

P-999/CI-88-917 ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna

Chair  
Commissioner  
Commissioner  
Commissioner

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

ISSUE DATE: March 25, 1992

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

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**PROCEDURAL HISTORY**

**I. Proceedings to Date**

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.<sup>1</sup> In that Order the Commission consolidated all previously filed applications for authority to provide alternative operator service (AOS). The Commission also initiated an investigation of AOS in the docket herein, and referred the matter to the Office of Administrative Hearings for contested case proceedings. The case was assigned to Administrative Law Judge (ALJ) John W. Harrigan.

From December 23, 1988 through June 17, 1991, the Commission granted twenty petitions for interim authority to provide AOS. The Commission imposed a number of protective measures on all companies granted interim AOS authority.

Following several interim Commission Orders and full contested proceedings before the ALJ, the ALJ issued his FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS on May 20, 1991.

On November 19, 1991, the Commission issued its ORDER SETTING REGULATORY REQUIREMENTS FOR OPERATOR SERVICE FROM TRANSIENT LOCATIONS. In that Order, the Commission found that AOS is in the public interest so long as certain consumer protections are in place. The Commission also found that AOS is neither effectively nor emergingly competitive. The Commission established permanent regulatory requirements for AOS providers.

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<sup>1</sup> 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.

On December 9, 1991, petitions for reconsideration were filed by AT&T Communications of the Midwest, Inc. (AT&T), MCI Telecommunications Corporation and Teleconnect Long Distance Services and Systems Company (MCI), US WEST Communications, Inc. (US WEST) and the Minnesota Independent Coalition, Mankato Citizens Telephone Company and Blue Earth Valley Telephone Company (together, MIC).

On December 9, 1991, the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed a petition for clarification of a portion of the Commission's November 19, 1991 Order.

Between December 9 and December 19, 1991, comments were filed by three entities who had not previously participated in evidentiary hearings or appeared before the Commission in this matter. These entities are Minnesota Motel Association (MMA), the Minnesota Independent Payphone Association (MIPA) and Intellicall, Inc. (Intellicall).

Reply comments were filed by MCI, US WEST, AT&T, RUD-OAG, and the Department of Public Service (the Department).

The matter came before the Commission for reconsideration on February 20, 1992.

## FINDINGS AND CONCLUSIONS

### **II. The Nature of Reconsideration**

Minn. Rules, part 7830.4100 provides for a process of rehearing, amendment, vacation, reconsideration or reargument following a final decision or Order of the Commission. The rule spells out the Commission's authority to grant or deny a request for reconsideration without a hearing, or in its discretion to set a hearing thereon.

Once the Commission has granted a request for rehearing or reconsideration, the Commission has the right and the obligation to examine the issues raised in the same careful and thorough manner as in the original proceeding. If the Commission finds upon reconsideration that its original judgment was in some part incorrect, the Commission has full authority to reverse, change, modify or suspend the original action in whole or in part. This authority is intrinsic to the authority to reconsider which is granted under the rule. Anything less than full authority to modify, reverse or clarify its decisions would render the Commission's authority to reconsider meaningless.

The process of reconsideration is especially important in the area of utility law, where legal, fact and policy issues are

particularly complex. The fact that the Commission rethinks a past decision does not imply that the original judgment was rendered without full consideration of the record and the parties' arguments. A modification of the original order means that the Commission, after reviewing the issues raised upon reconsideration and the analyses of the parties addressing reconsideration, has come to a new conclusion regarding certain issues.

The Commission has examined the issues and arguments raised by the parties with full regard to the importance of the process and the Commission's duties under the reconsideration rule. The end product of the Commission's reconsideration, whether a reaffirmation, modification or clarification of a particular issue, has been carefully considered in light of the final Order, the full record, and the analyses of participating parties.

### **III. Definition of the Service in Question**

The Commission will here restate its previous findings regarding the exact nature and scope of AOS.

"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. "Alternative operator service" (AOS), the service which is the subject of the Commission's November 19, 1991 Order and the Order herein, is a subcategory of operator service. AOS is operator-assisted long distance service provided to transient end-users at call aggregators' locations. AOS is offered by telephone companies who provide operator service for calls made from telephones owned by call aggregators (e.g. hotels, motels, hospitals and pay telephones) whose customers tend to be transient. Call aggregators subscribe or contract with telephone companies for the provision of operator assisted service to their locations.

The Commission has stated that its AOS regulation will 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 telecommunications services) as well as "alternative" AOS providers (the relatively new companies who exist solely to provide AOS services).

