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October 18, 1990

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

Re: Docket No. UT-900726

Dear Mr. Curl:

Enclosed please find the Original and nineteen copies of the Reply Comments on behalf of MCI Telecommunications Corporation in the above-referenced Docket.

We would appreciate acknowledgement of receipt of this document. An additional copy along with a self addressed stamped envelope is enclosed. Would you please date stamp the copy and return it to MCI.

If you have any questions, please contact me.

Sincerely,

William Levis

William Levis

Enclosure

cc: Parties of Record

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending WAC 480-120-021, WAC 480-120-106, WAC 480-120-138, and WAC 480-120-141, Relating to Telecommunications Companies -- the Glossary, Alternate Operator Services Pay Telephones, and Forms of Bills.	)	DOCKET NO. UT-900726

REPLY COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), pursuant to Notice No. WSR 90-19-118 dated September 19, 1990, and through its undersigned attorneys, submits its reply comments in the above-captioned matter.

PROPOSED RULES

MCI agrees with the Washington Utilities and Transportation Commission (WUTC or Commission), and other parties which filed comments, that rules need to be instituted to regulate the provision of Alternative Operator Services (AOS) in the State of Washington. At the same time and as pointed out in the comments of U S West Communications, U.S. Long Distance, Inc., International Pacific, Inc., and National Technical Associates, President Bush signed the "Telephone Operator Consumer Services Improvement Act of 1990," PL 101-435, into law on October 17th. The Federal Communications Commission (FCC) also has proposed rules in CC Docket No. 90-313 for the

regulation of operator services. (See Attachment A.) Therefore, MCI feels that the WUTC should institute regulations that are comparable to, yet not exceeding, those on the federal level.

BLOCKING

MCI agrees with, and has always supported the proposition that end-users must be able to access their carrier-of-choice. However, there are instances where blocking of 10XXX-0 access to carriers is necessary to prevent fraud. There are some instances where equipment cannot be modified to prevent fraud, or the equipment does not indicate to the operator that the call is coming from a hotel, for example, and there is the possibility for large amounts of fraud. Some equipment currently in place blocks both 10XXX-1 and 10XXX-0 access because the equipment cannot distinguish between these two dialing sequences. It would be extremely costly to modify this equipment to block only 10XXX-1. Also, for instance, it is possible for a hotel patron, in a hotel where 10XXX-0 is not blocked, to reach an operator of a company other than the one serving the hotel and place a person-to-person call. Sometimes, depending on the line from the local exchange carrier, the operator may not know that the call is being placed from a hotel, puts the call through, and charges the call to the originating number. The party then checks out in a day or so, and the hotel must pay the bill and absorb the loss.

MCI recommends that the Commission institute a waiver process to allow blocking of 10XXX-0 access in very limited

circumstances. The Commission could also adopt a requirement such as the one presently proposed in the pending FCC rules for operator service providers. Under Section 64.706 (a) of the proposed rules, the FCC would require all interexchange carriers to establish, besides its 10XXX access code, at least one alternative form of access (e.g., a 950- or an 800- access number). To require that all carriers offer another form of access besides 10XXX would allow end-users the freedom of using their carrier-of-choice even in circumstances where 10XXX-0 needs to be blocked.

To put the costly burden of upgrading and/or changing equipment on motels, hotels, hospitals, etc. is unfair. These costs, in the long run, probably will be passed on to the consumer in the form of higher room/services rates. It is more equitable for the interexchange carrier, who is going to reap the profits from the telephone calls, to incur the expense of establishing a 950- or 800- access number.

Another significant problem, that has not been addressed by the WUTC, occurs when end-users are issued so-called "proprietary calling cards" which use 0+ as the access method. The problem has been cited, however, by several of the private citizens who submitted letter or comments. For example, AT&T issues these calling cards and instructs its customers to dial 0+. As validation and billing data cannot be obtained by other operator service providers because AT&T refuses to make them available, callers possessing these cards find that they are

not accepted on an 0+ basis at some transient locations unless the access line serving these locations is presubscribed to AT&T. Confusion and call inconvenience often result in these cases. If validation information for all numbers on all cards that are used for 0+ dialing were available, as it is with all Bell Operating Company cards, this confusion would be eliminated.

If companies issuing proprietary calling cards which use 0+ access are not willing to make card validation and billing data available, thereby being valid only on their networks, then these companies should be required to establish a 950- or 800- access for its customers.

AOS COMPANIES VS INTEREXCHANGE CARRIERS

Contrary to the comments of Intellicall (pages 7-8), there is a difference between AOS companies and traditional carriers/interexchange carriers (IXCs). MCI and other IXCs provide a full range of telecommunications services, including MTS, WATS, 800, and private line, to all types of customers, both residential and commercial. AOS companies, on the other hand, do not provide a full range of telecommunications services and do not serve all types of customers. Their primary customers are aggregators/location owners of transient locations. They may provide long distance service as such, but it is the resold services of an IXC and is in conjunction with 0+ or 0- calls.

If an AOS company, which does not serve residential or business customers, provides poor or over-priced service to an end-user, more than likely the AOS company has nothing to lose.

If the location is a transient one, the end-user might not ever be back to that location. The AOS company will not lose an end-user customer and it will probably retain the location owner as a customer.

However, if an end-user receives poor or over-priced service from MCI or another IXC at a transient location, the customer will remember that. Based on the poor service they might have received at a transient location, that person probably will not be likely to choose MCI as their carrier-of-choice for their home or business.

The states of Iowa (Senate File 231) and Missouri (House Bill No. 1315) both have adopted guidelines which distinguish AOS companies from IXCs. Under the guidelines of these states, AOS companies are defined as those that receive more than 50 percent and 60 percent of their telecommunications revenues, respectively, from captive, transient customers placing calls from other than their ordinary residence or business phones.

All of the complaints mentioned in the letters or comments filed by individual private citizens in this docket involved AOS companies and transient locations. They did not involve IXCs. All IXCs operating in the State of Washington are presently registered with the WUTC and their services and rates are price listed or tariffed with the Commission. The same is not so for the AOS companies.

CONCLUSION

In its initial comments, MCI recommended additional language to WAC 480-0120-021 GLOSSARY which would clarify the difference between IXCs and AOS companies. If the WUTC does not adopt MCI's recommended language and decides that IXCs, even though they already fall unders the Commission's jurisdiction and services, should fall under the same requirements as AOS companies, then MCI feels that the local exchange companies should also be bound by these requirements.

