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June 28, 1989

Mr. Harvey G. Hubbs, Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

RE: International Telecharge, Inc.
Case Number TR-89-2³89

Dear Mr. Hubbs:

Enclosed please find for filing an original and 14 copies of
Application of International Telecharge, Inc., for Reconsideration
and Motion to Vacate Order.

Thank you.

Very truly yours,

HENDREN AND ANDRAE

Donald C. Otto
Donald C. Otto, Jr. *RF*

DCO/pdp
Enclosures

cc: Mr. Mark D. Wheatley, Assistant Public Counsel
Mr. Charles Brent Stewart

FILED

JUN 28 1989

PUBLIC SERVICE COMMISSION

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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

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-89-239

**APPLICATION OF INTERNATIONAL TELECHARGE, INC.
FOR RECONSIDERATION AND MOTION TO VACATE ORDER**

Comes now International Telecharge, Inc., ("ITI") and, pursuant to Chapter 386.500, RSMo. 1987, and 4 C.S.R. 240.2.060 of the Rules of Practice of the Public Service Commission, requests that the Commission reconsider its Order Dismissing Tariff of June 20, 1989 (the "Order of June 20") and vacate same. In support of this pleading, ITI states the following:

1. On May 26, 1989, ITI filed its proposed tariff with the Public Service Commission. The Secretary of the Commission designated the tariff filing as Case Number TR-89-239.

2. By its Order of June 20, the Commission dismissed, without a hearing, ITI's tariff filing.

3. On June 21, 1989, ITI filed an amended tariff with the Commission identical to the tariff considered in Case Number TR-89-239 except for changes in the Company's intraLATA rates. ITI's intraLATA rates were amended to mirror those of Southwestern Bell Telephone Company. The Commission should grant ITI's Application for Reconsideration in order to consider these corrections in the tariff and to reconsider its decision on that portion of the tariff which remains unchanged for the reasons set forth below.

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4. The Commission's Order of June 20 is unlawful, unjust, unreasonable, unlawfully discriminatory, arbitrary, capricious, unconstitutional and totally without support or substantiation by the facts on the record as a whole and abusive of discretion.

5. The Commission's Order of June 20 relies on Case Number TA-88-218. The Order, in effect, has made a "finding," without a hearing, that ITI violates the distinction created in TA-88-218 between the provision of operator services "primarily" to traffic aggregators and operator services "primarily as an adjunct" or "ancillary" to toll services. Without the required hearing, there can be no lawful or constitutional finding that ITI fits into either of these categories. In addition, by not defining the terms "primarily," "ancillary" or "primarily as an adjunct to," the Commission's Order of June 20 is unsupported by competent evidence.

6. Case Number TA-88-218 was not a rulemaking proceeding. Yet the Commission has apparently attempted to apply TA-88-218 as if it had been a rulemaking proceeding. Since TA-88-218 was not a rulemaking proceeding, it is unlawful and unconstitutional to apply a finding in that docket to all potential operator services tariff filings. Given the procedural status of TA-88-218, it was not possible, lawful or constitutional for the Commission to make a finding in that docket that affects tariffs not filed in TA-88-218. The instant tariffs are substantially different from the tariffs considered by the Commission in TA-88-218 and, therefore, the findings in that case cannot be applied to the instant tariff filing.

7. Furthermore, the Commission's Order in Case Number TA-88-218 upon which the June 20th Order subjects ITI to unlawful and unconstitutional discrimination in that similarly situated telecommunications providers are given unlawful and unsupported preferences with respect to provision of operator assisted services in Missouri. Therefore, the June 20th Order is unlawful and unconstitutionally discriminatory.

8. The Commission's Order in Case Number TA-88-218, upon which the Order of June 20 relies, is unlawful, arbitrary, capricious, unconstitutional, unsupported by substantial and competent evidence and abusive of discretion.

9. The "ancillary" test enunciated in TA-88-218 and applied to ITI in this case is also, in and of itself, arbitrary, capricious, unlawful, unconstitutional, and unsubstantiated for the following reasons:

(a) The test is unconstitutional and unlawfully discriminates against ITI which is similarly situated to operator service companies which have been allowed to provide services to traffic aggregators in Missouri;

(b) The test is arbitrary, capricious and without support from the record in the instant case or Case Number TA-88-218;

(c) The test violates the Commerce and Supremacy Clauses of the United States Constitution;

(d) The test is based on a conclusion that companies who fail the "ancillary" test are not operating in the public interest, a finding which is arbitrary capricious and for which

there is no competent and substantial support in this record or in Case Number TA-88-218.

10. The Commission has exceeded its authority under Chapter 392, RSMo., by rejection ITI's tariff on the basis of the Commission's Order in Case Number TA-88-218 and effectively prohibiting ITI from providing its services to Missouri customers.

11. The effective date of the Order of June 20 is June 29, 1989, and this Application for Reconsideration has been filed prior to this effective date in compliance with the applicable statutes.

WHEREFORE, ITI requests that the Commission grant this Application to consider ITI's amendments to its intraLATA rates and reconsider its Order of June 20 as to the portions of ITI's tariff which remains unchanged and that the Commission, upon reconsideration, vacate its Order of June 20 and approve ITI's tariff as amended.

HENDREN AND ANDRAE

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ATTORNEYS FOR ITI

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
Jefferson City

June 20, 1989

CASE NO. TR-89-239

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

Sincerely,

Harvey G. Hubbs
Harvey G. Hubbs
Secretary

uncertified copy: