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November 3, 1990

VIA FEDERAL EXPRESS

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

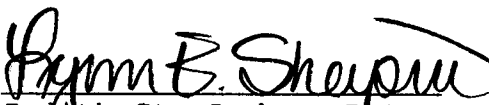
Re: Docket No. UT-900726

Dear Mr. Curl:

On behalf of Intellicall, Inc. ("Intellicall"), we enclose for filing in the referenced proceeding an original and 19 copies of the Reply Comments of Intellicall.

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

Respectfully submitted,
INTELLICALL, INC.

By: 
Judith St. Ledger-Roty
Lynn E. Shapiro

Its Attorneys

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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

_____)
In re:)
)
Amending the Commission's) Docket No. UT-900726
Telecommunications Rules)
Relating to Telecommunications)
Glossary, Alternate Operator)
Services, Pay Telephones, and)
Form of Bills.)
_____)

REPLY COMMENTS OF INTELICALL, INC.

Intellicall, Inc., ("Intellicall"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. Specifically, Intellicall rebuts the comments of US West Communications ("US West") and MCI Telecommunications Corporation ("MCI") arguing that they should not be included in the Commission's definition of "alternative operator services company." Additionally, Intellicall addresses AT&T's proposal that carriers be given an option as to the means to which they provide access to their networks (i.e. via "10XXX-0+," "950" or "800") and the Attorney General's proposal that the Commission establish a rate cap for local calls.

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I. **THERE IS NO REASONABLE BASIS FOR EXCLUDING LECS OR "COMPETITIVE TELECOMMUNICATIONS COMPANIES" FROM THE DEFINITION OF ALTERNATIVE OPERATOR SERVICE COMPANY PROPOSED IN WAC 480-120-021.**

As Intellicall stated in its Comments, contrary to the position of US West and MCI, there is no reason to exclude any company that provides operator services from the consumer and other safeguards proposed by the Commission. US West argues that because local exchange carriers ("LECs") operations are regulated, they should not be included in the requirements relating to an AOS. US West Comments at 4. MCI states that it files a price list with the Commission and then leaps from this fact to the conclusion that "as such, MCI, and other full service interexchange carriers is [sic] different and distinct from alternative operator service companies" and should be excluded from the Commission's definition. MCI Comments at 1. Exclusion of these companies from the Commission's AOS definition would exempt them from the safeguards that the Commission is considering.

The fact that LECs and interexchange carriers ("IXCs") file tariffs and price lists respectively does not support their exemption from the proposed requirements. AOS providers also file tariffs/price list with the Commission. Thus, this is clearly no basis for differentiating between these providers. If these carriers are not required to comply with the Commission's rules, the Commission's goals of providing notice to end users of the

company processing the call thereby enabling them to make an informed choice of carrier will be thwarted. For example, if all providers are not required to brand calls or post notices at payphone locations, consumers will have no way of knowing which OSP they have reached. The result would be increased customer confusion. Some pay phones would provide notice to customers as to which OSP is providing service,^{1 /} while at other phones end users would be left in the dark as to which service provider they had accessed.

All OSPs, including MCI and other "competitive telecommunications companies," serving transient locations often provide service to end users who have presubscribed their home or office telephones to a different IXC. For example, an end user presubscribed to MCI at home would, upon dialing "0" from a hotel presubscribed to AT&T have his or her call routed to AT&T for completion. Thus, there is no factual basis for distinguishing between the services provided by various OSPs. All should be subject to the same, nondiscriminatory regulations.

^{1/} It should be noted that LEC payphones, as well as private payphones are presubscribed to OSPs. It is not as if all LEC phones are presubscribed to the same carrier, a scenario which might at least minimize end user confusion. Rather, LEC phones may be presubscribed to any OSP. Thus, end users, if they are to be in a position to use their carrier of choice must be given notice of the carrier to which the LEC phone is presubscribed. The only way to insure such notice is to require LEC compliance with any consumer safeguards that the Commission adopts.

