

P-999/CI-88-917 ORDER SETTING REGULATORY REQUIREMENTS FOR
OPERATOR SERVICE FROM TRANSIENT LOCATIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the
Applications for Authority to
Provide Alternative Operator
Services in Minnesota

ISSUE DATE: November 19, 1991

DOCKET NO. P-999/CI-88-917

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REQUIREMENTS FOR OPERATOR
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PROCEDURAL HISTORY

I. DEFINITION

"Operator service" refers to any service using a live operator or mechanical (automated) operator function for the handling of a telephone service, such as toll calling via collect, third party billing, and calling or credit card services. In the past few years, the use of operator services has risen sharply in the telecommunications industry. Federal and state regulatory agencies have been working to clarify the definition of these types of services, and to establish and implement regulatory requirements for their use.

"Alternative operator service" (or "AOS") is a subcategory of operator service. In a September 5, 1990, Order¹, the Commission clarified the definition of alternative operator service. The Commission stated that alternative operator services are offered by telephone companies who "provide operator service on a presubscribed basis for calls made from telephones owned by call aggregators (e.g. hotels, motels, hospitals and pay telephones whose customers tend to be transient)." The Commission referred to end-users of such operator services as "captive" because they could not choose the presubscribed operator service provider at these locations as they could at their own residence. Instead, the call aggregators subscribe or contract with telephone companies for the provision of operator assisted service to their locations. The Commission stated specifically that its AOS regulation would extend both to "traditional" AOS providers (interexchange carriers such as AT&T, and local exchange carriers such as US WEST, who provide AOS along with a range of other

¹ In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, Docket No. P-999/CI-88-917, ORDER DENYING PETITIONS at p.6.

telecommunications services) as well as "alternative" AOS providers (the relatively new companies who exist solely to provide AOS services).

II. FEDERAL OVERSIGHT

On January 15, 1991, the federal Telephone Operator Consumer Services Improvement Act of 1990 went into effect. This law represented the federal government's attempt to protect "captive" consumers who place interstate operator service calls from hotels, motels, pay telephones, and other transient locations. The federal government placed stringent statutory guidelines upon providers of interstate AOS. A 1991 FCC rulemaking procedure also placed strict requirements on interstate AOS providers.

III. HISTORY BEFORE THE COMMISSION

The Public Utilities Commission was first presented with the issues underlining AOS on April 28, 1988. On that date Central Corporation (Central), a Florida based reseller of long distance services, petitioned the Commission for authority to provide operator-assisted long distance services to locations such as hotels, motels, hospitals and pay telephone stations which serve transient end-users. On May 26, 1988, Teleconnect Long Distance Services and Systems Company (Teleconnect), a long distance provider already certified by the Commission, requested authority to provider operator-assisted long distance services to its customers as well as to transient "captive" customers. Between May 26 and December 16, 1988, the Commission received petitions similar to Central's and Teleconnect's from six other prospective AOS providers.

During the same period, the Commission, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) received complaints from parties who had been "captive" telephone customers from transient Minnesota locations and felt they had been poorly served by their AOS providers.

On October 26, 1988, the Commission issued its ORDER CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING in Docket Nos. P-485/NA-88-291; P-478/M-88-359.² In that Order the Commission consolidated all previously filed requests and applications for authority to provide AOS. The Commission also opened the docket herein to conduct an investigation of operator services from those locations that serve transient end-users. The Commission referred the matter to the Office of

² In the Matter of an Application for Certificate of Authority and Tariff Filing by Central Corporation, d/b/a Central Long Distance Corporation, for the Provision of Long Distance and Alternative Operator Services; In the Matter of a Tariff Filing by Teleconnect Company to Introduce Operator Services and Rates.

Administrative Hearings (OAH) for contested case proceedings. The case was assigned to Administrative Law Judge (ALJ) John W. Harrigan.

On November 14, 1988, the Commission issued its ORDER ACCEPTING WITHDRAWAL, CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING. In that Order the Commission accepted a withdrawal of request for certificate of authority from Central and established a prehearing date for the contested case hearing to be conducted by the ALJ.

From December 23, 1988 through June 17, 1991, the Commission granted twenty petitions for interim authority to provide AOS³, pending final disposition of the matter by the Commission. The Commission imposed a number of protective measures on companies granted interim AOS authority. The AOS providers were required to:

1. Identify themselves to end-users using their services;
2. Refrain from imposing any surcharge;
3. Set rates at or below the level of AT&T's rates for similar services;
4. Transfer all emergency calls to the local exchange carrier (LEC);
5. Provide adequate notice to end-users regarding price and access to alternative operator service providers;
6. File rates and form contract with aggregators with the Commission and the Department;
7. Comply with statutory requirements regarding the maintenance of an office in the state.

A contested case hearing was scheduled to commence on April 10, 1989. Prior to that date, all parties agreed to a Stipulation, which was presented to the ALJ. The ALJ issued his Findings of Fact, Conclusions of Law and Recommendation and Memorandum on June 7, 1989.

