IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE, ex rel., INTERNATIONAL TELECHARGE, INC., Relator,	)	
vs.	)	Case No. CV189-506CC
PUBLIC SERVICE COMMISSION OF MISSOURI, Respondent.	)	

WRIT OF REVIEW

Wherefore, for good cause shown, and upon Application of Relator, International Telecharge, Inc., arising out of the proceedings of the Public Service Commission in Case Number TR-89-6 (Consolidated Case Number TA-88-218), it is hereby ordered the the Commission shall certify to this Court within thirty (30) days hereof, the full and complete record in said case. This Court shall utilize the record in its consideration of the issues raised by Relator in its Petition pursuant to Section 386.510, RSMo. 1986.

Byron L. Kender by dy
Circuit Judge
Cole County, Missouri

DATED: 5-3-89

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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE, ex rel., INTERNATIONAL TELECHARGE, INC., Relator,	)	
vs.	)	Case No. CV189-306 CC
PUBLIC SERVICE COMMISSION OF MISSOURI, Respondent.	)	

APPLICATION FOR WRIT OF REVIEW AND STAY

Comes now Relator, by and through its attorneys, and, pursuant to Section 386.510, RSMo. (1986), for its Application for Writ of Review, states as follows:

1. This action involves a Report and Order dated April 17, 1989, by the Missouri Public Service Commission in Case Number TR-89-6 (said case was consolidated with a number of other proceedings, the consolidated docket being referred to as Case Number TA-88-218), which rejected the tariffs filed by Relator, International Telecharge, Inc., (hereinafter "ITI" or "Relator") and directed that Relator, International Telecharge, Inc., unlike some other entities, would not be allowed to submit any additional tariffs for Commission consideration. Relator appeals from and asks the Court to review the portions of said Report and Order that are unreasonable, unconstitutional, abusive of discretion, and unsupported by substantial and competent evidence. A copy of said Report and Order is attached for reference as Exhibit "A".

2. Relator, International Telecharge, Inc., is a Telecommunications Company certified to operate in the State of

Missouri and was a party to proceedings below which resulted in the Report and Order adverse to Relator. As such, Relator is a proper party to bring this action for a Writ of Review.

3. Respondent, Public Service Commission of Missouri (hereinafter "Commission") is a regulatory agency of the State of Missouri established by the Public Service Commission laws, Section 385, RSMo. 1986. The Commission has statutory authority to regulate telecommunications service in Missouri pursuant to Section 392, RSMo. 1986. The principle office of the Commission is in the County of Cole, State of Missouri, and, therefore, venue and jurisdiction over is matter is proper in this Court.

4. In the April 17th Report and Order, the Commission refused to approve ITI's tarriff. In addition, the Commission found that as a company which derive most of its revenue from operator assisted telecommunications, ITI would not be allowed to provide intrastate services in Missouri, regardless of the contents of any tariff these companies might file. However, the Commission found that Teleconnect, Dial U.S., and Dial U.S.A. would be allowed to provide operator assisted services, provided they filed new tariffs complying with certain rules set forth in the Report and Order. The Commission reasoned that these companies should be allowed to provide operator assisted services, based on a vague and unspecified test that such services were "ancillary" to those companies' customary services. Commissioner Fischer dissented from the Commission's blanket refusal to approve ITI's tariff. A copy of Commissioner Fischer's dissent is included as part of Exhibit "A".

5. On April 24, 1989, Relator filed its Application for Rehearing, and on April 26, 1989, Relator filed its Supplemental Suggestions in Support of its Application for Rehearing. Copies of both pleadings are attached hereto as Exhibit "B" and Exhibit "C" (respectively) and are incorporated into this Application by this reference as if more particularly set out herein.

6. Relator's Application for Rehearing was denied by Order of the Commission dated April 28, 1989. A copy of said Order is attached for reference as Exhibit "D". Relator has filed this Application for Writ of Review within thirty (30) days of the date of the Order denying Relator's Application for Rehearing.

7. The Commission's April 17th Report and Order and its April 28th Order Denying Rehearing are unconstitutional, unlawful, unreasonable, arbitrary, capricious, and unreasonably discriminatory. The findings of fact in those Orders are clearly erroneous and are not supported by substantial and competent evidence on the record as a whole. The conclusions of law therein utilize improper legal analysis, are unlawfully discriminatory, violate the Commerce and Supremacy Clauses of the United States Constitution, and are not supported by sufficient findings of fact based on competent and substantial evidence on the record as a whole. The Orders are unconstitutional because they deny ITI its rights of due process and equal protection under the Missouri Constitution and the Constitution of the United States. The Commission's Orders also draw unlawfully and unreasonably discriminatory distinctions.

8. ITI specifically incorporates herein the specifications

of error set forth in its Motion for Rehearing and Reconsideration before the Commission, attached hereto as Exhibit "B". The Commission's Orders are unlawful and unreasonable for the reasons stated in that Motion.

9. The Commission improperly and unlawfully found that no scheme of regulatory control could properly protect Missouri telecommunications users from the alleged, yet unproved, abuses by operator services companies such as ITI. If allowed to stand, these Orders would effectively foreclose any possibility of real competition in the operator services market in Missouri.

10. Further, the Commission's April 17, 1989, Order will result in great and irreparable harm to ITI as it jeopardizes all of ITI's contracts with Missouri premise owners and, in particular, its public pay telephone presubscription commitments, which were created as a result of the rulings of United States District Judge Harold Greene. As a result of the rejection of ITI's tariffs, ITI will be unable to provide intrastate service to any of its locations. Each of the hotels, motels, private pay telephone owners and public pay telephone premise owners who subscribe to ITI service will no longer be able to access ITI intrastate services as a direct result of the Commission's illegal and unauthorized action since ITI will be prohibited from providing service under its contractual obligations to each of these locations. In addition, ITI will lose all interstate calls from Southwestern Bell owned payphones in Missouri. ITI also believes it will lose many private payphone customers as a consequence of the Commission's Order and consequently will lose

the interstate calls from these phones as well. Based on its present number of customers in Missouri, ITI projects it lose revenue of over Thirty Thousand Dollars ($30,000.00) per month from hotels and motels, over Two Hundred Thousand Dollars ($200,000.00) per month from private payphones, and approximately One Million Dollars ($1,000,000.00) per month from public payphones for a minimum an annual loss of over Thirteen Million Dollars ($13,000,000.00). Even if ITI ultimately prevails by overturning the Commission's decision, there is no adequate remedy at law which will compensate ITI for the loss of these customers. In particular, each of the hotels, motels and public and private pay telephone owners that subscribes to ITI must, if this Order remains effective, be denied ITI intrastate services and, in the case of public payphones, interstate service, and each will have to seek alternative means to provide operator service to end users at their premises. Further, ITI will lose its portion of the allocated Southwestern Bell public pay telephone traffic under the prescription plan and any additional allocations. Even if ITI is subsequently vindicated, the victory will be of little practical significance since ITI will have already lost all its Missouri customers. Since the Commission is a state agency, ITI may be unable to obtain monetary compensation for any of the damages heretofore described. Furthermore, even if compensation for damages are available, the value of ITI's contracts and the monetary effect of ITI's inability to provide service on ITI's reputation is not readily subject to calculation or measurement. Therefore, pursuant to Section 386.520, RSMo.

1986, ITI respectfully requests that the Court stay the Commissioner's Order in Case Number TR-89-6 as it pertains to ITI and to call this matter before the Court for a hearing to determine what reasonable bond, if any, should be required. Such a stay would also be in the public interest as, if none is granted, over nine thousand (9,000) Missouri users will lose their operator service company of choice.

WHEREFORE, Relator prays that the Court review the Commission's Orders in Case Number TR-89-6 (Consolidated Case Number TA-88-218) and, upon such review, reverse the Commission's Order as it pertains to Relator as unlawful, unreasonable, unconstitutional, abusive of discretion, discriminatory and not supported by substantial and competent evidence, and, if the Court deems necessary, a remand to the Commission for appropriate proceedings. Furthermore, Relator requests that this Court enter a stay of the Commission's Order as it pertains to ITI pending the outcome of this appeal, and any other relief the Court deems just and equitable.

Respectfully submitted,

HENDREN AND ANDRAE

By Richard S. Brownlee III
Richard S. Brownlee, III
Donald C. Otto, Jr.

235 East High Street
P. O. Box 1069
Jefferson City, Missouri 65102
(314)636-8135

ATTORNEYS FOR RELATOR
INTERNATIONAL TELECHARGE, INC.

EXHIBIT "A"

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 17, 1989

CASE NO. TA-88-218, et al.

Jeffrey T. Smith, Patton, Boggs and Blow, 2550 M Street, N.W., Washington, D.C. 20037
James F. Bryan, Director, Telco & Regulatory Relations, Fourth Floor, 6100 Executive Blvd., Rockville, MD 20852
Mark P. Johnson, Spencer, Fane, Britt & Brown, 1400 Commerce Bank Building, 1000 Walnut Street, Kansas City, MO 64106-2140
T. Michael Payne and Thomas Horn, Southwestern Bell Telephone Company, 100 North Tucker, Room 618, St. Louis, Missouri 63101
Richard S. Brownlee III, Attorney at Law, 235 East High Street, P. O. Box 1069, Jefferson City, Missouri 65102
Andrew Kever, Attorney at Law, San Jacinto Center, Suite 1800, 98 San Jacinto Blvd., Austin, Texas 78701
Jeremiah D. Finnegan, Attorney at Law, 4049 Pennsylvania, Suite 300, Kansas City, Missouri 64111
Joni K. Ott and Mark D. Wheatley, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102
Eddie M. Pope, General Counsel, International Telecharge, Inc., 108 South Akard Street, Dallas, Texas 75202
Phillip R. Newmark, Attorney at Law, 7777 Bonhomme, Suite 1910, Clayton, Missouri 63105
Joel W. Mixon, Network Manager, Communications Cable-Laying Company, Inc., d/b/a Dial U.S.A., 1045 East Trafficway, Springfield, Missouri 65802
Edward J. Cadieux, Regulatory Attorney, MCI Telecommunications Corporation, Southwest Division, MCI Building, 100 South Fourth Street, St. Louis, Missouri 63102
W. R. England III, and Paul Boudreau, Attorneys at Law, P. O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102
Leland B. Curtis and Carl J. Lumley, Attorneys, 130 South Bemiston, Suite 200, Clayton, Missouri 63105
Mark P. Royer, Attorney,- Southern Region AT&T Communications of the Southwest, 1100 Walnut, Room 2432, P. O. Box 419418, Kansas City, Missouri 64141-6418
David K. Knowles and J. Richard Smith, United Telephone Company of Missouri, 5454 West 110th Street, Overland Park, Kansas 66211
Vernon C. Maulson, Associate General Counsel, GTE North Inc., 1312 East Empire Street, Bloomington, Illinois 61701
Carol L. Bjelland, Missouri Administrator of Regulatory Affairs, GTE North Inc, 428 East Capitol, Jefferson City, Missouri 65101
Brad E. Mutscheknaus, General Counsel, National Telephone Services, Inc., 6100 Executive Boulevard, 4th Floor, Rockville, Maryland 20852
Andrew D. Lipman and Jean L. Kiddoo, Attorneys at Law, 3000 K Street, N. W., Suite 300, Washington, D. C. 20007
Willard C. Reine, Attorney at Law, 314 East High Street, Jefferson City, Missouri 65101

