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November 5, 1990

Mr. Paul Curl
Secretary
Washington Utilities & Transportation
Commission
1300 South Evergreen Park Drive, S.W.
Olympia, WA 98504

Re: **Docket No. UT-900726**

Dear Mr. Curl:

Enclosed herewith is an original plus twenty (20) copies of the Reply Comments of U.S. Long Distance, Inc., International Pacific, Inc., and National Technical Associates to be filed in the above referenced docket. These conform to, and should be substituted for, the facsimile copy of this pleading transmitted to you earlier today.

Please date stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

Robert G. Berger
Counsel for U.S. Long
Distance, Inc., International
Pacific, Inc., and National
Technical Associates

RGB/cpy
Enclosures



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**Before the**

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
**Olympia, Washington**

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| In Re Proposed Amendments to WAC 480-120-021, -106, -138, and -141 Relating to Telecommunications Companies -- the Glossary, Alternate Operator Services, Pay Telephones, and Form of Bills | ) | Docket No. UT-900726 |

**REPLY COMMENTS OF U. S. LONG DISTANCE, INC.,**
**INTERNATIONAL PACIFIC, INC.,**
**AND NATIONAL TECHNICAL ASSOCIATES**

U. S. Long Distance, Inc., International Pacific, Inc., and National Technical Associates (collectively "the Commenters"), by their undersigned counsel, hereby jointly submit their Reply Comments in the above-captioned proceeding.

**DISCUSSION**

As stated in their initial Comments, the Commenters generally support many of the individual rule amendments proposed by the Commission in this proceeding, as well as the overall intent of those rules. At the same time, however, in a number of instances, the proposed rules would mandate performance standards that technically are not capable of being achieved; place operator service providers offering service at call aggregator locations in untenable oversight relationships with their subscribers; and

establish notice requirements redundant of, or in conflict with, parallel federal standards.

Although Commenters are generally supportive of reforms that protect and educate consumers, they cannot support those aspects of the proposed rules which may have an unfair or deleterious impact on all parties, including local exchange carriers ("LECs"), alternative operator services ("AOS") providers, and end users. Most importantly, unreasonably restrictive, technically unobtainable, or redundant regulations affecting an entire industry should not be adopted without careful review of the necessity for each regulation, the ability of carriers to comply, and the cost of compliance in relation to the benefit to be gained by consumers.

It is with these precepts in mind that the Commission should review the Comments of those parties which supported without qualification the proposed rule revisions. In particular, only the Attorney General and the Washington Independent Telephone Association ("WITA") urged wholesale adoption of the proposed rules. Neither party, however, addressed any of the individual rules with specificity. Instead, both submitted extremely cursory exhortations to the Commission urging it to adopt the proposed revisions in response to perceived past problems. Both consisted of broad generalities rather than the pragmatic considerations incident to an effective, even-handed regulatory scheme.

By contrast, a number of other commenting parties addressed the same pragmatic infirmities raised by the Commenters in their initial Comments.

## I. Interexchange Carriers Properly Are Included Within The Definition of Alternate Operator Services Companies (WAC 480-120-021)

Only one party, MCI, submitted comments challenging the proposed inclusion of all operator services providers (except for LECs) providing service to call aggregator locations within the definition of AOS providers. The sole rationale offered by MCI in support of its position was that, as a "competitive telecommunications provider," MCI's services are subject to tariff; hence, MCI should be exempted from the critical consumer protection provisions of the proposed rules.

Current regulation of IXCs such as MCI, however, in no way ensures the type of necessary consumer protection embodied in the rules this Commission has now proposed, or for that matter, as are embodied in the parallel federal legislation signed into law in October. Current state regulation of companies such as MCI does not require that calls to other carriers via 800 or 950 not be blocked. Nor is MCI currently subject, on an intrastate basis, to the notice and branding requirements that are the only real guarantors that consumers will understand which carrier is servicing a call, and that they have the option of instead accessing their carrier of choice. Clearly, all other similarly

situated IXCs recognize the critical distinction between the impact of current regulation and that of the proposed rules, for none formally challenged the necessity or desirability of including IXCs within the definition of AOS providers.