The Commission met on September 7, 1989 and November 20, 1989 to consider the Stipulation. Between the two meetings the Commission sought further information from the parties. On January 12, 1990, the Commission issued its ORDER MODIFYING PROPOSED STIPULATION OF SETTLEMENT AND ADOPTING STIPULATION OF SETTLEMENT AS MODIFIED. In that Order the Commission modified and adopted the Stipulation of Settlement which had been filed by the parties to the contested case proceedings. The Commission concluded that the available record did not contain substantial

³ See attachment for list of current interim authority certificate holders.

evidence that the provision of AOS would be in the public interest, absent the consumer protection guidelines agreed to in the Stipulation. The Commission determined that three additional consumer protections should be added to those covered in the Stipulation. The additional protections required the AOS providers to:

1. Post the rates for operator services on or near each telephone used for those services;
2. Post the percentage or actual dollar amount paid as commission by the AOS providers to location owners;
3. Show their names on the bill sent to end-users.

On April 16, 1990, the Commission issued its ORDER GRANTING RECONSIDERATION, VACATING COMMISSION ORDER, AND REMANDING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR FURTHER PROCEEDINGS. In that Order, the Commission decided on its own motion to reconsider the January 12 Order in its entirety, and upon that reconsideration vacated the prior Order. The Commission again referred the matter to the OAH for contested case proceedings.

On May 11, 1990, the ALJ held a prehearing conference. On May 25, 1990, the ALJ issued a prehearing Order outlining the schedule and procedures to be followed during the evidentiary hearings. On July 26, 1990, the ALJ issued an Order suspending the proceedings, pending the Commission's consideration of possible alternatives for resolving the AOS matter.

On September 5, 1990, the Commission issued its ORDER DENYING PETITIONS. In that Order, the Commission denied the petition of Teleconnect seeking severance from the AOS proceedings and a grant of authority to provide operator services. The Commission also denied the petition of AT&T, which had been filed to dispute AT&T's cost assessment in the AOS proceedings. The Commission decided that contested case proceedings before the ALJ were the best means of deciding the issues arising from AOS. The Commission once again directed the ALJ to proceed with the contested case hearing.

The ALJ held another prehearing conference on September 10, 1990. Following that meeting, the ALJ issued an Order reestablishing dates and procedures for the evidentiary hearings.

Evidentiary hearings were held before the ALJ in St. Paul from December 10-14, and December 17-19, 1990. The following parties made appearances:

Mary Jo Murray and Amy V. Kvalseth, 1100 Bremer Tower, St. Paul, Minnesota 55101, on behalf of the Department of Public Service (the Department);

Julia E. Anderson, 340 Bremer Tower, St. Paul, Minnesota 55101, on behalf of the Residential Utilities Division of the Office of Attorney General (RUD-OAG);

Michael J. Bradley and Maureen A. Scott, Moss & Barnett, 4800 Norwest Center, Minneapolis, Minnesota 55402-4119, on behalf of the Minnesota Independent Coalition (MIC), Mankato Citizens Telephone Company (MCTC) and Blue Earth Valley Telephone Company;

Amy J. Klobuchar, Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, Minnesota 55402-1498, on behalf of MCI Telecommunications Corporation (MCI) and on brief on behalf of Teleconnect Long Distance Services and Systems Company;

William E. Flynn, Lindquist & Vennum, 4200 IDS Center, Minneapolis, Minnesota 55402, on behalf of Teleconnect Long Distance Services and Systems Company (Teleconnect);

Joan L. Volz, William M. Ojile, Jr., and David G. Seykora, 200 South Fifth Street, Room 1800, Minneapolis, Minnesota 55402, on behalf of Northwestern Bell Telephone Company, n/k/a US WEST Communications, Inc. (US WEST);

Nancy H. Witteborg, 227 W. Monroe, Sixth Floor, Chicago, Illinois 60606, on behalf of AT&T Communications of the Midwest (AT&T);

Jean L. Kiddoo, Swidler & Berlin, 3000 K Street NW, Suite 300, Washington, D.C. 20007-3851, on behalf of Operator Assistance Network (OAN) and Telesphere Limited Incorporated (Telesphere);

Ben Omorogbe, 780 American Center Building, St. Paul, Minnesota 55101, on behalf of the Commission.

The ALJ closed the record on April 8, 1991. On May 20, 1991, the ALJ filed his FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS. Several parties filed Exceptions and Replies to Exceptions to the ALJ's report.

The Commission met to hear oral argument and consider the matter on September 25 and 26, 1991.

Upon review of the entire record of this proceeding, the Commission makes the following Findings, Conclusions, and Order.

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Commission has general jurisdiction over issues arising from AOS and parties who provide services connected with AOS under Minn. Stat. §§ 237.01, 237.02, 237.06, 237.16, 237.57 and 237.59 (1990).

The case was properly referred to the Office of Administrative Hearings under Minn. Stat. §§ 14.48-14.62 (1990) and Minn. Rules, Part 1400.0200 et seq.

II. FURTHER ADMINISTRATIVE REVIEW

Under Minn. Rules, Part 7830.4100, any petition for rehearing, reconsideration, or other post-decision relief must be filed within 20 days of the date of this Order. Such petition must be filed with the Executive Secretary of the Commission, must specifically set forth the grounds relied upon and errors claimed, and must be served on all parties. The filing should include an original, 13 copies, and proof of service on all parties.

Adverse parties have ten days from the date of service of the petition to file answers. Answers must be filed with the Executive Secretary of the Commission and must include an original, 13 copies, and proof of service on all parties. Replies are not permitted.

