

ORDER NO. 97-165

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 775

In the Matter of an Investigation of Toll  
Restriction Service, Billed Number  
Screening, Local Exchange Carrier Billing  
and Collection Practices, and Related  
Issues. )  
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ORDER

**DISPOSITION: POLICIES ADOPTED; INVESTIGATION CLOSED**

On October 17, 1995, the Public Utility Commission of Oregon (Commission) directed its staff to open an investigation into toll restriction service, billed number screening, and associated billing and collection practices of local exchange carriers. Order No. 95-1326.

Administrative Law Judge Allen Scott held a prehearing conference in this matter on December 21, 1995, in Salem, Oregon. Appearances were made on behalf of U S WEST Communications, Inc., (USWC), GTE Northwest Incorporated (GTE), United Telephone (United), AT&T, MCI, Ameritel, and Telnet.

On January 19, 1996, two parties to the proceeding, Ameritel and Telnet, filed motions for interim relief. The Administrative Law Judge issued a ruling denying the motion on March 11, 1996. The movants then filed a request for certification of the ruling to the Commission on March 22, 1996. The Administrative Law Judge certified the matter to the Commission on June 15, 1996. On July 1, 1996, the Commission issued Order No. 96-170 affirming the ruling of the Administrative Law Judge.

A hearing in this matter was held on August 20 and 21, 1996, in Salem, Oregon. Briefs were filed thereafter, with final briefs submitted on November 20, 1996. In March 1997, at the request of the Administrative Law Judge, the parties filed additional comments relating to the impact of the Telecommunications Act of 1996 on the issues presented in this case.

**GENERAL BACKGROUND AND FINDINGS**

This investigation grew out of disputes between two "third-party dial tone providers," Ameritel and Telnet, and various local and interexchange telecommunications providers. Ameritel and Telnet (called "customers of record" or "third-party dial tone providers" herein) lease residential lines from local exchange carriers (LECs) such as USWC and GTE, and then "rent" or resell them to individuals, "end users," for their residential use. Although the third-party dial tone providers do not usually determine why the end-users seek their services, they assume that most have had their service with the local exchange carrier terminated because of nonpayment of charges or have abandoned service because of substantial accrued charges.

Ameritel and Telnet remain the customer of record with respect to each line. The person to whom they rent the line receives a directory entry. Ameritel and Telnet charge \$49.95 and \$43-\$45, respectively, for the basic residential service. They also provide a limited amount of additional services, such as non-published numbers and call waiting, for additional charges.

Both Ameritel and Telnet have been in business for about four years. Ameritel is headquartered in Oregon and operates in nine states. It has 2,000 USWC lines in Oregon and 350-400 GTE lines in the state. It has about 35 employees. Telnet operates only in Oregon and has about 1,000 USWC lines and 250-300 GTE lines in the state. It has six employees. Neither company does significant business in areas served by local exchange carriers other than USWC and GTE and neither provides service to business customers except on a very limited scale. During the 12 months preceding the hearing in this matter, Ameritel paid about \$670,000 to USWC and GTE for the local service it rents to its end-users.

Ameritel and Telnet assert that the service they provide furthers the Commission's goal of insuring universal service in Oregon. They argue that the statute establishing that goal, ORS 759.015, does not make an exception for "the poor or the unemployed," who have as much need as others for "the lifeline that is provided by local exchange service."

### **Toll Restriction Service and Billed Number Screening**

Ameritel and Telnet seek to prevent their end-users from incurring any toll charges on the leased lines. When customers sign up for the service, both companies inform them that they are not to make or receive toll calls that are charged to the line. Ameritel provides the information through a written policy statement and Telnet through a written agreement signed by the end-user. Each company offers to sell every end-user a prepaid calling card as a means of allowing the end-user to make toll calls that are not charged to the line. Few of their customers purchase such cards.

Both companies also purchase toll restriction service (TRS) and billed number screening (BNS) for each line they buy from the local exchange carrier. TRS, for which USWC charges \$2 per month and GTE \$1.50-3.40, depending on the degree of restriction, is designed to block outgoing toll calls. An LEC implements TRS by placing an information digit with line attributes on the line to be restricted. On an originating call, the central

office checks the information digit, and if it is not "all clear," sends the call to a special part of the switch for special processing. The special processing directs the call to an intercept, which provides an announcement that the line is restricted.

The types of calls blocked by TRS vary somewhat with the carrier involved. Generally, "1" and "0" calls are blocked, as are directory assistance, 1-976 and 1-900 calls. TRS does not, however, block all calls to the toll network. 1-800/888 calls are not blocked by any carrier. Some carriers allow 1-950 calls because toll carriers use this form of access to screen each call by the caller's PIN number.

BNS is designed to prevent incoming calls such as collect calls, calling card (or credit card) calls, and third-party billed calls from being charged to the line. BNS may be a part of or separate from TRS. GTE charges separately for BNS. USWC includes it automatically with TRS.

When a customer purchases BNS for a telephone number, the LEC makes an entry into a line information database (LIDB) indicating that no collect, calling card, or third-party bill charges are to be levied against the telephone number. The LECs each use different databases. When a caller attempts to charge a collect, calling card, or third-party call to a telephone number, the carrier of the call is supposed to check the LIDB associated with the number. This check is called a "LIDB dip." If the LIDB dip indicates that the line has BNS, the carrier is not supposed to complete the call.

Although Ameritel and Telnet purchase TRS and BNS on each line they rent to end-users, toll charges appear on many of the bills sent to the companies each month by the LECs for the rented lines. Ameritel estimates that 75 percent of the bills have such charges each month. Telnet estimates that 35 percent of its bills have new toll charges each month.