MCI recognizes the tremendous and complex task the WUTC has before it in the promulation of rules and appreciates the Commission's consideration of MCI's comments and reply comments.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

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Its Attorneys

Dated: November 5, 1990

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-313

In the Matter of

Policies and Rules Concerning Operator Service Providers — RM-6767

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1990; Released: July 17, 1990

By the Commission:

I. INTRODUCTION

1. The Communications Act of 1934, as amended, ("the Act") mandates that this Commission regulate interstate telecommunications services "so as to make available . . . to all the people of the United States . . . efficient, nationwide . . . communication service with adequate facilities at reasonable charges."[1] Recent technological and marketplace evolution in the provision of operator services,[2] along with widespread consumer dissatisfaction over the rates and practices of many operator service providers, [3] now oblige us to reexamine many of our requirements and policies as they pertain to this rapidly changing segment of the telecommunications industry.[4] Specifically, we propose to adopt new rules and policies that we tentatively conclude are required to promote the objectives of the Communications Act. We therefore initiate this Rule Making proceeding and begin with a discussion of the development of the modern operator services industry.

II. BACKGROUND

A. The Development of the Operator Services Industry

2. In the aftermath of the AT&T divestiture,[5] as regulation of the telecommunications industry changed, the operator services industry evolved to include companies offering alternatives to the traditional Bell System-provided operator services. These companies, sometimes referred to as alternative operator service providers, typically lease lines from telephone carriers and combine these transport elements with their own operator services. Then, like the more traditional OSPs, they enter into contracts to provide operator services to "call aggregators."[6] The telephones for which an OSP provides service are said to be "presubscribed" to that OSP. Barring some affirmative action by the caller, such as dialing a 10XXX or a 950 or 800 number, a call aggregator's customers are automatically connected to the presubscribed OSP when they make certain operator-assisted calls using the aggregator's telephone. Most companies, other than [illegible] local exchange companies and AT&T, are classified [illegible] nondominant carriers under our *Competitive Carrier* decisions.[7]

B. Related Proceedings

1. The TRAC proceeding

3. In July 1988, two consumer advocacy groups, the Telecommunications Research and Action Center ("TRAC") and Consumer Action, filed a formal complaint against five AOS companies, alleging that under *Competitive Carrier* the defendants were operating as dominant carriers and should be subject to the full panoply of Title II regulation, including tariff filing and certification requirements. The complainants contended that the defendants possessed market power because of the purported control they, along with their call aggregators, exercise over what the complainants characterized as "bottleneck" facilities. The complainants further alleged that this market power permitted the defendants to charge excessive rates and engage in practices that effectively deprive "captive" consumers on the aggregators' premises of information and competitive options. The complainants urged the Bureau to reclassify the defendant companies as dominant carriers, to find their rates and practices to be unjust, unreasonable, and contrary to the public interest, and to revoke their operating authority.

4. In a Memorandum Opinion and Order released February 27, 1989,[8] the Bureau granted the complaint in part, finding a number of the defendants' practices involving consumer disclosure, call blocking, and call splashing to be unjust and unreasonable in violation of Section 201(b) of the Act.[9] It ordered several specific forms of relief designed to eliminate the unlawful practices.

5. First, the Bureau ordered the defendant companies to provide consumer information to their customers in the form of tent cards, phone stickers, or some other form of printed documentation that could be placed on, or in close proximity to, all presubscribed phones.[10] These materials were required to set forth the company's identity (name, address, and a customer service number for receipt of further information), as well as information advising users that the company's rates would be quoted upon request. The Bureau said that new contracts between OSPs and call aggregators must contain provisions requiring aggregators to display these materials on, or in close proximity to, all presubscribed telephones. In addition, the defendants were ordered to amend existing contracts with call aggregators to reflect this requirement.[11]

6. Second, the Bureau found it to be an unlawful practice for an OSP not to identify itself audibly before a call is connected. This identification process is known as "call branding." In addition, the Bureau directed the defendant AOS companies to provide a sufficient delay period after the branding to permit a caller to either hang up or advise the operator to transfer the call to the caller's preferred carrier. The Bureau ordered these procedures to be implemented by the defendants immediately upon the effective date of the order.[12]

7. Third, the Bureau determined call blocking[13] to be an unlawful practice and ordered the defendants to discontinue the practice immediately.[14] The Bureau also required the defendants to amend existing contracts with call aggregators to prohibit blocking by the aggregators.[15]

3. Finally, the Bureau determined that the problem of call splashing[9] reflects the technological characteristics of the network and that a solution could best be obtained through the industrywide cooperation of operator service providers, including AT&T and the Bell Operating Companies. Because of concerns that splashing might have an adverse economic impact on consumers, the Bureau required the defendant AOS companies to bring the matter before the Carrier Liaison Committee of the Exchange Carrier Standards Association and to report back to the Bureau. The defendants were required, however, to eliminate immediately any call splashing that was within the technical capability of their existing networks.[10]

9. While the *TRAC Order* was specifically issued against the five defendants, the Bureau's reasoning made it clear that such practices would be unlawful if engaged in by any OSP. Therefore, the *TRAC Order* requirements would apply to any participant in the operator services industry, including, for example, other AOS companies and AT&T.[11]

2. The NARUC Rule Making petition

10. On April 17, 1989, shortly after the issuance of the *TRAC Order*, the National Association of Regulatory Utility Commissioners ("NARUC") filed a petition for Rule Making[12] to address a number of issues regarding the practices, policies, and appropriate regulatory treatment of OSPs.[13] Specifically, NARUC urges the Commission to adopt, *inter alia*, minimum regulatory guidelines applicable to operator service companies in the following areas: (1) rate levels, (2) customer notification, (3) billing practices, (4) quality of service, (5) complaint resolution procedures, and (6) customer choice.[14] NARUC, while voicing general support for the measures taken by the Bureau to resolve the *TRAC* complaint, argues that the Commission should broaden the scope of its inquiry into OSP practices beyond those encompassed by the *TRAC* complaint proceeding.[15] NARUC maintains that certain issues, such as the Commission's definition of firms with market power, cannot be considered adequately in other than a Rule Making proceeding.[16] In a Rule Making context, NARUC argues, the Commission would be in a position to consider detailed evidence and arguments on operator service issues submitted by a wide range of interested parties who may not have participated in the *TRAC* proceeding.[17]

11. On May 23, 1989, the Bureau issued a Public Notice inviting comments on NARUC's petition.[18] A number of commenters responded favorably to NARUC's petition and encouraged the Commission to institute a proceeding to adopt additional regulatory restraints on OSPs.[19] Other commenters, including the *TRAC* proceeding defendants and other interested parties, opposed the petition as unnecessary or inappropriate in light of the Bureau's *TRAC Order* and other Commission proceedings.[20] We will grant NARUC's petition insofar as it seeks a broader Commission inquiry into the practices of operator service providers, and, accordingly, we address in this proceeding many of the issues raised by NARUC and the comments filed on its Rule Making petition. We are not persuaded, however, that we should consider modifying our rules and policies regarding the classification of AOS providers as non-dominant carriers. While the concerns expressed by NARUC and others over the rates charged by many OSPs raise important issues, we tentatively conclude that the rules and policies proposed in this Notice, which will enable consumers to make informed choices and to reach their carriers of choice, will constitute a sufficient check on the rates and practices of service providers and will eliminate those that are harmful to consumers. In this regard, we also tentatively conclude that the rules proposed herein will reduce or eliminate any market power that OSPs arguably may have. We therefore tentatively reject the NARUC proposal to the extent that it requests that we reexamine our *Competitive Carrier* policies and consider the adoption of specific rules to regulate the rate levels of operator service providers.

