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December 30, 1988

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

Re: TA-88-218, et al.

Dear Mr. Hubbs:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of the Reply Brief of the Office of the Public Counsel. Please "file" stamp the extra enclosed copy and return it to this office. I have on this date mailed or hand-delivered copies to all counsel of record.

Thank you for your attention to this matter.

Very truly yours,

Mark D. Wheatley
Assistant Public Counsel

MDW:kl
Enclosures

cc: Counsel of record

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

REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

Comes now the Office of the Public Counsel (Public Counsel) and respectfully submits the following reply to the Initial Briefs filed by the various parties to this action.

105.

I. Contrary to the arguments of the Applicants, the Commission is required to make a strict determination of whether the provision of AOS by the Applicants is in the public interest.

The Alternative Operator Service (AOS) providers have attempted in their initial briefs to persuade the Commission that their companies should be treated as typical toll telecommunications service providers. As a result, the AOS providers contend that they are entitled to the liberal public interest determination which has been afforded to typical toll resellers by the Commission in Case No. TC-85-10, In the Matter of the Regulation of All Providers of Interexchange Telecommunications Services in Missouri, 10 Mo. Reg. 1048 (1985) and in Case No. TO-84-222, Re: Investigation into WATS Resale by Hotels/Motels, et al., 28 Mo. P.S.C. 535 (effective August 26, 1986). Since the obvious distinctions between the above cases and the present case were discussed at length in Public Counsel's Initial Brief, it should suffice to say that the Commission determined in the above cases that it was not necessary to determine if there was a public need for each reseller's services because competition in the market between the resellers for the business of the public would eliminate any reseller which the public did not want or need. Although the AOS providers have argued that because of competition, the Commission need not determine if there is a public need for their services, such is not the case.

In their initial briefs, the AOS providers have attempted to embrace the term "competitive" in an effort to clothe themselves as toll providers entitled to the above liberal public interest determination. As a result, all of the AOS providers have referred to themselves as "competitive Operator Service Providers" with AOSI/NTS going so far

as to attempt to make some type of nebulous distinction between "Operator Service Providers" (OSPs) and "Competitive OSPs" (AOSI Initial Brief, p. 5), claiming that all five of the petitioners in this case are "Competitive OSPs".

AOSI/NTS further asked not only for a grant of a Certificate of Service Authority, but also asked for a grant of "competitive status". (AOSI Initial Brief, p. 45). Clearly such claims and requests are beyond the scope of these proceedings. In the IXC classification docket, Case No. TO-88-142, the Commission has not even addressed the issue of whether operator services provided by traditional certificated IXCs constitute a competitive service much less whether operator services as provided by the Applicants are competitive.

The AOS providers' liberal usage of the terms "competitive" and "competition" is clearly misleading. In the above cited cases the Commission obviously viewed competition as a mechanism by which to provide the ratepaying public with a choice of which toll provider to use for their long distance needs. By contrast, when the AOS providers talk about competition they openly admit that they are competing for the business of the subscribers which are the hotels, universities, hospitals, airports, and payphone owners (Bryan, T. 68; Freels, T. 217) and not for the business of the end user. Unfortunately, the end user is an inconsequential cog in the AOS machine.

The phenomenal growth in revenues of which the AOS providers boast is obviously fueled by subscribers attracted by the surcharges and commissions offered by the AOS providers rather than by the demand of the public. As the testimony regarding end user complaints

reveals, the AOS providers are relatively unknown to the public. (Exhibit 12, Drainer Direct, Schedule 1).

Since the competition referred to by the AOS providers is for the subscribers and not for the end users, the previously discussed principles and effects of competition recognized by the Commission in Case No. TC-85-10 and Case No. TO-84-222 are inapplicable to AOS providers. This conclusion is consistent with the provisions of House Bill 360 as codified in Chapter 392 of the Revised Statutes of the State of Missouri and specifically Section 392.530.1(6), RSMo 1987 which states that the provisions of Chapter 392 shall be construed 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. (emphasis added)

The "competition" between AOS providers certainly does not benefit the end user who is usually a captive customer forced, often unknowingly, to incur excessive rates and surcharges for operator services from a provider which is unknown to the customer. This is obviously not "full and fair" competition as far as the end user is concerned. Furthermore, the allowance of AOS within Missouri is certainly not consistent with the protection of the ratepayers and not consistent with the public interest. As a result, the Commission must protect the end users by requiring a strict determination of whether the services of the Applicants, whether presently certificated or not, are in the public interest.