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

Harvey G. Hubbs

Harvey G. Hubbs
Secretary

uncertified copy:

Charles L. Jones, Executive Vice-President, Missouri Hotel and Motel Association, 119 Madison, Jefferson City, Missouri 65101
Donald B. Heidebrecht, United Telephone Company, P. O. Box 1024, Jefferson City, Missouri 65102
James Hedges, President, Communication Cable-Laying Company, Inc., 1045 East Trafficway, Springfield, Missouri 65802
Howard Keister, Contel of Missouri, Inc., P. O. Box 307, Wentzville, Missouri 63385
Wayne Clark, Missouri Telephone Company, Eastern Missouri Telephone Company, P. O. Box 180, Bolivar, Missouri 65613
Harold A. Jones, Mid-Missouri Telephone Company, Box 38, Pilot Grove, Missouri 65276
Harold Fisher, Citizens Telephone Company of Higginsville, Missouri, P. O. Box 737, Higginsville, Missouri 64037
Ray Ford, Northeast Missouri Rural Telephone Company, 718 South West Street, Green City, Missouri 63545
J. Steve Weber, State Director-Missouri, AT&T Communications of the Southwest, 101 Madison, Suite 600, Jefferson City, Missouri 65101
Terry Troughton, Fidelity Telephone Company, 64 North Clark, Sullivan, Missouri 63080
Harvey M. Berg, General Manager, Operator Assistance Network, 6611 Val Jean Avenue, Van Nuys, Callifornia 91406
Elizabeth Davidson, Kirk Organization, 101 South Hanley, Suite 1250, St. Louis, Missouri 63105
Jane Gisselquist, 375 Westwood Drive, Barrington, Illinois 60010
Frederick J. Earle, On Line Communications, Inc., 2355 Old Oakland Road, Suite 1, San Jose, California 95131
Peter D. Shields, Attorney at Law, 1220 19th Street, N.W., Suite 501, Washington, D. C. 20036
Laura C. Burley, Legal Analyst, Cable & Wireless Communications, Inc., 1919 Gallows Road, Vienna, Virginia 22180
James G. Campbell, Ogden, Sturgill & Welch, 1209 One Riverfront Plaza, Louisville, Kentucky 40202
Kim Bradley, Swidler and Berlin, 3000 K Street, Suite 300, Washington, D. C. 20007
Bud L. Stanley, Assistant Vice President, U.S. Fiberline Comm., Inc., 6745 Convoy Court, San Diego, California 92111
Carolyn Cleveland, Office Manager, American Telecommunications Corporation, 1666 North Firman, Suite 400, Richardson, Texas 75081

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of American Operator Services, Inc. for a certificate of service authority to provide Intrastate Operator-Assisted Resold Telecommunications Services.	)	CASE NO. TA-88-218
In the matter of Teleconnect Company for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-282
In the matter of Dial U.S. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-283
In the matter of Dial U.S.A. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-284
In the matter of International Telecharge, Inc. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-89-6

REPORT AND ORDER

Date Issued: April 17, 1989

Date Effective: April 25, 1989

APPEARANCES: Mark P. Johnson, Attorney at Law, Spencer, Fane, Britt & Browne, 1000 Walnut, Suite 1400, Kansas City, Missouri 64106, for American Operator Services, Inc., d/b/a National Telephone Services.

Richard S. Brownlee, III, Attorney at Law, Hendren and Andrae, 235 East High Street, Jefferson City, Missouri 65101, for International Telecharge, Inc. and Teleconnect Company.

Andrew Kever, Attorney at Law, Bickerstaff, Heath & Smiley, 1800 San Jacinto Center, Austin, Texas 78701, for International Telecharge, Inc.

Paul A. Boudreau, Attorney at Law, and W. R. England, III, Attorney at Law, Hawkins, Brydon, Swearengen & England, P.C., P. O. Box 456, Jefferson City, Missouri 65102, for Citizens Telephone Company of Higginsville, Missouri, Contel of Missouri, Inc., Contel System of Missouri, Inc., Eastern Missouri Telephone Company, Fidelity Telephone Company, Mid-Missouri Telephone Company, Missouri Telephone Company, Northeast Missouri Rural Telephone Company and Webster County Telephone Company.

Thomas J. Horn, Attorney at Law, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Vernon C. Maulson, Associate General Counsel, GTE North Incorporated, 1312 East Empire Street, Bloomington, Illinois 61701, for GTE North Incorporated.

David K. Knowles, General Attorney, and J. Richard Smith, Vice President and General Counsel, United Telephone Company, 5454 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

Mark P. Royer, Attorney at Law, AT&T Communications of the Southwest, Inc., 1100 Walnut Street, Room 2432, Kansas City, Missouri 64106, for AT&T Communications of the Southwest, Inc.

Willard C. Reine, Attorney at Law, 314 East High Street, Jefferson City, Missouri 65101, and Jean L. Kiddoo, Attorney at Law, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007, for Operator Assistance Network.

Edward J. Cadieux, Regulatory Attorney, MCI Telecommunications Corporation, 100 South Fourth Street, Suite 1200, St. Louis, Missouri 63102, for MCI Telecommunications Corporation.

Philip R. Newmark, Attorney at Law, 7777 Bonhomme, Suite 1910, Clayton, Missouri 63105, for Midwest Independent Coin Payphone Association.

Joni K. Ott, First Assistant Public Counsel, and Mark D. Wheatley, Assistant Public Counsel, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Charles Brent Stewart, Assistant General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

HEARING EXAMINER: Beth O'Donnell

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Procedural History

On February 26, 1988, American Operator Services, Inc., d/b/a National Telephone Services (NTS) filed an application for a certificate of service authority as a reseller of intrastate operator-assisted telecommunications services. The application of NTS was denominated Case No. TA-88-218.

On May 27, 1988, Teleconnect Long Distance Services and Systems Company (Teleconnect), a certificated reseller of interexchange telecommunications services, filed tariffs proposing to provide operator services within the State of Missouri. On June 17, 1988, the Commission suspended Teleconnect's proposed tariffs in order to determine if they were just and reasonable. Consideration of Teleconnect's proposed tariffs was docketed as Case No. TR-88-282.

On June 3, 1988, Dial U.S. (DUS) and Dial U.S.A. (DUSA), both certificated resellers of interexchange telecommunications services in the State of Missouri, filed tariffs with the Commission proposing to provide operator services within this state. By order issued June 17, 1988, the Commission suspended the proposed tariffs of DUS and DUSA in order to determine if they were just and reasonable. Consideration of the proposed tariffs of DUS was docketed as Case No. TR-88-283 and consideration of the proposed tariffs of DUSA was docketed as Case No. TR-88-284.

On October 14, 1987, International Telecharge, Inc. (ITI), a certificated reseller of interexchange telecommunications services in the State of Missouri, filed tariffs proposing to provide operator services within this state. ITI subsequently extended the effective date of its proposed tariffs to July 1, 1988. On June 24, 1988, the Office of the Public Counsel (Public Counsel) filed a motion to suspend the proposed tariffs of ITI. By order issued July 15, 1988, the Commission suspended ITI's proposed tariffs in order to determine if they were just and reasonable. Consideration of ITI's proposed tariffs was denominated Case No. TR-89-6.

On June 29, 1988, Public Counsel requested that the Commission consolidate the above-referenced cases and by order issued July 15, 1988, the Commission granted that motion.

By order issued August 9, 1988, the Commission granted the applications to intervene in this case of the following entities: MCI Telecommunications Corporation (MCI), AT&T Communications of the Southwest, Inc. (AT&T), Contel of Missouri, Inc., Contel System of Missouri, Inc., Webster County Telephone Company (collectively, Contel), Missouri Telephone Company, Eastern Missouri Telephone Company, Mid-Missouri Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Northeast Missouri Rural Telephone Company, Fidelity Telephone Company (collectively, Small Telephone Company Group or STCG), United Telephone Company of Missouri (United) and GTE North Incorporated (GTE). The applications to intervene of the Competitive Telecommunications Association of Missouri (CompTel), Midwest Independent Coin and Payphone Association (MICPA), Missouri Hotel and Motel Association (MHMA), Southwestern Bell Telephone Company (SWB), and the Operator Assistance Network (OAN), were also granted. The Commission's Staff (Staff) and the Public Counsel participated in these proceedings.

A prehearing conference was held September 14, 1988, and a hearing was held September 20, 21 and 22, 1988. Briefs were filed by the parties pursuant to a schedule established by the hearing examiner. Exhibit Nos. 21 and 22 were reserved for late-filed exhibits. These exhibits were subsequently submitted under seal prior to the submission of the briefs and will be received into evidence by the Commission in this Report and Order. The reading of the transcript required by Section 536.080, RSMo 1986, was not waived.

Hereinafter, the four companies seeking approval of their proposed operator service tariffs will be referred to collectively as the Resellers. NTS and the Resellers will hereinafter be referred to collectively as the Applicants.

Findings of Fact

The Missouri Public Service Commission having considered all of the competent and substantial evidence upon the whole record makes the following findings of fact.

I. Introduction

NTS seeks a certificate of authority to operate as a reseller of intrastate operator-assisted telecommunications services within the state of Missouri. NTS proposes to offer its operator services primarily to such telephone traffic aggregators as hotels, hospitals, and other large institutions as well as private pay telephone providers. This is the first application filed with the Commission requesting a certificate of service authority to provide such alternative operator services (AOS).