C. Legislative Proposals

12. Congress, too, is concerned over problems related to operator services and has expressed this concern in the form of specific legislative proposals aimed at curbing certain practices of OSPs as well as preserving the customers' right to just and reasonable rates. Currently, there are three bills pending: one in the House, H.R. 971, 101st Cong., 1st Sess. (1989), and two in the Senate, S. 1643, 101st Cong., 1st Sess. (1989), and S. 1660, 101st Cong., 1st Sess. (1989). During hearings on the proposed legislation before the Senate Subcommittee on Communications in February 1990, the Chief of the Common Carrier Bureau expressed the Commission's agreement with the overall goal of the legislation and informed the Subcommittee of our intention to institute this Rule Making proceeding to address continuing issues and concerns. Several of the legislative provisions, such as those concerning call blocking and customer information and notification practices, are similar in all pertinent respects to the remedies adopted in the *TRAC Order* and are reflected in the rules we propose herein. Other provisions, such as those concerning equipment and software modifications, were not contemplated in the *TRAC* proceeding; nevertheless, these too are encompassed by this Notice.

D. Continuing Concerns

13. In the wake of the *TRAC Order*, the Commission has attempted to address problems with operator services through consumer education and awareness efforts and by maintaining a dialogue with industry participants. While the number of complaints received by the Commission has diminished by half, significant problems persist.[28] In light of this situation, we now propose the following rules and policies.

III. DISCUSSION

A. Proposed Rules [29]

1. Customer Information

14. We first propose rules that pertain to a subject that is vital to the operation of an open and competitive operator services marketplace: customer information and notification.[30] In the *TRAC Order*, the Bureau noted that a "gap in [customer] information thwarts effective [customer] choice and creates the opportunity for any [operator service] company to charge excessive rates."[31] We view this Rule Making proceeding as an opportunity to ensure application of the *TRAC Order* remedies throughout the operator services industry, by AOS providers and "traditional" OSPs alike. Our proposed Section 64.703

should generally implement several ...omer information requirements that were applied to ... defendants in the *TRAC* proceeding.

15. The initial parts of Section 64.703 prescribe customer information that must be provided by the operator service companies themselves. Section 64.703(a)(1) requires OSPs to engage in "call branding," which is the process by which an OSP audibly and distinctly identifies itself to every person who uses its operator services. This branding must be done before the customer incurs any charges from the OSP, and, under Section 64.703(a)(2), the OSP must allow sufficient time after the branding for the customer either to terminate the call without charge or to advise the operator to transfer the call to the customer's preferred carrier without charge. We emphasize that all calls must be branded, regardless of what devices are used to process the calls.[32] We also seek comment on whether we should require double branding, which is an identification both at the beginning of a call and again just before the call is connected.[33] Double branding would, by emphasizing the identity of the operator service company, more fully ensure that the customer has freely chosen to use that company's services.

16. Section 64.703(a)(3) requires OSPs to disclose, upon request by the customer, the rates or charges for the anticipated call, collection methods for those rates or charges, and the OSP's complaint resolution methods. This information is necessary both to allow the customer to make a free and knowledgeable choice among OSPs and to help avoid or resolve disputes over charges.

17. Call aggregators would also, under our proposed rules, play an important part in informing customers of their choices in the operator services marketplace. Pursuant to the proposed Section 64.703(b), the call aggregator would have to provide, for the customer's use, printed documentation that informs the customer of the OSP's identity, address, and toll-free customer service telephone number, and that contains a statement that the OSP's rates will be quoted upon request. This documentation must also inform customers that they have a right to use their carriers of choice and must contain instructions on how to contact those carriers. While we expect that most aggregators will choose to display this information either on tent cards near the telephones or on stickers or signs affixed to the telephones, we seek comment on whether the aggregators should have the option of giving the necessary printed documentation to the customer in person. A customer at a hotel or a patient at a hospital, for example, could be given this information while checking in. Although we see this alternative as a way for aggregators to ensure that each customer is properly notified, we would expect aggregators that choose this option to make certain that every customer is, in fact, aware that the written material being provided contains the information described above. As Section 64.703(c) indicates, we propose to place the responsibility for providing this on-site information jointly on the OSP, the aggregator, and the owner of the telephone, such as LECs that own pay telephones.[34] Joint responsibility would help ensure that the customer will be fully informed when choosing an operator service provider and would eliminate the possibility that one of these entities could, with impunity, thwart the efforts of the others.[35]

2. Call Blocking

18. Next, in proposed Section 64.704, we address the problem of call blocking, an unlawful practice that the Bureau has previously determined acts to "distort and impede the operation of a fully competitive operator services industry,"[36] a finding that we now affirm. Our goal in addressing this problem is to allow all customers access to their carriers of choice through alternative access methods. As we are doing elsewhere in this Notice, we seek comment on a variety of means to our stated end and will study the comments to determine which steps or combinations of steps will best achieve our goal. Subsections (b), (c), and (d) of this proposed rule prohibit blocking by OSPs, call aggregators, and pay telephone owners, and, under subsection (e), all applicable contracts or tariffs must be modified to delete any blocking requirements and to prohibit blocking explicitly. We also seek comment on whether and to what extent it would be appropriate to grant any limited waivers of this section's blocking prohibition. We currently contemplate that any exceptions to the blocking prohibition will likely be limited in scope and duration and focused on a physical problem faced in a specific location. We encourage interested parties to suggest criteria we might use in making a waiver determination.[37]

19. The *TRAC Order* defines call blocking as "the process of screening the calls dialed from the presubscribed telephone for certain predetermined numbers, and preventing or 'blocking' the completion of calls [that] would allow the caller to reach [an OSP] different from the [presubscribed operator service] company."[38] In other proceedings and filings before us,[39] a number of parties have suggested that we redefine call blocking so that it applies to 800, 950, and 10XXX-0+ traffic only.[40] This revision would allow OSPs the option of blocking 10XXX-1+ traffic in order to protect against unauthorized, fraudulent, or otherwise uncollectible calls being charged to payphone owners and other "hospitality"-type aggregators, such as hotels, hospitals, airports, and universities, who may be particularly vulnerable to this type of fraudulent or unauthorized calling from their telephones. Parties supporting the refined definition state that while an OSP receiving a 0+ call can collect all pertinent billing information and bill the end-user for the call, 1+ calls are usually charged to the originating line by a carrier with whom the aggregator has no account. Even when the call is placed by the end-user in anticipation that he will be billed for the call (*e.g.*, from a hotel guest room), the aggregator may receive the bill from the carrier long after the guest has left. The parties state that if 10XXX-1+ blocking is allowed, callers will still have access to their carrier of choice through 800, 950, or 10XXX-0+ dialing.