The Commission, in its discretion, may grant oral argument on the petition or decide the petition without oral argument.

III. SERVICES IN QUESTION

As discussed above, the definition of alternative operator services has undergone a process of refining and narrowing. The Commission has relied on its previously stated definition of alternative operator services: operator-assisted services provided to transient end-users at call aggregators' locations. Because there was some confusion among the parties to this proceeding as to whether the Commission was attempting to regulate **all** operator services, not just long distance services, the Commission will clarify the definition further. The Commission finds that alternative operator services are operator-assisted **long distance** services provided to transient end-users at call aggregators' locations.

IV. PARTIES AFFECTED BY THE COMMISSION'S ORDER

Although this issue was not specifically addressed by the ALJ or the parties, the Commission finds that it is appropriate to specify what entities or groups will be affected by the Commission's decision. Obviously, all providers of operator-assisted long distance calls from Minnesota locations that serve transient end-users must abide by the Commission's decision. All local exchange companies (LECs) play a part in long distance calls from locations that serve transient end-users, at least to the extent that long distance calls must originate and eventually terminate through a LEC switch. Long distance companies, including AOS providers, pay access charges to LECs for completed long distance calls. To the extent of their role in the

provision of AOS, LECs are affected by the Commission Order. Because AOS users place their calls at call aggregators' locations, the call aggregators are also indirectly affected by this Commission Order. Finally, separate companies that provide billing and collection services for AOS providers will also be indirectly affected by the provisions of this Order.

V. REGULATION OF VARIOUS TYPES OF PROVIDERS

AOS is offered by three different types of companies: LECs and independent local exchange companies (ILECs), who have franchised territories and provide operator services to transient and non-transient customers; interexchange carriers (IXCs), who provide non-operator assisted and operator-assisted toll services; and pure AOS companies, who derive the bulk of their revenues from providing operator services to transient end-users.

The Department advocated dividing the regulation of AOS providers into three categories according to how the provider was categorized. The Department would place the highest restrictions on pure AOS providers and the least restrictions on LECs and ILECs.

The Commission finds that the same regulations should apply to all AOS providers, whatever their category. This belief has been previously stated in the Commission's September 5, 1990 ORDER DENYING PETITIONS:

The Commission's concern has always focused on the plight of "captive" customers calling from locations such as motels, hotels, etc. regardless of whether the provider was "alternative" (e.g. ELcotel LD*OS, Inc.) or "traditional" (e.g. AT&T). Accordingly, measures adopted by the Commission as a result of these proceedings to ensure the quality of their telephone service and reasonable rates to the end-users of operator services will apply to all parties who provide operator service on a presubscribed basis for calls made from telephones owned by call aggregators...

Transient end-users who wish to place a long distance call are in the same "captive" position and must face the same procedures to place the call, no matter what category of alternative operator service provider is involved. The same regulations must therefore apply to all alternative operator service providers, so that transient end-users are given information and the opportunity for choice, regardless of who the provider is.

VI. FEDERAL REQUIREMENTS

As previously discussed, the federal government in 1990 placed certain restrictions on the interstate provision of AOS. The ALJ and parties to the proceeding agreed that it is appropriate to adopt intrastate guidelines which are analogous to the federal restrictions. The Commission finds that these safeguards are a

necessary means of ensuring that the rates, terms and conditions of service of AOS in Minnesota are fair and reasonable. They are part of the analysis by which the Commission must determine if AOS is in the public interest.

The requirements embodied in the federal guidelines, which the Commission will adopt for intrastate AOS purposes, are the following:

1. Oral identification ("branding") by the AOS provider at the beginning of each call, with a second identification before connecting the call and before a charge is incurred;
2. No charge for uncompleted or unanswered calls;
3. Immediate disclosure, upon request and at no charge to the end-user, of rates and charges for a call, collection methods and complaint resolution procedures;
4. Contracts between AOS providers and call aggregators must prohibit blocking access to other carriers. Payment of commissions by the AOS provider to the location owner must be withheld if an AOS provider reasonably believes the aggregator is blocking "950" or "800" numbers or is blocking equal access codes such as 10XXX.
5. No call splashing (transferring of a call to another provider which results in a call being rated and/or billed from a point different from where the call originated) unless requested by end-user and then only after the end-user is informed of possible billing results;
6. A prohibition against billing for a call that does not reflect location of the call's origination.
7. Aggregators must post written information on or near the telephone, including:
 - a. Name, address, and toll-free number of the AOS provider;
 - b. Written disclosure that rates are available upon request;
 - c. Consumer's right to access a carrier of choice.

VII. ADDITIONAL REQUIREMENTS BEYOND THOSE ADOPTED AT THE FEDERAL LEVEL

As explained more fully in section VIII below, the Commission finds that additional requirements besides those adapted from the federal requirements are necessary. These restrictions are enumerated below.

A rate ceiling for AOS providers

Under current interim requirements imposed by the Commission, AOS providers are precluded from charging rates higher than AT&T's rates. This requirement was put into effect in order to provide rate protection for captive end-users of AOS services. The history of complaints against excessive AOS rates is ample proof that such protection was, at least at the time of interim approval, necessary.

