

RECORDS MANAGEMENT  
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WASHINGTON TRANSP.  
COMMISSION



# FONE AMERICA, INC.

November 2, 1990

VIA OVERNIGHT

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

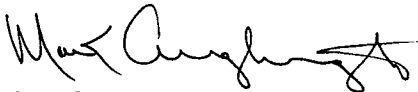
RE: Docket No. UT-900726

Dear Mr. Curl:

Enclosed for filing in the above-referenced matter are an original and twenty copies of the Reply Comments of Fone America, Inc. Please date stamp the additional copy and return it to us in the envelope provided.

Thank you for your assistance.

Sincerely,



Mark Argenbright  
Fone America, Inc.

00637

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF AMENDING RULES     )  
RELATING TO ALTERNATE OPERATOR     ) Docket No. UT-900726  
SERVICES.                                 )

REPLY COMMENTS OF FONE AMERICA, INC.

Fone America would like to reiterate its intent to participate fully in this proceeding to ensure that rules that are fair and equitable for the consumer and the industry alike are borne out of this process. Fone is pleased to see a basic broad consensus forming around general goals of the Commission. By incorporating many of the comments filed by parties in this docket, the proposed rules can be adapted to become acceptable, workable guidelines for the industry.

The Commission's basic concerns were echoed by comments submitted by consumers in this Docket. The issues in these comments seem to boil down to access to alternative carriers, rates charged, and information (posting and branding). Fone America continues to take all consumer dissatisfaction seriously. The company does not block access, ensures that rates charged are tariffed rates and that rate quotes are always provided, and spends considerable resources, both human and dollars, in an effort to provide and maintain required posting of information. One of the consumer comments, indicating a problem that had not been resolved, mentioned Fone America (along with another operator service provider). Pursuant to our standard practice, that complaint has

Page 1 - REPLY COMMENTS OF FONE AMERICA, INC.

00638

been forwarded to our investigators to determine whether the phone in question is now operating properly. In subsequent correspondence, we will report back to the Commission on our findings and resolution of the problem.

The following responds to the comments filed by other parties by category of issue:

I. Reorigination of calls to other carriers.

Many of the commentors point to the technical limitations involved in the proposed rule. Both AT&T and US West, the entities that the proposed rules advocate as the "standard" by which to judge all other providers, indicate that they can not comply with this requirement. The option advanced by AT&T and others is appropriate. The final rule should require the AOS to instruct the consumer to hang up and redial the preferred carrier using the dialing pattern provided by that carrier.

II. Operator response within 10 seconds on 90% of calls.

The comments identified in Fone America's opening comments bear out the technical limitations to this proposed rule. The Northwest Payphone Association makes a good point in regard to the ambiguity involved in using "...from the time the caller dials "0"." as the starting point for timing the operator response. This section should be removed.

III. Form of bills.

It is obvious from the comments that the requirement to have both the billing agent and the service provider on the bill is technically impossible at this point in time. As the LECs gain

this capability and the cost is reasonable, it would be appropriate to include the carrier name on the bill. US West indicates that it may have this capability in February 1991. Until, and then only where, these capabilities become available, there should be no requirement to have both billing agent and carrier names on the bills.

#### IV. Rate caps.

In a competitive industry, as AT&T indicates AOS is, rates charged will be governed by costs and the marketplace. Prior to adopting any of the rate related rules, Staff should endeavor to acquire a full understanding of the costs involved in this industry. There seems to be an underestimation of these costs as evidenced by comments submitted in regard to the Small Business Impact Statement. This full understanding can not be developed in a rulemaking process, as pointed out by the Northwest Payphone Association.

For the reasons recited in Fone America's initial comments, the U.S. Constitution and Washington law require that rates be remunerative and that they be carefully developed after opportunity for hearing.

#### V. AOS and LECs in an enforcement role.

Many comments indicate the basic unfairness of putting the AOS providers and LECs in the enforcement role with regard to other entities complying with Commission rules. The Commission has already adopted, in Docket UT-900733, a lawful and fairer approach to resolving "regulatory gap." In that rule, adopted by the

Commission on October 31, 1990, a LEC is prohibited from providing services to a company whose registration has been suspended. This same approach could be reflected in the Commission's rules relating to call aggregators by requiring the AOS to include in its contracts with aggregators a provision entitling the AOS to discontinue service to an aggregator, found by the Commission to have violated the rules. This places the penalty where it belongs--on the party failing to follow the rules. AT&T argues that an entity should not be penalized for the acts of third parties over which it exercises no management control. Fone America agrees.

The Commission should also recognize that the Telephone Operator Consumer Services Improvement Act of 1990, recently passed by Congress, requires an AOS to withhold payment of any compensation, including commissions, to aggregators blocking 950 and 1-800 access. The Commission should carefully consider whether its own rules would be pre-empted by the Federal legislation.

#### VI. Access to alternative carriers.

Fone America has never denied access to alternative carriers and works diligently to ensure that its customers do not engage in this practice. There seems to be agreement among the commentators and the federal government that access must be allowed. However, consideration must be given to the existence of fraud as it applies to allowing different forms of access. Additionally, the pay telephone owners advance a legitimate need to have some compensation for providing access to alternative carriers. Both Congress and the FCC have given credence to this argument. The

Page 4 - REPLY COMMENTS OF FONE AMERICA, INC.

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federal requirement to withhold compensation from aggregators that block 950 and 1-800 access will go far toward curbing the practice of blocking.

#### VII. Contracts.

Many comments reveal the cost considerations and general burden of the requirement to file all contracts. The Commission and its staff would also experience the resulting increase in costs and administrative burden associated with this requirement. The proprietary nature of this information is evident from the comments. If the rule is adopted, the Commission must provide safeguards to protect proprietary information.

#### VIII. Branding of Billing Agent.

Fone America and the other commentors have pointed out the confusion in both branding and billing that could arise because of the existence of multiple billing agents serving various areas of the country. The technological problems seem insurmountable and could cause, rather than eliminate, consumer confusion. This section should not be amended.

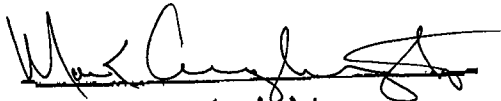
#### IX. Federal legislation.

Many of the comments suggest that the recent federal laws should be considered in this rulemaking in an effort to avoid duplication or possibly conflicting regulation. Fone America supports this argument and recommends carefully reviewing the "Telephone Operator Consumer Services Improvement Act of 1990" to avoid any Federal pre-emption problems and conflicting regulatory requirements.

x. Conclusion.

Fone America appreciates the opportunity to reply to other parties comments and looks forward to participating in the Staff's interest group meeting on November 8, 1990 to make the final rules fair, technically feasible and of benefit to consumers.

Respectfully submitted,



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