20. It appears that the blocking of 1+ calls may have an insubstantial impact on the ability of callers to access their carriers of choice, while at the same time serving as an effective means of protecting against unauthorized or uncollectible calls.[41] Therefore, we seek comment on whether the blocking prohibition proposed in this Notice should apply only to 0+ calls.[42] and we propose the adoption of the following definition: call blocking occurs when an end-user is prevented from accessing the preferred carrier through alternative dialing methods – 800, 950, and 10XXX-0+. Nevertheless, because it appears that some existing equipment may not be technically capable of blocking 1+ traffic without also blocking 0+ calls, we

seek comment on the extent to w · our proposed rules and policies might be applied to · calls and how such an application could be narrowly tailored to affect only the appropriate classes of 1+ calls.[43]

21. The final part of Section 64.704 prohibits the payment of any compensation by OSPs to call aggregators at locations where blocking occurs. This provision is intended to reduce or eliminate an incentive aggregators may have to engage in blocking, and we emphasize that this provision would cover all types of compensation, including, for example, flat fees, per call charges, and various rental arrangements. We seek comment on how this provision should be effectuated.

3. Equipment Capabilities

22. We expect OSPs and call aggregators to take maximum advantage of the capabilities of their existing networks and equipment to implement our blocking pronibition and ensure consumer choice. We are aware, however, that there are telephones at many locations for which 10XXX access is not available because of a combination of network design and equipment limitations. We therefore propose the amendment of Section 68.318 with the intention of requiring the modification or replacement of PBXs and other customer premises equipment (CPE) that is technically incapable of providing access through each of the three access code dialing sequences, 800, 950, and 10XXX-0+. Under the new subsection (d), both new and existing equipment must have or be modified to have the capability of providing access to interstate common carriers through the use of each of the three access codes within eighteen months of the effective date of the proposed rule. Further, existing equipment that is modified to comply with this rule must be re-registered if required by Section 68.214. In order to avoid service dislocations not anticipated by our proposed rule, we believe waivers should be granted when there is a clear showing that compliance with the rule is not technically or economically feasible and that our existing procedures, such as Part 68 re-registration, cannot accommodate the circumstances. We ask interested parties to recommend standards for the granting of waivers of the modification requirement. In general, we seek comments, along with supporting data, on the extent to which existing software and equipment are technically capable of allowing unrestricted access to 10XXX-0+ dialing and the feasibility of implementing proposed Section 68.318(d) in terms of the costs involved, the time necessary for equipment manufacturers to develop the required hardware and software modifications, and installation timetables.

23. We recognize that the modification of existing equipment may involve software changes, circuit card replacement, or the installation of additional devices. Under Section 68.214 of the Rules, any hardware modification of registered equipment that would result in changes in the information contained in the original Part 68 application may be made only after the granting of a new registration application. Changes that do not result in any change in the information in the original application, such as circuit card changes not affecting protective circuitry, may be made only by the registrant or the registrant's authorized agent. To the extent that the proposal set forth in proposed Section 68.318(d) affects Part 68 compliance, re-registration may be necessary. Such re-registration could be performed by the current registrant, who would then be responsible for implementing the required modific ·ns in compliance with Part 68. Alternatively, the ·er could register the PBX and install the necessary modification. We note that some 3000 models of PBXs have been registered under Part 68, representing hundreds of thousands of PBXs in use. In some cases, the manufacturer is no longer in business, and there may be no agent authorized to perform the needed modification, thus requiring the user to either re-register the PBX or replace it. We ask commenters to provide data on the number PBXs in use that would require Part 68 re-registration or replacement and on the costs associated with such re-registration or replacement.

24. The majority of extant PBXs are software-controlled, which means that, for those PBXs, compliance with our proposed rule does not require re-registration under Part 68. In order to assure that OSPs and call aggregators implement the blocking prohibition on a consistent basis, however, we propose that only the equipment registrant or the registrant's agent be allowed to make the software changes required to comply with our rule. Under proposed Section 68.318(d)(2), we would permit the registrant or agent to rely on any technology that would effectively prevent the user of the equipment from inadvertently or intentionally reprogramming the equipment to circumvent the requirements of our proposed rule. For example, the access code sequence control software might contain secret codes or be embedded in "read only memory" (ROM) integrated circuits obtainable only from the manufacturer of the equipment. We seek comment on the feasibility, cost, and time necessary for such software changes to be made.

4. Unanswered and Uncompleted Calls

25. We next request comment on proposed restrictions on billing practices related to the provision of operator services, beginning with charges for unanswered or uncompleted calls. The Commission receives numerous complaints from consumers who allege they are being billed by carriers for such calls. Charges associated with unanswered or uncompleted calls are often attributed to the lack of answer supervision capabilities[44] in areas where equal access is not available.[45] Without answer supervision, carriers are incapable of properly monitoring the progress of calls forwarded through the network and may inadvertently charge callers for unanswered or uncompleted calls if, for example, the carrier automatically begins charging after a certain number of rings. In other cases, carriers may actually lose revenues if the lack of answer supervision results in the carrier's billing equipment not being activated. In our *Section 68.314 Rule Making*, we are reviewing in detail the technical aspects of answer supervision and are considering the adoption of rules aimed at, *inter alia*, identifying the conditions and circumstances under which answer supervision should be required and those instances in which unanswered and uncompleted calls should be exempted from billing.[46] We seek comment on the need for and feasibility of adopting a rule that would prohibit operator service providers from charging any caller for unanswered or uncompleted calls. We expect that any such requirement would closely track the rules and policies ultimately adopted in our *Section 68.314 Rule Making*. We encourage interested parties to consider fully the proposals set forth in that proceeding when fashioning their comments.

5. Call Splashing

26. Proposed Section 64.705 addresses the problem of call splashing. As described in the *RAC Order*, call splashing occurs when an OSP transfers a call to another carrier at a point different from that at which the caller is located, thereby causing the caller's bill to contain a charge that reflects the transfer of the call at the distant point.[48] The Call Splashing Task Force, assembled for the purpose of identifying and recommending possible solutions to the splashing problem, has suggested that we adopt the following definition, which it believes will facilitate industry efforts to eliminate the problem: "[c]all splashing occurs when a call transfer (whether caller-requested or OSP-initiated) results in incorrect billing because the point from which the call is rated and/or billed is different from the point from which the call originates."[49] The Task Force states that the refined definition reflects the need to differentiate call splashing from those situations where a call is simply "handed off" or "transferred" from one OSP to another. We tentatively conclude that the definition suggested by the Task Force more appropriately reflects the nature and extent of the splashing problem and should be adopted for the purpose of applying proposed Section 64.705. We invite comments, however, on whether and to what extent even this new definition should be modified.