The Commission is now completing the process of establishing permanent protections for final approval of AOS. As a result of this Order, a full range of restrictions will ensure that AOS rates, terms and conditions are fair and reasonable. As competition will presumably continue to increase, market forces will provide their own check on excessive rates. Indeed, the number of complaints received by the Commission has decreased markedly in the past several years, a possible indication that market forces are already at work. The Commission's requirements imposed upon AOS providers will ensure a greater flow of information to AOS end-users. The more educated AOS customers become, the better they will be able to distinguish among communications alternatives and access their alternative of choice.

While AOS end-users may be moving to a more equal footing with their AOS providers, the Commission finds that the need for restrictions is still evident. AOS providers have not yet proven that their services will be fair and reasonable, and therefore in the public interest, without a rate ceiling tied to AT&T's rates. When the protective restrictions embodied in this Order have been implemented, the Commission will reexamine the need for rate ceilings on a case-by-case basis, as petitions for rate changes are filed. Until the time for administrative review of this Order is exhausted, however, it would be useless to determine if an AOS provider's proposed uncapped rate is fair and reasonable. When such time has passed and the Commission's protections are in place, the Commission will allow AOS providers to come forward to propose a change in rates unrelated to AT&T's current rates. AOS providers should be aware that any proposed rates will be scrutinized with care, even though the full range of protections are in place.

Sub-carrier identification

Sub-carrier identification refers to the practice of including the AOS provider's name on the end-user's bill. This is an important protection for end-users who may be overcharged for AOS services or otherwise provided unsatisfactory service. Only when the name of the actual provider is available can customers readily verify bills, compare rates, or register complaints.

Sub-carrier identification is not presently universally available. ILECs and LECs, which often provide billing and collection services for AOS companies, do not always have the

capability of providing the end-user with the name of the company for whom the call is being billed.

The Commission finds that it is in the public interest to require all AOS providers to identify themselves on end-users' bills. If the AOS provider is unable to do so because of technical insufficiencies, the AOS provider must seek and secure from the Commission a waiver of this requirement. Because the Commission views sub-carrier identification as an important consumer protection, the Commission will only grant a waiver upon a showing of good cause.

Information regarding accessing an alternative carrier

The Commission has determined that protections must be instated in order to ensure that AOS rates and conditions of service are fair and reasonable and AOS is in the public interest. A core protection for consumers is knowledge of alternative providers. Only if the transient end-user has knowledge of the ability to bypass the presubscribed provider is such ability truly available.

The Commission finds that it is in the public interest to require AOS providers, upon request by the end-user, to provide information regarding access to an alternative carrier. The information could include "800" numbers, "950" numbers, or access codes, as requested.

Limitations on AOS billing periods

End-users of AOS services in Minnesota have registered complaints regarding AOS bills received unreasonably late. Such practices can work a hardship on consumers who may be confused by bills received long after the services rendered. Delayed bills can make bill verification and effective complaints difficult if not impossible.

Because AOS providers often bill through third party LECs or clearinghouses, billing can sometimes be unavoidably delayed. Coordinating billing agent and provider billing cycles can increase billing time. Because some delay can be an unavoidable part of the AOS process, the Commission finds that a reasonable time lag between service and billing is acceptable. The Commission finds that a maximum billing period of 90 days, as recommended by the RUD-OAG and the Department, is appropriate. The Commission will require that all AOS providers arrange for their billing to reach the end-user on or before 90 days from the date of service.

10XXX unblocking

Under the Commission's interim requirements for the provision of AOS, all forms of blocking are prohibited. Thus, AOS providers

and call aggregators are currently forbidden to block access to "800" numbers, "950" numbers, or 10XXX access codes.

The Commission continues to find that the unblocking of all forms of access, including 10XXX access, is an essential consumer protection. Access to alternative carriers is an important means of ensuring that AOS rates and services are fair and reasonable. AOS will only be in the public interest if it is not imposed upon transient end-users with no reasonable alternatives.

The Department and RUD-OAG advocated allowing blocking of only the 10XXX-1 access code, a means of direct dialing long distance calls. The Department and RUD-OAG argued that this type of access code could lead to abuse by transient end-users who would incur long distance bills charged to the location owners.

The Commission finds that it is not necessary to allow blocking of the 10XXX-1 access code. There was nothing in the record to support the assertion that this type of access code has led to abuse. There was evidence that AOS providers are presently unable to distinguish 10XXX-1 codes from other 10XXX access codes; allowing blocking of 10XXX-1 would therefore in effect be allowing blocking of all 10XXX access codes. Although the Commission will not allow blocking of the 10XXX-1 code, parties are free to come forward in future proceedings and attempt to show good cause for allowing blocking of this code.

Transfer of emergency calls

In order for AOS to be in the public interest, end-users must have the same level of telecommunications access to emergency services as users of non-AOS services. To promote this policy, the Commission will require that AOS providers transfer emergency calls, whether initiated by the dialing of "0" or "911", to the LEC or appropriate emergency response agency. Because this safety procedure is essential to the public interest, the Commission will require that the service be offered free of charge to the end-user.

Posting of information

The Commission has found that meaningful information available to the end-user is key to the determination that AOS is in the public interest. Only with such information is the end-user able to make informed economic decisions. Only the informed end-user is free from a vulnerable "captive" state inimical to public interest.