The toll charges on the supposedly restricted lines occur in many ways. According to the record in this case, the greatest incidence results from the use of calling cards. Interexchange carriers (IXCs) such as MCI and AT&T offer the cards to Ameritel's and Telnet's end-users through telephone promotions. The IXCs then send the cards to the end-users, not to Ameritel or Telnet, the customers of record. Any charges on the card are assessed to the line, which is in Ameritel's or Telnet's name, not the name of the end user. Ameritel and Telnet are not aware that the cards have been issued until they receive a bill with charges incurred through use of the card. Card holders use the cards primarily to circumvent BNS by charging calls from anywhere to the number the card holder rents from the third-party dial tone provider. The card holder may also use the card to circumvent TRS by accessing the IXC through an 800 number not blocked by TRS.

Various other circumstances lead to charges on the supposedly restricted lines. Incoming toll charges occur despite the presence of BNS for several reasons in addition to the use of calling cards described above. If the IXC operator fails to perform the LIDB dip, which informs the IXC that the line has BNS, the call may go through despite the restriction. Similarly, if the LIDB is not up-to-date because of failure of the LEC to enter

information into it indicating that BNS is on the line, calls may go through. Additionally, on infrequent occasions the dip takes so long to perform that the line "times out" and the call goes through automatically. Moreover, international collect calls are not usually prevented by BNS because the foreign operators have discretion to ignore signals indicating the presence of the restriction. The evidence indicates that the most common cause of problems with TRS is the failure of the LEC to install the TRS indicator when ordered by a customer. In some instances, toll calls made to an 800 or 888 prefix are ultimately "converted" to a toll call. In other cases, an end-user may be able to convince an operator to put a call through despite the block.

Ameritel provided a summary of the disputed toll charges billed to it by USWC and GTE during a period of about 10 months from July 1995 to May 1996. It shows the type of call and the IXC involved. The total charges billed by USWC were about \$96,000. Of this, 47 percent resulted from the use of calling cards; 28 percent from collect international calls; and 17 percent from collect domestic calls. Only 2 percent were from direct dial calls. For GTE, the total for the period was about \$17,000, with 37 percent coming from calling card calls, 22 percent from international collect calls, and 25 percent from domestic collect calls. About 12 percent were from direct dial calls, including 1-800 and 1-900 calls. MCI and AT&T accounted for 78 percent and 68 percent of the charges billed to Ameritel by USWC and GTE, respectively. Ameritel paid about \$40,000 to USWC and GTE during this period for the toll blocking services.

To discourage their customers from making toll calls, both Ameritel and Telnet levy a penalty on each account upon which such charges occur. Ameritel assesses a penalty of \$10 on each line upon which toll charges occur. It also contacts the end-user if the toll charges are \$20 or more a month and warns him/her not to incur toll charges. Telnet assesses a penalty of \$5 for each toll charge on a line up to a maximum of \$25 per month. Both companies retain any penalty charges they collect as reimbursement for costs they incur in attempting to prevent the toll calls. Both companies on rare occasion terminate service to a customer who has made toll calls. That sanction is applied only if the charges are very large or the customer is otherwise an undesirable customer.

The LECs bill the third-party dial tone provider on behalf of the IXCs as well as for their own charges. Both Ameritel and Telnet decline to pay any of the toll charges incurred by their end-user customers. They contact the LECs to dispute each such charge listed on the bills they receive. Ameritel and Telnet do not attempt to collect the toll charges from their end-user customers. They do offer to provide the IXC with the name and address of the end-user but, according to their testimony, the carriers do not want that information.

Ameritel and Telnet do not want to have any contractual relationship with any of the IXCs (including USWC with respect to its handling of intraLATA calls). They argue that the blocking services they have paid for should prevent toll calls and that if the services do not do so, the telecommunications provider involved, LEC or IXC, should not look to the third-party dial tone provider for payment but should either attempt to collect from the end-user customer who made or accepted the calls or should accept responsibility for the charges itself. Ameritel and Telnet point out that they pay USWC and GTE thousands

of dollars each month for TRS and BNS. They acknowledge that they have known for several years that TRS and BNS are not foolproof even if implemented and operating properly.

Some of the carriers involved in this case have sought to collect the toll charges from Ameritel and Telnet. Ameritel and Telnet have responded by filing complaints with the Commission against these companies. These complaints await resolution.

### **Scope of the Proceeding**

This is a policy-making proceeding. The Commission opened it at a public meeting and provided notice and an opportunity to participate to a large list of persons and entities involved in the telecommunications industry. Although the factual setting presented by the parties to this case, and the disputes among them, have been instructive to us in our formulation of policy, that policy is intended to apply prospectively to all entities over whom we have authority. We do not intend that it should apply retrospectively to the complaints pending before us, which must be resolved by reference to the facts, policy, and law existing at the time of the relevant events.

### **ISSUES**

The parties focused on a list of issues designed to establish Commission policy with respect to TRS and BNS. The policy decisions will help prevent or resolve disputes such as those which developed between Ameritel, Telnet, and the carriers involved in this case.

### **UNDISPUTED ISSUES**

Several issues are not in serious dispute. They include the descriptions in the general findings above of TRS and BNS and how they operate. The parties also agree that third-party dial tone providers should obtain certificates of authority and should pay residential rates for service installed at their clients' homes. Agreement also exists that the Commission's rules regarding allocation of partial payments and disconnection should not be changed. A more full description of these undisputed issues is set out at the end of this order.