II. The provision of AOS by AOSI/NTS and ITI is not in the public interest and, therefore, should not be allowed within the State of Missouri.

Notwithstanding the arguments of AOSI/NTS and ITI, Public Counsel contends that the provision of AOS by these two companies is not in the public interest. Public Counsel's contention is based upon the fact that neither of these companies contract directly with the public but instead contract only with host businesses which capture the public's business for them. Since neither of these companies are directly responsible to the end users of their services, it is obvious that these two companies are more interested in the benefits to their own companies and to their actual customers, the traffic aggregators, than in any claimed benefits to the public.

Such a conclusion can be easily drawn from the fact that both AOSI/NTS and ITI have been providing intrastate operator services within Missouri for some time without having previously obtained both certification and approval of their tariffs from the Commission. (Bryan, T. 83; Freels, T. 212-216). This illegal business was transacted by these companies even though the companies were aware that certification and approval of tariffs was necessary prior to commencement of such business (Freels, T. 214-215) and even though the companies admittedly had the ability to block intrastate traffic. (Bryan, T. 107; Freels, T. 214).

While operating illegally in the state, these companies have taken the opportunity to bilk the public by charging rates and operator service charges greatly in excess of what the public is accustomed to paying, adding customer determined surcharges as high as two dollars per call (Exhibit 12, Drainer Direct, Proprietary Schedule 3-7),

imposing a three minute minimum charge (Freels, T. 225), and refusing to allow time-of-day discounts. To compound the severity of their practices, these companies have fraudulently accepted AT&T credit cards in payment of these charges, leading the public to believe that they will be charged the AT&T rates to which they are accustomed. (Exhibit 12, Drainer Direct, Schedule 1; Drainer, T. 505). Furthermore, if these excessive charges were not paid, the end user was faced with the threat of having his or her local telephone service disconnected. When faced with such conditions, the benefits such as multi-lingual operators offered by these companies are of little solace to the ratepayers of Missouri.

In their initial briefs, each of these companies attempt to remedy these past illegal acts by arguing that their proposed rates are closer to AT&T rates and Southwestern Bell rates prior to July 1, 1988. However, their argument should be weighed against the fact that their proposed rates are still higher than the rates of the above carriers and their present rates admittedly are higher than their proposed rates. (Bryan, T. 125; Freels, T. 222-224).

In their initial briefs each of these companies have attempted to respond to the Commission's concerns regarding quality of service. Public Counsel finds their arguments unpersuasive and contends that serious problems exist, particularly in the area of operator response time. As a result of their operation configuration, it is clear that each company's response time is poor and, in the case of emergency calls, might be disastrous.

At the hearing, the witness for ITI testified that a call from an ITI location in St. Louis to Jefferson City would first be processed

through the customer premises equipment in St. Louis and routed to the point of presence in St. Louis of the interexchange carrier handling the call for ITI. (Freels, T. 264-265). Thereafter, the call is routed to the closest switch which is in Chicago, Illinois. From Chicago the call is then bridged through a drop link to Dallas, Texas where ITI's operators are located. (Freels, T. 264-265). It is obvious that such a routing method would be very time consuming. ITI admitted that their own tests revealed operator response times as high as 21 seconds. (Freels, T. 180).

On the subject of operator response time, the witness for AOSI/NTS testified that they had a 3 to 5 second response time after the call was delivered to their point of presence. The AOSI/NTS blamed others for any problems with the response time by giving the following answer:

> There are a number of factors that are beyond our control. The only studies we've been able to perform which have been statistically reliable indicate that a call is answered on the average between three and five seconds following delivery of the call to NTS's point of presence within the LATA. The time consumed by the customer premise equipment and the local exchange prior to delivery to our POP is beyond our control, and we've really not been able to be measure. But it's between three and five seconds from delivery to the POP. (Bryan, T. 69).