27. Many of the problems associated with call splashing may be eliminated when call blocking ceases, since customers will be able to dial their carriers of choice directly. Because call splashing results in incorrect billing to the consumer, however, we would be concerned if any splashing occurs. Therefore, our proposed rule in Section 64.705 directs OSPs to eliminate the practice of call splashing.

28. The Call Splashing Report suggested a myriad of solutions to the call splashing problem, some of which have advantages that may make them more effective than others. For example, one recommendation would require OSPs to modify their systems to provide reorigination of calls back to pay telephones or to CPE located on aggregator premises. According to the Report, reorigination capability at the CPE would: allow transferred calls to be correctly rated and billed by the OSP receiving the transferred call; spare the customer the inconvenience of redialing; solve billing problems associated with splashing; avoid transmission degradation; and reduce the originating OSP's problems with unnecessary switched access connections and associated costs. The Call Splashing Report also states, however, that such a requirement will likely involve substantial replacement or modification of existing CPE and payphone equipment by OSPs or aggregators and payphone owners, as well as the development of new switching capabilities to generate the reorigination tone. We invite comment generally on the recommendations in the Call Splashing Report as solutions to the splashing problem. We encourage parties commenting on these proposals to provide supporting data on equipment replacement and modification requirements as well as implementation costs and timetables.

6. Access Codes of Interexchange Carriers

29. The last rule that we specifically propose, Section 64.706, concerns the access codes of interexchange carriers. By requiring carriers to establish at least one alternative to "10XXX"[49] access under subsection (a), we hope to mitigate any lingering problems with equipment that is incapable of providing 10XXX access because of technical limitations or its inability to protect against fraud. With such an alternative, customers should be technically able to exercise their right to contact their preferred carriers. The establishment of an alternative to 10XXX access may not be a complete solution to blocking problems, however, because other access codes can also, in theory, be blocked. Nevertheless, such an alternative should provide some relief from splashing problems that occur when a call must be transferred at a distant point because the caller is technically unable to use the 10XXX access code and no alternative is available for the preferred carrier.

30. Subsection (b), requiring LECs to provide access codes to calling customers upon request, will allow customers to use readily the codes that carriers must establish under subsection (a). By subsection (b), we intend only that the LECs must provide the access codes for specifically requested carriers. We seek comment on whether such information is readily available to LECs and whether LECs will, in a practical sense, be able to provide it to callers.

31. In subsection (c), we propose a rule requiring each LEC to place in every edition of any "white pages" telephone directory it distributes, supplies, or provides, a set of instructions indicating the ways by which the 10XXX, 950, and 800 dialing methods can be used to reach interexchange carriers and OSPs. The LECs would also be required to list the 10XXX codes and the 950 and 800 numbers of interexchange carriers and OSPs serving any part of the area that is the subject of the directory. Under this subsection, LECs would be prohibited from charging carriers and OSPs for listing such information, and the listed carriers and OSPs would be responsible for supplying the necessary information for this listing. These requirements would take effect ninety days after the adoption of this section. As an alternative to this subsection, we could instead require carriers and OSPs to place advertisements listing their access codes in the appropriate telephone directories. We seek comment on these proposals, which will, we hope, ensure that callers have a ready source of the information necessary for reaching their carriers of choice.

32. Our proposed rule in Section 64.706(a) requiring carriers to establish only one alternative to 10XXX access may seem inconsistent with our provision concerning equipment capabilities, Section 68.318(d), because the latter requires equipment to have the capability of processing all access methods. We think it is necessary, however, for equipment to have this broader capability because carriers would, under Section 64.706(a), have the discretion to choose whichever 10XXX alternative they desire. The result will be that some carriers may choose, for example, the 950 alternative, while others may implement 800 access. Under these circumstances, equipment must be able to process all access methods in order to allow callers to reach all carriers in a prompt and convenient way. Similarly, our blocking prohibition, in proposed Section 64.704, must be equally broad so that all carriers may be reached through the methods they choose to implement.

B. Miscellaneous Issues

33. Finally, we seek comment on an additional issue related to operator services. NARUC has recommended that we consider adopting nationwide standards for the handling of emergency calls by OSPs in order to ensure that such calls are efficiently routed to the appropriate

local public safety organization.[50] ... have traditionally deferred to the states in this area because the overwhelming majority of emergency calls are local in nature and the handling of such calls is of primary concern to local communities. State agencies have been active in ensuring that operator service providers complete emergency calls efficiently and have adopted different standards to address this particular situation. Nevertheless, in light of NARUC's request that we explore the extent of problems concerning emergency calls, we invite interested parties to comment on the appropriate federal role in the resolution of such problems.

34. In the discussion above, we have generally raised a wide array of alternatives to the rules that are actually proposed. We encourage attention to and seek comment on these alternatives so that we may develop a record that will allow us to consider fully the implications of both the proposed rules and their alternatives. Our final determination will then be made with a view toward adopting the most effective and appropriate provisions of both. More broadly, we seek comment on the extent to which the proposed rules, or a combination of some but not necessarily all of the proposals, are necessary for achieving our goal in this proceeding, which is to assure that consumers are fully informed about their operator service options and are able to choose freely among the available services and providers.

IV. LEGAL ISSUES

35. OSPs, as providers of interstate common carrier service, are squarely within our jurisdiction under Title II of the Communications Act. We also tentatively conclude that we have jurisdiction over call aggregators, such as hotels, under Title II.[51]

36. We intend to exercise our jurisdiction against offending OSPs and aggregators alike by making appropriate use of our forfeiture authority. This authority under Section 205(b) of the Communications Act[52] has recently been increased so that we can now impose a forfeiture of up to $12,000 per offense against any carrier or agent of a carrier who knowingly fails or neglects to obey any Commission order prescribing just, fair, and reasonable practices. This section provides that every distinct violation is a separate offense and that, in the case of a continuing violation, each day is to be deemed a separate offense. Further, under the recently amended Section 503, we can impose substantial forfeitures for willful and repeated general violations of the Act or our Rules, regulations, or orders: for common carriers subject to the Act, up to $100,000 for each violation or each day of a continuing violation, up to a total of $1,000,000 for a continuing violation; and for others, up to $10,000 for each violation or day of a continuing violation, up to a total of $75,000.[53] We will not hesitate to use our forfeiture authority against violators of our Rules.

V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

37. **Reason for Action.** The Commission is issuing this Notice of Proposed Rule Making to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

38. **Objectives.** The objective of this Notice of Proposed Rule Making is to assure that operator services are provided in a manner that fosters a fully competitive operator services industry and that allows calling customers to exercise choice freely in selecting services.