Recognizing the necessity of information for AOS interstate end-users, the federal government has set stringent information requirements for AOS providers. The Commission has acknowledged the value of these requirements and is adopting intrastate requirements which parallel the federal guidelines (see Part VII above).

There is an additional federal posted information requirement which the Commission did not adopt. The federal government requires call aggregators to assist end-users who wish to complain to the FCC's Common Carrier Bureau by posting the name and address of that office on or near the telephone. Obviously, this requirement is relevant only to interstate use and the Commission did not adopt a parallel requirement.

The Commission does recognize the value of this requirement, however. Posted information regarding complaints is especially important in the area of AOS, because so many parties are involved in the AOS process. The end-user may experience unsatisfactory service from the call aggregator, the AOS provider, the LEC, or the billing service. A confused end-user should have the means of addressing a complaint to the body which regulates the overall process. In the case of intrastate AOS, that regulatory body is the Commission.

Posted complaint information is also important because of the "captive" position of the end-user. Although the AOS end-user may bypass the subscribed provider through informed use of the system, a clear overriding complaint process is an added means of ensuring continued protection for transient end-users.

The fact that federal and state agencies have to date received numerous complaints is an indication that posted information regarding complaints is necessary. While some complaints have made their way to the Commission's attention, other unhappy consumers may have given up because they lacked knowledge of the complaint process. The Commission's ability to monitor and regulate the AOS process is essential to its being found in the public interest. The Commission finds that posted information regarding complaints is an effective means of ensuring Commission oversight.

The Commission will require AOS providers to post the name, address and telephone number of the Commission's Consumer Affairs office on or near the telephone at call aggregators' locations.

Branding of telephone calls

As stated previously, the Commission will require oral identification ("branding") by AOS providers at the beginning of each call, with a second identification before connecting the call and before a charge is incurred by the end-user. This process is known as double branding. Certain ILECs requested the Commission to at least delay the requirement of double branding for six months. In approximately six months, the implementation of Minnesota Independent Equal Access Corporation (MIEAC) intraLATA services will bring competition into the intraLATA long distance market. The ILECs reasoned that branding as a means of identification would simply not be necessary until competition exists.

The Commission finds that it is reasonable to allow a six month delay for the requirement of double branding of AOS calls by ILECs or LECs. The delay will allow the LECs and ILECs time to acquire any training and equipment which are necessary to begin branding. The six months will also mean that MIEAC has entered the market, making branding of intraLATA calls especially necessary to avoid confusion. The Commission will allow Minnesota ILECs and LECs six months in which to initiate double branding of all AOS calls.

Disconnection of local service for nonpayment of AOS charges

Minnesota Rules, Part 7810.2000 limit the reasons for which a utility may disconnect service:

7810.2000 NONPERMISSIBLE REASONS TO DISCONNECT SERVICE

A utility may not disconnect service to any customer for any reason stated below:

- B. failure to pay for equipment or service not approved by the commission as an integral part of the utility service;

Thus, a LEC ("a utility") could only disconnect local service ("the utility service") if the customer had failed to pay for equipment or service which is an integral part of the local service. In order to premise disconnection of local service upon nonpayment of AOS, AOS must be shown to be an integral part of local service.

The Commission finds that AOS is not an integral part of local service. The definition of AOS as developed by the Commission bears this out: Alternative operator services are operator-assisted **long distance** services provided to transient end-users at call aggregators' locations. The fact that AOS services are by definition confined to long distance services indicates that they are not integrally tied to local service. Further, AOS end-users often do not depend upon the LEC which serves their residence or place of work for placement of the AOS call. Although their own LEC may be the billing conduit, the call is placed through an AOS provider via the LEC serving the call aggregator's location. If the billing and call placement LECs are the same, the matter is coincidental; the provision of AOS is not an integral part of the end-user's local service.

For these reasons, the Commission disagrees with the ALJ, who recommended allowing disconnection of local service for nonpayment of AOS charges. The Commission finds that such disconnection is prohibited under Minn. Rules, Part 7810.2000.

There is an additional reason that local service must not be disconnected because of nonpayment of AOS charges. AOS is unique

because of the number of parties who may be involved in the billing chain. The billing parties may include: the call aggregator; the AOS provider; the LECs who originate and terminate the calls, and who sometimes bill and collect on behalf of the clearing agents; clearing agents, who usually do not bill or collect, but serve as a data base; and the facility based carrier whose service is actually being resold by some of the AOS providers.

Due to the large number of parties who may be involved in AOS service and billing, it would be unfair and onerous to allow disconnection of local service for nonpayment of the AOS bill. Local service, which is vital for most parties, must not be placed in jeopardy while an AOS customer traces a billing error through the billing chain. Linking local disconnection and nonpayment of AOS would not be proper under these circumstances.

Surcharges

Some AOS providers have placed surcharges on the bill presented to the end-user for AOS services. The Commission's interim requirements have prohibited AOS providers from imposing such surcharges. The Commission finds that this prohibition should continue. There is no convincing justification for allowing a surcharge to be imposed by AOS providers upon transient end-users for AOS services. AOS providers have tariffed rates or a price list approved by the Commission and must not impose any charge over those rates.

AOS surcharges can be imposed by the call aggregator as well as by the AOS provider. The call aggregator may add the charge to the user's hotel or hospital bill, or may wish to have it billed along with AOS services. When one or more surcharges are included in the AOS bill provided to the end-user, the end-user may be confused regarding the source of the charges. Confusion means a lack of information for the end-user, which in turn means that the end-user is not free to make reasoned decisions regarding the AOS provider or call aggregator.