The Resellers have filed tariff sheets herein seeking to provide operator services within their certificated service areas in the State of Missouri. Teleconnect is primarily an interexchange carrier seeking to provide operator services as part of its long-distance service to end users. Only one to two percent of the present revenues earned by Teleconnect arise from its operator services. Teleconnect projects that five to ten percent of its revenues could arise from their proposed operator services. DUS and DUSA are interexchange carriers who propose to purchase their operator services from Teleconnect and offer them under the same rates and conditions as Teleconnect. ITI, like NTS, is primarily a provider of operator services to telephone traffic aggregators. Ninety-nine percent of ITI's revenue arises from operator services provided to traffic aggregators. The Commission has not previously approved tariffs offering such alternative operator services.

The Commission suspended the proposed tariffs of the Resellers in order to address their propriety and consolidated the cases addressing these tariffs with the case addressing NTS' application for a certificate. The Commission did this in order to develop a comprehensive policy for the regulation of alternative operator services.

Operator services are required when the end user desires to make a person-to-person or collect call, or a call billed to a third party or calling card. Operator services are also required to provide information and, in some instances, to connect the end user to emergency services. Until recently, operator services were provided exclusively by AT&T and local exchange companies (LECs) ancillary to their long distance and local transport of calls. US Sprint now offers operator services ancillary to its long-distance business. The provision of operator services to traffic aggregators, as a primary source of revenue, is a relatively new development in the telecommunications industry. This new service has become a source of controversy because end users have complained that AOS providers have charged unreasonable rates and provided low quality of service. The Commission itself has received such complaints. Opponents argue that AOS providers have no incentive to lower rates and improve the quality of service since their customers are the traffic aggregators to whom they pay a commission for taking their service rather than the end users. Given these concerns, the Commission determined that it was necessary to carefully scrutinize the Applicants' proposals.

On September 28, 1987, House Bill 360 went into effect repealing twenty-one sections of Chapters 386 and 392, RSMo, and enacting in lieu thereof new sections affecting the regulation of telecommunications companies. The Commission is bound by the terms of these amended chapters in considering the propriety of allowing alternative operator services. Section 392.440, RSMo Supp. 1988, requires that resellers of local exchange or interexchange telecommunications service obtain a certificate of service authority before providing such service. This section requires that the Commission approve such a certificate upon a showing by the applicant and a finding by the Commission, after notice and hearing, that the grant of authority is in the public interest.

In Case No. TX-85-10 to be found at 10 Mo. Reg. 1048 (1985), the Commission made a statement of policy which sets forth standards pertaining to applicants requesting authority to provide interLATA telecommunications services. Therein the

Commission stated that if an applicant for such authority is found to be financially fit it would be presumed that additional competition in the interLATA market is in the public interest and a certificate would be granted.

In Case No. TO-84-222, et al., the Commission found it reasonable to apply the standards established for the interLATA market to applicants desiring to provide intraLATA toll services. Re: Investigation into WATS resale by hotels/motels, 28 Mo. P.S.C. (NS) 535 (July 24, 1986). The Commission believes that the policies enunciated in these cases are consistent with the standards set forth in Section 392.530, RSMo Supp. 1988, for construing the provisions of Chapter 392.

Given the controversy which accompanied the rise of alternative operator services, the Commission determined there was no basis to presume that the public interest standard required by Section 392.440, RSMo Supp. 1988, would be met. The Commission felt there was no basis to presume that the proposed service would result in additional competition which could function as a substitute for regulation in protecting the public interest. Accordingly, the Commission believes it is inappropriate to utilize herein the relaxed standard for the certification of resellers enunciated above. Therefore, the Commission is of the opinion that NTS must demonstrate that its certification would be in the public interest.

In considering whether the public interest would be served by the grant of a certificate to NTS, the Commission must consult the provisions of Section 392.530, RSMo Supp. 1988. These provisions require the Commission to construe the chapter, inter alia, to ensure that customers pay only reasonable charges for telecommunications service and to allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest. These same principles must be consulted by the Commission in considering the propriety of the tariffs proposed by the Resellers.

II. The Proposals

A. NTS

American Operator Services, Inc., d/b/a National Telephone Services is a Delaware corporation. NTS has authority to do business in the State of Missouri. Its corporate headquarters are located in Rockville, Maryland. NTS proposes to offer operator services primarily to traffic aggregators and, to some extent, to those interexchange carriers and resellers choosing not to provide such services themselves. NTS intends to pay a commission to the traffic aggregators employing its services. The only party opposing a grant of a certificate to NTS is Public Counsel. No party questions NTS' evidence in support of its financial and technological capability to provide the service proposed. NTS has announced its intentions to comply with the applicable statutes, the rules and regulations of the Commission and the terms and conditions which the Commission might impose.

B. ITI

International Telecharge, Inc., is a Delaware corporation certificated in this state as a reseller of interexchange telecommunications services. ITI proposes to offer operator services to such traffic aggregators as hospitals, hotels, motels, temporary housing units, business establishments and private pay telephone providers. ITI would allow end users to bill their long-distance telephone calls to major credit cards, a telephone number, or a calling card issued by a local exchange company. ITI intends to pay a commission to the traffic aggregators employing its services. The only party opposing approval of ITI's proposed operator service tariffs is Public Counsel.

C. Teleconnect

Teleconnect Long Distance Services and Systems Company is an Iowa corporation certificated to operate in the State of Missouri as a reseller of interexchange telecommunications services. Teleconnect proposes to offer operator services primarily ancillary to its long-distance service to end users. Teleconnect intends to pay a commission to the traffic aggregators it serves. No party opposes

approval of Teleconnect's proposed tariffs provided they contain certain conditions more fully set forth hereinafter.

D. DUS and DUSA

DUS and DUSA are certificated in the State of Missouri as resellers of interexchange telecommunications services. DUS and DUSA propose to purchase their operator services from Teleconnect and offer them to end users under the same rates and conditions as Teleconnect. No party opposes approval of the operator service tariffs proposed by DUS and DUSA provided they contain certain conditions set forth more fully hereinafter.

III. Should The Proposed Operator Services Be Permitted?

The evidence indicates that there is a fundamental difference between provision of operator services to traffic aggregators (AOS) on the one hand, and provision of operator services directly to end users ancillary to toll service (OS), the other. Where such services are provided through a traffic aggregator the end user has little direct influence in choosing the provider. The provider is chosen by the traffic aggregator.

In the provision of operator services directly to end users ancillary to interexchange toll service, the end user selects the carrier he desires. If he is unhappy with the prices and quality of service, he is free to choose another provider. Under these circumstances, the end user can influence carriers to provide good service at a reasonable price by his freedom to choose a competitor.

The Commission finds that operator services provided to traffic aggregators are a distinct and separate service from operator services provided to end users ancillary to toll service. The next question is whether it is in the public interest to allow either, or both, of these services to be provided by the Applicants in this case.

In the AOS market there is little competitive choice for the end user. AOS providers respond to the competitive choice of the aggregator who might be primarily influenced by the size of the commission the provider will pay rather than the

quality of the service and the reasonableness of the price. In this regard, the interests of the aggregator and the end user might be in opposition to one another. To enable him to pay the most attractive commission, the AOS provider might be induced to charge the end user higher rates and to reduce the quality of his service.

The end user is generally a transient customer for whom the usual telephone arrangements are, practically speaking, unavailable. He is the traveler at the airport, the guest at the hotel, the patient in the hospital, the driver at the truck stop, the soldier at the military base and the student at the university. Operator services from the provider of his choice may be entirely unavailable without traveling to another location. Traveling to another location might be difficult or impossible for some of these customers such as the hospital patient, the soldier and the air traveler.

The evidence indicates that the consumer might be unaware that he is using an AOS provider. Even if the AOS provider announces its name at the beginning of the call and posts its name on the premises of the traffic aggregator the consumer might remain unaware of the significance of this notification. The consumer's first meaningful notification that he has used an AOS provider might be receipt of a bill for operator services at prices higher than those to which he is accustomed.

For example, NTS proposes to charge rates higher than the rates currently charged by SWB for intrastate, intraLATA toll calls in Missouri. Although ITI filed proposed rates that mirror AT&T's rates, ITI asserts that its proposed tariffs are informational. ITI has not expressly recognized that its rates should be subject to the approval of this Commission as to their reasonableness.

Even if the end user does understand the significance of the notification he has received, he still might be unable to reach his carrier of choice. The evidence in this case shows that there are difficulties in transferring the end user to another carrier. The traffic aggregator might block the capability of the AOS provider to transfer calls to other carriers. Another difficulty occurs in transferring calls to AT&T. Because AT&T has concerns about accepting automatic

number identification (ANI) from AOS providers, these providers are unable to transfer calls to AT&T which indicate the actual point of origin where the caller is located. AT&T is concerned about the potential for fraud if it accepts the ANI of the AOS provider. This results in calls being listed as originating on the AT&T system at the point of presence of the AOS provider. This results in confused and outraged customers who do not recognize these calls as being their own.

The problem of properly transferring calls to the end user's chosen carrier is not one that lends itself readily to a regulatory solution. Since the Commission does not regulate many traffic aggregators it is difficult to ensure that access to other carriers will remain unblocked. It is also difficult to mandate intercompany acceptance of ANI numbers when technological and protocol problems intertwine to obstruct a workable solution.

Other problems associated with the AOS market are equally difficult to solve by regulatory mandate. By ordering AOS providers to announce their names at the inception of a call and post their names on the premises of the traffic aggregator, the Commission cannot ensure that the end user is made aware of the significance of the information. If the end user is not educated as to the intricacies of using an AOS provider, he does not truly have a meaningful choice by virtue of the notification he has received. If he is unaware that an AOS provider might charge higher rates, it is of little use that he is able to obtain rate quotes at his request. He will not realize that he should ask for a rate quote.

If the end user is aware of the rates charged by AOS providers, he still might be unable to reach the carrier of his choice with any expectation of having his call rated from its actual point of origin. Even if the end user is experienced with the problems of reaching his desired carrier from an AOS provider, what choice does he actually have if he is prevented from seeking another provider by virtue of being a patient in a hospital or a transient at an airport?

In view of the foregoing, the Commission determines that the end user of an AOS provider is bereft of a meaningful choice. At this point in the development of

the AOS market, regulation cannot completely remedy this problem. Any one of the problems discussed above might itself be insufficient to threaten the public interest. However, in their cumulative effect their potential for harm outweighs the benefits which have been set forth by the AOS advocates. The benefits are in the area of innovative services which AOS providers state that they presently have or soon will have. These include multilingual operators, voice messaging, teleconferencing, weather reports and multiple billing options including the use of major credit cards. There is no evidence that these benefits cannot be made available to consumers by traditional operator service providers.