### **IV. Non-parties Filing Comments**

Three entities who had not previously appeared before the Commission or the ALJ regarding AOS issues filed comments regarding the Commission's November 19, 1991 Order. The entities are MMA, MIPA and Intellicall. MMA is an association of motel owners and operators in Minnesota. MIPA is an independent association of private pay telephone owners and operators. Intellicall is a manufacturer of instrument-implemented pay

telephones.

These three filing entities contended that they should be heard because the Commission's November 19 Order would have an adverse impact on their operations in Minnesota. All three urged the Commission to reconsider its requirement of unblocking 10XXX-1 calls. MIPA also asked for reconsideration of the Commission's position on providing access information to end-users. MIPA further urged the Commission to mirror completely the federal requirements for the provision of AOS.

Minn. Rules, part 7830.4100 confines the right to petition for reconsideration to parties. The rule states in part:

[W]ithin 20 days from the date of the mailing...of the final decision or order, **any party** may petition for an amendment...or for reconsideration or reargument.  
(Emphasis supplied.)

Minn. Rules, part 7830.0100, subpart 8 defines "party":

"Party" means a person by or against whom a proceeding before the commission is commenced; a person permitted to intervene in a proceeding pursuant to this chapter; or, a person admitted pursuant to this chapter as a protestant in a motor carrier proceeding.

None of these definitions applies to the three filing entities.

The Commission finds that these entities' requests for reconsideration are without a legal basis, because the entities are not parties to the proceeding. The Commission will not consider these filings as requests for reconsideration.

## **V. Commission Action**

Numerous issues were raised by the five parties who petitioned for reconsideration or clarification. The issues raised by the petitioners will be taken up individually.

### **A. Competitive Status**

#### THE COMMISSION ORDER

In its November 19, 1991 Order, the Commission found that AOS is presently neither emergingly nor effectively competitive. The Commission found that evidence was insufficient or lacking to prove that AOS fulfills the five statutory criteria of Minn. Stat. § 237.59, subd. 5 (1990), or that AOS exhibits a trend toward effective competition pursuant to Minn. Stat. § 237.57, subd. 4 (1990). The Commission noted in its Order that the AOS market could be subject to change, and might be found emergingly competitive in the future.



## POSITIONS OF THE PARTIES

AT&T, MCI and US WEST asked the Commission to reconsider its decision regarding the competitive status of AOS, and to find that this service is emergingly competitive. AT&T argued that the Commission misapplied or ignored the statutory criteria when it found that AOS is noncompetitive. MCI argued that its offering of AOS was presumptively emergingly competitive and that MCI had gone beyond the presumption and met its burden of proof that the service is emergingly competitive. MCI also alleged that the Commission failed to consider alternatives to rate regulation or to balance the relative benefits and burdens of rate regulation. US WEST argued that the Commission misapplied the statutory standards and made findings unsupported by the record when it found that AOS is not emergingly competitive. US WEST stated that the Commission erred when it decided that the interim regulations made a finding of competitiveness impossible, yet imposed the restrictions on a permanent basis. US WEST argued that a finding of a trend towards competitiveness was sufficiently supported by the record.

In their comments, the RUD-OAG and the Department supported the Commission's November 19 decision regarding the competitive status of AOS. The agencies stated that the Commission correctly applied the statutory criteria and made findings which were supported by sufficient factual evidence.

## COMMISSION ANALYSIS

### Definition and statutory criteria

The definition of emerging competition is found at Minn. Stat. § 237.57, subd. 4: "'Emerging competition' exists when the criteria of section 237.59, subdivision 5, have not been satisfied, but there is a trend toward effective competition."

The criteria of Minn. Stat. § 237.59, subd. 5 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 emergingly competitive service must satisfy the following requirement found in Minn. Stat. § 237.59, subd. 5(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.

### Analysis of criteria

Determination of the competitive status of a telephone service thus requires an analytical blending of the language in Minn. Stat. §§ 237.57, subd. 4 and 237.59, subd. 5(a) and (c). A service may fail to satisfy some of the statutory criteria and yet the record may show there is a trend toward effective competition. In this case, the service may be found emergingly competitive.

The Commission has carefully examined the full record and has found that there is sufficient record evidence to fully support a finding that the provision of AOS in Minnesota is emergingly competitive. As determined through an analysis of the statutory criteria of Minn. Stat. § 237.59, subd. 5, AOS displays a fully documented trend toward effective competition. The Commission makes the following findings on the statutory 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.