To avert end-user confusion and promote fair and reasonable rates, the Commission will prohibit AOS providers from billing, collecting, or including as part of AOS charges, any surcharge imposed by a call aggregator. Location surcharges imposed by call aggregators, if any, must be presented apart from the AOS provider's bill. Customers will be able to trace this charge to the call aggregator, and make consumer decisions accordingly. AOS providers who protest that they cannot distinguish call aggregators' surcharges should note that if the providers are billing at their tariffed rate, they are not including extra charges.

Monitoring of AOS providers

The Commission agrees with the Department's specific recommendations regarding monitoring of AOS providers. The Department recommended that AOS providers be required to submit sample location contracts and quarterly reports to the Commission. AOS providers should also provide AOS regulatory information to location owners and to the public. Finally, the Commission will direct the Department to conduct random service checks on AOS providers. The parameters of the quarterly reports from AOS providers will be discussed in a future Commission Order.

The Commission finds that these requirements are an essential means of ensuring that the provision of AOS remains in the public interest on an **ongoing** basis.

VIII. THE PUBLIC INTEREST

The Commission is charged under Minn. Stat. § 237.16, subd. 4 (1990) with determining if the present or future public convenience and necessity require or will require a new certificate of territorial authority. The Commission is further charged under Minn. Stat. § 237.06 (1990) with determining if proposed telephone rates, terms and conditions of service are fair and reasonable. Only if the Commission determines that the conditions of both statutes have been fulfilled will the Commission decide that a proposed telephone service is in the public interest.

The Commission has examined the rates, terms and conditions of proposed AOS services under Minn. Stat. §§ 237.16 and 237.06 to determine if the provision of AOS in Minnesota would be in the public interest. In the process, the Commission has weighed the special concerns and issues raised by the AOS proposals against possible benefits they may bring.

The fact that end-users of AOS services are "captive" raises special concerns. End-users dialing from such locations as motels, college campuses, pay telephones and hospitals usually have no choice regarding the location of their call. When they dial "0" to place a long distance call, a presubscribed operator service provider responds. The operator service provider, however, is not chosen and subscribed by the caller, but by the call aggregator. The transient caller is a "captive" user of the operator services unless the end-user can bypass the presubscribed provider by means of a calling card, access code, or other methods. Bypassing the presubscribed AOS provider requires knowledge and ability on the part of the transient end-user.

Against the special concerns which are part of the nature of AOS itself must be weighed the good it can bring to the Minnesota public. The encouragement of reliable telephone service has long been recognized as in the public interest. AOS can promote that

policy by allowing transient end-users dependable access to long distance service on a 24-hour basis. This is an important and sometimes essential service for transient customers such as patients confined to hospitals, patrons of hotels or motels, and travelers or other users of payphones. AOS providers have also introduced such conveniences as billing to commercial credit cards, multiple language operators, teleconferencing and message forwarding to transient end-users. These innovations have enabled transient end-users to achieve telecommunications access which is equal or nearly equal with services available to residential or business customers.

Under Minn. Stat. §§ 237.16, subd 4 and 237.06, the Commission has balanced the "captive" nature of AOS, with the consequent heightened vulnerability of AOS end-users, against the benefits of dependable, expanded access AOS can bring. The Commission finds AOS is only in the public interest if protections are instituted to ensure that it brings benefit and not harm to the public. AOS terms and conditions of service will only be fair and reasonable if they do not allow AOS providers to exploit the captive nature of AOS end-users to the end-users' disadvantage. With all of the protections enumerated in sections VI and VII above in place, AOS can provide a benefit to the Minnesota public without a concomitant possible harm. Only then can the Commission find AOS in the public interest.

The Commission finds that AOS is in the public interest, **as long as** the protections set out in sections VI and VII above are in place.

IX. IS AOS SUBJECT TO EFFECTIVE OR EMERGING COMPETITION?

Effect on regulation

In its October 26, 1988 ORDER CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING, the Commission on its own motion ordered a contested case hearing "to determine whether [AOS] can be classified as subject to effective or emerging competition." Either finding by the Commission would have an effect on the level of regulation of AOS. Although all providers of telephone service in Minnesota are required under Minn. Stat. § 237.06 (1990) to charge rates which are fair and reasonable, Commission oversight is usually reduced by a finding of emerging or effective competition.

Pursuant to Minn. Stat. § 237.60, Subd. 1 (1990), a provider of an effectively competitive service can decrease the rate for that service without notice to its customers or the Commission. The effectively competitive provider can increase the rate upon 30 days notice to its customers. A provider of services found emergingly competitive under Minn. Stat. § 237.60, Subd. 2 (1990) is subject to streamlined regulation free of many of the time consuming filings and reviews required for noncompetitive services.

Definitions

The definition of effective competition can be found in Minn. Stat. § 237.57, Subd. 3 (1990): "'Effective competition' exists when the criteria of section 237.59, subdivision 5, have been satisfied for a service."