It is clear that the operator response time of each of these companies exceeds the service standards set by the Commission and results in poor service to the end user. Although both companies boast that they can handle emergency calls with the touch of a few buttons once the call reaches their operator, the time required for the call to reach the operator could well spell disaster for the caller.

An additional concern of Public Counsel which each of these companies have failed to adequately address is the potential for mis-

allocation of access revenues. Since the operator location of each company is located outside of the State of Missouri even intrastate calls are routed to the out-of-state operator location for handling and then sent back to the State of Missouri. To the underlying IXCs this call appears to be two interstate calls. The obvious result is a possible loss of intrastate access revenues. In its initial brief, AOSI/NTS admits that this is a "theoretical possibility" (AOSI Initial Brief, p. 27) and at the hearing admitted that at the present time between five to ten percent of its calling volume might be mishandled. (Bryan, T. 106). If such a misallocation of intrastate access revenues occurs, the ratepayers of Missouri ultimately would be responsible for the payment of the lost revenues through higher local service charges.

For the above reasons and in view of the arguments and case authority set forth in Public Counsel's Initial Brief, Public Counsel respectfully requests that the Commission deny the Application of AOSI/NTS for a Certificate of Service Authority and reject the proposed tariffs filed by ITI.

III. Public Counsel does not oppose the operator service tariffs proposed by Teleconnect Long Distance Services and Systems Company (Teleconnect) provided Teleconnect is subject to the conditions proposed by Public Counsel.

At the hearing of this case, Public Counsel's witness amended her prefiled testimony to state that "Public Counsel does not oppose approval of Teleconnect's tariffs as it is apparent that Teleconnect is not an AOS provider as defined in my testimony." (Drainer, T. 488).

In their Initial Briefs, AOSI/NTS and ITI argued that Public Counsel's position was discriminatory. However, Public Counsel contends that the position is not discriminatory for the reason that

numerous differences exist between the nature of the services offered by Teleconnect and those offered by AOSI/NTS and ITI.

Unlike AOSI/NTS and ITI, Teleconnect intends to market its operator services directly to residential users in connection with its 1+ long distance service in an effort to provide a total long distance package. (Ricca, T. 298, 324). Teleconnect does not intend to market operator services separately from its 1+ service. (Ricca, T. 298-299). However, if a hotel refused to accept Teleconnect's 1+ service but desired to have its 0+ service, Teleconnect has stated that it would accept that customer. (Ricca, T. 299). Nevertheless, unlike AOSI/NTS and ITI which provide nothing but operator services, less than one or two percent of Teleconnect's business consists of operator services. (Ricca, T. 323).

Of most importance to Public Counsel, Teleconnect intends to charge customers calling from a traffic aggregator location, such as a hotel, the same rates which it charges its residential 1+ customers for operator services (Ricca, T. 324), which rates are identical to AT&T's present operator service rates. (Ricca, T. 302). In addition, Teleconnect does not collect surcharges. (Ricca, T. 324). These facts are important to Public Counsel in distinguishing Teleconnect from AOSI/NTS and ITI for the reason that if Teleconnect's operator services are deemed by its residential customers to be of poor quality or overly expensive, the residential customers would have the opportunity to discontinue Teleconnect's services. Since residential customers constitute a large part of Teleconnect's business, Teleconnect would have to correct any such problems or suffer severe financial losses as its residential customers went to other carriers.

Such a situation is exactly what the Commission envisioned in recognizing the benefits of true competition in the previously discussed cases, Case Nos. TC-85-10 and TO-84-222. Public Counsel believes that the above possible effects of competition in the residential market will be sufficient to protect the captive customers calling from a traffic aggregator location since such rates are the same as the rates charged by Teleconnect to its residential customers.

Of additional importance is the fact that Teleconnect has a one minute minimum charge (Ricca, T. 324) and does not intend to handle 0- traffic (Ricca, T. 322, 326), thereby minimizing the danger of mishandling emergency calls. Moreover, Teleconnect has refrained from operating within the State of Missouri (Ricca, T. 324) which evidences a respect for the laws of this state and this Commission which has not been shown by AOSI/NTS or ITI.

