituted improper delegation of state powers to both LECs and AOS providers (Comments of NWPA, p. 15), and that it is improper for the Commission to require AOS companies to monitor their subscribers (Id.). United recognized that it could not enforce or police on behalf of the Commission (Comments of United, p. 3-4).[4] USLD also recognized that it does not and cannot police all telephones at all times (Comments of USLD, p.4).

ITI agrees with an important point raised by NWPA. While the Commission has its own enforcement procedures and mechanisms, it is attempting to have OSPs enforce rules through contracts. The problem with that procedure is that all the OSPs can do is take subscribers who violate contracts to court (Comments of NWPA, p. 15). Thus, the OSP would be required not only to have "phone police," it would be necessary to have "phone prosecutors" as well. It is an inappropriate use of scarce court resources to have courts jammed with OSPs trying to enforce contracts with subscribers.

The solution is simple. The new federal law places the obligation directly on aggregators to post notices and unblock access. The FCC is empowered to enforce the Communications

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[4]Ironically, United indicated that it "strongly support[ed]" the imposition of vicarious liability on other OSPs. United supports a burden on its competitors which it is not ready to shoulder. The Commission can correct this attitude by applying all of the rules equally to the LECs and other OSPs.

Act against violating aggregators. Washington should impose obligations directly upon the party that has the ability to comply with the obligations, and it should be the Washington Commission staff that acts as "phone police" and "phone prosecutors." In this manner, the Commission can assure that due process will be preserved, and no competitor will take advantage of another competitor.

THE NOTICE REQUIRED BY THE WASHINGTON COMMISSION SHOULD BE CONSISTENT WITH THAT REQUIRED BY FEDERAL LAW AND REGULATION (WAC 480-120-141(4)(a) and (b))

ITI recognizes that written information on or near the phone at the time of the call can help consumers understand that the phone may be subscribed to a carrier different from the one they use from home, and that they have options to the use of that carrier. Thus, ITI supported federal legislation that requires every carrier's name, address and toll-free number to be on or near every phone served by that carrier. The federal legislation also requires that consumers be informed that access to other carriers is available from that phone.

The Staff draft adds to that simple information a plethora of additional information. Each bit of information may seem helpful to the consumer; in the aggregate, it will only result in confusion. As USWC observed, more data "simply adds confusion and makes the massive information provided at the station more difficult to understand." (Comments of USWC, p.7).

The Commission must recognize that <u>any</u> change to the mandated

notice will impose substantial costs upon all the parties. To the extent the Commission imposes requirements that differ from federal law, they will add costs to the process. Fone America pointed out the Commission should consider not only the substantial cost of replacing notices (Comments of Fone America, p. 16), but also the labor cost of reposting the notices (Id. p. 31). GTE estimated costs of $5,000 in printing new cards, and additional costs in visiting each phone (Comments of GTE, p. 2). ITI would also incur costs in printing special Washington stickers and tent cards.

ITI agrees with those commentors that found the "rates higher than normal" language to be confusing. As AT&T noted, the language needlessly confuses and intimidates consumers (Comments of AT&T, p. 8). USLD found that part of the notice misleading and false (Comments of USLD, p. 7) and redundant to Commission rate regulation (Id., p. 8).

Commentors uniformly recognized that it is technically impossible to provide connection to every possible carrier of choice (see the discussion below), and thus misleading to place such a statement on the phone. The new federal law mandates language informing consumers that access to other carriers is <u>available</u> from the phone. The Washington Commission should adopt language that mirrors the federal requirement.

Posting of billing agents drew a great deal of comment. As USWC pointed out, it is unlikely a customer is going to revist a station just to obtain billing information (Comments of USWC, p. 7). AT&T felt that posting billing agents would be unduly

burdensome and discriminatory (Comments of AT&T, p. 9). International Pacific noted that the cards would have to be changed every time a carrier changed billing agents (Comments of International Pacific, p. 4). NWPA noted that there are actually four providers at each phone that would have to be posted, and posting billing agents would be impractical since they change frequently (Comments of NWPA, pp. 16-20).

Mr. Lazar advocated that the full company name be placed on the posting. Mr. Lazar will be happy to know that each of the stickers and tent cards produced by ITI contain ITI's full name. However, the information on US West and GTE public phones is controlled by those companies, so ITI's full name does not appear on those instruments. If the Commission considers Mr. Lazar's suggestion, it should re-notice this portion of the rule so that other affected parties (e.g. local exchange companies) can respond.

The Commission should coordinate its posting requirements with those of the federal government. This will aid consumer understanding of the options they have at every phone, and will aid the Commission and OSPs in enforcing and complying with the Commission's requirement.