The criteria of Minn. Stat. § 237.59, Subd. 5 (1990) are as follows:

Subd. 5. **Criteria.** (a) In determining whether a service is subject to either effective competition or emerging competition from available alternative service, the commission shall consider and make findings on the following factors:

- (1) the number and sizes of alternative providers of service and affiliation to other providers;
- (2) the extent to which services are available from alternative providers in the relevant market;
- (3) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service;
- (4) the market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and
- (5) the necessity of the service to the well-being of the customer.

In addition, an effectively competitive service must satisfy the following requirement:

- (b) In order for the commission to find a service subject to effective competition alternative services must be available to over 50 percent of the company's customers for that service.

The definition of emerging competition is found at Minn. Stat. § 237.57, Subd. 4 (1990): "'Emerging competition' exists when the criteria of section 237.59, subdivision 5, have not been satisfied, but there is a trend toward effective competition." Under Minn. Stat. § 237.59 is found the aforementioned list of five criteria, plus the availability requirement for an emergingly competitive service:

- (c) In order for the commission to find a service subject to emerging competition alternative services must be available to over 20 percent of the company's customers for that service.

To be found effectively competitive, then, a service must satisfy the five criteria of Minn. Stat. § 237.59 (1990), and alternative services must be available to over 50 percent of the company's customers. To be found emergingly competitive, a service must exhibit a trend toward effective competition, based upon a consideration of the five factors. Alternative services must also be available to over 20 percent of the company's customers.

Focus of the analysis

The Commission agrees with the ALJ, the RUD-OAG and the Department, who all argued that the statutory criteria must be analyzed from the perspective of the end-user, not the location owner. Thus, for example, an analysis of the number and sizes of alternative providers must focus on alternatives available to transient end-users, not to location owners. The focus is properly on the end-user because this party is the one who requires Commission protection. This analysis goes to the heart of the entire examination of alternative operator services from locations that serve transient customers: the location owner is free to choose any operator service provider; the transient end-user is not.

Analysis of the five criteria

1. The number and sizes of alternative providers of service and affiliation to other providers.
2. The extent to which services are available from alternative providers in the relevant market.

These two criteria are interconnected with the regulatory guidelines which have been placed upon AOS providers. To date, there are twenty telephone companies which have interim authority to provide operator services in Minnesota. The record does not state the size of the carriers, the numbers of their customers, or their affiliation to other providers. Even if these facts were clear, the number, size and availability of alternative providers are only relevant if the transient end-user has **meaningful** access to the alternatives. Meaningful access is in turn contingent upon unblocking and sufficient relevant information for an informed choice. AOS is a relatively new offering whose providers have been required to unblock and provide consumer information on an interim basis. It is impossible at this time to determine if these criteria would be fulfilled, or a trend toward effective competition would exist, in the less regulated context of an effectively or emergingly competitive service. The Commission finds that an examination of the first two criteria does not indicate that AOS is effectively or emergingly competitive.

3. The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service.

Parties differed as to the availability of functionally equivalent services. The ALJ considered 10XXX access codes and 950 and 800 numbers as well as telephone calling cards as functionally equivalent to AOS for end-users. The Department argued that the dialing of multiple numbers is not equivalent to picking up the phone for an operator-assisted long distance call. The Department stated that calling cards do not offer access which is truly alternative to the presubscribed provider because the end-user must still apply a certain level of sophistication to use the card. Most current calling cards contain insufficient information for the end-user to bypass easily the presubscribed provider.

The Commission finds that there is insufficient evidence to decide at this time that the dialing of multiple digits or use of a telephone credit card is functionally equivalent to AOS.

Even if access codes or calling cards were found functionally equivalent, functionally equivalent services must be readily available at "competitive rates, terms, and conditions of service." It is premature to find that this criterion is satisfied, or a trend exists. At present, AOS is highly regulated on an interim basis. A rate ceiling has been imposed on all providers, and terms have been largely determined by the Commission. It is impossible for the Commission to find that functionally equivalent services are readily available to end-users at competitive rates, terms, and conditions of service.

4. The market share, the ability of the market to hold prices close to cost, and other economic measures of market power.

The Commission finds that there is no evidence in the record to form a determination of market share for AOS providers. Because of the rate cap which has been imposed on an interim basis, there is presently no evidence of the ability of the market to hold prices close to cost.

5. The necessity of the service to the well-being of the consumer.

As discussed previously in this Order, the Commission finds that AOS is in the public interest, as long as the regulatory requirements imposed in this Order are present. Transient end-users calling from hotels and hospitals and travelers calling from payphones are examples of consumers for whom AOS is a boon. As long as sufficient protections are in place, these parties are benefitted by the availability of AOS.

Summary of competition analysis

The emergingly competitive and effectively competitive statutes form part of the continuum of utility service from noncompetitive through emergingly competitive to effectively competitive. The AOS providers argue that their increased numbers have moved the service up the continuum to merit the streamlined regulation of emergingly competitive services.

The Commission finds that AOS is presently neither emergingly nor effectively competitive. This is a service which has been closely regulated and rate-capped by the Commission. Protections which have been necessary for the captive end-user have prevented natural positioning of market share or pricing. Evidence is insufficient or lacking to prove that AOS fulfills the five statutory criteria, or that AOS exhibits a trend toward effective competition.

This situation could change. As a result of this Order, AOS providers will be allowed to petition the Commission in the future to modify rates. If rates and services move eventually to a more market-driven pattern, the providers will be free to come before the Commission to try to prove that their service has become emergingly competitive.