The Minnesota and federal requirements of unblocking competitive access are significant factors in assessing the availability of alternative providers. If access is not blocked, a consumer can bypass the presubscribed AOS provider by use of a 10XXX, 800 or 950 access code. These are important methods of obtaining alternative access which are available to Minnesota end-users.

Calling cards are an increasingly significant means of obtaining alternative access. The record shows increasing consumer awareness and acceptance of telephone calling cards. In 1990 AT&T issued 6.8 million Universal Cards, which are combination calling cards and credit cards. Each interexchange carrier offering AOS has its own calling card and MCI and Sprint have announced their intention of issuing cards similar to AT&T's Universal Card. With the use of these calling cards, end-users calling from call-aggregators' locations can bypass the presubscribed AOS provider.

In order for technical means of alternative access to be significant, the consumer must be informed of their existence and the means of obtaining them. The record reflects an increasing flow of information regarding AOS which has been available to the consumer. Access information has been disseminated through bill inserts, television, radio, print media and direct mail advertising. Aggressive telephone company advertising campaigns inform potential end-users of the means of bypassing the presubscribed AOS provider to reach the end-user's provider of choice.

The record therefore reflects federal and Minnesota prohibitions against blocking access to other AOS providers, increasing consumer sophistication, and increasing customer awareness of alternative access. The record supports a trend toward readily available competitive alternative providers in the AOS market. The Commission finds that its analysis of the first two statutory criteria supports a finding of a trend toward effective competition in AOS.

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

There is evidence that AOS providers can enter the market with relative ease. Many AOS companies provide service with leased facilities which do not require extensive capital investment. This fact is an indicator of the ability of alternative providers to make AOS services readily available to the consumer.

As discussed previously, 10XXX, 950 and 800 access codes and calling cards enable end-users to bypass the presubscribed AOS provider. Dialing the access codes or using the calling card enables an end-user to obtain the essence of AOS: operator assistance in placing a long distance call or arranging for special billing. Neither the dialing of numbers nor the use of a card is an exact substitute for obtaining long distance operator services by dialing "0." Upon a careful examination of the entire record, however, the Commission now finds that these means of access to operator services are functionally equivalent to presubscribed AOS.

A significant decrease in AOS complaints has been documented. No complaints regarding AOS were received by the Commission in 1990, the last year which was included in the record. The decrease in consumer complaints, plus the documented proliferation of AOS providers and means of alternative access, indicate that consumers are finding competitive terms, rates and conditions available.

The Commission finds that an analysis of the third statutory criterion supports a finding of a trend toward effective competition.

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

The record shows that AT&T has lost 25% of its national operator services market share over the past three years. Although this is a national rather than a state figure, it is clear that there is a proliferation of AOS competitors. In most cases, increased competition in a market will drive prices toward a market basis. Since interexchange carriers must offer the same rates to transient and non-transient customers, these carriers in particular will be unlikely to raise AOS prices beyond the point at which they remain competitive for toll charges.

The record shows that end-users have increasing access to alternative providers and that there is increasing competition of interexchange carriers. These facts support the market's ability to hold prices close to cost.

The Commission finds that an examination of the record supports a finding of a trend toward effective competition, as indicated through an analysis of the fourth statutory criterion.

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

In its November 19, 1991 Order, the Commission found that transient end-users calling from such locations as hotels and hospitals and travelers calling from payphones are examples of consumers for whom AOS is a distinct benefit. The Commission continues to find that an analysis of this statutory criterion supports a finding of emerging competition.

6. Percentage of availability of alternative services

Minn. Stat. § 237.59, subd. 5 (c) states that in order for a service to be found subject to emerging competition, alternative services must be available to over 20 percent of the company's end-users.

The record supports a finding that AOS fulfills this statutory criterion. The wide use of calling cards and 10XXX, 950 and 800 access codes makes it clear that well over 20 percent of AOS end-users have alternative access available to them.

#### Commission authority to regulate emergingly competitive services

Every telephone company, no matter what its competitive status, must furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges must be fair and reasonable. Minn. Stat. § 237.06. The Commission has the statutory power to review and ascertain the reasonableness of utility rates. Minn. Stat. § 216A.05, subd. 2(2).

Telephone services which are found emergingly competitive remain subject to the Commission's investigative authority pursuant to Minn. Stat. § 237.081. Under this statute the Commission may initiate an investigation of a telephone company on its own motion or in response to a complaint.