THE COMMISSION SHOULD ALLOW REASONABLE SURCHARGES TO BE TARIFFED AND COLLECTED (WAC 480-120-141 (4)(e))

Consumers like Mr. Bovee believe that hotels have to have telephones in rooms, so guests can call the office. Mr. Fluharty wants to pay for those phones in room rents or the price of

groceries. Of course, there is no true obligation of any establishment to make a phone available to its guests. Those that do provide that convenience should be allowed to charge a reasonable amount for that convenience. In the regulatory world, it is recognized that the "cost causer should be the cost bearer." In this context, it means that Mr. Bovee should not have to pay more in rooms or groceries so Mr. Fluharty can make lots of phone calls. The establishment should be allowed to charge Mr. Fluharty a reasonable sum for each call, to cover the cost of providing phones.

Allowing a surcharge means that there will be more phones for the Mr. Bovees and Fluhartys to use. As PCA pointed out, its financial survival is dependent on the collection of a modest surcharge. As more phones are made available, universal service is enhanced.

The broad language of the Commission's surcharge prohibition raised a concern in other commentors that ITI now shares. It would appear that the language, if read literally, would require the AOS provider to prohibit a hotel from collecting a surcharge at the front desk. As Fone America observed, this is placing an extraordinary policing responsibility on the operator service provider (Comments of Fone America, p. 31). USLD also raised the question whether it was the intent of the staff draft to prohibit hotel surcharges at the front desk (Comments of USLD, p. 4).

The simple solution is to allow OSPs to collect surcharges, but have them capped and placed in tariffs, as proposed by ITI. In

that manner, the owner of locations like the Park Lane can collect revenues for the use of the phones in the establishment, while consumers are protected against exorbitant charges. United has advocated that the Commission should recognize "reasonable" surcharges (Comments of United, pp. 4-5), and the method suggested by ITI, and adopted by other Commissions, will provide a means by which that objective can be met.

THE COMMISSION SHOULD NOT REQUIRE A SPECIFIC BRANDING SCRIPT OR BRANDING IN THE NAME OF THE CARRIER AND THE BILLING AGENT (WAC 480-120-141 (5)(ii))

No commentor argued in favor of the Commission's specific script, or requirement for billing agent branding. USLD made an eminently practical observation: "it is highly unlikely that a consumer will desire or be able to note two or even three separate corporate names at the time of the call for future billing reference." (Comments of USLD at 13) AT&T agreed that such branding would only confuse consumers (Comments of AT&T, p. 12).

While there is no advantage to consumers, there is significant detriment to operator service companies. The Commission should recall that <u>every</u> carrier must utilize billing agents at one time or another. Several commentors made the same point as ITI raised in initial comments - that it is impossible to know <u>who</u> the billing agent is before the consumer's billing information is supplied (Comments of AT&T, p. 12, fn. 10; Comments of International Pacific, p.2; Comments of NWPA, p. 19).

Commentors also recognized that the specific brand would be, in AT&T's words, "highly expensive and time-consuming" (Comments of AT&T, p. 12). Fone America pointed out that it would increase access costs, capital costs and data processing costs (Comments of Phone America, p. 17). Intellicall stated that the specific branding would be technically difficult for store and forward phones, and would cost in excess of $200 a phone for retrofitting (Comments of Intellicall, p. 24). International Pacific concurred that there would be significant costs associated with modifying software, the network, and switching costs (Comments of International Pacific, p. 2).

USLD also pointed out that the delay that would be required by the proposed brand would be annoying to consumers (Comments of USLD, p. 13). ITI can verify USLD's statement. Right after ITI was formed, in order to provide information to consumers, operators read an explanation of who ITI was on every call. Callers were swiftly annoyed at having to listen to this "commercial." Repeat callers were especially annoyed at having to hear this information several times. ITI had to recognize marketplace realities, and dropped the long script. The script proposed by the Commission would similarly annoy consumers whose only desire is to complete the call as swiftly as possible.

Since the Commission's proposed brand would not provide consumer information or protection, and would be impossible to implement, ITI recommends that this rule not be adopted.

THE COMMISSION SHOULD NOT REQUIRE REORIGINATION TO OTHER CARRIERS (WAC 480-120-141 (5)(c))

All of the commenting carriers agreed with ITI's assessment that reorigination to all carriers was not technically possible without engaging in splashing (Comments of AT&T, pp. 13-15; Comments of Fone America, p. 20 and 33; Comments of GTE, p. 3; Comment of Intellicall, pp. 17-20; Comments of International Pacific, p. 2-3; Comments of USLD, p. 10; Comments of USWC, p. 7).

ITI agrees with the recommendation of Fone America and AT&T that the carrier be required to reoriginate or give instructions to follow the preferred carrier's dialing instructions (Comments of Fone America, p. 20; Comments of AT&T, p. 15.) Even when reorigination is accomplished, the Commission must recognize that it is accompanied by the "loud piercing tones in my ear" that Mr. Bovee mentions in his letter.