For these reasons the Commission determines that it is not in the public interest to grant the certificate requested by NTS or to approve the tariffs filed by ITI. Both these companies propose to provide operator services primarily to traffic aggregators. Accordingly, the Commission will reject the tariffs proposed by ITI and deny the certificate requested by NTS.

Teleconnect, DUS and DUSA are primarily providers of long-distance service to end users and propose to provide operator services ancillary to this long-distance service. To the extent that these providers offer operator services to traffic aggregators, they propose to provide these services at the same rates whether the end user is directly served or served through a traffic aggregator. The Commission determines that operator services offered ancillary to long-distance service provided directly to end users is in the public interest. Since end users can choose another provider if dissatisfied with rates and service, the competitive market will influence such providers to offer quality services at a reasonable price or suffer the consequences of losing customers.

The Commission further determines that operator services offered to end users through traffic aggregators are in the public interest where the provider primarily renders such services directly to end users and proposes to offer operator services under the same terms, conditions and rates to end users at traffic aggregators as to end users directly served. Under these circumstances the public

interest is served because the competitive toll market will influence the quality and price of the operator services thereby controlling potential abuses in the AOS market.

Based upon the foregoing the Commission determines that the tariffs filed by Teleconnect, DUS and DUSA will be rejected and those companies will be authorized to file tariffs to provide operator service rendered to end users, and separate tariffs to traffic aggregators consistent with this Report and Order.

IV. Under What Further Conditions Should Teleconnect, DUS and DUSA Be Permitted To Operate?

Staff recommended that the Commission allow all the proposed operator services to be provided under certain conditions. Public Counsel recommended that only Teleconnect, DUS and DUSA be allowed to provide operator services under certain conditions.

Staff's first condition would require that the provider not knowingly bill for incomplete or emergency calls. Public Counsel would strengthen this condition by requiring the provider to guarantee that end users not be charged for incomplete calls.

Teleconnect disavows any intention to bill incomplete calls. The evidence indicates that answer supervision is unavailable in some exchanges in Missouri resulting in some incomplete calls being billed by mistake. The problem will disappear as premium access becomes available affording the answer supervision required. Teleconnect observes that the system for timing the length of a call can prevent billing for most incomplete calls but does result in no billing for very short completed calls. No party opposes Staff's recommendation although AT&T argues that traditional operator service providers should not be saddled with any requirements arising from the misdeeds of AOS providers.

The Commission determines that Teleconnect, DUS and DUSA should be required to guarantee no charges for incomplete calls where answer supervision is available. Where answer supervision is unavailable the Commission determines that the Applicants

should not knowingly bill for incomplete calls and should remove charges for end users who notify them of charges for incomplete calls. In addition, where answer supervision is not available the Applicants should use a timing surrogate to prevent the accidental billing of the majority of incomplete calls.

Staff's second condition would require identification of the company to the caller during the initial contact as well as to the billed party if different from the caller. Public Counsel concurs in this recommendation. No party opposes this requirement.

The Commission determines that Staff's condition is reasonable and should be required of Teleconnect, DUS and DUSA. Identification of the provider to the caller and billed party, if different, is necessary to aid end users in making an informed choice.

Staff's third condition would require that providers quote rates at no charge upon request, including the initial minute, additional minutes, the operator surcharge and any additional charges. Public Counsel concurs in this recommendation and no other party opposes it. However, at the time of hearing, Teleconnect was not providing rate quotes but was working on an automated system to provide rate quotes. Teleconnect's rates mirror AT&T's rates.

The Commission determines that Teleconnect, DUS and DUSA should be required to quote rates on request at no charge including all rate components and any additional charges as recommended by Staff. This condition is necessary to aid the end user in making an informed choice. Teleconnect, DUS and DUSA should not begin to provide intrastate operator services until they are able to comply with this condition.

Staff's fourth condition would require that only charges established by certificated parties pursuant to approved tariffs be combined into a single charge on an end user's local exchange bill resulting in disconnection for nonpayment. Staff recommends that charges established by noncertificated parties should be separately identified and specifically associated with each call on the customer's local

exchange bill. Public Counsel would limit both the AOS provider and the traffic aggregator to billing the end user only for authorized tariffed rates.

Teleconnect accepts billing only authorized rates so long as this rule applies to all providers of operator services including AT&T. Several of the parties, including Staff and AT&T, believe application of this or other requirements to parties other than the Applicants would require a generic docket or rulemaking.

MICPA vehemently opposes a prohibition against billing and disconnecting for location surcharges. MICPA asserts that the revenue from location surcharges is necessary for the survival of COCTs. In addition, MICPA asserts that there is insufficient evidence to decide this issue in this docket and that application of such an injunction must necessarily be pursuant to a rulemaking where additional evidence can be gathered and the rule applied fairly to all operator service providers even those not parties to this case.

SWB is concerned primarily that the LECs be allowed to continue to bill and collect for certificated providers of operator services including disconnection for tariffed charges. SWB would not oppose a prohibition against disconnection for surcharges. SWB agrees with Staff that surcharges should not appear on the LEC bill unless separately listed and identified. SWB notes that billing and collection for operator service providers makes a contribution to basic services.

Contel does not oppose limiting disconnection to tariffed charges of operator service providers. GTE wants to retain billing and collection for all customers even if uncertificated. GTE states that many LECs do not have the programming ability to separate the location surcharges on the bill and GTE wishes to continue to bill and collect for unbundled surcharges. GTE does not oppose a prohibition against disconnection for untariffed surcharges.

The Commission determines that only tariffed rates approved by this Commission for certificated providers should be bundled into a single charge on local exchange billings with disconnection for nonpayment. Location surcharges should not appear on the LEC's bills. As long as location surcharges appear on the LEC's bills,

customers will remain under the misapprehension that they will suffer disconnection for nonpayment. This is a result that the Commission wishes to avoid. Since the Commission does not have jurisdiction over all traffic aggregators, it cannot effectively control the level of all location surcharges. The Commission does not wish to see the implied threat of disconnection used to collect charges over which the Commission has such limited control. In addition, the Commission views location surcharges as another example of the abuses to which the public has been subjected by the operator service industry and does not wish to lend to such surcharges any implied blessing by allowing this collection through LEC billing.

Teleconnect employs a billing agent which contracts with the LECs for billing and collection on its behalf. Staff's fifth condition would require that the provider's name rather than the billing agent's name be listed on the local exchange bill. Public Counsel and the LECs do not oppose this condition.

Teleconnect states that it uses a billing broker because it is more economical than contracting with the LEC independently. Teleconnect would like to have its name on the bill but argues that it is not feasible since the LECs only allow the broker's name on the bill.

OAN vehemently opposes Staff's recommendation. OAN argues that the requirement is technologically unfeasible at this time since the LECs' computer programs do not allow more than one name on the bill and that it would be costly to reprogram the LECs' databases to allow for more than one name. OAN further argues that this requirement is unnecessary since the LEC is authorized to provide explanations to confused customers in resolving disputed matters up to a certain ceiling. If the LECs' actions do not resolve the matter the LEC can refer the customer to OAN which has billing records with which to resolve any problems. OAN notes that small LECs are unable to list operator service providers individually and currently bill only on behalf of AT&T by name. The remaining carriers are listed on the bills of these small LECs under the billing agency of the National Exchange Carriers Association (NECA).

The Commission determines that Staff's recommendation is reasonable and should be adopted where the LEC has multicarrier billing capabilities. This approach will aid the consumer in identifying which calls are correctly billed to him. The evidence indicates that major reprograming would only be required to list both the agent and the provider which the Commission is not requiring. The evidence also indicates that some small LECs are able only to list AT&T and NECA. As these LECs acquire the capability for multicarrier billing Teleconnect, DUS and DUSA should make provision for the listing of their names on the calls billed for them.

Staff's sixth condition would require that providers utilize reasonable procedures for verifying calling cards which are acceptable to the company issuing the card. Staff also would require that calls transferred to another carrier correctly identify the point of origin as the caller's location and not the location of the provider's operator. Staff believes that this condition is necessary to ensure that the call is rated and billed properly, and that the end user can recognize the call on his bill as one he has made.

Public Counsel concurs with Staff's recommendation that end users be provided with a local point of origin. In addition, Public Counsel would require the provider to offer toll-free access for end users to all other authorized interexchange carriers and the LEC. Transferring the end user to another carrier is referred to as "splash back".

Teleconnect agrees with Staff's recommendation to utilize reasonable calling card verification procedures but believes that Public Counsel's requirement for splash back is technically unfeasible at this time. Teleconnect asserts that the network changes required to make splash back feasible would be prohibitively expensive. Teleconnect further argues that to require it to provide splash back would be unreasonable if AT&T were exempted from this condition.

Contel, STCG and SWB are concerned that a correct point of origin be listed for any calls which are splashed to other carriers. STCG and Contel worry that improper points of origin on bills can cause customer confusion and resentment which

will focus on the LECs handling the billing complaints. Contel argues that operator service providers should not be required to splash calls unless they are capable of listing the actual point of origin.

The evidence indicates that it is not always possible to list the correct point of origin on calls splashed to AT&T because AT&T refuses to accept the automatic number identification (ANI) provided to it by other providers of operator services. The evidence also indicates that the traffic aggregator might install a program to prevent splash back by the provider of operator services. AT&T asserts that acceptance of these ANI numbers has the potential to expose AT&T to fraud and other collection problems.

The Commission determines that Teleconnect, DUS and DUSA should employ reasonable calling card verification procedures which are acceptable to the companies issuing the calling cards. The Commission further determines that Teleconnect, DUS and DUSA should provide splash back to other authorized interexchange carriers and the LEC where it is feasible to list the actual point of origin of the caller. As problems resulting in inaccurate points of origin are resolved with a given carrier, Teleconnect, DUS and DUSA should provide splash back to that carrier. In addition, Teleconnect, DUS and DUSA should provide in their tariffs that they will not render operator services to traffic aggregators which block splash back to other carriers.

Staff's seventh condition would require the providers to hand over 0- emergency traffic to AT&T or the LEC until the providers can show that emergency calls would be handled adequately. Public Counsel does not oppose Staff's condition and itself would require that providers route all emergency 0- calls in the quickest possible way to the appropriate local emergency service provider. Both Staff and Public Counsel are concerned about the length of time it takes the provider to initially respond to the call as well as the length of time it takes the provider to route the call to the appropriate emergency agency. Teleconnect agrees to route 0- calls to the LEC and stresses that its technology gives it the capability to respond quickly to emergency calls. The only emergency calls which Teleconnect might receive

are 00- calls which are the result of an anxious caller hitting the zero button twice within the first five seconds.

