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## Missouri Public Service Commission

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December 30, 1988

ROBERT J. SCRIBNER  
Staff Director

HARVEY G. HUBBS  
Secretary

MARY ANN YOUNG  
General Counsel

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

Re: Case No. TA-88-218 - In the matter of the application of American Operator Services, Inc. for a certificate of service authority to provide Intrastate Operator-Assisted Resold Telecommunications Services, as consolidated.

Dear Mr. Hubbs:

Enclosed for filing in the above-captioned case is an original and fourteen (14) conformed copies of the Reply Brief of the Staff of the Public Service Commission of Missouri. Copies have been sent this date to all parties of record.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Charles Brent Stewart".

Charles Brent Stewart  
Assistant General Counsel

CBS:nsh

Enclosures

cc: All parties of record

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DEC 30 1988  
PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application )  
of American Operator Services, Inc.)  
for a certificate of service ) Case No. TA-88-218  
authority to provide Intrastate )  
Operator-Assisted Resold )  
Telecommunications Services. )

In the matter of Teleconnect )  
Company for authority to file )  
tariff sheets designed to establish) Case No. TR-88-282  
Operator Services within its )  
certificated service area in the )  
State of Missouri. )

In the matter of Dial U.S. for )  
authority to file tariff sheets )  
designed to establish Operator ) Case No. TR-88-283  
Services within its certificated )  
service area in the State of )  
Missouri. )

In the matter of Dial U.S.A. for )  
authority to file tariff sheets )  
designed to establish Operator ) Case No. TR-88-284  
Services within its certificated )  
service area in the State of )  
Missouri. )

In the matter of International )  
Telecharge, Inc. for authority to )  
file tariff sheets designed to ) Case No. TR-89-6  
establish Operator Services within )  
its certificated service area in )  
the State of Missouri. )

REPLY BRIEF OF THE STAFF OF THE  
PUBLIC SERVICE COMMISSION OF MISSOURI

I. Certification of American Operator Services, Inc. (AOSI)

The initial briefs clearly indicate that only one of the many parties to this case, the Office of the Public Counsel (OPC), opposes AOSI's request for a certificate of service authority to provide operator-assisted telecommunications services within Missouri. OPC argues that the provision of competitive operator-assisted services by AOSI, or by any other provider, is not in the public interest.

In response, Staff wishes to point out that granting AOSI's request would be consistent with past Commission treatment of: 1) applicants seeking to provide interLATA telecommunications services (Case No. TX-85-10); 2) applicants seeking to provide intraLATA toll

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services (Case No. TO-84-222); 3) applicants seeking to resell telecommunications services (Case No. TA-88-144) and 4) applicants seeking to provide operator services.<sup>1</sup> Despite OPC's dim view of competitive operator service companies generally, and OPC's reliance on other state Commission decisions, the evidence presented in this case clearly indicates that AOSI has met the "public interest" standard of Sections 392.430 and 392.440 RSMo Supp. 1987 as that standard has been previously applied by the Commission.

According to OPC's peculiar operator service provider classification scheme,<sup>2</sup> there is no functional difference between AOSI and International Telecharge, Inc. (ITI). It is clear, however, that ITI already has received authority from the Commission to provide the same telecommunications services that AOSI now seeks authority to provide. In Staff's view, the Commission should accord AOSI the same treatment as was given to ITI and should not now attempt to hold AOSI to some previously undefined and non-existent certification criteria.

OPC would deny AOSI its requested certificate and retroactively or otherwise render void ITI's certificate in an effort to quash the evolution of the competitive operator services market within Missouri. Even so, OPC somehow would permit the certification of other companies, such as Teleconnect, Dial U.S., Dial U.S.A. and presumably even other companies which are deemed by OPC to be "legitimate" providers of operator services. OPC has no statutory basis to make such distinctions among companies and the Staff believes that such distinctions simply are unworkable and unnecessary.

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<sup>1</sup>Co-applicants Teleconnect Company, Dial U.S., Dial U.S.A., and International Telecharge, Inc. each have been granted certificates by the Commission similar to the certificate now requested by AOSI. Moreover, the local exchange companies, AT&T, U.S. Sprint, LTS and American Communications, Inc. each have been granted authority to provide operator services in Missouri.

<sup>2</sup>The Staff does not agree with OPC's distinctions between and among providers of operator services since all such providers offer operator-assisted telecommunications services, regardless of each provider's peculiar cost-of-service characteristics and method of business operations. (See, OPC Brief, pp. 6-7).

The Staff and the other parties to this case propose instead that the Commission recognize that the industry is changing, grant AOSI's certificate request, and move on to the more pressing problem of designing and implementing appropriate regulations to govern the operations of all Missouri operator service providers.

## II. Staff's Recommended Regulatory Response

Despite having a difference of opinion regarding the application of the "public interest" standard to the applicants in this case, both the Staff and OPC clearly agree that Missouri's ratepayers should receive adequate operator-assisted telecommunications services at reasonable prices. As the parties' initial briefs indicate, there is general agreement among all the parties that Staff's recommended requirements and conditions are appropriate. Even OPC's proposed requirements do not differ significantly from those of the Staff's. (See, VanEschen Direct, pp. 13-14; OPC Brief, pp. 13-15). However, some minor differences between Staff and some of the parties to this case have been mentioned in the initial briefs and are properly here addressed.