If a service is found emergingly competitive and the telephone company offering it has elected under Minn. Stat. § 237.58 to be governed under the emergingly/effectively competitive statutes, the company may change rates, terms and conditions under Minn. Stat. § 237.60, subd. 2. Price changes under this streamlined process must still be supported by cost studies, and increases must be investigated by the Department. If the Commission believes that a proposed price increase should be subjected to further review, the Commission may decide that the increase is interim and refundable and may conduct a contested case hearing or an expedited hearing before it makes its final decision on the rate increase.

The Commission thus has clear authority to require that a telephone company offering an emergingly competitive service furnish adequate service at just and reasonable rates. The Commission has the power to investigate and to determine the reasonable rate to be charged by contested case proceedings. If the Commission finds that AOS is emergingly competitive, the regulatory authority of the Commission will continue to function to protect end-users.

#### Consumer protections

The Commission has placed stringent protective requirements on AOS providers since the first providers were granted interim authority. These and additional consumer safeguards were imposed on a permanent basis under the terms of the Commission's November 19, 1991 Order. These protections, which include unblocking, posting and branding, billing safeguards, and others, are in addition to seven federal requirements which were also adopted for intrastate purposes in the November 19 Order.

Consumer protections for AOS end-users are thus proven, in place, and ongoing. The competitive status of AOS service in Minnesota will not affect these requirements. The Commission finds that AOS customers are and will continue to be adequately protected under Commission oversight.

#### CONCLUSION

After a careful analysis of the entire record of this proceeding, the Commission finds that AOS in Minnesota displays a definite trend toward effective competition. As analyzed under Minn. Stat. §§ 237.57, subd. 4 and 237.59, subd. 5(a) and (c), the record fully supports a finding that AOS in Minnesota is emergingly competitive. The Commission so finds.

#### **B. Unblocking of 10XXX Access**

#### THE COMMISSION ORDER

In its November 19, 1991 Order, the Commission made permanent the interim requirement that call aggregators unblock alternative access codes, including "800" numbers, "950" numbers, and 10XXX access codes. The Commission did not distinguish 10XXX-1 access

from other forms of 10XXX access codes; all 10XXX access codes were to remain unblocked.

#### POSITIONS OF THE PARTIES

AT&T asked for reconsideration of the Commission's requirement that 10XXX-1 access be unblocked. AT&T argued that this requirement would lead to substantial fraud as transient end-users incurred long distance charges through this code and left call aggregators with unpaid bills. AT&T stated that the record supported the reality of this abuse and that AT&T would be willing to submit further evidence if necessary.

AT&T further argued that no party had advocated the unblocking of 10XXX-1 access. According to AT&T, the Commission's requirement of this form of unblocking is inconsistent with industry standards, the federal "Operator Services Act," and FCC practice.

MCI also requested that the Commission reconsider the requirement of unblocking 10XXX-1 access. MCI stated that there was a potential for abuse if this code were unblocked. MCI argued that the Commission was incorrect when it stated that the record does not substantiate a pattern of abuse of the 10XXX-1 code.

The Department stated that it would not object if the Commission reconsidered this requirement. The Department shared the Commission's concern that blocking 10XXX-1 access would in effect result in blocking all 10XXX access codes, since the codes often cannot be distinguished.

#### COMMISSION ANALYSIS

The Commission recognizes that there is a possibility of abuse by fraudulent end-users if all forms of 10XXX access, including 10XXX-1, are unblocked. While the use of 10XXX-0 access results in calls which are billed to the caller or an authorized third party, 10XXX-1 access results in calls which are billed to the originating (call-aggregator's) telephone. Thus, unscrupulous callers could use transient location telephones or payphones to place 10XXX-1 intrastate calls without intending to pay. By the time the call aggregator received the bill for the calls, the fraudulent end-user would be gone; in most cases the call aggregator would have to suffer the loss.

At the same time, the Commission recognizes the difficulty which can arise if call aggregators cannot distinguish between calls made through 10XXX-1 access codes and calls made through 10XXX-0 access. The record indicates that call aggregators who use software controlled systems such as "smart" PBX's or pay telephones may be able to install or modify their software to screen calls and differentiate between the two types of 10XXX calls. On the other hand, call aggregators who use customer premises equipment which is not controlled by software may not be capable of distinguishing between the two types of 10XXX use. In the latter case, if 10XXX-1 blocking were allowed, in effect all 10XXX access would be blocked.

Faced with this difficult fact situation, the Commission must weigh its desire to keep alternative access open to consumers through unblocking against the possibility of economic losses to aggregators and AOS providers from total unblocking. While there is no perfect solution to this conflict, the Commission will establish a graduated requirement which is intended to meet the interests of the parties as fairly as possible.