SWB opposes directing 0- traffic to the LEC. SWB recommends that the Commission require carriers receiving 0+ traffic to handle 0- traffic as well. SWB argues that it is unfair to require the LEC to handle 0- emergency calls without the benefits of handling the 0+ traffic. GTE believes that there should be connection time standards for all providers of operator services.

The evidence indicates that Teleconnect can connect end users quickly to local emergency providers. It is not as clear, however, that end users can acquire access to these providers as rapidly as they can to the traditional operator. The Commission determines that Teleconnect, DUS and DUSA must show that they can connect end users to their operators as rapidly as can the traditional providers of operator services. Teleconnect, DUS and DUSA also must route all emergency 00- calls in the quickest possible manner to the appropriate local emergency service provider. Teleconnect, DUS and DUSA must show they have met these two conditions within 120 days of the effective date of this Report and Order.

Public Counsel recommends additional conditions to be imposed upon operator service providers. Public Counsel contends that the providers must file tariffs on rates for their services which are deemed just and reasonable and approved by the Commission. Public Counsel states that these rates should be at or below present rates charged by AT&T. Staff disagrees with using the rates of rate base regulated companies to establish a ceiling for rates charged by AOS providers.

Teleconnect proposes to charge rates that track AT&T's rates and states that its proposed rates are fully cost justified.

GTE recommends that the rates proposed by AOS providers be based on cost and market forces where the market is competitive. STCG and Contel concur in Public Counsel's suggestion that AOS providers file rates deemed just and reasonable upon the Commission's review. These parties believe that review by the Commission is

necessary because the competitive forces in the AOS market are insufficient to ensure reasonable rates.

The Commission determines that the tariffs to be filed by Teleconnect, DUS and DUSA shall reflect the same tariffed rates for operator service to traffic aggregators as for operator service to end users, at the level proposed for the latter service. The tariffs for operator service to traffic aggregators shall also contain the conditions found reasonable by the Commission as discussed herein.

Public Counsel also recommends that the operator service providers be required to post and display in a prominent fashion at the traffic aggregator's location their names, procedures for reaching the local exchange operator and authorized interexchange carriers, as well as detailed complaint procedures.

Teleconnect opposes this recommendation stating that it cannot force the traffic aggregator to post this information. Teleconnect believes that this recommendation should be made a requirement only if all operator service providers are required to do it and not merely the Applicants. However, Teleconnect is willing to provide such material to its subscribers.

The Commission determines that Teleconnect, DUS and DUSA should be required to supply to their subscribers for posting and display in a prominent fashion at their subscriber's location their name and detailed complaint procedures as well as instructions informing the end user on procedures to reach the local exchange operator and other authorized interexchange carriers. Further, the Commission determines that Teleconnect, DUS and DUSA should include in their filed and approved tariffs the requirement that their subscribers post and display this information.

Finally, the Public Counsel recommends that applicants for a certificate to provide alternative operator services should be required to submit proof of incorporation, demonstrate their financial and technical capability to provide the proposed service, describe the service proposed and file proposed tariffs on the rates to be charged.

Since the Commission is only permitting operator services ancillary to interexchange toll service, the Commission believes it is unnecessary to address this condition of Public Counsel.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Applicants are public utilities and telecommunications companies subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo Supp. 1988. The Commission suspended the Resellers' operator services tariffs pursuant to Section 392.230, RSMo Supp. 1988. Section 392.230 invests the Commission with the authority to judge the propriety of any new rate, rental or charge.

NTS seeks a certificate of service authority to operate as a reseller of intrastate operator-assisted telecommunications services. Section 392.440, RSMo Supp. 1988, provides that:

> Any telecommunications company offering or providing the resale of either local exchange or interexchange telecommunications service must first obtain a certificate of service authority. ...the commission shall approve an application for a certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the commission, after notice and hearing, that the grant of authority is in the public interest.

Section 392.470, RSMo Supp. 1988, provides in pertinent part that:

> The Commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications services if such conditions are in the public interest and consistent with the provisions and purposes of this chapter....

The Commission has considered the propriety of the operator service tariffs proposed by the Resellers herein and has determined that the tariffs of Teleconnect, DUS and DUSA should be withdrawn and new operator services tariffs submitted in their place which are consistent with the findings and conditions set forth herein. The Commission has further determined that the tariffs of ITI should be rejected as not being in the public interest.

After notice and hearing, the Commission has found that the application of NTS for a certificate of service authority should be denied as not being in the public interest.

It is, therefore,

ORDERED: 1. That the application for a certificate of service authority to operate as a reseller of intrastate operated-assisted telecommunications services within the State of Missouri filed herein by American Operator Services, Inc., d/b/a National Telephone Services is hereby denied.

ORDERED: 2. That the tariffs filed herein on October 14, 1987, by International Telecharge, Inc., proposing to provide alternative operator services in the State of Missouri are hereby rejected.

ORDERED: 3. That the tariffs filed herein on May 27, 1988, by Teleconnect Distance Services and Systems Company proposing to provide operator services in the State of Missouri are hereby rejected and Teleconnect Long Distance ices and Systems Company is authorized hereby to file in lieu thereof on or re May 25, 1989, tariffs proposing to provide operator services within the State issouri which are consistent with the findings and conditions set forth herein.

ORDERED: 4. That the tariffs filed herein by Dial U.S. and Dial U.S.A. on June 3, 1988, proposing to provide operator services within the State of Missouri are hereby rejected and Dial U.S. and Dial U.S.A. are hereby authorized to file in lieu thereof on or before May 25, 1989, tariffs proposing to provide operator services within the State of Missouri which are consistent with the findings and conditions set forth herein.

ORDERED: 5. That Teleconnect Long Distance Services and Systems Company, Dial U.S. and Dial U.S.A. are hereby directed to demonstrate to the satisfaction of the Commission's Staff on or before August 23, 1989, that end users can acquire access to their respective operators as rapidly as they can to the traditional operators and that they can route all emergency 00- calls in the quickest possible manner to the appropriate local emergency service provider.

ORDERED: 6. That late-filed Exhibit Numbers 21 and 22 submitted herein under seal as containing proprietary information are hereby received into evidence.

ORDERED: 7. That all motions and objections not ruled upon by the Commission heretofore are hereby denied and overruled.

ORDERED: 8. That this Report and Order shall become effective on April 25, 1989.

BY THE COMMISSION

Harvey G. Hubbs

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Hendren and Rauch, CC.,
Concur and certify compliance
with the provisions of
Section 536.080, RSMo 1986.
Fischer, C., Dissents with Opinion.

Dated at Jefferson City, Missouri,
on this 17th day of April, 1989.

DISSENT OF COMMISSIONER JAMES M. FISCHER IN CASE NO. TA-88-218, ET AL.

I respectfully dissent from the majority's position that American Operator Services, Inc., d/b/a National Telephone Services (NTS), should be denied a certificate of authority in this case. I would also permit International Telecharge, Inc. (ITI) to file revised tariffs authorizing it to provide operator services to traffic aggregators and other interexchange carriers within the State of Missouri under certain restrictions designed to promote the public interest and further the goals and purposes of Chapter 392, RSMo 1988 Supp. I concur with the majority's position to authorize Teleconnect, Dial U.S. and Dial U.S.A. to file revised tariffs proposing to provide operator service within the State of Missouri under the conditions and restrictions set forth in the majority's Report and Order.

Section 392.530, RSMo 1988 Supp. establishes the following goals and purposes for regulation as the Commission manages the transition to a more competitive telecommunications marketplace: (1) promote universally available and widely affordable telecommunications services; (2) maintain and advance the efficiency and availability of telecommunications services; (3) promote diversity in the supply of telecommunications services and products throughout the State of Missouri; (4) ensure the customers pay only reasonable charges for telecommunications service; (5) permit flexible regulation of competitive telecommunications companies and competitive telecommunications services; and (6) allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest.

I believe that the record in this case supports a finding that the goals and purposes of Chapter 392 can best be met by permitting a more competitive operator services market to develop, including operator services to traffic aggregators such

as the hospitality industry and public and customer-owned pay telephones. However, in my opinion, it is too early in the development of this operator services industry to make a definitive determination that the marketplace alone will protect the general public from potential abuses. This statement is especially true for operator services provided to traffic aggregators rather than to the ultimate consuming public. I would therefore condition any grant of certificates of authority and the approval of operator services tariffs upon certain conditions suggested by the Office of the Public Counsel and the Commission Staff, and accepted by the majority opinion for operator services provided by Teleconnect, Dial U.S. and Dial U.S.A.

These conditions and restrictions relate to the following areas: (1) charges for emergency and incomplete calls; (2) "branding" of calls; (3) rate information; (4) location surcharges; (5) identification of operator service providers on bill; (6) calling card verification and "splash back" procedures; and (7) handling emergency 0- and 00- calls.

Public Interest Standard

The majority opinion finds "that operator services offered ancillary to long-distance service provided directly to end users is in the public interest." Report and Order, p. 10. However, the same operator services provided primarily to traffic aggregators is found by the majority not to be in the public interest. While the distinction has some tacit appeal since most of the recent customer abuses in the operator services market have occurred when such services were provided to traffic aggregators, I believe this distinction will be difficult, if not impossible, to maintain over the long term.

Staff witness Van Eschen testified that competitive operator services will allow interexchange carriers and operator service providers (i.e., NTS and ITI) to become "full service" telecommunications companies. A competitive operator service marketplace will permit interexchange carriers such as MCI to contract with outside

operator service providers (e.g., ITI or NTS) or develop operator capabilities internally. Likewise, operator service providers such as NTS and ITI could develop and expand their traditional interexchange services. Indeed, ITI is already a certificated interexchange company in Missouri. As the interexchange and operator services markets become more competitive in the future, the majority's distinction will become more difficult to sustain.