### **DISPUTED ISSUES**

Most of the contention in this docket centers on two general issues:

The responsibility for payment of toll charges incurred on lines having TRS and BNS;

Whether changes should be made in TRS or BNS or in the procedures associated with them.

The Commission believes that it is necessary to promulgate explicit policy relating to these issues. The investigation was occasioned by significant disputes relating to the services that purport to block toll calls and to the responsibility for payment for charges incurred on lines with these services. We have not dealt with these issues in any rigorous fashion before. We conclude that our policy be spelled out now.

As we noted above, the policy statements we set out are intended to be prospective. The pending complaints involving several of the participants will have to be resolved by reference to the specific facts and legal context of those cases. We cannot resolve them in this investigation. Ameritel has asked, essentially, that we intimate in this order the likely outcome if the complaints are adjudicated. However, we will not attempt to do so. The purpose of this investigation is to establish policy, not to adjudicate existing disputes, and it would be inappropriate to attempt such resolution.

Some of the parties have cited existing tariffs as legal support for their views on some of the issues in this case. Since, however, we are looking at possible new policies in this order, existing tariffs are not dispositive of any issue. Our task in this case is to determine if current policy, expressed sometimes in tariffs, should be changed. We are obviously not bound by existing policy if we conclude that change is necessary.

This investigation was initiated by a request from Staff. We will therefore organize our discussion by reference to the several proposals proffered by Staff. They cover the matters set out in the Issues List and provide a good basis for consideration of our policy. We also consider recommendations made by other parties.

## **I. Responsibility for the Charges; Positions of the Parties**

The parties offered their views, sometimes sharply differing, as to responsibility for the charges among the following entities:

The end-user.

The customer of record (third-party dial tone provider).

The LEC or competitive local exchange service provider.

The IXC.

**End-User.** The parties appear to be in agreement that the end-user of the service (that is, the customer of Ameritel or Telnet in this case) is "responsible" for the charges for completed calls. However, the parties noted that the difficulties of collection often make that assignment of responsibility of little practical value. Moreover, some parties noted that existing tariffs do not allow LECs or IXCs to pursue collection from the end-user, because that person is not their customer.

**Staff.** Staff's recommendations regarding responsibility for payment of toll charges may be summarized as follows.

LECs should be responsible for toll charges only under these circumstances: a) The LEC fails to clearly explain to the customer what TRS and BNS do and do not do; or, b) The LEC fails to implement TRS and BNS as described in tariffs when the services are requested by a customer.

IXCs should not bill the customer of record when the IXC does not check for BNS or does not honor a BNS indicator.

Carriers, including IXCs and LECs, should not bill the customer of record for toll charges incurred by personal 1-800 or 1-888 numbers or by calling cards when those numbers or cards were issued without confirmation from the customer of record. The carriers also should mail the cards or personal number to the billing address of the customer of record. This policy would be limited, of course, to carriers and situations over which the Commission has jurisdiction.

LECs should not be responsible for toll charges incurred in circumstances beyond the LECs' reasonable control.

The customer of record should be responsible to pay the LEC (or IXC) for all charges on the bill other than in the circumstances described in the above recommendations.

**Ameritel.** Ameritel's views may be summarized as follows: 1) the end-user of the service is responsible for toll charges; 2) the LEC or IXC, not the customer of record, is responsible for toll charges because it has "control" over the matter; and 3) charges resulting from calling cards are a "matter between the card issuer and the card recipient, not the third-party dial tone provider."

In support of its position, Ameritel cites certain FCC orders, including *In the Matter of General Plumbing Corporation v. New York Telephone Company and MCI Telecommunications Corporation*, E-93-100 and E-93-101, adopted June 17, 1996; *In the Matter of Chartways Technologies, Inc. v AT&T Communications*, E-88-72, adopted August 11, 1993; and *In the Matter of United Artists Payphone Corporation v. New York Telephone Company and American Telephone and Telegraph Company*, E-90-181 and E-90-182, adopted August 6, 1993. In *United Artists*, the FCC adopted the rationale that the end-user who places an operator-assisted call or the billed party who accepts the charges, rather than the third-party dial tone provider, is "ordering" service from the IXC through an affirmative act.

**Telnet.** Telnet's views may be summarized as follows:

It agrees with Staff's view set out in 1 and 2 above, except that it believes third-party dial tone providers should also not be liable for toll charges incurred in circumstances beyond their reasonable control.

It agrees with Staff's view set out in 3 above. It argues that the policy should be extended to interstate toll traffic to the extent that bills for local exchange service are used to bill and collect for this toll traffic.

It believes that liability for calls in which a LIDB dip is not performed should be extended to international carriers. According to Telnet, there is no reason that international carriers should be exempt from the financial consequences of their failure to make a LIDB dip.

It disagrees with Staff's position set out in 5 above. It requests, instead, that a workshop involving third-party dial tone providers and LECs and IXC's be convened to develop means of cooperation in collecting toll charges from end-users.

**AT&T.** AT&T argues that third-party dial tone providers should be liable for calls made on the lines they provide to end-users. It notes that its interstate tariff establishes such liability. It agrees with Ameritel that "control" is the key issue as to liability, but asserts that control in the situation presented in this docket is with the third-party dial tone providers. It argues that the FCC decisions in *General Plumbing* and *United Artists, supra*, are either inapposite to the situations involved or are contrary to Ameritel's position. It argues that the *Chartways* decision, *supra*, in fact supports AT&T's position. In that case, Chartways operated a PBX which allowed company employees to place long distance calls. Unauthorized interlopers broke the access code and made toll calls to Pakistan. AT&T pursued collection of the charges from Chartways. The FCC ruled that Chartways was liable for the charges because it had the capability to restrict access to and egress from the PBX or otherwise to suppress or eliminate the unauthorized use of the PBX.