The Commission will remove the requirement of unblocking 10XXX-1 access. All other forms of 10XXX access must be unblocked on the following schedule:

1. Providers using systems that are software controlled must modify or replace their software within 30 days of the date of this Order;
2. Providers using systems that are not software controlled and would therefore need an entire system replacement to distinguish 10XXX access codes must replace said system within twelve months of the date of this Order;
3. Regardless of the type of system used by the provider, all forms of 10XXX access **except 10XXX-1 access** must be totally unblocked within 12 months of the date of this Order;
4. AOS providers must withhold compensation to call aggregators (on a location by location basis) who fail to comply with the above schedule.

The Commission notes that this modification to its previous Order does not affect its previous decisions regarding "950" or "800" access codes.

#### **C. Information Regarding Accessing an Alternative Carrier**

##### COMMISSION ORDER

In its November 19 Order, the Commission determined that AOS providers must, if requested by an end-user, provide information regarding access to an alternative carrier. The Commission stated that "[t]he information could include "800" numbers, "950" numbers, or access codes, as requested." Order at p. 10.

##### POSITIONS OF THE PARTIES

AT&T requested reconsideration of this requirement. According to AT&T, it would be burdensome and perhaps impossible for AT&T to obtain and maintain information on all available access codes from every possible AOS provider. AT&T noted that since 1987 over 100 AOS companies have applied for certificates of public convenience and necessity in the United States. AT&T argued that it did not have the data to determine the identity and access code of every alternative provider in Minnesota.

The RUD-OAG argued that it is in the public interest that AOS providers conform to this requirement of the Commission's

November 19 Order. In the alternative, the Commission could require that AOS providers be required to provide only the access codes of the full service providers such as AT&T, Sprint and MCI.

The Department stated that information on alternative access is an essential requirement for AOS providers. The Department did not object, however, to a clarification of the exact nature of the information which must be provided.

#### COMMISSION ANALYSIS

As the Commission stated in its November 19 Order, consumer protections must be enforced in order to ensure that AOS rates and terms and conditions of service are fair and reasonable and that AOS is in the public interest. At p. 10 of the Order the Commission stated:

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.

Because of the captive nature of the AOS end-user relative to the presubscribed AOS provider, the provider will be required to do what is necessary to make alternative access possible. The unblocking of alternative access codes is one means of ensuring alternative access; providing information on alternative access is another. This information service is a requirement which the Commission imposes on AOS providers in order to ensure that AOS remains in the public interest. It is a consumer protection which is key to the provision of AOS to captive customers.

The Commission rejects the RUD-OAG's suggestion that AOS providers could be required to provide just the access codes of full service providers. The Commission did not distinguish among requirements for the various providers of AOS in its November 19 Order and is not persuaded at this time that such a distinction is warranted.

When the Commission ordered AOS providers to supply information regarding accessing an alternative carrier, the Commission stated that "[t]he information **could include** "800" numbers, "950" numbers, or access codes, as requested." (Emphasis supplied.) The Commission will clarify that this requirement may also be fulfilled by the AOS provider's referring customers to seek specific information regarding alternative carriers from those carriers or from the telephone book.

#### **D. Disconnection of Local Service for Nonpayment of AOS Charges**

#### COMMISSION ORDER

In its November 19, 1991 Order, the Commission forbade the disconnection of local service for nonpayment of AOS charges. The Commission based its decision on Minn. Rules, part 7810.2000,

which limits the reasons for which a utility may disconnect service. Under the rule, a utility may only disconnect local service if a customer fails to pay for equipment or service which is an integral part of the local service. The Commission found that AOS is not an integral part of local service, and thus nonpayment of AOS charges cannot trigger local service disconnection.

#### POSITIONS OF THE PARTIES

AT&T requested reconsideration of the Commission's decision regarding the disconnection of local service for nonpayment of AOS charges. AT&T stated that selective carrier denial, which allows local exchange companies to block end users' access to certain interexchange carriers, is not available in all Minnesota exchanges. AT&T requested that the Commission allow disconnection of local service in exchanges in which selective carrier denial is not available. Without the option of local disconnection in these exchanges, AT&T argued, it would have no way of preventing an AOS end-user from continuing to incur charges without paying for them.

AT&T argued that Minn. Rules, part 7810.1800 allows disconnection of local service for nonpayment of AOS charges. AT&T reasoned that AOS is merely a subdivision of general operator services, which are an integral part of the consumer's telephone service. AT&T also disputed the Commission's finding that disconnection must be denied because of the number of parties in the billing chain and the possibility of billing errors and disputes. AT&T argued that the record failed to support this reasoning.