### A. "Post and Display"

OPC has proposed that operator service providers "post and display in prominent fashion the name of the AOS provider" in an effort to give adequate notice to end users. (OPC Brief, p. 14) The Staff does not necessarily disagree with the intent of OPC's requirement. Staff certainly agrees with GTE that an informed buyer is necessary for competition to function effectively (GTE Brief, p. 2). However, the Staff believes that OPC's proposed requirement is impractical, at least for certain traffic aggregators such as hotels and hospitals.<sup>3</sup> First, the Commission would be unable to enforce such a requirement since hotels and hospitals clearly are beyond the Commission's jurisdiction. Section 386.020(41)(d) RSMo Supp. 1988.

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<sup>3</sup>OPC's requirement conceivably could be enforced by the Commission against pay telephone and STS providers. However, Staff believes a formal rulemaking proceeding would be necessary if the Commission desired to impose OPC's requirement since no private pay phone company or STS provider has been a party to this case.

Second, the enforcement of post and display responsibilities is often even beyond the control of the operator service provider. Given this, Staff believes its identification requirements will adequately protect the end user, at least until universally applicable rules are promulgated.

B. Emergency Services

The initial briefs of AOSI and ITI appear to suggest that Staff is totally satisfied with their ability to currently handle emergency calls. (AOSI Brief, pp. 29, 45; ITI Brief, pp. 16-17). This is a mischaracterization. Staff's main concern is the length of time it takes to be connected with the operator after the caller dials "0". This time should not necessarily be confused with the operator response time after a call has been delivered to the operator provider. In this respect, Staff's concern regarding emergency services has not yet been satisfied, and therefore, Staff is recommending that all "0-" end traffic be delivered to AT&T or the local exchange company (LEC).

Intervenor Southwestern Bell urges in its initial brief that as a matter of fairness all "0-" traffic should be handled by the competitive operator service company. Staff believes that Southwestern Bell's position is premature in that competitive operator service companies should first satisfactorily demonstrate that the emergency calls would be adequately and efficiently handled. When such a showing is made, Staff would agree to Southwestern Bell's position. Also, in Staff's view Southwestern Bell's fairness argument erroneously assumes that the LEC receives no revenues from "0-" traffic even though the LEC receives revenues from such traffic pursuant to tariffed rates. (Tr. 603-604).

C. Location Surcharges

Under Staff's proposal, surcharges would be allowed, but would be restricted if charged on a LEC bill; surcharges must be separately identified and specifically associated with each call on the bill and must be unbundled from the underlying rated charge, unless the entity imposing the bundled surcharge possesses both a certificate from this Commission and approved tariffs for the

surcharge. Disconnection for non-payment of surcharges would not be permitted unless these requirements were met. These requirements should pose no problems for STS and pay phone providers. For hotels and hospitals, however, the requirement would probably mean that such surcharges must be collected directly by the hotel or hospital.

Intervenor OAN has challenged on feasibility and financial grounds Staff's requirement that the local exchange bill include the operator services company's name rather than that of the billing agent. However, even OAN must admit that no cost estimates for changing the existing LEC billing mechanisms has been provided and that the costs of such a change are at this time simply unknown. Staff, therefore, holds to its basic premise that the customer's LEC bill should clearly indicate exactly which operator service company provided the service for which the customer is being charged. As a matter of clarification, the Staff is not proposing that the operator service company or the billing agent billing inquiry number appear on the LEC bill in place of the existing LEC inquiry number.

### III. Rulemaking Procedure Required

Most all the parties have indicated that this case is not the appropriate vehicle for the Commission to attempt to enact substantive rules regarding all providers of operator services. (See, e.g., Contel Brief, pp. 6-7; Southwestern Bell Brief, p. 10; MICPA Brief, pp. 4-6). Since several competitive operator service providers and other affected parties are not parties to this case, it would clearly be improper for the Commission to attempt any "generic" rulings herein. (See, Exh. 21).

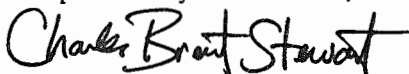
Under the Missouri Administrative Procedure Act, "any agency statement of general applicability that implements, interprets, or prescribes law or policy" is defined as a "rule". Section 536.010(3) RSMo 1986. If the Commission desires to establish a general policy regarding the provision of operator services which is binding on all operator service providers and other affected parties, a formal rulemaking proceeding will be necessary. Section 536.021 RSMo 1986. The current Commission rules provide the appropriate procedure under which a future rulemaking on this subject can be conducted.

4 CSR 240-2.180; 4 CSR 240-2.190. For these reasons, Staff would urge the Commission to adopt Staff's proposed requirements at least until a formal rulemaking proceeding can be established which will address the provision of operator services by all operator service providers in the State of Missouri.

IV. Conclusion

The Staff believes that certification of AOSI and implementation of Staff's proposed tariff requirements appropriately balances the interests of Missouri ratepayers and the Applicants herein. Staff further would urge the Commission to consider establishing a rulemaking proceeding whereby all operator service companies, and the generic issues involved in the regulation of such companies, can be more adequately and properly addressed.

Respectfully submitted,



Charles Brent Stewart  
Assistant General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all parties of record on this 30<sup>TH</sup> day of December, 1988.