39. **Legal Basis.** Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 303(r).

40. **Description, potential impact, and number of small entities affected.** The proposed rules will mandate that entities in the operator services industry provide information that is necessary for customers to make knowledgeable choices among services. The rules will also help to eliminate certain practices and charges involving the provision of operator services that reduce customer choice and competitiveness within the industry. The equipment modifications required under the proposed rules will likewise further these goals. Small entities, especially certain call aggregators, may feel some economic impact due to the proposed equipment modification requirements, but we have proposed the granting of waivers to lessen such burdens when appropriate. In addition, this Notice seeks comments and evidence regarding the actual impact on small entities.

41. **Reporting, recordkeeping, and other compliance requirements:** The proposed rules require reporting in the form of the disclosure by operator service providers and call aggregators to their customers of certain information regarding their identities, their services, and the options customers have in using those services.

42. **Federal rules which overlap, duplicate, or conflict with the Commission's proposal:** None.

43. **Any significant alternatives minimizing impact on small entities and consistent with stated objectives:** We have indicated a willingness to waive the proposed blocking and equipment modification requirements in the appropriate circumstances. In addition, we have suggested alternatives to several of the proposed rules and have requested comment on them.

44. **Comments are solicited.** We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. *See* 5 U.S.C. § 601, *et seq.*

VI. EX PARTE REQUIREMENTS

45. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that

the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

46. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b) of the Commission's Rules, 47 C.F.R. § 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

47. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary, with a copy to the Commissioner or staff member involved, which summarizes the data and arguments. The memorandum, as well as any transmittal letter, must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

48. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

VII. CONCLUSION AND ORDERING CLAUSES

49. In summary, the rules proposed in this Notice are intended to remedy problems related to operator services that have thwarted customer choice and have impeded and distorted the operation of a fully competitive operator services industry. By requiring both operator service providers and call aggregators to provide customers with information on their services, we hope to eliminate the situation in which consumers are unaware of how to exercise their options in the operator services field. We also intend these rules to prohibit practices such as call blocking and splashing that are inimical to the exercise of customers' rights and to competition in the industry. Consistent with this aim, the proposed rules require the modification of equipment that blocks calls. Overall, we expect the proposed rules to free customers from charges they did not agree to and from practices that prevent them from using the operator service provider they prefer. These rules will also help foster a marketplace environment in which operator service providers compete based on the merits of their services, rather than on the payments they provide to aggregators who deliver to them a captive clientele. Interested parties are invited to submit comments and supporting data that will assist us in pursuing these goals. We are particularly interested in evidence regarding the technical and operational complexities of implementing the proposed rules and the economic impact of implementation in terms of costs to or burdens on consumers, carriers, and call aggregators.

50. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 303(r), that a NOTICE OF PROPOSED RULE MAKING IS ISSUED, proposing the amendment of 47 C.F.R. Parts 64 and 68 as indicated above.

51. IT IS FURTHER ORDERED, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, that all interested parties may file comments on the matters discussed in this Notice and the proposed rules contained in the Appendix below by **September 7, 1990**, and reply comments by **September 24, 1990**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

52. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

53. IT IS FURTHER ORDERED that the Secretary shall cause a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a) (1981). The Secretary shall also cause a summary of this Notice to appear in the Federal Register.

54. IT IS FURTHER ORDERED that the Petition of the National Association of Regulatory Utility Commissioners, RM-6767, filed April 17, 1989, IS GRANTED to the extent indicated herein and is otherwise DENIED. All related pleadings and comments filed with regard to NARUC's petition are hereby incorporated by reference.

FEDERAL COMMUNICATIONS MMISSION

Donna R. Searcy
Secretary

APPENDIX
PROPOSED RULES

It is proposed that Part 64 of Title 47 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. A new Section 64.703 is added to read as follows:

§ 64.703 Customer information.

(a) An operator service provider shall:

(1) identify itself, audibly and distinctly, to the customer before the customer incurs any charges;

(2) after the identification, allow sufficient time before the call is connected to permit the customer either to terminate the call at no charge or to advise the operator to transfer the call to the customer's preferred interstate or international common carrier at no charge; and

(3) disclose immediately, upon request by, and without charge to, the customer,

(A) the rates or charges for the customer's intended call;

(B) the methods by which such rates or charges will be collected; and

(C) the methods by which complaints concerning rates, charges, or collection practices will be resolved.

(b) Each call aggregator shall display plainly on or in close proximity to all telephones available for customer use, or shall provide to customers personally, printed documentation containing:

(1) the name(s), address(es), and toll-free telephone number(s) of the operator service provider(s) to which the telephones are presubscribed;

(2) a statement that the rates of the operator service provider(s) will be quoted upon request; and

(3) a written disclosure that informs customers that they have a right to obtain access to the carrier of their choice if said carrier provides service in that area and that informs them of how to contact that carrier.

(c) Satisfaction o requirements of subsection (b) shall be the joint .esponsibility of the operator service provider, the call aggregator, and the owner of the telephone; applicable contracts or tariffs, if any, shall be modified accordingly.

3. A new Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a) Call blocking occurs when an end-user is prevented from accessing the preferred carrier through alternative dialing methods -- 800, 950, and 10XXX-0+.

(b) Operator service providers shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(c) Call aggregators shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(d) Owners of pay telephones shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(e) Applicable contracts or tariffs shall be modified so as to effectuate the provisions of subsections (b), (c), and (d).

(f) Operator service providers shall not pay compensation of any kind to call aggregators at locations at which any blocking of access to any common carrier occurs.

4. A new Section 64.705 is added to read as follows:

§ 64.605 Restrictions on charges related to the provision of operator services.

Call splashing. Operator service providers shall not charge customers for a distance that is more than the distance, in a straight line, between the calling party's point of origination and point of termination of the telephone call.

5. A new Section 64.706 is added to read as follows:

§ 64.706 Access codes of interexchange carriers.

(a) All interexchange common carriers shall establish within twelve (12) months of the effective date of this section a "10XXX" access code and at least one alternative form of access (*e.g.*, a "950" or an "800" number).

(b) Local exchange carriers shall provide to calling customers, upon request, the access codes for specifically requested carriers operating in that local exchange area.

(c) Each local exchange carrier shall place in every edition of any "white pages" telephone directory it distributes, supplies, or provides on or after [ninety (90) days after the adoption of this section]:

(1) instructions indicating the ways by which the 10XXX, 950, and 800 dialing methods can be used to reach interexchange carriers and operator service providers; and

(2) a listing of the 10XXX access codes and the 950 and 800 numbers of interexchange carriers and operator service providers that serve any part of the area that is the subject of the directory. This listing shall be placed by the local exchange carrier at no cost to the listed carriers or

operator service providers, and the ...d carriers and operator service providers shall bear responsibility for supplying the necessary information for this listing.