MIC also requested reconsideration of the Commission's decision regarding disconnection of local service. MIC argued that both the record and the number of regulatory protections in place indicate that AOS end-users are fully protected when billing disputes occur. MIC stated that disconnection should be allowed in the case of undisputed charges.

The RUD-OAG and the Department supported the Commission's original decision regarding the issue of disconnection of local service for nonpayment of AOS charges.

#### COMMISSION ANALYSIS

The Commission finds nothing new in the parties' arguments, which were fully considered and addressed in the November 19 Order. Upon reconsideration, the Commission continues to find that Minn. Rules, part 7810.2000 governs the disconnection issue. AOS, or operator-assisted **long distance** service provided to transient end-users, is not integrally tied to local service and thus may not justify local disconnection under the rule. The Commission also remains convinced that local service, which is a vital communication link for most persons, must not be placed in jeopardy while an AOS customer traces a billing error through a complicated billing chain. The Commission will not allow disconnection of local service for nonpayment of AOS charges.

## **E. Posting of Information**

### COMMISSION ORDER

In its November 19 Order, the Commission required 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. This requirement is similar to the federal requirement that call aggregators post the name and address of the FCC's Common Carrier Bureau on or near the telephone.

### POSITIONS OF THE PARTIES

MIC sought Commission reconsideration of two issues pertaining to posted information. MIC asked the Commission to defer implementation of the posting requirements for payphones until 0+ intraLATA competition is provided through equal access for payphone locations. MIC felt that the same reasoning which supported a delay in double branding for AOS calls also justified a delay in posting requirements. MIC argued that the lack of intraLATA competition at this time means that posting information is not necessary to avoid confusion and would be an unnecessary cost.

In addition, MIC asked the Commission to drop the requirement that the Commission's address be included in posted information. MIC stated that the Commission's address requires five lines on payphone posting cards. Since the standard size posting cards are already crowded with other federal posting requirements, MIC argued that the Commission's address was unnecessary and impractical. MIC also stated that unhappy payphone customers would be more likely to seek redress through the Commission's telephone number, which would still be posted.

### COMMISSION ANALYSIS

#### Delaying implementation

The Commission is not persuaded that the same reasoning applies to delaying implementation of posting requirements as applies to delaying implementation of double branding. The Commission allowed a six month delay for the requirement of double branding by local exchange carriers (LECs) and independent local exchange carriers (ILECs) so that training and equipment modifications could take place. The six months would also mean that intraLATA equal access had been implemented, which would make double branding of intraLATA calls especially necessary to avoid confusion.

In this case, the implementation of intraLATA equal access is several months closer. There is also no need to allow for training personnel or replacing or modifying equipment in the case of posting requirements. The Commission finds that the important consumer protection of payphone information posting should not be delayed.

### Excluding the Commission's address

The Commission finds that the address of its Consumer Affairs office is a significant part of the "meaningful information available to the end-user [which] is key to the determination that AOS is in the public interest." November 19 Order at p. 11. Because there may be so many entities involved in the provision of AOS, it is especially important that the end-user have access to the regulatory body overseeing the service. Complete posted information is an important consumer protection for "captive" AOS end-users.

The record indicates a history of complaints regarding AOS services. The Commission wants to remain open to the complaint process; the Commission's address is necessary to the complaint procedure. The Commission finds that the inclusion of its address in posted requirements is a benefit to consumers which outweighs any inconvenience to AOS providers. The Commission will continue to require this posted information.

### **F. Sub-carrier Identification**

#### COMMISSION ORDER

Sub-carrier identification is the practice of including the AOS provider's name on the end-user's bill. In its November 19 Order, the Commission required all AOS providers to implement sub-carrier identification. If an AOS provider uses a LEC or ILEC as a billing agent and that agent does not have the capability of providing sub-carrier identification, the AOS provider must seek a waiver from the Commission.

#### POSITIONS OF THE PARTIES

MIC asked that ILECs be exempted from the requirement of sub-carrier identification. An exempted ILEC whose AOS billing was provided by a billing clearinghouse would only need to include the clearinghouse's name, not the AOS provider's name, on the customer's bill. MIC argued that it is often technically impossible or prohibitively expensive for ILECs to provide information regarding the AOS provider on the customer's bill. MIC also stated that the billing clearinghouse's name is more helpful to the consumer, and that inclusion of the provider's name might actually result in confusion.

The Department did not disagree with the Commission's sub-carrier identification requirements.

#### COMMISSION ANALYSIS

The Commission's precise sub-carrier identification requirement is found at Order Paragraph No. 3, p. 21 of its November 19 Order:

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.