Here, AT&T argues that Ameritel and Telnet (and other third-party dial tone providers) have "complete and direct control" over their customers' access to the public switched network, even if TRS and BNS fail. They can exercise control by changing the means of selecting their customers, by requiring a deposit, or by provisioning their service by way of public access lines and "smart telephones," which allow for use of Originating Line Screening (OLI), a service which provides much greater protection against toll fraud than do TRS and BNS. This degree of control, AT&T asserts, makes the third-party dial tone providers liable for toll calls made by the end-users.

**MCI.** MCI's position is that, as a matter of public policy, the third-party dial tone providers should be held responsible for the toll charges incurred by their end-users. MCI argues that the third-party dial tone providers are attempting to pass on to the IXC's the known risk represented by the end-users, who, for the most part, have purchased the services of the third-party dial tone providers because they have substantial unpaid bills



for telecommunications services. MCI asserts that the LECs should be liable for toll charges only if they have willfully failed to implement TRS or BNS. The IXCs should not, in MCI's view, be liable for toll charges under any circumstances.

MCI opposes Staff's recommendations relating to calling cards (*see* Staff recommendation 3 above). MCI avers that it would be impractical and expensive to require IXCs to make LIDB dips before issuing a calling card to those whom it reaches in one of its marketing efforts. The LIDB dip, MCI points out, is a computer function used to determine whether a collect or third-party billed call should be made to a specific line. An IXC required to use the dip as a method of screening would have to make its telemarketing calls as a collect or third-party billed call, an unworkable process. Doing so would also be very expensive, as MCI has to pay 2.5 cents for each dip. Moreover, the dip shows only whether the line is restricted from receiving charge calls, not whether the customer should or should not have a calling card. MCI also claims that as it issues calling cards only to those who have chosen MCI as their carrier, the LEC should be able to determine if there is a restriction on the line when MCI sends the LEC notification of the customer's selection of it as the long-distance carrier.

MCI also opposes changes relating to verification of the identity of customers, as recommended by Staff in Staff recommendation 3 above. MCI attempts to determine if the person reached by the telemarketers is a head of household and will be responsible for paying all charges. If not, MCI issues the person only a calling card that is not billed to the telephone number. MCI has no way of determining whether a customer is the "customer of record" or whether the address to which it sends a card is the address of the customer of record because it does not have access to the LEC's information about its accounts. MCI opposes the billing restriction set out in Staff's recommendations for these reasons and because it believes the customer of record, that is, the third-party dial tone provider, should be responsible for the situation it has created. MCI opposes the proposal by GTE (*see* below) that a workshop be held to consider the technical issues relating to LIDB and other matters. It feels the unfeasibility of using the LIDB dip and of confirming the identity of the customer of record is clear without further consideration.

**GTE.** GTE argues that the third-party dial tone provider should be held responsible for all charges on the line in its name, including those charged on a calling card or credit card. The third-party dial tone provider is the customer and has, in GTE's view, control over the line. It is in the best position to control charges on the line. It should therefore have the responsibility for the charges that accrue to the line. GTE argues that the *General Plumbing* case, *supra*, does not support the position of the third-party dial tone providers in that the charges in question were occurring on the telephone company's side of the point of demarcation. GTE asserts that making the third-party dial tone provider responsible serves the public interest in that it gives an incentive to the end-user either to cease making the calls or to pay for them.

In GTE's view, the LEC should never be held responsible for the charges. In its view, TRS and BNS work as promised. GTE opposes Staff's recommendation that LECs be responsible if they have failed to explain the services adequately, as that policy would

allow for fraudulent claims by customers that an explanation did not occur. GTE also opposes Staff's recommendation that an LEC be held responsible if it fails to implement TRS or BNS as requested by the third-party dial tone provider. GTE's tariffs set out its liability for failure to perform and GTE believes there is no reason to change that standard. Moreover, GTE believes that holding the LECs responsible for the charges would negatively affect the development of competition. The third-party dial tone providers are, in GTE's view, competitors of the LECs. If they are allowed to shift their costs to other parties, their services will be underpriced and the LECs' costs will be unduly increased. The result might be a contraction of the market with a corresponding diminution of competition. For the same basic reasons, GTE believes the IXC's should not be held responsible for the charges.

GTE recommends that a workshop be held to determine the practicality of proposed changes which would require companies who issue calling cards to make a LIDB dip to determine if the line is restricted, to verify the customer status of the person asking to receive the card, and to determine whether that person's address is the same as that of the customer of record. GTE acknowledges that such information has become increasingly difficult to obtain because of increased secrecy connected with greater competition in the industry.

**USWC.** USWC argues that its tariffs and public policy dictate that third-party dial tone providers always be responsible for all charges on the lines they rent from LECs. USWC has no business relationship with the end-users and cannot, under its tariffs, seek payment from them. It has only one party to collect from, the third-party dial tone provider. There is no basis in the public interest to allow third-party dial tone providers to shift the risk to regulated carriers, and ultimately their ratepayers, or to IXC's. USWC points out that allowing the third-party dial tone providers to avoid payment perpetuates an incentive to the end-users to continue to incur the toll charges. In general, USWC accepts the notion that "control" is the key issue. In USWC's view, however, it is the third-party dial tone providers who have the control and thus the responsibility for the charges.