After reciting numerous potential abuses that may occur when operator services are provided to traffic aggregators, the majority opinion nevertheless finds that operator services offered to end users through traffic aggregators are in the public interest where the provider renders such services directly to end users and proposes to offer operator services under the same terms, conditions and rates to end users at traffic aggregators as to end users directly served. Report and Order at p. 10. In effect, the majority opinion permits operator services provided to traffic aggregators, if and only if the operator service provider also serves numerous end users at the same rates, terms and conditions as provided to traffic aggregators. However, it does not quantify the number of end users or amount of end user traffic required before the Commission will give its regulatory blessing to the operator service provider also serving traffic aggregators. Teleconnect, a firm which intends to obtain ten percent of its revenues from traffic aggregators, is permitted to operate in the state. However, if operator services are offered "primarily" to traffic aggregators, even if these services are provided at the same rates, terms and conditions as other authorized operator service providers, the applicant will be denied the right to operate in Missouri. NTS and ITI fall into this category, although their rates and quality of service would be virtually identical to rates and quality of service provided by certificated carriers.

The majority's rationale for its distinction rests upon the premise that a competitive toll market will influence the quality and price of the operator

services, including operator services provided to traffic aggregators. I do not disagree with the conclusion. However, I disagree that it is merely the number of end users subscribing to interexchange service of that particular operator service provider that will determine the level of its rates.

In this case, ITI proposed to charge rates which match those of AT&T's operator services. ITI also proposed giving end users a five percent discount from these rates for charging their calls to major credit calls. NTS proposed charging rates equal to the intrastate intraLATA rates charged by Southwestern Bell for toll calls in Missouri. These SWB rates were in effect at the time NTS filed its application for authority. On July 1, 1988, SWB lowered its rates approximately four percent to reflect changes made with the dissolution of the intraLATA toll pool.

In the past, the Commission has approved rates for interexchange carriers that were less than or equal to the rates authorized for AT&T, without the necessity of a full-blown rate case. Since NTS and ITI proposed rates which are substantially the same as operator services provided by AT&T or SWB, I believe the proposed rates should be approved by the Commission.

Even though NTS' and ITI's proposed rates are substantially the same as other interexchange carriers' rates today, the Commission may be concerned that it will not be in a position to protect ratepayers from abusive rates in the future if the operator services market is classified as transitionally competitive or competitive, pursuant to Section 392.361 et seq. This concern could emanate from the possibility that more rate flexibility may be afforded to transitionally competitive and competitive services.

In my opinion, such fears are unwarranted. Pursuant to Section 392.361(4), the Commission may classify an operator service as "transitionally competitive" or "competitive," only if the telecommunications service "is subject to sufficient competition to justify a lesser degree of regulation and that such a lesser degree of

regulation is consistent with the protection of ratepayers and promotes the public interest...." If the Commission concludes that some portion of the operator services market (e.g., operator services provided to traffic aggregators, including pay telephone and/or the hospitality industries) are not subject to sufficient competition and marketplace forces to protect consumers from abusive rates, the Commission may not lawfully classify the service as transitionally competitive or competitive.

Section 392.361(7) provides additional protections against abusive rate practices by operator service providers:

> If necessary to protect the public interest, the commission may at any time, by order, after hearing upon its own motion or petition filed by the public counsel, a telecommunications company, or any person or persons authorized to file a complaint as to the reasonableness of any rates or charges under section 386.390, RSMo, reimpose or modify the statutory provisions suspended under subsection 5 of this section upon finding that the company or service is no longer competitive or transitionally competitive or that the lesser regulation previously authorized is no longer in the public interest or no longer consistent with the provisions and purposes of this chapter. (Emphasis added.)

Section 392.470(1) also gives the Commission broad powers to protect the public interest:

> The commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the provisions of this chapter....

Given the broad authority of the Commission to protect consumers against abusive rates, I believe it is inappropriate to deny authority to NTS and ITI to compete in the intrastate operator services market, based upon a finely drawn segmentation of that market. Instead, I believe a more reasonable approach, given that operator service providers may operate within Missouri on an interstate basis,

would be to protect consumers through reasonable regulations that would apply to all operator service providers.

Respectfully submitted,

James M. Fischer
Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 17th day of April, 1989.

Harvey G. Hubbs
Secretary

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the application of American Operator Services, Inc. for a certificate of service authority to provide Intrastate Operator-Assisted Resold Telecommunications Services.	)	Case No. TA-88-218
In the matter of Teleconnect Company for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-282
In the matter of Dial U.S. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-283
In the matter of Dial U.S.A. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-284
In the matter of International Telecharge, Inc. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-89-6

APPLICATION FOR RECONSIDERATION, REHEARING AND STAY

International Telecharge, Inc., ("ITI" or "Applicant"), by its attorneys, pursuant to Section 386.500 RSMo. 1986, and 4 C.S.R. 240-2.160 of the Missouri Public Service Commission ("Commission") Rules of Practice and Procedure, hereby requests reconsideration and applies for a rehearing and stay of the Commission's Report and Order entered herein April 17, 1989, ("Order"), and in support of this Application states as follows:

I. GENERAL CONSIDERATIONS

A. The Commission's Order Rejecting ITI's Tariff is Discriminatory, Unjust and Unreasonable Because the Concerns Raised by the Commission About ITI's Service to Traffic Aggregators Apply to the Service Proposed by All Competing Companies, Not Just ITI.

The Commission's Order rejecting ITI's tariff governing the provision of operator service to traffic aggregators while at the same time allowing Teleconnect, Dial U.S. and Dial U.S.A. to refile complying tariffs proposing service to traffic aggregators is discriminatory, unjust and unreasonable. The Commission's action reflects two fundamental misunderstandings. First, this Commission erroneously concluded that ITI does not recognize that its rates are subject to the approval of this commission for reasonableness. ITI explicitly acknowledges that this Commission has authority to require that ITI's intrastate rates be resonable. Second, this Commission erred in its understanding of the manner in which ITI and the other carriers provide service. This misunderstanding has resulted in an Order which is not supported by the law and the facts.

Specifically, the Commission, at pages 7-10 of the Report and Order expresses four basis concerns about service provided to end users from hotels, motels, and pay telephones (aggregators). These concerns can be summarized as follows:

1) Since the traffic aggregator chooses the operator service provider, "the end user has little direct influence in choosing the provider" (p. 7);

2) The traffic aggregator may block access to the particular service provider that the end user wishes to access (p. 8);

3) Even if the operator service provider identifies itself to the end user by means of announcements during the call or by signage, the end user may remain unaware of the significance of the notification (p. 8); and,

4) Notifying the end user of the identify of the carrier and providing rate quotes is of questionable value to the end user when the traffic aggregator has blocked access to the end users' carrier of choice (pp. 9-10).

In its Order, the Commission determines that Teleconnect, Dial U.S. and Dial U.S.A. may provide service to traffic aggregators because end users accessing these carriers from traffic aggregator locations "can choose another provider if dissatisfied with rates and service . . . " The Commission goes on to state ". . . the competitive market will influence such providers to offer qualify services at a reasonable price or suffer the consequences of losing customers." This reasoning is entirely illogical and unsupported by any interpretation of the evidence in the record.

Each of the concerns expressed by the Commission about service to traffic aggregators by ITI is equally applicable to these carriers even if they provide operator service "ancillary" to other long distance service. The erroneous and illogical reasoning of the Commission is demonstrated by the fact that each traffic aggregator is capable of subscribing its telephones at a particular location to only one operator service provider, be it Teleconnect, Dial U.S. or Dial U.S.A. or some other provider. However, many different guests, patrons, patients, etc., will be using the aggregators' telephones to access operator services. There is no guarantee that the operator service provider to which

the traffic aggregator has subscribed is the same as each of the end users' service provider of choice. In other words, just because a Missouri customer subscribes to Dial U.S. service at home does not guarantee that the hotel where he stays while away from home will also be subscribing to Dial U.S., even if Dial U.S. provides operator services on an "ancillary" basis. Given this basic fact, how is the end user at the hotel able to make his dissatisfaction with the provider's rates and services known?

Similarly, the erroneous reasoning is further shown by the fact that there is no guarantee that the mere provision of operator service by a provider as an "ancillary" service will ensure that the premise owner will not block access to the end users' carrier of choice, or that the provider will identify itself or provide rate information.

The Commission itself realizes this weakness in its decision even after authorizing "ancillary" operator services by requiring in Part IV of its Report and Order additional preconditions for operator service for Teleconnect, Dial U.S. and Dial U.S.A. before they may provide service to traffic aggregators. For example, at page 12 of the Order, the Commission requires that the provider identify itself to the end user and billed party. Also at page 12, the Commission requires the provider to quote rates on request at no charge. At page 16, the Commission determines that Teleconnect, Dial U.S. and Dial U.S.A. must provide access to other "authorized interexchange carriers and the LEC" where feasible.

Why would the Commission need to impose these restrictions on Teleconnect, Dial U.S. and Dial U.S.A. for service to end users at traffic aggregator points, if competition among "ancillary" operator service providers would control these qualitative and quantitative features of service? Obviously, the Commission believes that the provisions are necessary in order to ensure adequate and reasonable service to end users at these locations. However, the provisions are just as appropriate to regulate service by ITI to these same locations and in fact are similar to the regulatory provisions proposed by ITI in this case. Additionally, the restrictions are virtually identical to those imposed on ITI by the FCC in a recent case involving operator service providers. (See discussion of FCC TRAC Order below.)

These concerns apply to all providers including Teleconnect, Dial U.S. and Dial U.S.A. as well at ITI. The Commission has been able to address the concerns and implement standards of operation which will allow fair and reasonable access to operator services to end users at traffic aggregator locations. These standards also remove any need for trying to distinguish between the services of ITI and those of Teleconnect, Dial U.S. and Dial U.S.A. The Commission should grant rehearing and, upon rehearing, authorize ITI to provide operator service to traffic aggregators on the same terms and conditions as Teleconnect, Dial U.S., and Dial U.S.A.

B. The Commission's Order is Unreasonable and Arbitrary in That the Commission Adopted Standards Governing Service and Approved Companies That Could Not Comply With Those Standards, While Rejecting the Tariff of ITI, Who Can Comply.

The Commission's Order imposes conditions on the provision of operator service by the companies authorized to provide such service. The record demonstrates, however, that the companies authorized to provide operator service cannot all comply with the conditions imposed by the Commission. The record also demonstrates that ITI, whose tariffs were rejected by the Commission, can comply with those conditions of service. The Commission's Order is therefore arbitrary, discriminatory, and unreasonable.