Thus, both the burden of implementing sub-carrier identification and the burden of applying for a waiver if necessary rest with the AOS provider. The Commission is therefore unpersuaded by MIC's arguments that ILECs who provide billing services would be overburdened by the requirement of sub-carrier identification.

The Commission finds that sub-carrier identification is an important source of consumer information regarding the actual source of the AOS bill generated. The Commission will continue to require that AOS providers supply this information on end-users' bills.

#### **G. Call Splashing**

##### COMMISSION ORDER

Call splashing is the transferring of a call to another AOS provider, which results in a call being rated and/or billed from a point different from the point at which the call originated. In the Commission's November 19 Order, the Commission forbade call splashing "unless requested by an end-user and then only after the end-user is informed of possible billing results." Order at p. 20.

##### POSITIONS OF THE PARTIES

AT&T requested that the Commission clarify that call splashing will only be allowed if the consumer requests it, is informed of possible billing results, **and the consumer then consents to be transferred.** This informed consent would go beyond the requirements in the Commission's Order and would more closely conform to federal requirements.

The Department stated that to the extent the Commission's requirements on this issue differ from federal requirements, the Commission's Order should control.

##### COMMISSION ANALYSIS

The Commission will consent to AT&T's request for clarification. The Commission considers that informed consent for call splashing was required under the terms of the November 19 Order. The additional language only makes doubly clear the necessity of informed customer consent before call splashing can take place. The Commission will modify Order Paragraph No. 1 (f), p. 20, to read:

Refrain from "splashing" a call unless the end-user requests to be transferred to another provider of operator services, the end-user is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the end-user then consents to be transferred.

#### **H. Double Branding**

##### COMMISSION ORDER

In Order Paragraph No. 1 (a) of its November 19 Order the Commission required AOS providers to "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." This process of double identification is known as double branding.

##### POSITIONS OF THE PARTIES

AT&T stated that some AOS providers may connect the call and then identify themselves the second time, before charges are incurred by the end-user. AT&T therefore requested that the Commission clarify the portion of its Order which referred to double branding to accommodate this set of circumstances. The language modification would bring the Commission's requirement into conformity with federal requirements.

##### MIC

MIC noted that the Commission's Order did not address double branding of O- local operator assisted calls. MIC asked the Commission to clarify that double branding of local operator assisted calls is not necessary.

##### COMMISSION ANALYSIS

The Commission will clarify its requirement of double branding to include circumstances in which AOS providers may connect the call before identifying themselves the second time. Order Paragraph No. 1 (a) will be modified to read:

Audibly and distinctly state their identity at the beginning of each call, with a second identification before connecting the call or 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.

The Commission does not find that clarification is necessary regarding double branding of O- local operator assisted calls. Throughout this Order and the November 19 Order, the Commission has consistently held to the following definition of AOS:

Alternative operator services are operator-assisted long distance services provided to transient end-users at call aggregators' locations.

Clearly, the requirements of the Commission's AOS Orders apply to operator-assisted **long distance**, not local, services. No further clarification of this point is necessary.

### I. Clarification of the Term "Trend"

#### COMMISSION ORDER

As discussed in this Order and the November 19 Order, the definition of emerging competition found at Minn. Stat. § 237.57, subd. 4 states that "emerging competition exists when the criteria of section 237.59, subdivision 5, have not been satisfied, but there is a trend toward effective competition." The Commission used this blend of the two statutes in analyzing the competitive status of AOS.

#### POSITIONS OF THE PARTIES

The RUD-OAG asked for clarification of the following statement found on p. 18 of the November 19 Order:

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. (Emphasis supplied.)

The RUD-OAG asked the Commission to clarify that the phrase "trend toward effective competition" is interpreted by the Commission as a "shorthand description" of emerging competition rather than as the standard of analysis of the statutory criteria which determine competitive status. The RUD-OAG asked the Commission to clarify specifically that the analytical standard of emerging competition should require **substantial** satisfaction of the statutory criteria.

The Department supported the RUD-OAG in its request for clarification.

AT&T, MCI and US WEST opposed the RUD-OAG's request for clarification. These companies stated that the RUD-OAG's proposed clarification was unnecessary and in conflict with the governing statutes.

#### COMMISSION ANALYSIS

The Commission disagrees with the RUD-OAG that further clarification of the Commission's use of the phrase "trend toward effective competition" is necessary. The dictionary definition of the word trend is clear. In Webster's New Collegiate Dictionary, the word trend is defined as "a line of general direction or movement," a prevailing tendency or inclination," and "a line of development." These definitions are sufficiently clear and convey the meaning which the Commission used in its finding of a trend toward effective competition.