USWC argues against Staff's recommendation that LECs become responsible for toll charges if they do not explain the service or if they fail to implement TRS and BNS. It maintains that the remedy for failures of this sort should be the traditional remedy under contract law and under its tariffs: refund of the charge. USWC also expresses doubt about Staff's recommendations that LECs and IXC's be prohibited from billing the customer of record under certain circumstances (*See* Staff recommendations 2 and 3 above). It points out that these restrictions may result in added costs and other unforeseen problems. USWC calls for workshops to investigate the impact of those recommendations before a decision is made to adopt them.

**United Telephone.** United argues that there is no justification for imposing strict liability on LECs or IXC's for payment of toll charges on lines with TRS or BNS. These services are of considerable value to the public, in United's view, and would be imperiled if the LECs were required to pay for many of the toll calls which occur on these lines. United

points out that the vast majority of the toll calls made on restricted lines are made without any fault on the part of the LEC.

United proposes that LECs be responsible only for those calls that occur through their fault. For example, if an LEC fails to implement TRS or BNS or fails to update the LIDB, it should be held responsible for the toll charges.

### **Commission Disposition**

We first note that the responsibility of the end-user who incurs toll charges is manifest and undisputed by all parties. That responsibility does not, however, provide much help to the parties in this case. We have little, if any, authority over end-users and usually have little ability to ensure payment from them. What we are concerned about in this case is the responsibility of those over whom we have some authority, either directly because they are certificate holders, or indirectly because they are customers of certificate holders and have brought a matter before us.

Staff's recommendations have the general effect of placing responsibility for payment of most of the toll charges in question on the third-party dial tone providers. However, where the LEC or IXC has erred in certain ways, such as by failing to implement the service when directed to do so or by providing the end-user with a credit card tied to the line without appropriate safeguards, the responsibility shifts from the third-party dial tone provider to the LEC or IXC. The liability of the LEC or IXC, under those circumstances, would not be limited to simply refunding the charge for TRS and BNS, but would extend to the toll charges themselves. For example, an LEC that failed to implement TRS and BNS or which failed to explain the services clearly to customers would be responsible for toll charges on the line. An IXC that failed to comply with BNS or any carrier that issued a credit card or personal 800/888 number without confirming the issuance with the customer of record would be required to forego billing the customer of record for the charges.

The Commission concludes that several of Staff's suggestions should be adopted, specifically all but recommendation 1a. They alter slightly the apportionment of risk between the third-party dial tone providers and the LECs and IXCs. That modification is not unreasonable. The record clearly establishes that most of the disputed toll charges occur as a result of errors by the LECs or IXCs or because of risky practices on their part. The unwanted charges are not for the most part the result of the state of the technology involved, as some of the carriers seem to assert. The greatest single problem is the rather haphazard issuance of calling cards by the carriers, particularly the IXCs. They issue cards without establishing that the recipients are the customers of record and send the cards to addresses that are not those of the customers of record. These practices may have the sound business justifications claimed by the IXCs: the volume of telemarketing calls would make verification expensive and the present competitive environment may make obtaining information about end-users from LECs difficult or impossible in some instances. Nevertheless, the lack of verification significantly increases the risk that the

cards will fall into the hands of those who will not pay the charge. It is reasonable that the IXC's should share in the consequences of the risk they help create.

LECs and IXC's contribute to the problem in several other ways. Sometimes LEC's fail to implement the services or fail to update the databases necessary for the success of BNS. IXC's sometimes fail to check the databases and thus allow calls to go through despite the presence of BNS on the line. Other problems relating to installation and operation of the blocking services apparently occur and lead to toll charges on the lines rented by the third-party dial tone providers. It is reasonable that the LEC's and IXC's share the consequences of the risk they create through these errors.

The LEC's and IXC's argue that Ameritel and Telnet have failed to do all they can to prevent the toll charges. They could, according to the LEC's and IXC's, take a more active preventative role, such as by requiring the end-users to pay a deposit applicable to toll charges. Ameritel does not, they point out, even require that the customer sign an agreement promising not to make toll calls, although a written statement of the policy is given to the customer. When unauthorized calls are made, Ameritel and Telnet do not bill the end-user for the charges, thereby creating an incentive for the end-user to continue to make toll calls. They also fail to disconnect the service of end-users who make toll calls, except when the use is egregious and the customer is otherwise not highly valued. The LEC's and IXC's argue that companies such as Ameritel and Telnet, who target people who have lost service from LEC's because of unpaid charges, have knowingly accepted an unusual risk and should not expect to pass it on to LEC's, IXC's, and to the customers of those companies.

The Commission notes, however, that Ameritel and Telnet do take many steps to reduce the number of toll charges. They instruct the customers at the time service begins not to make the calls. They impose fines on customers who incur toll charges. They contact those who incur substantial toll charges to remind them of the policy against toll charges. They offer customers pre-paid calling cards as a means of discouraging toll charges on the rented lines. And, of course, they purchase TRS and BNS in the hope of preventing toll charges on their lines. In any event, as we pointed out above, this proceeding is generic in nature and our policy decisions need not be based on the specific acts of the parties to this proceeding. These decisions will affect all companies who provide the kind of service that Ameritel and Telnet provide and the LEC's and IXC's with whom they do business.