The Commission's Order indicates that one carrier authorized by the Commission to provide operator services cannot comply with two of the service standards imposed in the Order and that the evidence was not clear whether all three carriers could comply with another standard. The Order requires operator service providers to quote rates upon the caller's request, to connect emergency calls to the appropriate local emergency provider in the quickest manner possible, and to provide splashback to other interexchange carriers and the LEC where it is feasible to list the actual point of origin of the caller. According to the Order, however, at the time of the hearing Teleconnect did not have the capability of providing either rate quotes or splashback in the manner required by the Commission. (Order at 12, 15) In its Order, the Commission further finds with respect to emergency calls that it is not clear from the evidence whether Teleconnect,

Dial U.S. or Dial U.S.A. can connect end users to their operators as rapidly as can the traditional providers of operator services. (Order at 17)

The record indicates that ITI, on the other hand, meets these conditions imposed by the Commission. ITI already has the capability of providing rate quotes upon request and can splashback calls such that the actual point of origin is listed. (Tr. 15 238, 263-64) ITI's witness, Mr. Paul Freels, testified that the company has found in tests that its operators can be accessed in as little as 4 to 6 seconds, and Mr. Freels further indicated that ITI would comply with any guidelines regarding speed of access to operators imposed by the Commission. (Tr. 15 180) The Commission ignored this evidence regarding ITI's capabilities and rejected ITI's tariff, while at the same time authorizing other carriers, who do not have the same capabilities, to provide operator service. Consequently, the Commission's Order is arbitrary, discriminatory, and unreasonable.

ITI is uniquely qualified to provide high quality operator services to callers in Missouri and can do so pursuant to the conditions imposed by the Commission in its Order. The Commission's Order reflects a fundamental misconception regarding ITI. ITI is the largest competitive provider of operator services in the country, earning revenues in 1988 of approximately $170 million. ITI processed its first operator assisted call in Dallas, Texas in September, 1985. Since that time, ITI has expanded its operations so that it now provides interstate

service in all 50 states and international service from 37 foreign countries. The company provides intrastate service in 39 of the 43 states which permit interLATA competition. Currently, ITI has over 2,000 employees and processes 400,000 calls on peak days, totalling over 10 million calls per month. ITI uses a nationwide switching network with regional centers in Dallas, Los Angeles, Chicago, Atlanta, Miami, and New York. As described in the testimony of Mr. Freels and Mr. Dennis Thomas, ITI provides a wide variety of services with its state-of-the-art software, ranging from standard operated assisted services such as person-to-person and credit card calling to many new and enhanced services such as message forwarding and teleconferencing. ITI believes that these services would bring substantial benefits to the State of Missouri. ITI is willing and able to provide its service under the terms and conditions established in the Commission's Order. The Commission should grant rehearing and, upon rehearing, allow ITI to provide operator services in Missouri pursuant to such terms and conditions.

C. <u>The Commission Should Grant Rehearing to Take New Evidence Regarding Changed Circumstances in the Operator Assist Market</u>.

The Commission's Order fails to take into consideration recent developments in the operator services market which have occurred since the hearing in this case but which bear directly on whether the provision of operator services by companies such as ITI is in the public interest. In its Order, the Commission

indicates that it will allow only companies who provide operator services ancillary to interexchange toll services to provide operator service in Missouri. (Order at 19) On page 7 of its Order, the Commission explains that it will permit only those companies to provide operator services because they provide service to persons who, if unhappy with the price and quality of the service, may choose another carrier. The Commission thus appears to only focus on the 1+ market. The Commission does not appear to understand that the provision of operator services to transient callers at payphones, hotels, motels, etc., is a very substantial and competitive market in which many carriers including ITI, Teleconnect, Dial U.S. and Dial U.S.A. are participating.

ITI competes nationwide against such companies as Teleconnect, Dial U.S., Dial U.S.A., MCI, and US Sprint to provide operator services to callers from such locations as private payphones, hotels, and motels. In addition, as a result of an Order entered by Judge Harold Green in U.S. v. WEstern Electric Co., Inc. (Civil Action No. 82-0192) on October 14, 1988, the operator services market has become even more competitive and substantial. Judge Greene held that the Bell Operator Companies' practice of routing all long distance traffic from their own pay telephones to AT&T violated the requirements of the MFJ. Judge Green required that the BOCs allow the premises select an

interexchange carrier[1] to handle 0+ calls originating from these payphones, thus opening these phones up to competition among operator service providers. The Order reveals the massiveness of this market -- approximately 1.7 million phones that yield $2.5 billion in annual revenue. The presubscription and balloting process that was implemented by the BOCs to effectuate Judge Greene's Order is similar to the process used several years ago for residential and business presubscription to companies that provide 1+ service. Judge Greene's October 14, 1988, Order is attached hereto as Exhibit A.

ITI participated in the public payphone presubscription process nationwide. Its name appeared on the ballot sent by Southwestern Bell to premises owners for public payphones in Missouri, along with the names of carriers such as Teleconnect, Dial U.S., Dial U.S.A., MCI, US Sprint, and AT&T. A copy of an example ballot for an end office in Missouri is attached hereto as Exhibit B. Under Judge Green's orders, service by presubscribed carriers to public payphones was implemented April 1, 1989.

The FCC has been involved in monitoring the public payphone presubscription process and issued an order concerning the presubscription packages and tariffs prepared by the various Bell Operating Companies. (DA 89-24, Order adopted Feb. 27, 1989, Released Feb. 28, 1989). The FCC also recently issued an order

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[1] The Order specifically recognizes that companies such as ITI are interexchange carriers for purposes of the Order and competition at public payphone locations.

requiring specific changes in the operator services industry. (In the Matter of Telecommunications Research and Action Center and Consumer Action v. Central Corporation, et al., ("TRAC") DA 89-237, Order adopted Feb. 24, 1989, Released Feb. 27, 1989). In its TRAC Order, the FCC required companies who offer operator services to provide notice to consumers of what company will carry and bill each call by posting this information in writing on the telephone and announcing it to the caller. In addition, the FCC ordered that rate information be made available and disclosed upon request to the consumer, and that complaint procedures be established for the consumers' convenience. Finally, the FCC outlawed call blocking. A copy of the FCC's Orders regarding the BOC payphone presubscription tariffs and TRAC complaint are attached hereto as Exhibits C and D, respectively. The FCC has explicitly indicated that these requirements are applicable to all operator services providers, including AT&T, US Sprint, MCI and ITI.

The Commission's Order does not reflect these events and therefore does not take into account the disruptive effect of its order on the massive competitive operator services market which has developed. The Commission should grant rehearing to correct this deficiency in the record.

II. FINDINGS

A. Findings of Fact

Notwithstanding the Commission's fundamental error in its ORder as identified above, ITI further submits that the following Findings of Fact are unlawful as they are:

(1) unsupported by substantial and competent evidence on the whole record in this proceeding in violation of Article V, Section 18 of the Missouri Constitution;

(2) unsupported by findings of fact based upon evidence in the record as required by Missouri law;

(3) inconsistent with the provisions of H.B. 360, now codified in Chapter 386 and 392, RSMo. 1987 Supp;

(4) contrary to applicable Missouri law; and

(5) unlawful, unreasonable, unjust, arbitrary, capricious, and discriminatory.

Findings of Fact Which Are Unlawful

1. That there is any distinct or definable category of interexchange carriers which are "AOS" companies for purposes of the Order.

2. That in the provision of operator services directly to end users ancillary to interexchange toll services, the end user selects the carrier he or she desires.

3. That evidence indicates there is a fundamental difference between the provisions of operator services to traffic aggregators (AOS) and the provision of operator service to end users ancillary to toll services (OS);

4. That operator services provided to traffic aggregators

are a distinct and separate service from operator services provided to end users.

5. That AOS providers respond to the competitive choice of the aggregators who might be primarily influenced by the size of the commission the provider will pay rather than the quality of the service and the reasonableness of the price.

6. That the interests of the aggregator and the end user might be in opposition to one another.

7. That to enable it to pay the most attractive commission, the AOS provider might be induced to charge the end user higher rates and to reduce the quality of service.

8. That the evidence indicates that the consumer might be unaware that he is using an AOS provider.

9. That even if the AOS provider announces its name at the beginning of the call and posts its name on the premises of the traffic aggregator, the consumer might remain unaware of the significance of this notification.

10. That the consumer's first meaningful notification that he has used an AOS provider might be receipt of a bill for operator services at prices higher than those to which he is accustomed.

11. That ITI asserts that its proposed tariffs are informational.

12. That ITI has not expressly recognized that its rates should be subject to the approval of this commission as to their reasonableness.

13. That even if the end user does understand the significance of the notification he has received, he still might be unable to reach his carrier of choice.

14. That by ordering AOS providers to announce their names at the inception of a call and post their names on the premises of the traffic aggregator, the Commission cannot ensure that the end user is made aware of the significance of the information.

15. If the end user is not educated as to the intricacies of using an AOS provider, he does not truly have a meaningful choice by virtue of the notification he has received.

16. That the end user of an AOS provider is bereft of a meaningful choice of carriers.

17. That the effect of the potential for harm from problems outweighs the benefits which have been set forth by the AOS advocates.

18. That is it not in the public interest to approve the tariffs filed by ITI.

19. That the Commission will reject the tariffs proposed by ITI.

20. That the Commission determines that operator services offered ancillary to long-distance service provided directly to end users is in the public interest.

21. That operator services offered to end users through traffic aggregators are in the public interest where the provider primarily renders such services directly to end users and proposes to offer operator services under the same terms,

conditions and rates to end users at traffic aggregators as to end users directly served.

22. That the public interest is served because the competitive toll market will influence the quality and price of the operator services thereby controlling potential abuses in the AOS market.

23. The conditions set forth in Section IV of the Report and Order are discriminatory and unlawful if they are not applied to ITI.

24. That only tariffed rates approved by this commission for certificated providers should be bundled into a single charge on local exchange billings with disconnection for nonpayment, and that location surcharges should not appear on the LEC's bills.

25. That the Commission views location surcharges as another example of the abuses to which the public has been subjected by the operator service industry and does not wish to lend to such surcharges any implied blessing by allowing this collection through LEC billing.

26. That the tariffs to be filed shall reflect the same tariffed rates for operator service to traffic aggregators as for operator service to end users, at the level proposed for the latter service.

B. Conclusions of Law

The following conclusions of law are unlawful:

1. That the tariffs of ITI should be rejected as not being in the public interest.

C. Additional Grounds

Additional grounds for reconsideration and rehearing:

1. The rationale in the Commission's Report and Order for denying ITI's tariffs is not based on any ITI specific evidence, complaints or concerns, but rather on general determinations of what "might" occur regarding the industry as a whole. As such, the Commission's decision is unlawful and not based on substantial and competent evidence on the whole record as to ITI.