It is proposed that Part 68 of Title 47 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

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(d) *Requirement that registered equipment allow access to common carriers.*

(1) Any equipment that is manufactured, imported, or installed more than eighteen (18) months after the effective date of this subsection and that is used by any call aggregator shall be capable of providing callers with access to common carriers through the use of all access methods -- 800, 950, and 10XXX-0+.

(2) All equipment used by call aggregators shall, within eighteen (18) months of the effective date of this subsection, provide callers with access to common carriers through the use of all access methods -- 800, 950, and 10XXX-0+. Such equipment shall be modified as necessary and re-registered if required by Section 68.214. Any software modifications required to achieve compliance with this subsection shall be installed in a manner that cannot readily be altered by the user.

FOOTNOTES

[1] 47 U.S.C. § 151.

[2] The vast majority of "0" calls fall into one of three categories: calling card, collect, and third number billing. We recently noted that while operator services used to require the intervention of a human operator, some functions previously performed by human operators are now sometimes performed by computers. *See* Competition in the Interstate Interexchange Market, Notice of Proposed Rule Making, CC Docket No. 90-132, FCC No. 90-90, para. 76, n.125 (released April 13, 1990). For the purposes ofthis Notice, we use the term "operator services" to refer to "0" calls, whether or not they require the intervention of an operator.

[3] Complaints concerning operator services comprise the single largest category of consumer complaints received by the Common Carrier Bureau (Bureau), with 125 to 150 informal complaints currently being filed each month. Since early 1988, thousands of these complaints have been filed.

[4] An operator service provider ("OSP") as used here is any entity that provides operator services, including AT&T as well as the newer entrants into the operator services industry. We will use the term "alternative operator service" provider or "AOS" where necessary to distinguish then ewer providers.

[5] *See* United States v. ...rican Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C.1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[6] "Call aggregators," as we use the term in this Notice, are entities that have telephones available for use by their cus-tomers, patrons, or other transient users. Aggregators include, for example, hotels, hospitals, airports, and universities.

[7] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization: Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 308 (1979) ("*Notice*"); First Report and Order, 85 FCC 2d 1 (1980) ("*First Competitive Carrier Order*"); Further Notice of Proposed Rule Making, 84 FCC 2d 445 (1981) ("*Further Notice*"); Second Report and Order, 91 FCC 2d 59 (1982) ("*Second Competitive Carrier Report*"), *recon. denied*, 93 FCC 2d 59 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) ("*Fourth Competitive Carrier Order*"); Fifth Report and Order, 98 FCC 2d 1191 (1984) ("*Fifth Competitive Carrier Order*"); Sixth Report and Order, 99 FCC 2d 1020, *vacated and remanded sub nom.* MCI v. FCC, 765 F.2d 1186 (D.C. Cir. 1985); (hereinafter collectively" *Competitive Carrier*").

[8] Telecommunications Research and Action Center v. Central Corporation, et al., 4 FCC Rcd 2157 (Com. Car. Bur. 1989) (hereinafter "*TRAC Order*"). The Bureau concluded that while most controversies over operator services concern "0+" calls, the issues and remedies adopted in the order are equally applicable to "1+" calls, which include calls from coin-operated telephones that are paid in cash, the so-called "sent paid" calls. *Id.* at 2160, n.4.

[9] *TRAC Order*, 4 FCC Rcd at 2159. The Bureau, however, denied the complaint insofar as it sought a reclassification of the defendant AOS companies as dominant carriers under the Commission's regulatory structure and revocation of their operating authority. *Id.* at 2158. The Bureau also concluded that the complainants had provided no facts or arguments that would be legally sufficient to sustain a finding that the defendants' rates were unjust and unreasonable under the Act. *Id.*

[10] 4 FCC Rcd at 2159.

[11] *Id.*

[12] *Id.*

[13] The *TRAC Order* defines call blocking as

> the process of screening the calls dialed from the presubscribed telephone for certain predetermined numbers, and preventing or "blocking" the completion of calls [that] would allow the caller to reach [an OSP] different from the [presubscribed operator service] company.

4 FCC Rcd at 2160 n.6. We noted above that the *TRAC Order* extends the blocking prohibition to 1+ as well as 0+ traffic. *See supra* note 8. Asdiscussed below, we tentatively conclude that the blocking definition should be refined to allow OSPs the option of blocking 1+ traffic .

[14] 4 FCC Rcd at 2159. The Bureau stated, however, that it would consider petitions to waive the blocking prohibition under some circumstances, such as when an OSP could make the requisite showing that blocking is required in order to prevent fraudulent use of the network. In April 1989, four of the defendants in the *TRAC* proceeding, National Telephone Services, Inc., International Telecharge, Inc., Payline Systems, Inc. and Telesphere Network, Inc. filed petitions requesting general, systemwide waivers of the *TRAC Order*'s blocking prohibition so as to allow blocking of 10XXX access.

[15] 4 FCC Rcd at 2159.

[16] The *TRAC Order* describes "call s[ ] ng" as occurring

> when a caller requests a transfer from [a presubscribed operator service] company operator to [the caller's] preferred . . . carrier. Since the call is handed off to the preferred carrier in the city where the [operator service] company's operations center and switch are located, the point from which the call will be billed will often be different from the caller's originating location, and the call may be billed at a rate different than the caller may have anticipated.

Id. at 2160 n.5. For the reasons discussed below, however, we tentatively conclude that the call splashing definition should be refined to reflect more appropriately the nature and extent of the splashing problem and to facilitate industry efforts to obtain a workable solution.

[17] 4 FCC Rcd at 2159.

[18] On March 29, 1989, the complainants filed an application for review of the Bureau's decision.

[19] *See* Petition of the National Association of Regulatory Utility Commissioners, RM-6767 (filed April 17, 1989) (hereinafter "NARUC Petition").

[20] The provision of AOS services had been the subject of considerable discussion and study by NARUC prior to the time it filed its Rule Making petition. *See, e.g.*, NARUC Staff Subcomm. on Telecommunications, State Task Force Report on the Results of the Alternative Operator Services(AOS) Survey (June 24, 1988); NARUC Staff Subcomm. on Telecommunications.State Task Force Report on the Results of the Alternative Operator Services (AOS) Survey II (February 15, 1989).

[21] NARUC Petition at 7.

[22] NARUC Petition at 5.

[23] NARUC Petition at 5-6.

[24] NARUC Petition at 7.

[25] Public Notice, DA 89-571 (released May 23, 1989).

[26] *See, e.g.*, Comments of Pacific Bell and Nevada Bell Telephone Companies; Comments of National Association of State Utility Consumer Advocates; Comments of Florida Public Service Commission; Comments of Iowa State Utilities Board; Comments of The American Public Communications Council; Comments of The National Telephone Cooperative Association.

