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PLEASE REPLY TO THE MISSOURI OFFICE  
FILE NO. 3332800-2

**FILED** 24, 1989

APR 24 1989

VIA TELECOPY

PUBLIC SERVICE COMMISSION

Mr. Harvey G. Hubbs  
Secretary  
Missouri Public Service Commission  
301 West High Street  
Floor 5-A North  
Jefferson City, MO 65101

Re: Application of American Operator Services, Inc., Case  
No. TA-88-218

Dear Mr. Hubbs:

Please find enclosed for filing the original and 14 copies of the Application of American Operator Services, Inc. for rehearing and reconsideration of the Commission's Order of April 17, 1989. By copy of this letter, I have mailed a copy of the enclosed to all parties of record.

Very truly yours,



MPJ/wsh  
Enclosure  
cc: All Parties of Record

CR;

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application )  
of American Operator Services, Inc. )  
for a certificate of service authority ) CASE NO. TA-88-21  
to provide Intrastate Operator-Assisted )  
Resold Telecommunications Services. )

In the matter of Teleconnect Company )  
for authority to file tariff sheets )  
designed to establish Operator ) CASE NO. TR-88-282  
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 establish ) CASE NO. TR-89-6  
Operator Services within its )  
certificated service area in the State )  
of Missouri. )

APPLICATION OF AMERICAN OPERATOR SERVICES, INC.  
FOR REHEARING AND RECONSIDERATION

Comes now American Operator Services, Inc., d/b/a National Telephone Services ("NTS"), and pursuant to Chapter 386.500, R.S.Mo. 1987, and 4 C.S.R. 240-2.060 of the Rules of Practice of the Public Service Commission, requests that the Commission rehear and reconsider its Report and Order of April 17, 1989 (the April 17 Order). In support of this Application, NTS states the following:

1. On February 26, 1988, NTS filed an Application for a Certificate of Service Authority to provide operator-assisted

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telecommunications service in Missouri on a resale basis. The Secretary of the Commission designated the Application as Case No. TA-88-218. Four other long distance telecommunications resellers, Teleconnect Long Distance Services and Systems Company ("Teleconnect"), Dial U.S., Dial U.S.A. and International Telecharge, Inc. ("ITI"), filed tariff sheets which, if approved by the Commission, would have allowed those companies to provide operator-assisted long distance services in Missouri.

2. By Order issued July 15, 1988, the Commission consolidated the captioned cases. Hearings were held in September, 1988, and the parties filed briefs in support of their respective positions. By its Order of April 17, the Commission denied NTS's Application for certification and rejected the tariffs of the other four resellers. However, the Commission ruled that it would allow Teleconnect, Dial U.S., and Dial U.S.A. to file revised tariffs reflecting the rules set forth in the April 17 Order.

3. As it applies to NTS's Application for certification, the Commission's Order of April 17 is unlawful, unjust, unreasonable, unlawfully discriminatory, and unconstitutional. The factual findings with respect to NTS's lack of qualification and ability to provide service which is in the public interest are unsupported by substantial and competent evidence on the whole record. The Commission's Order also subjects NTS to unlawful discrimination, in that similarly-situated telecommunications providers are given unlawful and unsupported preferences with respect to provision of operator-assisted services in Missouri.

4. The Commission's decision to deny NTS's Application as a matter of law is unsupported by findings of fact based upon evidence in the record, as required by Missouri law. The factual findings upon which the Commission based its decision are grounded in pure speculation, as demonstrated by the Commission's finding that the behavior of end users, customers, and operator service providers "might" or "may" be influenced by improper considerations. (See pages 7-9 of the April 17 Order). The substantial and competent evidence on the record demonstrates that the Commission's speculation is clearly erroneous and contrary to the great weight of the evidence.

5. The Commission's April 17 Order unfairly and unlawfully discriminates against NTS in announcing a standard that long distance telecommunications resellers may provide operator-assisted services, if those services are "ancillary" to "1+" long distance telecommunications resale services, while a company like NTS may not. This "ancillary" test is arbitrary, capricious, vague, without support in the record, and deprives NTS of its due process and equal protection rights under the Missouri Constitution and the Constitution of the United States. There is no substantial and competent evidence on the whole record supporting the Commission's attempt to distinguish among the Applicants in these cases based on this vague test, allowing Teleconnect, Dial U.S., and Dial U.S.A. to provide operator-assisted services and forbidding NTS and ITI from providing those services.