THE COMMISSION SHOULD NOT IMPOSE A "TEN SECOND" RULE, UNLESS THE TIMING IS AVERAGE ANSWER SECONDS AFTER THE CALL REACHES THE CARRIER'S SWITCH (WAC 480-120-141 (5)(d)

As ITI argued in its initial comments, there is no need for a time requirement or quality of service requirement in the rules because the competitive marketplace will weed out performers that do not meet consumer's expectations.

Park Lane states that not even U.S. West currently meets a ten second after "0" dialed requirement, (Comments of Park Lane, p. 3). International Pacific says that the current technology does not exist to meet this standard (Comments of International Pacific, p. 5) and Fone America agrees that it is "simply unobtainable"

(Comments of Fone America, p. 23). The Commission should examine whether any carrier is currently achieving the goal posted in the rules.

Several commentors pointed out that the OSP is not in full control of the amount of time required to reach it (Comments of Fone America, p. 24; Comments of NWPA, pp. 18-19). The message must go through both the local exchange switch and the long distance carrier's switch before it reaches the operator toll center. While most consumers would not note a delay, it is possible for the delay to exceed ten seconds.

Fone America agreed with ITI that the Commission could establish a standard of answer of ten seconds from the time the call reaches the carrier's switch (Comments of Fone America, p. 25). As ITI pointed out, industry members traditionally measure their average answer seconds in this manner, and could report those measurements to the Commission.

ITI does not read the proposed rule to require every call to go to a live operator, as did the NWPA. If the rule actually does require that a live operator answer within ten seconds, then ITI agrees with the NWPA that such a rule would constitute a technical regression (Comments of NWPA, p. 18.)

ITI strongly urges the Commission to either delete this rule, or modify it to require an average answer speed of ten seconds after the carrier's switch is reached.

THE COMMISSION SHOULD NOT DEFINE PUBLIC CONVENIENCE AND ADVANTAGE IN TERMS OF US WEST OR AT&T SERVICE STANDARDS (WAC 480-120-141 (9)).

As pointed out in ITI's initial comments, ITI does not favor "raising the ladder" with regard to the entry of new competitors in Washington. In that light, ITI agrees with Fone America and Intellicall that this proposed rule is subjective, impossible to quantify, may be impossible to meet, and instills a inappropriate permanent advantage in those former monopoly providers of service (Comments of Fone America, p. 23; Comments of Intellicall, p. 22).

As noted in ITI's initial comments, the presence of competition in operator services is driving the larger providers to improvements. As AT&T adds services like major credit card billing, instant conference calling, multilingual operators and message forwarding, all consumers benefit from the service competition that results. The Commission's rules should encourage such competition, not discourage it.

IF THE COMMISSION ADOPTS A RATE CAP, IT SHOULD NOT UTILIZE U.S. WEST OR AT&T RATES AS A BENCHMARK

ITI firmly agrees with those commentors that stated that competition should be allowed to drive rates to costs, and that each carrier's rate should reflect the individual cost of that carrier (Comments of AT&T, p. 16).

ITI also agrees that there are significant legal barriers to establishing a rate cap, and that an arbitrary cap is

unconstitutional (Comments of Phone America, pp. 1-15; Comments of NWPA, pp. 7-12)

One of the reasons ITI proposed utilizing the rates of the highest interexchange carrier (as opposed to specifying AT&T or any other carrier) is because ITI recognizes the superior physical connections, amortized investments and financial advantages uniquely enjoyed by US West and AT&T (Comments of Fone America, pp. 25-26). ITI recognizes that the input costs for competitors exceed those of the former monopoly providers, as noted by International Pacific (Comments of International Pacific, pp.4-5). The Commission's rules could easily result in carriers being allowed to only charge $.50 for a call that they must pay the local exchange company $.54 to process (Comments of NWPA, p. 12).

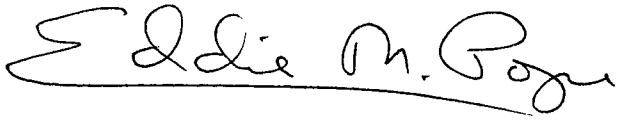
ITI's proposal of a different rate cap, with a capped subscriber surcharge is advanced as a practical solution to the Commission's dilemma. The rates charged by some carriers have provoked consumer concern (Comments of Fluharty, Johnson, Syring). ITI's experience in dealing with 39 state regulatory commissions has taught it that Commissioners are most concerned about rates, and will frequently cap rates at dominant levels unless given a workable alternative. ITI believes the solution adopted by Georgia and (in part) by Florida allows for these concerns to be met while competition is encouraged. That solution caps rates at the highest rate of interexchange carriers, and allows a tariffed subscriber surcharge of $1.00.

ITI agrees that this cap has no greater statutory or constitutional standing than that proposed by the Staff. However, it may have the very practical advantage of being a workable compromise that satisfies the legitimate needs of all parties. It is in this spirit that it is proposed by ITI.

CONCLUSION

ITI looks forward to working with the Staff and the Commission to craft effective rules that both protect legitimate consumer concerns and have enough flexibility for competition to flourish.

Respectfully submitted,



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