[27] *See, e.g.*, Comments of National Telephone Services, Inc.; Comments of International Telecharge, Inc.; Comments of Telesphere Network, Inc.; Comments of U.S. Operators, Inc.; Comments of The Operator Service Providers of America; Comments of U.S. Long Distance, Inc.

[28] As noted above, consumer complaints regarding OSP rates and practices continue to comprise the single largest category of complaints received by the Common Carrier Bureau. On April 10-11, 1990, staff members from our Washington, D.C. office and our thirty-five field offices conducted an informal nationwide audit of selected telephones in an effort to gauge the level of compliance with the *TRAC Order* requirements and to educate call aggregators as well as OSPs about those requirements. While we do not rely on the results of the audit as a basis for our proposed rules,we note that the results do appear to corroborate the fact that problems in the operator services industry generally continue to exist for AOS providers and "traditional" OSPs alike.

[29] The text of the proposed rules is contained in an Appendix to this Notice.

[30] As used herein, the word "customer" refers to a caller who initiates services thro[ ] an OSP.

[31] *TRAC Order*, 4 FCC Rcd at 2159.

[32] It has been brought to our attention that certain adjunct devices used by aggregators, such as the so-called "store-and-forward" or "bong-in-the-box" devices, allow callers to make and be billed for 1+ calls from an aggregator's telephones, and, as such, the caller is never connected to the presubscribed OSP's live operator for branding purposes. We seek comment on how our branding requirement should be applied when such devices are used.

[33] A number of states, including Florida, Georgia, Kansas, Kentucky, and Massachusetts, currently require some form of double branding. In general, we welcome any comments or evidence from states regarding their experiences with operator services and their efforts to address consumer and industry problems. On February 16, 1990, the Chairman of the FCC solicited comments from all of the state attorneys general about these concerns, and several responses have been received that describe current state laws and regulations in this area. *See, e.g.*, Letter from the Attorney General of Washington to Chairman Alfred C. Sikes (February 26, 1990). These letters and any similar ones received will be included in the record of this proceeding.

[34] In some cases, the owner of the telephone may not be the aggregator on whose premises the telephone is located. For example, a pay telephone that is owned by a LEC or a private company may be located on the premises of an aggregator such as a hotel or airport.

[35] In this regard, proposed Section 64.703 goes beyond the *TRAC Order*, which, in effect, placed the primary responsibility for informing the customer on the operator service provider. *See* 4 FCC Rcd at 2159.

[36] *TRAC Order*, 4 FCC Rcd at 2159.

[37] For example, factors we might consider in deciding whether to grant a waiver could include the size of the aggregator, the realistic prospect of a fraud problem, the limitations of the type of equipment in question,and the cost and time involved in upgrading or replacing the equipment.

[38] 4 FCC Rcd at 2159, 2160 n.6.

[39] *See, e.g.*, Report of the Call Splashing Task Force at 5-6 (June 1, 1989) (hereinafter "Call Splashing Report"); Comments Supporting Waiver Petitions (ENF-89-08), filed May 30, 1989 by U.S. Operators, Inc.; Comments in Support of Waiver Petitions filed May 30, 1989 by ComSystems, Inc., Nycom Information Services, Inc., and Call Technologies, Inc.

[40] The current alternative dialing methods, 800, 950, and 10XXX, are sometimes referred to as "access codes." This term denotes a dialing sequence, unique to individual carriers, that allows a caller to gain access to a particular carrier. The "XXX" is known as the Carrier Identification Code (CIC). CICs are assigned to carriers by Bell Communications Research and are used with both the 10XXX dialing method and the 950 method, in the form of either 950-0XXX or 950-1XXX. *See* Industry Analysis Division, FCC, Report on the Number of Carriers Holding Carrier Identification Codes at 2 (released April 24, 1990) (hereinafter "CIC Report"). It appears that while most OSPs provide at least two of three alternative types of access, AT&T now relies exclusively on 10XXX and does not provide 800 or 950 access to its services.

[41] We recognize, however, that operator-assisted calls may cost more than 1+calls. For example, a hotel guest who is billed directly by the hotel for a 1+ call may be charged less than would be the case with the operator-assisted call that would be necessary if 1+ calls were blocked. We seek comment on the

degree of these cost differentials and on ... ther such costs outweigh the fraud concerns that justify our permitting 1+ blocking.

[42] Pending disposition of this Rule Making proceeding, we will not enforce the prohibition regarding 1+ blocking.

[43] For example, there is no danger of fraud with "sent paid" 1+ calls from pay telephones because the caller pays for these calls in cash. It therefore might be appropriate to apply our blocking prohibition to such calls.

[44] "Answer supervision" is the term used by telephone companies to describe the signal that the called station (or other CPE) emits to tell the telephone companies' billing equipment that a call has been answered and that billing should commence. *See* Petition for Adoption of New Section 68.314(h) of the Commission's Rules, Notice of Proposed Rule Making, CC Docket No. 89-114, FCC No. 89-152, 4 FCC Rcd 4577, 4585n.3 (released June 1, 1989) (hereinafter "*Section 68. 314 Rule Making*").

[45] Currently, equal access is available for approximately 93% of the nation's telephone lines. As the conversion of the remaining lines to equal access proceeds and answer supervision becomes more readily available, we anticipate that the problem with charges for uncompleted or unanswered calls will decline.

[46] *See Section 68. 314 Rule Making*, 4 FCC Rcd at 4581-83.

[47] *See TRAC Order*, 4 FCC Rcd at 2160 n.5.

[48] Call Splashing Report at 3.

[49] We use "10XXX" generically; it includes all 10XXX-type access codes, including any eventual expansion to 10XXXX. As described in note 40, *supra*, the Carrier Identification Code, XXX, is used in both the 10XXX and the 950 dialing methods. According to the CIC Report, 774 CICs had been assigned as of March 1990. CIC Report at 4. We seek comment on the anticipated length of time until an expansion to a four-digit CIC is required and on what action, if any, the Commission could take to ensure the efficient use of these codes.

[50] *See* NARUC Petition at 7, Appendix C.

[51] Ambassador, Inc. v. United States, 325 U.S. 317, 322, 326 (1945); United States v. AT&T, 57 F. Supp. 451, 454 (S.D.N.Y. 1944), *aff'd sub nom.* Hotel Astor v. United States, 325 U.S. 837 (1945). Any commenters who believe we lack jurisdiction under Title II should also address why we do not have ancillary jurisdiction over call aggregators. *See* 47 U.S.C.§ 152(a) ("The provisions of this act shall apply to all interstate and foreign communications by wire . . . ."). *See* generally United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

[52] 47 U.S.C. § 205(b).

[53] 47 U.S.C. § 503(b)(1), (2).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of November 1990, true and correct copies of the foregoing Reply Comments of MCI Telecommunications Corporation were sent via United States first class mail, postage prepaid, to the following:

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