Moreover, the recently passed federal Act specifically includes all IXCs within the definition of "providers of operator services."[1/] As such, with respect to interstate traffic, MCI is subject to the same consumer safeguards, including requirements for branding of calls, unblocking, access to other carriers, and posted notice requirements, as are all other AOS providers. If consumers are to receive at least equal protection with respect to intrastate traffic, a similar result should attach here and the definition of AOS providers, as proposed, should be adopted.

## II. There Is A Critical Need To Ensure The Proprietary Nature Of Customer Lists And Contracts (WAC-480-120-141(1))

No party challenged the Commenters' assertion as to the critical importance of protecting the proprietary nature of customer lists and contracts, should the proposed filing requirement for such lists and contracts be adopted. Moreover, two additional parties submitted Comments strongly supportive of the

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1/ The federal legislation adds a new section, 47 U.S.C. §226, to Title II of the Communications Act, which states in pertinent part:

> The term 'provider of operator services' means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services. (47 U.S.C. §226(a)(9))

Commenters' position.[2/] AT&T went so far as to oppose the required filing of contracts due to the danger to the confidentiality of such market-sensitive information that would accompany the filing of contracts with the Commission.[3/] AT&T and Intellicall pointed out both the heavy administrative burden which the filing of AOS provider contracts and customer lists would place both on providers and the Commission alike, and the countervailing absence of any measurable offsetting benefits to consumers. No party, even those supporting adoption of the rules as a whole, articulated any perceived benefits for such a requirement.

Accordingly, while the Commenters do not oppose in principal such a filing requirement, they urge serious deliberation before any such rule is adopted, and recognition of the critical necessity of providing appropriate safeguard of confidentiality if such a rule ultimately is deemed necessary.

## III. AOS Providers Should Not Be Required To Serve As Both Policemen And Guarantors Of Aggregator Performance (WAC 480-120-141(2))

Only one party, United Telephone, specifically supported the proposed requirement that AOS providers legally be made policemen and guarantors of call aggregator performance. On the other hand, the vast majority of parties which addressed this issue opposed such a requirement, principally for reasons similar to those

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2/ See Comments of AT&T at 5-6; Comments of Intellicall at 21.

3/ Comments of AT&T at 6.

articulated in the Commenters' initial pleading.[4/] Ironically, the sole reason United Telephone propounded for adopting the measure was to ensure that LECs such as itself (which under the proposed rules inexplicably are exempted from like regulation as AOS providers when offering like services), are not held liable for potential compliance failures of call aggregators. Such a rationale may hardly be deemed persuasive.

Neither United Telephone in its specific endorsement of the proposed rule, nor the Attorney General or WITA in their generalized endorsements, addressed the fact that AOS providers have no ongoing control over the activities of call aggregators and, in fact, could not practically police all aggregator telephones on a daily basis to ensure that Commission requirements are being met. It is highly inappropriate to subject AOS providers to penalty for failure to police separate corporate entities over which they have no ongoing control for activities that they were not aware of.

By contrast, the newly enacted federal legislation, the Telephone Operator Consumer Services Improvement Act of 1990, H.R. 971, 101st Cong., 2d Sess., Rec. S14304 (1990), strikes a far more appropriate balance: AOS providers are required to include in contracts or tariffs, provisions that call aggregators comply with requirements pertaining to non-blocking, posting of appropriate

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4/ See Comments of AT&T at 6; Comments of Fone America at 29-30; Comments of Northwest Payphone Association at 14-16; Comments of U S West at 1-2.

notices, and appropriate charges. Moreover, AOS providers are precluded from continuing to pay commissions to aggregators once they have knowledge that aggregators are failing to comply with such contract or tariff provisions. At the same time, however, responsibility for compliance is placed directly on the aggregators, where it belongs.

Accordingly, Washington's proposed rule should be similarly modified in order that responsibility for compliance be placed directly with those parties which control the means of compliance, i.e., call aggregators.