The issue of the extent of the liability, if any, of the LEC's and IXC's was argued by the parties. The LEC's argued that even if the services do not work as expected because of some flaw on their part in implementation or use, their liability should be limited to refund of the charges paid for the services. That limited liability is in keeping with their tariffs, they point out, and is in accord with general contract law, which does not allow recovery of consequential losses. The Commission concludes, however, that such a limitation would not be appropriate. Existing tariffs do not limit our decision, as we noted above, and contract law is not binding on our policy decisions, which implicate the public interest and not merely the relationship between the parties to a contract. Thus, under the

limited circumstances set out in this order, we will require that toll charges either be removed from the account of the third-party dial tone providers or not billed to them.

The Commission notes that several of the parties argued that the responsibility for toll charges should be determined by the degree of "control" the party has over the unauthorized toll charges. We do not find the control issue dispositive, primarily because it is obvious that several entities may share in control in any given situation. Nevertheless, we believe the policies we are adopting are fair and do take "control" into account to the extent feasible. Moreover, these policies provide appropriate incentives to participants to reduce the incidence of unauthorized toll calls. The third-party dial tone providers, who retain responsibility for many of the charges, will have an incentive to develop better methods of discouraging their customers from making the calls. The LECs and IXC's will have incentives to reduce the number of errors that contribute to the occurrence of toll charges and to change any practices that foster unauthorized calls.

The Commission thus specifically adopts these Staff recommendations relating to responsibility for toll charges:

1. An LEC shall be responsible for toll charges if it fails to implement TRS or BNS as described in applicable tariffs.
2. An IXC shall not bill the customer of record when the IXC does not check for BNS or does not honor a BNS indicator.
3. Carriers, including LECs and IXC's, shall not bill the customer of record for toll charges incurred by personal 1-800 or 1-888 numbers or by the use of calling cards when those numbers or cards were issued without confirmation from the customer of record or when the carrier has mailed the personal 1-800 or 1-888 number or calling card to an address other than that on record for the customer of record.
4. The customer of record is responsible for all billed toll charges other than those described in 1, 2, and 3 above.

The Commission does not adopt Staff's recommendation requiring the LEC to be responsible for toll charges when it has failed to "clearly explain" to the customer (that is, the third-party dial tone provider) what TRS and BNS do and do not do. That provision could, as some of the parties point out, lead to insoluble disputes about what information was provided and what the state of knowledge of the customer of record was after the discussion. In the sections below we do adopt the Staff recommendation that LECs be required to file tariffs which clearly describe what TRS and BNS do and do not do.

Telnet requests that the Commission add international carriers to Staff's recommendation 2 above. The Commission declines to do so. The record is not clear that, in fact, international carriers are billing the third-party dial tone providers. It appears that domestic IXC's are billing the customer of record for the calls. The record further indicates that the domestic IXC's are unable to require the foreign carrier to honor its

signal indicating that the residential line called has a toll block on it. Moreover, it is unlikely that the Commission would have jurisdiction over such calls. For these reasons, we see no basis for adding international calls or carriers to recommendation 2 above.

## **II. Changes in TRS, BNS, or in Procedures Relating to Them; Positions of the Parties**

**Staff.** Staff's recommendations contain several suggestions that involve possible changes in TRS and BNS or processes relating to them.

TRS, where offered, should block calls to 1+, 0+, 0-, Directory assistance, 976, 900, and 950, while allowing 800/888 calls. The LEC may, however, offer other variations of TRS.

LECs should be required to file tariffs that clearly describe what TRS does and does not do.

LECs should be required to file tariffs that clearly describe what BNS does and does not do.

Third-party dial tone providers should be required to attempt to collect toll charges from the end-users.

**Telnet.** Telnet believes the existing regulatory "paradigm" does not adequately address third-party dial tone providers. The present scheme assumes an identity or close relationship between the customer of record and the end-user that does not exist where a third-party dial tone provider is the customer of record. Telnet asks that tariffs be revamped to assign payment for different services in a way that recognizes the existence and role of third-party dial tone providers.

Telnet asks that OLI (Originating Line Information) codes be placed on lines having TRS and BNS. OLI codes, according to Telnet, are codes that inform LECs and IXC's that a line, such as a line for a Payphone or for a telephone in a hotel or hospital room, is not supposed to incur toll charges. Such a mechanism, Telnet avers, would provide a "simple way to ensure that telephones with TRS and BNS are treated more like pay phones and that Telnet and Ameritel actually receive the TRS and BNS service they have paid for."

Telnet opposes Staff's recommendation 4 above requiring that third-party dial tone providers attempt to collect toll charges from the end-user. It proposes, instead, that a workshop be held to develop methods for cooperation between third-party dial tone providers and LECs and IXC's in collecting toll charges from end-users.

**AT&T.** AT&T argues that any attempt to make TRS and BNS 100 percent effective as to all calls and all carriers will be futile. It notes that many mechanisms exist for circumventing whatever technological innovations might be used to restrict charges and that avoidance techniques will continue to be developed to circumvent any improvements

in the services. It notes the problems with international calls now. When a call is made from a foreign company to domestic AT&T lines, AT&T's system cannot determine if the call is to be paid by the caller or is to be charged to the domestic line. Nevertheless, AT&T does a LIDB dip and, if the line has BNS, sends a signal to the international operator to that effect. The international operator has discretion, however, as to whether or not to honor the restriction.

AT&T objects to the suggestion by Telnet that an OLI signal be placed on each restricted line. Assignment of OLI codes to residential lines would be "extraordinarily expensive," in AT&T's view, and would require software adjustments by both LECs and IXC's. The changes would have to be made throughout the United States to be effective. AT&T offers an alternative to the imposition of OLI codes. It suggests that the third-party dial tone providers be required to purchase public access lines, install "smart" phones on their customers' premises, and accept and utilize existing OLI coding for pay phones. Public access lines are available under tariff from both USWC and GTE and the smart phones from various vendors. Public access lines allow the application of OLI, which provides additional protection against toll fraud. If this recommendation were adopted, the third-party dial tone providers would be subject to the same protections from unauthorized toll calls as are pay phone providers.