Problems do exist with Teleconnect's proposed tariff which must be corrected. Teleconnect presently uses a billing agent for the collection of its operator service revenues. (Ricca, T. 300). As a result, the billing agent's name and telephone number, rather than Teleconnect's, appears on a customer's local exchange bill. (Ricca, T. 301). In addition, Teleconnect has proposed a "customized operator greeting" which could be used to announce the name of the traffic aggregator rather than Teleconnect's name. (Ricca, T. 301). Finally, Teleconnect does not have the present ability to give rate quotes to end users, although Teleconnect does announce that their rates are exactly the same as those of AT&T. (Ricca, T. 302).

In response to these concerns, Teleconnect has indicated that it would properly brand its calls by announcing Teleconnect's name to

the caller (Ricca, T. 315, 325), that it is developing a rate quote system (Ricca, T. 326), and that it is currently pursuing a billing and collection agreement with Southwestern Bell which would allow Teleconnect's name to be shown on their local exchange bills. (Ricca, T. 307, 325).

Public Counsel contends that these problems must be corrected and, therefore, suggests that Teleconnect's operator services should be subject to the conditions and requirements set forth in Public Counsel's testimony and Initial Brief. (Public Counsel's Initial Brief, p. 13). If these conditions are required to be followed, Public Counsel does not otherwise oppose approval of Teleconnect's operator service tariff.

IV. Public Counsel does not oppose the operator service tariffs proposed by Dial U.S. and Dial U.S.A. provided that these companies are subject to the conditions proposed by Public Counsel.

As in the case with Teleconnect, Public Counsel's witness amended her prefiled testimony to state as follows:

> Public Counsel does not oppose Dial U.S. and Dial U.S.A. tariffs because they will be buying Teleconnect's operator services and offering them at the same rates and subject to the same conditions. (Drainer, T. 488).

Although AOSI/NTS and ITI have also claimed in their Initial Briefs that this treatment is discriminatory, Public Counsel contends that it is not for the reasons set forth in Section III of this brief in regard to Teleconnect's tariff. However, as in the case of Teleconnect, Public Counsel would urge the Commission to impose upon these companies the same conditions and requirements suggested by Public Counsel with reference to Teleconnect. If such conditions and

requirements are imposed, Public Counsel would not oppose approval of the proposed tariffs of Dial U.S. and Dial U.S.A.

V. The conditions and requirements proposed by Public Counsel are reasonable and necessary for the protection of the public.

In their Initial Briefs, some of the parties have criticized Public Counsel's suggested conditions and requirements as being unreasonable and unattainable. Public Counsel contends that these requirements are reasonable and necessary for the protection of the public and should be required of any of the Applicants whose services are approved by the Commission. For ease of reference, Public Counsel's suggested conditions are as follows:

> First, as a condition of certification, the AOS provider must submit proof of Articles of Incorporation, demonstrate financial ability to support proposed service offerings, demonstrate technical ability to support proposed service offerings, describe type of service, and file tariffs on rates of services to be provided.
>
> Second, as a condition of certification, the AOS provider must route all emergency zero minus (0-) calls in the quickest possible way to the proper local emergency service provider.
>
> Third, as a condition of certification, the AOS provider must file tariffs on rates of services to be provided which are deemed just and reasonable.
>
> Fourth, as a condition of certification, the AOS provider and/or business subscriber (i.e., COCOT payphones, hotel, motel, hospitals, universities, etc.) must be limited to only billing the end user the duly authorized tariffed rates. In other words, surcharges, unless authorized by the tariffs, should not be billed to the end user.
>
> Fifth, as a condition of certification, the AOS provider must: (A) post and display in prominent fashion the name of the AOS provider and detailed complaint procedures; (B) pre-announce to the end user the name of the provider handling the call; (C) upon request verbally quote rates charged to the end user; and (D) post and display instructions that inform the end user how to reach the local exchange operator and authorized interexchange carriers.

> Sixth, as a condition of certification, the AOS provider must provide toll free access to all other authorized inter-exchange or local exchange carriers in a manner which provides end users with a local billing point.
>
> Seventh, as a condition of certification, the AOS provider must guarantee the Commission that it will not charge end users for incomplete calls. (Exhibit 12, Drainer Direct, p. 11).