2. The Commission's finding that no amount of regulation can control operator services that are not ancillary to long distance service, is unfounded and not based on substantial and competent evidence on the whole record. This is especially true for ITI in that ITI has already agreed to substantially all of the restrictions and regulations outlined in the Report and Order and has stated that it would abide by any technically possible restrictions, regulations or safeguards that the Commission would wish to impose. The Commission, therefore, has determined that its regulatory and oversight power is a failure before it was exercised; a proposition for which there is no support in the record.

3. ITI has already been certificated as a telecommunications company in the State of Missouri. This certificate is identical to other companies who are currently providing operator services in the State of Missouri. Furthermore, the provision of operator services clearly falls into the telecommunications definition found in Chapter 386. While the Commission may have the authority to reject a specific tariff (assuming the evidence supports such a rejection), it is unlawful, unconstitutional and beyond the scope of the authority of the Commission to rule that not only will this tariff be rejected, but that all ITI operator services tariffs, regardless of what they contain, will be rejected.

4. The rejection of ITI's tariff is unlawfully discriminatory, as ITI proposes to allow service on the same basis as AT&T, U.S. Sprint and Teleconnect, which have certificates from the Commission identical to ITI.

5. The Commission prohibited ITI from providing intrastate operator services in Missouri. Intrastate and interstate traffic on public pay telephones cannot be handled by separate carriers. IN prohibiting ITI from carrying intrastate traffic in Missouri, the Commission has effectively prohibited ITI from carrying interstate traffic on public payphones as well. The Commission's order violates ITI's right to carry interstate traffic from public payphones and thus violates the Commerce and Supremacy Clauses of the United States Constitution.

D. Payphone Issues

The Commission failed to consider the impact on the private payphone industry when issuing this Report and Order. The implication of this Report and Order upon private payphones in the State of Missouri is as follows:

1. The Commission is denying private payphone owners the opportunity to earn revenues from payphones in the same manner that Southwestern Bell and other LECs in the State of Missouri have the ability to do.

2. In the Commission's Report and Order, they made the determination of what were fair and reasonable rates. The rates that Southwestern Bell charges from their payphones provides them a return on their investment in excess of 12-15% By not allowing the private payphone industry to get the same return on their investment, they discriminate against the COCOT industry in the State of Missouri. The Commission in this Report and Order made an arbitrary decision on what was and was not in the best interest of the ratepayers in the State of Missouri in applying these decisions allowing and disallowing certificates or tariffs for operator services. By disallowing operator services the ability to service traffic aggregators they are denying those traffic aggregators the same services and revenues that Southwestern Bell and other LECs now enjoy, all of which is discriminatory and unlawful.

3. The Commission specifically denied implementation and collection of surcharges for traffic aggregators. Unlike motels,

motels and hospitals, the COCOT industry has no other means of collecting surcharges but through the inclusion of its surcharge in the billing and collection by the LEC.

4. By denying operator service tariffs to ITI, the Commission has eliminated any possible hope for same and equal competition in the payphone industry in the State of Missouri.

E. Application for Stay

The Commission's April 17, 1989, Order jeopardizes all of ITI's contracts with Missouri premise owners and in particular its public pay telephone presubscription commitments. As a result of the rejection of ITI's tariffs, ITI will be unable to provide intrastate service to any of the locations described in the preceding paragraphs. Each of the hotels, motels, private pay telephone owners and public pay telephone premise owners who subscribe to ITI service will no longer be able to access ITI intrastate services as a direct result of the Commission's illegal and unauthorized action since ITI will be prohibited from providing service under its contractual obligations to each of these locations. IN addition, ITI will lose all interstate calls from Southwestern Bell-owned payphones in Missouri as described above. ITI also believes it will lose many private payphone customers as a consequence of the Commission's Order and consequently will lose the interstate calls from these phones as well. Based on its present number of customers in Missouri, ITI projects it will lose revenue of over $30,000 per month from

hotels and motels, over $200,000 per month from private payphones and approximately $1 million per month from public payphones for an annual loss of over $13 million. Since ITI will also lose its right to an allocation of additional public payphone locations and any increase in hotel and private payphone sites, the actual impact of the Commission's Order will be much greater than $13 million per year.

Even if ITI fully complies with all of the applicable administrative procedures for review of the Commission's decision and ultimately prevails by overturning the Commission's decision, there is no adequate remedy at law which will compensate ITI for the loss of these customers. In particular, each of the hotels, motels and public and private pay telephone owners that subscribes to ITI must immediately upon the effective date of this Order be denied ITI intrastate services and, in the case of public payphones, interstate service, and each will have to seek alternative means to provide operator service to end users ar their premises. Furthermore, ITI will lose its portion of the allocated Southwestern Bell public pay telephone traffic under the presubscription plan. Even if ITI is subsequently vindicated on rehearing, the victory will be of little practical significance since ITI will have already lost all its Missouri customers.

Pursuant to Section 386.500, RSMo. 1987 Supp., applicant hereby requests that the Commission stay its Report and Order so that the parties may have relief from complying with or obeying

EXHIBIT "C"

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the application of American Operator Services, Inc. for a certificate of service authority to provide Intrastate Operator-Assisted Resold Telecommunications Services.	)	Case No. TA-88-218
In the matter of Teleconnect Company for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-282
In the matter of Dial U.S. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-283
In the matter of Dial U.S.A. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-88-284
In the matter of International Telecharge, Inc. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	Case No. TR-89-6

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF APPLICATION FOR RECONSIDERATION, REHEARING AND STAY

International Telecharge, Inc., ("ITI"), by Hendren and Andrae, Richard S. Brownlee, III, and hereby files this Supplemental Memorandum in Support of the Application for Reconsideration, Rehearing and Stay filed by ITI herein on April 24, 1989.

In its Application, ITI urged the Commission to reconsider its Order rejecting ITI's tariff because that Order is discriminatory, unjust and unreasonable. In support of its claim, ITI argued that the Commission's concerns about ITI apply as well to providers of service including Teleconnect, Dial US and Dial USA, and that ITI should be subject to the same rules of operation as the Commission has imposed on those companies. In further support of its claim, ITI respectfully notes that both Judge Greene and the FCC have found that all interexchange carriers, including competitive operator service providers, should be treated in the same manner. Judge Greene, in his October 14, 1988, opinion specifically recognized "alternative service providers" as interexchange carriers besides AT&T are entitled to compete for 0+ traffic from public payphones. U.S. v. Western Electric Co., Inc., Civil Action No. 82-0103) at p. 23 (Ex. A to ITI's Application for Reconsideration). The FCC has also expressly recognized that companies providing services to the same category of transient users should be subject to the same rules of operation. In its February 27, 1989 TRAC Order, the FCC imposed various consumer notification and other requirements on providers of operator services. In the Matter of Telecommunications Research and Action Center and Consumer Action v. Central Corporation, et al., DA 89-237 (Ex. C to ITI's Application for Reconsideration.) The FCC has explicitly indicated that the principles of its TRAC Order are applicable to all operator service providers, including AT&T, MCI, US Sprint, and ITI.

In its Application, ITI also urged this Commission to grant rehearing in this case to take new evidence regarding changed circumstances in the operator services industry. In further support of this request, ITI respectfully brings to the Commission's attention the fact that ITI has recently been certificated by three states which previously denied ITI's applications for certification. On February 23, 1989, the Alabama Public Service Commission issued an order granting ITI's application to provide intrastate service in that state and specifically found in its order that ITI's proposed service "appears to be excellent and would provide quality-of-service competition." On March 22, 1989, the Kentucky Public Service Commission issued an interim order granting ITI authority to provide intrastate service to BOC payphones in Kentucky. Finally, on April 14, 1989, the Mississippi Public Service Commission entered an order authorizing ITI to provide intrastate service in that state after the Chancery Court of the First Judicial District of Hinds County, Mississippi, reversed the Commission's earlier denial of ITI's application. Significantly, the Chancery Court in Mississippi found that it is not appropriate to address public interest issues by denying a carrier the right to operate, but rather a state commission should adopt appropriate rules and regulations applicable to all such companies, including AT&T.

The Alabama, Kentucky, and Mississippi Commissions all adopted various terms and conditions of services to allow fair and reasonable access to operator services to end users at traffic aggregator locations. This Commission should grant

rehearing to consider these new developments in the regulation of the operator services industry and, upon rehearing, should allow ITI to provide operator services in Missouri pursuant to the same terms and conditions as Teleconnect, Dial US and Dial USA.

HENDREN AND ANDRAE

Richard S. Brownlee III

Richard S. Brownlee, III
235 E. High Street
P.O. Box 1069
Jefferson City, MO 65102

Attorneys for International Telecharge, Inc.

Of Counsel:

BICKERSTAFF, HEATH & SMILEY

Katie Bond
San Jacinto Center, Suite 1800
98 San Jacinto Blvd.
Austin, TX 78701-4039

INTERNATIONAL TELECHARGE, INC.

Steve Bickerstaff
Executive Vice-President of
Legal Affairs

Ed Pope
General Counsel
108 S. Akard
Dallas, TX 72002

Certificate of Service

I hereby certify that a true copy of the foregoing was mailed on April 27, 1989, by prepaid United States mail to all counsel of record.

Richard S. Brownlee III

Richard S. Brownlee, III

EXHIBIT "D"

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 28th day of April, 1989.

In the matter of the application of American Operator Services, Inc. for a certificate of service authority to provide Intrastate Operator-Assisted Resold Telecommunications Services.	)	CASE NO. TA-88-218
In the matter of Teleconnect Company for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-282
In the matter of Dial U.S. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-283
In the matter of Dial U.S.A. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-88-284
In the matter of International Telecharge, Inc. for authority to file tariff sheets designed to establish Operator Services within its certificated service area in the State of Missouri.	)	CASE NO. TR-89-6

ORDER DENYING APPLICATIONS FOR REHEARING AND STAY

Timely applications for rehearing and stay of the Commission's Report and Order issued in the March 17, 1989, were filed in the above-referenced case by International Telecharge, Inc. (ITI), the Midwest Independent Coin Payphone Association (MICPA) and American Operator Services, Inc., d/b/a National Telephone Services (NTS).

ORDERED: 2. That this order shall become effective on the date hereof.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Hendren and Rauch, CC., Concur.
Fischer, C., Dissents.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28th day of April, 1989.

Harvey G. Hubbs
Secretary