## IV. The Proposed Notice Requirements Are Seriously Flawed

### A. It Is Unreasonable To Mandate That AOS Providers Meet Proposed Performance Standards Which They Do Not Have The Technical Capability Of Achieving

#### 1. Reorigination (WAC 480-120-141 (5)(c))

It should be sufficient to note that, without exception, all parties which specifically addressed the Commission's proposed reorigination requirement stated without qualification that no carrier, whether an LEC or AOS provider, currently has the capability throughout its system to reoriginate telephone calls, as as the Commission would require.[5/] Moreover, even if reorigination were universally possible, which it is not, the requirement of reorigination would unfairly penalize payphone providers, whose

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[5/] See Comments of AT&T at 9, 13-15; Comments of Fone America at 20-21; Comments of GTE at 2; Comments of Intellicall at 17-20; Comments of U S West at 7.

instruments would be tied up for the duration of reoriginated calls by activities which produce revenue solely for corporate entities other than the instrument providers themselves. Moreover, the instrument providers would be responsible for paying access charges to the LECs for the entire duration of the reoriginated calls, for which they would never be compensated.

In sum, the requirement of reorigination is not technically achievable at this time. Moreover, even if it should become technically feasible in the future, it would place an unreasonable, and arguably illegal, economic penalty on payphone providers. Accordingly, the rule should be rejected. Rather, the federal requirement that within a specified period all providers must offer unfettered access to 950 and 800 services, combined with intensive customer education and information efforts, will more than adequately protect consumers.[6/]

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[6/] AT&T, Comments at 3, was the only party which urged the Commission to also mandate the complete unblocking of 10XXX access. AT&T is the only carrier which currently relies exclusively on 10XXX, having disdained offering an alternate 950 or 800 access number. Complete unblocking of 10XXX, however, would leave aggregators open to the potential for widespread fraud and abuse. See Comments of Fone America at 21-22; Comments of Intellicall at 13-14. The recently enacted federal legislation concerning operator services explicitly recognizes this danger, and requires the FCC to adopt regulations which ensure consumer access to the carrier of choice, while protecting against the danger of widespread fraud. This Commission, therefore, should hold in abeyance any requirement for the unblocking of 10XXX until such time as the FCC has acted, in order to avoid adopting conflicting requirements or requirements which may be rendered unnecessary by federal action.

2. The Requirement That 90 Percent Of Operator Services Calls Be Answered Within 10 Seconds (WAC 480-120-141 (5)(d)

Without exception, all parties which addressed the proposed requirement that a minimum of 90 percent of all calls be answered by an operator within ten seconds from the time the caller dials "0" uniformly demonstrated that compliance is not possible given the current state of technical capabilities.[7/] Moreover, those parties rightly pointed out that the principal means of insuring compliance, i.e., the type of switching equipment employed, is controlled by the LEC which provides the public access line, not by the AOS provider. Hence, it would be a hollow gesture to mandate that AOS providers insure a standard of performance over which they lack the principal means of compliance and which in many cases it is not technically possible to achieve.

3. Branding Of Billing Agents (WAC 480-120-141 (5)(a)(iii))

Without exception, those parties which addressed the proposed requirement for the branding of the billing agent in addition to the double branding of the provider, uniformly opposed such a requirement.[8/] Their collective opposition was premised on the extraordinary technical difficulty and massive economic costs associated with compliance. At the same time, no party suggested

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[7/] See Comments of Fone America at 23-25; Comments of Northwest Payphone Association at 17-19.

[8/] See Comments of AT&T at 12; Comments of Fone America at 17-18; Comments of Intellicall at 24; Comments of Northwest Payphone Association at 19.

any realistic consumer benefits that would accrue from a requirement of branding the billing agent.

Certainly it is in the best interest of everyone that consumers not be misled or confused with respect to the identity of the carrier handling a given call, or the means by which consumers may ascertain rates in the first instance and verify or challenge charges after the fact. However, simply inundating consumers with information at times and in formats which are not of serviceable use may tend to exacerbate consumer confusion and frustration rather than remedy it. Accordingly, a branding-of-the-billing-agent requirement should be rejected.

B. A Notice Stating That AOS Rates May Be "Higher Than Normal" Would Be Misleading And Unfair (WAC 480-120-141 (4)(a)

The Commenters in their initial pleading addressed at length the reasons why a notice stating that "services on this instrument may be provided at rates that are higher than normal" would be unfair, misleading, and in certain instances, inaccurate. The one other party, AT&T, which addressed this issue[9/] similarly demonstrated the misleading, and at times totally inaccurate, nature of such a notice. By contrast, no party suggested that such a statement would be generally desirable or accurate.