Additionally, the exemption of these companies from the Commission's rules would result in their gaining an unfair economic advantage and thus, unreasonable discrimination as they would not have to incur the expense associated with compliance. To impose these costs on some OSPs, but not all is unreasonable, particularly as all OSP's are providing identical services to the same transient market. Additional discrimination would result as hotels and other customers would choose carriers such as MCI for their interexchange services not because they offer better service, but because the customer obligations (i.e. posting requirements) would be less than with other OSPs as they would be exempt from the Commission's Rules.

In light of the fact that there is no basis for distinguishing between providers of operator services, any standards or regulations regarding the provision of such services adopted in this proceeding should apply to all providers. Consumers are entitled to safeguards adopted herein regardless of which carrier is providing the service.

II. OSPS SHOULD BE REQUIRED TO PROVIDE ACCESS THROUGH "800" AND "950" DIALING

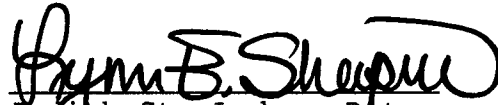
The Commission's proposed rules, although silent on the means, would require all OSPs to provide access to any registered interexchange carrier. WAC 480-120-138(12). As Intellicall and other commenters detailed in their comments, the unblocking of

Intellicall looks forward to discussing these issues further and resolving what it considers to be inconsistencies and problems with the rules as they are currently written at the scheduled meetings.

Respectfully submitted,

INTELLICALL, INC.

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"10XXX-0+" access opens payphones to massive fraud. See Intellicall Comments at 12-17; Fone America Comments at 21-22; US Long Distance, International Pacific, National Technical Associates Comments at 11-12. Access via 950 or 1-800 dialing on the other hand has minimal potential for fraud and can be provided without the expense of retrofitting payphones. Id.

AT&T would have the Commission adopt a requirement that access be made available by the method established by each carrier. AT&T Comments at 11, 15, 17. Thus, carriers would have a choice of providing access via "10XXX", "950" or "1-800". While AT&T's proposal is crafted to create the illusion of offering end users greater choice and carriers greater flexibility, in actuality it is self-serving and would allow it to maintain its status quo and provide access only via "10XXX". Thus, rather than allowing for increased consumer choice, the result of AT&T's proposal would be greater customer confusion as there would be no consistency in the means of carrier access, and greater costs to payphone providers who would be required to retrofit phones in order to provide access via "10XXX". ^{2/}

A far simpler way of promoting universal access given the technological constraints of unblocking "10XXX" would be to require AT&T to allow its end users to access its network via

^{2/} As all interexchange carriers of which Intellicall is aware provide access via "950" or "800," it is possible that payphone providers would incur the expense of retrofitting phone solely to allow access to AT&T via "10XXX." On balance, a far more equitable plan would be to require AT&T to provide access to its network via "950" and/or "800."

"800" or "950". Thus, the Commission should consider a modified version of AT&T's proposal which would require all carriers to provide access via "800" or "950". Such a requirement would eliminate the "10XXX" blocking issue, the need to retrofit CPE and the need to revise the network's screening functionality. Virtually all facilities-based IXCs of which Intellicall is aware currently provide such access, and AT&T has not indicated any reason precluding it from providing such access as well.

III. THERE IS NO EVIDENCE SUPPORTING A RATE
CAP ON LOCAL CALLS

Proposed WAC 480-120-141(a) provides that "charges no greater than the prevailing operator service charge ^{3/} . . . will be accepted as demonstrating that charges are for the public convenience and advantage." This provision, although unclear, appears to allow OSPs an opportunity to establish the reasonableness of different rates, an interpretation which Intellicall supports. See Intellicall Comments at 24.