6. In the April 17 Order, the Commission purports to sanction the provision of operator services, if those services are "ancillary" to "1+" long distance service. The Commission does not require that "1+" and "0+" services be marketed as a package, so providers such as Teleconnect may offer them as separate services. Indeed, Teleconnect's witness testified that his company intended to offer "0+" services to customers who do not want Teleconnect's "1+" services, and that in that case, Teleconnect's "0+" services would be indistinguishable from the operator services of NTS and ITI. (Tr. Vol II, p. 298-300). Where offered to a customer as a service separate from "1+" service, operator services cannot by definition be "ancillary" to the "1+" service. Thus, the Commission is creating an unlawfully discriminatory distinction between NTS and companies such as Teleconnect, and the Commission's finding of such a distinction is arbitrary, capricious, unsupported by substantial and competent evidence on the record, and lacks support from findings of fact based on substantial and competent evidence.

7. As a matter of law, the April 17 Order is contrary to the spirit and intent of House Bill 360, as the Order fails to honor that legislation's goal that competition, not regulation, is the preferable method of governing the telecommunications industry in Missouri. Without support in the record and without reference to any evidence supporting its decision, the Commission concludes that competition should not and cannot be substituted for regulation in the area of operator-assisted telecommunications services. The Commission finds as a matter of

law that no possible regulatory scheme could protect end users from the supposed abuses of operator service providers. This conclusion of law is without the support of substantial and competent evidence on the record as a whole, and the Order lacks sufficient factual findings to support this conclusion.

8. In prohibiting NTS and other operator-assisted companies whose operator services are not "ancillary" to long distance telecommunications services from providing operator services in Missouri, the Commission violates the Commerce and Supremacy Clauses of the United States Constitution. Substantial and competent evidence on the record as a whole demonstrates that public pay telephones presubscribed to NTS cannot distinguish between intrastate and interstate traffic. The Commission has no jurisdiction to regular interstate traffic, and in prohibiting NTS from carrying intrastate pay telephone traffic in Missouri, the Commission has effectively and unlawfully prohibited NTS from carrying interstate traffic on public pay telephones. The Commission has implicitly infringed on NTS's unquestioned right to carry interstate traffic, as NTS will be prevented from providing intrastate service in Missouri.

9. The Order denying certification and tariff approval to operator services providers which do not meet the Commission's "ancillary" test is also unlawful and destructive of competition, in that the substantial and competent evidence demonstrates that this Order will effectively end the prospect of competition in the public pay telephone market in Missouri. Owners of public pay telephones will be deprived of revenues absolutely critical

to their survival. Thus, Southwestern Bell and other local exchange companies will maintain their monopoly in the pay telephone industry.

10. The Commission erred as a matter of law in finding that the standards for certification set forth in Chapter 392.440, R.S.Mo. 1987, and Case No. TX-85-10 should not be applied to operator service companies such as NTS. There is no supportable and rational distinction between NTS and the telecommunications providers to which those tests are applied, and to the extent the Commission refuses to apply the same tests to similarly-situated telecommunications providers, the Commission is engaging in unlawful discrimination.

11. The Commission's finding of fact that the proposed services of NTS are not in the public interest, as discerned by applying the provisions of Chapter 392.530, R.S.Mo. 1987, is clearly erroneous and unsupported by substantial and competent evidence on the record as a whole, and its conclusion of law to that effect is likewise unsupported by findings of fact based upon evidence in the record.

12. Assuming the Commission correctly found that NTS bore the burden of proving that its proposed services are in the public service, the Commission erred as a matter of law and fact in finding that NTS had failed to meet that burden. There is no substantial and competent evidence to support that conclusion, and in fact the substantial and competent evidence demonstrates to the contrary.

13. Events occurring after the September, 1988, hearings support the reopening of the hearing to take additional evidence. Many of the abuses cited by the Commission in support of its decision not to grant certification and tariff approval to NTS were considered and dismissed by the FCC in its Memorandum Opinion and Order arising out of the complaint against operator service providers by the Telecommunications Research and Action Center. In the Matter of Telecommunications Research and Action Center, et al., v. Central Corporation, et al., File No. E-88104, Memorandum Opinion and Order, February 24, 1989. In addition, the events surrounding the Bell-owned pay telephone balloting process and the ongoing rapid evolution of the operator services industry justify reopening of the hearing to take additional evidence.

14. As enumerated herein, the Commission's Order of April 17 denying NTS's Application for Certification as a reseller of long distance operator-assisted telecommunications services is unlawful, unjust, discriminatory, arbitrary, capricious, unsupported by findings of fact, not based on substantial and competent evidence on the whole record, and denies NTS its due process and equal protection rights under the Missouri Constitution and the Constitution of the United States.

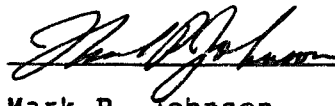
15. Pending rehearing, the prospect of substantial irreparable harm to NTS and its customers justified a stay of the Commission's April 17 Order.



Wherefore, NTS requests that the Commission stay the April 17 Order, reconsider that Order, grant rehearing, and upon rehearing grant NTS's Application for Certification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, United States mail, postage prepaid, to All Parties of Record, this 24th day of April, 1989.