ORDER

1. AOS providers are required to:
 - a. audibly and distinctly state their identity at the beginning of each call, with a second identification before connecting the call and before a charge is incurred by the end-user. Minnesota ILECs and LECs shall have six months from the date of this Order in which to initiate this process;
 - b. permit their end-users to terminate a call at no charge before the call is completed;
 - c. immediately disclose, upon request and at no charge to the end-user, the rates or charges for a call, how the charges will be billed or collected, and how complaints concerning any charges or practices will be resolved;
 - d. refrain from blocking end-user access to alternative carriers and to withhold compensation to call aggregators (on a location-by-location basis) who block access to other IXC's via "950", "800" or "10XXX";
 - e. refrain from billing charges for unanswered calls;
 - f. refrain from "splashing" a call unless requested by an end-user and then only after the end-user is informed of possible billing results;
 - g. assure by contract or tariff that call aggregators comply with the provisions of this Order, which will include posting, on or near the telephone, in plain view of consumers, the following information:
 - i. the name, address and toll-free telephone number of the provider of operator services;

- ii. a written disclosure that the rates for all operator-assisted calls are available upon request;
- iii. the fact that end-users have a right to obtain access to the carrier of their choice and may contact their preferred carrier for information on accessing that carrier's service using that telephone. AOS providers shall, upon request by the end-user, provide information regarding access to an alternative carrier;
- iv. a message including the name, address and telephone number of the Office of Consumer Affairs of the Minnesota Public Utilities Commission, as follows:

Complaints regarding rates for calls within Minnesota should be directed to:

Minnesota Public Utilities Commission
Office of Consumer Affairs
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-1079

- h. ensure that the presubscribed call aggregator allows end-users to use "900" and "850" access code numbers for their IXC of choice and that the charge for accessing the "900/800" IXC is no greater than the carrier's normal charge for such a service.
2. AOS providers currently operating under interim authority must continue to charge their existing rates until all administrative reviews of this proceeding are completed. At that time, any provider who wishes to change its existing rates may petition to do so pursuant to the applicable Minnesota statutes.
 3. Within 120 days of the date of this Order, AOS providers must begin stating their identities on the bills sent to end-users. AOS providers not able to meet this requirement must apply for a waiver from the Commission.
 4. AOS providers are prohibited from blocking access to other carriers via 10XXX access codes.
 5. AOS providers must provide, upon request by an end-user, information on how to access an alternative carrier.
 6. AOS charges must be billed to the end-user within 90 days of the date the service was provided.
 7. LECs and ILECs are prohibited from disconnecting an end-user's local service for nonpayment of AOS charges.

8. AOS providers are prohibited from imposing any charge over and above what is on file with the Commission. AOS providers are prohibited from billing for, or including as part of their operator service charges, any surcharge imposed by the call aggregator for or in connection with telephone service provided by the AOS provider.
9. AOS providers must immediately transfer or redirect all emergency calls initiated by dialing "0" + or "911" to the LEC or the appropriate emergency response agency.
10. Within 30 days of the date of this Order, AOS providers currently operating under interim certificates must submit a compliance filing with the following information in order to receive permanent authority:
 - a. sample contract forms that meet all of the requirements adopted in this Order;
 - b. samples of notices (tent cards, etc) that comply with the notice requirements adopted in this Order;
 - c. samples of bills that meet billing requirements adopted in this Order.

Effective upon further Commission Order, all AOS providers who meet the requirements of this Order and submit satisfactory compliance filings shall have their temporary authority converted to permanent authority.

11. The Department shall:
 - a. monitor the activities of the AOS providers through any appropriate means, including but not limited to random checks of AOS services, to ensure compliance with the requirements of this Order;
 - b. make prompt recommendations to the Commission for any future changes to be made to the requirements herein;
 - c. for two years following the issuance of this Order, submit annual reports to the Commission on the status of AOS. The report shall include the following information:
 - i. the level of AOS provider compliance with Commission AOS requirements;
 - ii. whether a rate ceiling should be imposed on AOS services;
 - iii. whether double branding should continue;
 - iv. whether rate quotes by AOS providers should continue; and

- v. any other relevant information that might be necessary to evaluate the effectiveness of AOS regulation, including any relief that may be appropriate for AOS providers.

12. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

Attachment

Current AOS interim authority certificate holders and dates of Commission Orders granting authority

Teleconnect	12/23/88
NTS	2/10/89
ITI	3/30/89
Long Distance USA, Inc.	3/20/89
Telesphere Network, Inc.	9/26/89
Cable and Wireless Communications, Inc.	4/18/89
OnLine Communications, Inc.	1/9/90
Pentagon Computer Data, Ltd.	2/8/90
US Operators, Inc.	3/6/90
Equicom Communications, Inc.	8/1/90
US Long Distance, Inc.	9/14/90
MCI Communications, Inc.	8/16/90
Alternate Communications Technology, Inc.	4/10/91
Ascom Autelca Communications	7/19/91
Comtel Computer Corp.	6/17/91
Fone America	2/26/91
One Call Communications d/b/a OPTICOM	2/26/91
Strategic Alliances, Inc.	5/16/91
US Osiris Corp.	6/27/91
Value-Added Communications	6/17/91