With reference to Public Counsel's second condition regarding emergency 0- calls, this requirement is essential. Although the AOS providers have suggested in their Initial Briefs that emergency 0- calls can be handled by the pushing of a few buttons, the operator response time, as discussed in Section II of this Brief, could still lead to disaster. For this reason, Public Counsel agrees with Staff's condition no. 7 (Commission Staff's Initial Brief, p. 6), that the provider must first demonstrate that emergency calls would be adequately and efficiently handled and that, in the meantime, all 0- traffic must be handled by AT&T or the local exchange company.

Public Counsel's fourth condition regarding surcharges is also reasonable. Teleconnect, Dial U.S. and Dial U.S.A. do not collect surcharges. (Ricca, T. 324; Drainer, T. 488). In addition, the witness for AOSI/NTS admitted that his company is "not entirely comfortable with either the practice of billing the surcharge or the size of many of the surcharges." (Bryan, T. 115). The witness for AOSI/NTS further stated that he "would certainly not object to a prohibition of either billing the surcharge or a prohibition of disconnection on that basis." (Bryan, T. 115).

While the assessment by hotels of such a charge is not new, the practice of placing the charge on a local telephone bill with the power of disconnection is new and is unreasonable. Furthermore, the

imposition of a surcharge on payphones at hospitals, universities, restaurants and all other locations is new and is even more unreasonable. For these reasons a prohibition of surcharges is a reasonable requirement.

The AOS providers contend that Public Counsel's fifth condition in regard to the posting of notice also is unreasonable because the AOS providers have no control over the telephone owners who would have to post and display the notice. However, the providers could easily put this requirement in their contracts with their subscribers. In addition, such a posting is already required by the Commission of private payphone owners.

Public Counsel's sixth condition requiring the provider to provide toll free access to other carriers which also provides the end user with a local billing point is also reasonable. The witness for ITI stated that ITI has the ability to hand off a call to other carriers at the caller's point of origin. (Freels, T. 262-263). Since this ability is available, it is not unreasonable to require that this service be made available to the public.

This condition is necessary to protect the public by providing a choice to the public. This condition and the need for consumer choice will become even more important when the presubscription of Regional Bell Company-owned public telephones becomes effective January 1, 1989, pursuant to the recent decision of Judge Harold Greene issued October 14, 1988, in U.S. v. Western Electric, Opinion No. 82-0192 (D.C. Cir. 1988), pages 31-52.

All of the conditions proposed by Public Counsel are reasonable and necessary to protect the public interest. The Commission should

deny a certificate to an AOS provider unless it is able to completely satisfy each condition. While both AOSI/NTS and ITI imply that they would be willing to comply with the conditions proposed by Staff witness VanEschen, which are similar to those proposed by Public Counsel, a close reading of their briefs and their witnesses' testimony demonstrates that neither AOSI/NTS nor ITI will be able or willing to comply with these conditions. For example, neither AOSI/NTS nor ITI subscribes to answer supervision in all areas and therefore both companies will continue to bill for incompleted calls. In addition, problems with operator response time in relation to emergency call handling, as discussed earlier in this brief, could prevent the AOS providers from promptly handling emergency calls. Therefore, if the ratepayers are to be afforded even minimal regulatory protection by the Commission, the conditions proposed by Public Counsel should be imposed by the Commission as conditions of certification and/or approval of tariffs.

VI. Conclusion.

For the reasons set forth in Public Counsel's Initial Brief and in this Reply Brief, Public Counsel respectfully requests that the Commission find that the services offered by AOSI/NTS and ITI are not in the public interest and that, therefore, this Commission deny AOSI/NTS's Application for a Certificate of Service Authority and deny approval of ITI's proposed tariffs.

In the event the Commission should allow AOSI/NTS and ITI to operate within the State of Missouri, Public Counsel respectfully

requests that the Commission impose upon them, at a minimum, the requirements and conditions proposed by Public Counsel.

Finally, Public Counsel does not oppose the approval of the proposed tariffs of Teleconnect, Dial U.S., and Dial U.S.A. if the Commission will also impose upon these companies, at a minimum, the above requirements and conditions proposed by Public Counsel.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By /s/ Mark D. Wheatley

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I hereby certify that a copy of the foregoing has been mailed or hand-delivered to all counsel of record on this 30th day of December, 1988.

/s/ Mark D. Wheatley