**MCI.** MCI supports Staff's proposals that the LECs be required to clearly explain the limitations of TRS and BNS to their customers and to properly install the services. MCI agrees with Staff's proposal that the third-party dial tone providers be required to bill the end-users for toll calls.

**GTE.** GTE recommends no change in TRS. It points out the need to continue to make 800/888 service available to all, even if doing so makes some circumvention of TRS possible. As is noted above, GTE recommends that a workshop be held to determine the practicality of proposed changes which would require companies who issue calling cards to make a LIDB dip to determine if the line has BNS, to verify the customer status of the person asking to receive the card, and to determine whether that person's address is the same as that of the customer of record. GTE acknowledges that such information has become increasingly difficult to obtain because of increased secrecy connected with greater competition in the industry.

**USWC.** USWC opposes any change in TRS. It notes that the service was designed to give some control over toll charges to subscribers, such as parents, who have some opportunity to supervise the use of the phone. TRS works properly to serve that purpose, according to USWC, and it is not feasible to have it block all toll calls. USWC does not believe that its tariffs fail to adequately explain the service, but is willing to change them if necessary to further explain the operations of the service. USWC also opposes the suggestions by Telnet that OLI codes be attached to lines with TRS and BNS. It questions the feasibility of placing such codes on residential lines and questions whether Telnet is willing to pay any additional charges.

**United.** United agrees with Staff's recommendation that LECs be required to clearly explain the limitations of TRS and BNS. It expresses no view on other potential changes relating to the services themselves.

### **Commission Disposition**

The record suggests that Ameritel and Telnet would like the Commission to direct the LECs and IXC's to develop ways of making these services work perfectly to prevent toll calls not directly authorized by the customer of record. The record convinces the Commission, however, that that desire is not realistic. It is apparent that these services work well for most customers. Staff noted that it has received only one complaint regarding the operation of these services in the past year, other than the complaints made by Ameritel and Telnet. It is not at all clear that near-perfection is possible, at least without costs which are higher than justified by any gain to the general public. Some of the carriers aver that the costs of attempting to achieve perfection would be very high. Although no one has actually quantified the cost for us, we believe it would likely be significant and would raise the charges, which are now very moderate, to something perhaps beyond the means of many people who want and need the service. Ameritel and Telnet will have to look to means other than perfection of the service to help them prevent toll charges on their accounts.

The parties expressed little enthusiasm for specific changes in the two services involved, other than in the billing and responsibility areas described in Section I above. Staff's recommendation 1 would assure that 800/888 numbers are not blocked. That recommendation does not appear to involve any changes from the present operation of the service. In any event, all parties appear to recognize the public benefit of these numbers. No party asked that restrictions be extended to 800/888 numbers. Staff's recommendation would also allow "other variations" of TRS, and so has flexibility. We adopt Staff's recommendation.

We also adopt Staff's recommendation that LECs be required to file tariffs which clearly set out the limitations of TRS and BNS. Although some parties argued that the existing tariffs are clear, no one objected to Staff's suggestion. It appears from the record that some possibility for misunderstanding does exist. Staff's recommendation is adopted. We direct Staff within 60 days of issuance of this order to contact the four large LECs--USWC, GTE, United, and PTI--to resolve revisions to those LECs' tariffs for TRS and BNS. We direct those four LECs to file revised tariffs within 30 days after meeting with Staff.

Telnet recommends that OLI codes be placed on lines having TRS and BNS as a means of making the restrictions more effective. Other parties, particularly AT&T, object to this suggestion on the grounds that it is technically dubious and would be very expensive. The Commission does not believe a basis for this recommendation has been established and declines to adopt it. We also decline to adopt AT&T's suggestion that the third-party dial tone providers be required to purchase public access lines and install "smart" phones as a



means of increasing the protection against undesired toll charges. We will leave that decision to the third-party dial tone providers.

We also do not adopt the recommendation made by Staff that third-party dial tone providers be required to attempt to collect toll charges from the end-users. The purpose behind Staff's recommendation is laudable: to make the end-users aware of their responsibility for the charges they incur and perhaps to discourage them from making the calls. However, we are not certain that a blanket requirement that they attempt to collect these charges is appropriate. The exact legal relationship between the end-users and the third-party dial tone providers is uncertain. In particular, whether the end-users "owe" anything to the third-party dial tone providers for the toll charges is not certain, especially where the third-party dial tone provider is not responsible for those charges, as will often be the case under the policy we adopt in this order. If the end-user does not owe anything to the third-party dial tone provider, it is not clear that the third-party dial tone provider has a right to collect a "debt" that is not owed to it. It is also not certain that the third-party dial tone providers would be under an obligation to pay over to the IXC any money collected from the end users, unless a contractual relationship existed between customer of record and IXC.

Of course, the third-party dial tone providers may choose to attempt to collect from the end-users to offset the obligation we have placed on them in this order to pay for some of the charges. Given the difficulty of collection from the end users, however, those attempts may be futile in many cases. We conclude that it is better to leave to their judgment whether to pursue such a debt in a particular case. Telnet has recommended that a workshop be convened to develop cooperative methods among third-party dial tone providers and other providers for collecting toll charges from end users. Staff and the other parties should consider that request and pursue it if it appears to be useful.