The Commission also finds that the governing statutes are sufficiently clear. Under Minn. Stat. § 237.57, subd. 4, a finding of emerging competition exists when the criteria of section 237.59, subd. 5, have not been satisfied, but there is a trend toward effective competition. The Commission must consider and make findings on the five statutory criteria when determining if a service is emergingly competitive. If the five criteria are not satisfied, but there is a trend toward effective competition along with sufficient availability, the service will be found emergingly competitive.

These statutes when read together provide an analytical framework for the Commission in its determination of competitive status. Concrete criteria are set out for analysis and findings. At the same time, the statutes provide flexibility and the opportunity for the Commission to use its expertise and discretion in forming determinations. This is particularly appropriate in the analysis of the competitive nature of telephone services, which are often moving along a continuum between noncompetitive status toward effectively competitive status.

Because the Commission finds no need for clarification of its use of the phrase "trend toward effective competition," a phrase which is taken directly from the governing statutes, the Commission will not grant the RUD-OAG's request for clarification.

#### **J. Amendment of Typographical Errors**

The Commission has noted that Order Paragraph No. 1 (h), p.21 of its November 19 Order, contains some typographical errors which involve the transposition of numbers. On its own motion, the Commission will amend the paragraph to read as follows:

Ensure that the presubscribed call aggregator allows end-users to use "950" and "800" access code numbers for their IXC of choice and that the charge for accessing the "950/800" IXC is no greater than the carrier's normal charge for such a service.

#### **K. New Deadlines for AOS Providers**

At Order Paragraph No. 10, p. 22 of the Commission's November 19 Order, the Commission required AOS providers currently operating under interim certificates to submit certain compliance filings within 30 days of the issuance of the Order. Presumably, AOS providers are awaiting the Commission's Order After Reconsideration before they submit their compliance filings. The Commission will therefore establish a new 30 day compliance deadline for AOS providers, based on the issuance of this Order After Reconsideration.

At Order Paragraph No. 3, p. 21 of the Commission's November 19 Order, the Commission required AOS providers to begin stating their identities on end-users' bill within 120 days of the Order. The Commission will modify this deadline so that it begins to run from the issuance of this Order After Reconsideration.

ORDER

1. Order Paragraph No. 1 (d) of the Commission's November 19 Order is amended to read:

[AOS providers are required to:] 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 IXCs via "950" or "800" access codes.

2. Order Paragraph No. 4 of the Commission's November 19 Order is amended to read:

AOS providers are prohibited from blocking access to other carriers via any form of 10XXX access other than 10XXX-1 access, according to the following schedule:

- i. Providers using systems that are software controlled must modify or replace their software within 30 days of the date of this Order;
  - ii. Providers using systems that are not software controlled and would therefore need an entire system replacement to distinguish 10XXX access codes must replace said system within twelve months of the date of this Order;
  - iii. Regardless of the type of system used by the provider, all forms of 10XXX access except 10XXX-1 access must be totally unblocked within 12 months of the date of this Order.
  - iv. Providers must withhold compensation to call aggregators (on a location by location basis) who fail to comply with the above schedule.
3. Order Paragraph No. 5 of the Commission's November 19 Order is amended to read:

AOS providers must provide, upon request by an end-user, information on how to access an alternative carrier. The information can include "800" numbers, "950" numbers, access codes, or a reference to seek specific information regarding alternative carriers from those carriers or from the telephone book.

4. Order Paragraph No. 1 (f) of the Commission's November 19 Order is amended to read:

[AOS providers are required to:] refrain from "splashing" a call unless the end-user requests to be transferred to another provider of operator services, the end-user is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the end-user then consents to be transferred.

5. Order Paragraph No. 1 (a) of the Commission's November 19 Order is amended to read:

[AOS providers are required to:] 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.

6. Order Paragraph No. 1 (h) of the Commission's November 19 Order is amended to read:

[AOS providers are required to:] ensure that the presubscribed call aggregator allows end-users to use "950" and "800" access code numbers for their IXC of choice and that the charge for accessing the "950/800" IXC is no greater than the carrier's normal charge for such a service.

7. The 120 day deadline in Order Paragraph No. 3 and the 30 day deadline in Order Paragraph No. 10 of the Commission's November 19 Order shall be considered to run from the date of this Order.
8. With the exception of the above-referenced modifications, all other requirements of the Commission's November 19, 1991 Order remain in force and effect.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)