In its Comments, the Attorney General proposes that the Commission cap the local rates of OSPs at the rates of US West and AT&T. The Attorney General's proposal does not provide for the filing of different, cost substantiated rates. In fact, the Comments states, "We do not believe that there is any public purpose served by allowing a COCOT to charge a higher rate than a

^{3/} The charges of US West for intraLATA service and AT&T for interLATA service are considered prevailing charges. WAC 480-120-161(a).

local exchange company." Attorney General Comments at 1. The Attorney General's proposal ignores the fact that different carriers have different cost structures. Any rate regulation imposed should be based on the individual carriers' costs and thus, the Attorney General's proposal is unreasonable as it may undermine the ability of carriers to earn a reasonable rate of return. See Comments of A. M. Vendettuoli; Comments of International Pacific at 4-5.

As discussed in the Comments of Fone America, OSPs cannot be denied an opportunity to earn a reasonable return on their investment. To do so would violate the Fourteenth Amendment to the United States Constitution. See Fone America Comments at 5-9. Additionally, if the Commission determines that rate regulation is appropriate for the operator services industry, it may impose such regulation only after an adjudicative proceeding which affords all effected parties an opportunity to be heard. RCW 80.36.140; See Comments of Northwest Payphone Association at 7-9; Comments of Fone America at 11-12. The Commission should therefore reject the Attorney General's rate cap proposal as it is violative of both the US Constitution and Washington law. Such a rate cap adopted in the context of a rulemaking proceeding, simply ignores OSPs actual costs and undermines their ability to earn any rate of return, much less a reasonable one.

IV. THE COMMISSION DID NOT CONSIDER TECHNOLOGICAL BARRIERS TO SEVERAL OF ITS PROPOSALS

The majority of Comments filed in this proceeding support Intellicall's position that several of the Commission's proposals are not technologically feasible.

A. Reorigination

As discussed in Intellicall's Comments, reorigination as proposed in WAC 480-120-141(5)(c) cannot technically be accomplished. See Intellicall Comments at 17-20. Other commenters provide additional support for Intellicall's position. AT&T indicates that its operators are technically incapable of connecting end user customers to another carrier of their choice and therefore recommends that AOS company operators be required to instruct the caller to hang up and dial his or her preferred carrier. ^{4/} AT&T Comments at 9. See also Fone America Comments at 20-21. As the Commission's proposed Rules will presumably require OSPs to provide access to their networks, WAC 480-120-138(12), a reorigination requirement is unnecessary and results in no additional public benefit.

^{4/} While Intellicall agrees with AT&T's recommendation in principle, as discussed above, carriers should not be permitted to choose the means to which an end user can access it. Rather, AT&T should be required to provide access to its network via "950" or "800."

B. Subcarrier Billing

There is universal agreement among those carriers addressing the issue that subcarrier billing, i.e. including the name of the underlying carrier and its billing agent on the face of the bill, as proposed in WAC 480-120-106 is not currently possible. See Intellicall Comments at 8-10; US West Comments at 4-5; Fone America Comments at 18-19; Northwest Payphone Association Comments at 16; Operator Assistance Network/Zero Plus Dialing Comments at 5-7. In light of the obvious impossibility of compliance with this provision at this time, the Commission should either delay implementation of or grant a blanket waiver from this requirement until such time as it is feasible.

V. CONCLUSION

The Commission should conclude that the public interest is best served by applying rules relating to operator services to all such providers. Such application is the only means of insuring that end users have notice of the carrier handling their call and thus, the ability to make an informed choice of carrier. Additionally, the Commission should recognize the expense and fraud potential stemming from the unblocking of 10XXX-0+ access and provide for universal access via "950" and "800" dialing. Finally, any rate regulation imposed on OSPs must provide an opportunity for providers to earn a reasonable rate of return.

CERTIFICATE OF SERVICE

I, Angel Morris, a secretary with the law firm of Reed Smith Shaw & McClay, do hereby certify that on this 3rd day of November, 1990, I caused a copy of the foregoing "Reply Comments of Intellicall, Inc." to be mailed first class, to the following:



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