### **UNDISPUTED ISSUES**

The parties reached agreement on several issues. The Commission has reviewed these matters and agrees with the conclusions of the parties as set out below:

#### **Policy Regarding Disconnection of Local Service (OAR 860-021-0505 and 860-04-0260).**

The above rules set out procedures and policy for disconnection of telephone and other utility service. They also provide that local exchange telephone service may not be disconnected or denied "for the failure by an applicant or customer to pay for services not under the local exchange utility's tariff or price list." The parties appear to agree that these provisions provide appropriate protection for local service and should not be changed. The Commission agrees and will not alter these rules.

#### **Policy Regarding Application of Partial Payments.**

The Commission has directed utilities to allocate partial payments in the following order:

Past due tariffed services.

Currently due tariffed services.

Non-tariffed services.

This policy helps protect local service. No party requested that changes be made. We agree and will direct no changes

### **III. Should Third-Party Dial Tone Providers be Required to Obtain Certificates of Authority?**

Staff's position is that third-party dial tone providers such as Ameritel and Telnet are "resellers" of telecommunications services and, specifically, competitive providers of local exchange dial tone services. *See* ORS 759.020. It asks the Commission to confirm this and specifically overrule the decision it made at a public meeting of April 20, 1987, that third-party dial tone providers are "sales agents" for the end-users. Ameritel and Telnet do not disagree with Staff. No party opposed Staff's recommendation.

The Commission agrees with Staff's recommendation. Our 1987 decision that third-party dial tone providers were agents was based on an erroneous conclusion that they merely assisted end-users in obtaining service. In fact, as the record reflects, they purchase the service from the LECs and resell it to end-users, who are their clients. We conclude that they are competitive telecommunications service providers and need certificates.

### **IV. Should Third-Party Dial Tone Providers Pay Residential Rates or Business Rates for Telephone Service They Have Installed at the End-User's Home?**

All parties agree that residential rates are appropriate for residential use by the end-user. The Commission agrees. It appears from the record that Telnet has a small number of business end-users for whose lines Telnet pays business rates. Third-party dial tone providers who provide service to business end-users should pay business rates to the LEC.

### **V. Should Third-Party Dial Tone Providers Be Treated Differently from Other Customers Regarding Obligations for Use of Telephone Services and Regarding LECs' Treatment of Them?**

The parties provided little comment on this issue, perhaps because it is not altogether clear. Those who did comment voiced the truism that identically-situated parties should be treated equally. The Commission agrees, of course, and notes that nothing in this order is intended to distinguish Ameritel and Telnet from others whose situation is not materially different.

### **Impact of the Telecommunications Act of 1996**

The Administrative Law Judge requested comments from the parties on the impact, if any, of the Telecommunications Act of 1996 on the issues presented in this case. Staff and the following parties filed comments: AT&T, Ameritel, Telnet, USWC, MCI, and GTE.

All parties agree that the third-party dial tone providers are "resellers" under the Act and thus providers of "telecommunications services." They therefore fall within the definition of "telecommunications carriers" in 47 U.S.C. 153 (a)(49). As such, the third-party dial tone providers are entitled to negotiate agreements with LECs which may provide for wholesale discounts in the price the third-party dial tone providers pay for lines to be resold. All parties argue that the Act does not directly affect the question of toll charge liability and all hewed to their original positions regarding that responsibility. No party suggests that the Act preempts the Commission from deciding the issues in this case. Staff points out that even if a third-party dial tone provider and an LEC entered into a negotiated agreement, there is no assurance that that agreement would address the liability issue. Thus, Staff and the parties ask that the Commission decide the issues raised in this case notwithstanding the Act.

Staff notes that a conflict could occur between policy set out by the Commission in this case and the terms of a negotiated agreement. It suggests, however, that since the record in this case does not present such a conflict, the Commission should not attempt to address that issue in this order. Telnet explicitly supports Staff's position that the Commission should restrict its decision "to the fact scenario before it, which involves the provision of telecommunications service at retail rates."

The Commission agrees with the parties that the issues presented in this docket are not made moot by the Act. We find nothing in the Act which directly addresses the primary issue of liability for the toll charges and nothing which preempts us from promulgating policy on that issue. We note, moreover, that our policy affects IXCs who will not be involved in contracts with third-party dial tone providers and whose relationship with third-party dial tone providers will therefore not be determined by such contracts.

Where an interconnection contract does exist, it could provide for a sharing of responsibility for toll charges on whatever terms the parties might agree upon. Such an agreement could be different from the policy set out herein. However, the possibility of such a conflict does not vitiate our policy, which will control the type of situation presented in the present case. We will deal with other scenarios as they are presented to us.

## **CONCLUSIONS**

It appears from the record that TRS and BNS have generally worked well in providing reasonable protection to families or other connected groups against unauthorized toll charges. These services obviously do not work as well in the context before us in this proceeding, where the people incurring the toll charges are physically separated from the customer of record and have only a tenuous business relationship with the customer of

record. However, we believe the establishment of some guidelines concerning responsibility for toll charges, as we have done in this proceeding, along with some clarification to potential users of the limitations of the services, will reduce disputes and may encourage the participants to take steps to improve the operation of the system. We encourage the participants to work on additional improvements and bring them to the Commission if they are matters we can help with.

The Commission concludes that the recommendations adopted in this order are in the public interest.

**ORDER**

IT IS ORDERED that the policy set out in this order is adopted.

Made, entered, and effective \_\_\_\_\_.

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**Roger Hamilton**  
Chairman

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**Ron Eachus**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070. A party may appeal this order to a court pursuant to ORS 756.580.