Clearly, as several of the brief Comments filed by individual users suggested, there have been unfortunate instances of consumers

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9/ See Comments of AT&T at 8-9.

discovering after the fact that rates charged for a call were higher than expected. The question presented thereby, however, is how best to prevent similar problems from occurring in the future; the question is not simply a matter of whether to adopt the specific proposed notice or opt for no notice at all. A far more effective and even-handed method of informing consumers would begin with the posting of an objective notice by payphones disclosing the identity of the provider and how to secure a rate quote at no charge prior to placing the call. The approach taken by this Commission should parallel, or adopt, that of the federal legislation which requires objective, even-handed informational notices while rejecting pejorative or misleading language.

## V. The Proposed Cap On Rates Would Interfere With The Dynamic Workings Of The Marketplace And Penalize Carriers That Are Not Similarly Situated (WAC 480-120-141 (9)(b))

At first blush, the imposition of a rate cap at the level of charges by U S West for intraLATA and AT&T for interLATA calls may appear a reasonable response to the problem of consumer frustration reflected in various individual Comments filed in this docket. Moreover, imposition of a rate cap seemingly would allow the Commission in the first instance to avoid the highly burdensome, onerous task of conducting individual rate proceedings for each AOS provider, while at the same time assuring consumers that charges would be within a certain range of expectations.

However, imposition of a rate cap based on an arbitrarily selected benchmark which may bear little or no relationship to the costs of capital and operating costs of individual AOS providers, as is proposed in this proceeding, is arbitrary and unfair. Such a rate cap would fail to take into account the varying sets of economic circumstances under which different AOS providers must conduct business, as well as value-added services, such as multilingual operators, offered by AOS providers. Nor would the proposed "escape clause" which would allow AOS providers to charge higher rates upon meeting the burden of presenting "persuasive contrary evidence" to the Commission, resolve the problem. Rather, the availability of such an option under present circumstances may well encourage a spate of individual rate cases, thereby significantly increasing the Commission's burden and obviating the administrative benefits of a rate cap in the first place. For all these reasons the vast majority of industry commenters, both AOS providers and LECs, opposed the imposition of a rate cap.[10/]

As even the Attorney General recognized,[11/] the AOS provider industry has only had a "brief history," albeit a dynamic one. Providers which did not have the inherent advantages of the former members of the AT&T system initially had significantly different

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[10/] See Comments of AT&T at 15-16; Comments of Fone America at 6-15; Comments of Northwest Payphone Association at 5-6; Comments of United Telephone at 1-2.

[11/] In his Comments, the Attorney General favored the rate cap, but failed to offer any specific analysis or justification for it.

capital and operating cost requirements than U S West and AT&T. In consequence, there was a "shake out" or transition period, which saw a number of consumer complaints about costs.

There has now been a rapid diminution nationwide in the number of consumer complaints as the imperative of competition has taken hold and begun to drive prices down. Moreover, expanded efforts by both private industry and regulators towards consumer education and information are being made and benefits realized accordingly.

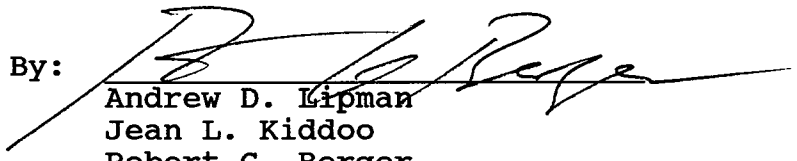
In this dynamic atmosphere, therefore, it would be counterproductive to arbitrarily adopt rate caps which may or may not reflect the fiscal requirements of an individual carrier. It would make far more sense for this Commission to forestall any urge to act precipitously; permit the workings of the marketplace to take place; and focus its efforts on facilitating consumer information and education, as the majority of the proposed rules would do.

## CONCLUSION

In sum, the Commenters urge the Commission to adopt the rules proposed in this docket once the clarifications, modifications, and deletions to those rules which have been addressed in the Commenters' initial and reply Comments have been incorporated.

Respectfully submitted,

U.S. LONG DISTANCE, INC.
INTERNATIONAL PACIFIC, INC.
NATIONAL TECHNICAL ASSOCIATES

By: 

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Dated: November 5, 1990