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

November 29, 1988

VIA FEDERAL EXPRESS

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

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 Post-Hearing Brief of American Operator Services, Inc. By copy of this letter, I have mailed copies of the enclosed brief to all parties of record.

Very truly yours,



MPJ/wsh  
Enclosure  
cc: All Parties of Record

**FILED**  
NOV 30 1988  
PUBLIC SERVICE COMMISSION

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Wak. 12/2/88  
11/29/88

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-88-218 ✓  
to provide Intrastate Operator-Assisted )  
Resold Telecommunications Services. )

In the matter of Teleconnect Company )  
for authority to file tariff sheets )  
designed to establish Operator Services ) Case No. TR-88-282 ✓  
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 Services ) Case No. TR-88-283 ✓  
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 Services ) Case No. TR-88-284 ✓  
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. )

POST-HEARING BRIEF OF APPLICANT  
AMERICAN OPERATOR SERVICES, INC.

November 30, 1988

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**FILED**

NOV 30 1988

PUBLIC SERVICE COMMISSION

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**FILED**

**NOV 30 1988**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**PUBLIC SERVICE COMMISSION**

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

**POST-HEARING BRIEF OF APPLICANT**  
**AMERICAN OPERATOR SERVICES, INC.**

Comes now the Applicant, American Operator Services, Inc., doing business as National Telephone Services (NTS), and pursuant to the Order of Hearing Examiner Beth O'Donnell files its post-hearing brief in support of its application for a certificate of service authority to provide competitive operator-assisted resold telecommunications services in Missouri.

**I. INTRODUCTION**

These consolidated cases present the Commission with the opportunity to authorize the operation of a new competitive telecommunications industry in Missouri: operator-assisted long distance service. The Commission must decide whether that service is in the public interest, and if so, whether NTS and the other parties to this case should be allowed to provide that service. In its Order of April 5, 1988, the Commission identified several issues to be addressed in this proceeding. NTS addresses those issues in proving that competitive operator service is in the public interest and that NTS should be certificated to provide that service in Missouri.

## II. PROCEDURAL HISTORY

These proceedings were initiated by NTS's filing of an application for service authority on February 26, 1988, docketed as Case No. TA-88-218. In an Order issued April 5, 1988, the Commission listed several issues to be considered in Staff's investigation of competitive operator services. Those issues included, inter alia, rates, access to interexchange carriers, and carrier identification.

The cases with which Case No. TA-88-218 has been consolidated involve the tariff filings of four interexchange carriers. The names of those carriers, the dates of their tariff filings, and the tariff case numbers are as follows: Teleconnect Company, May 27, 1988, Case No. TR-88-282, Dial U.S., June 3, 1988, Case No. TR-88-283, Dial U.S.A., June 3, 1988, Case No. TR-88-284, and International Telecharge, Inc. (ITI), October 14, 1987, Case No. TR-89-6. By Order dated June 17, 1988, the Commission suspended the effective dates of the tariffs filed by Teleconnect, Dial U.S., and Dial U.S.A. ITI voluntarily extended the effective date of its tariff to July 1, 1988. By Order dated July 15, 1988, the Commission further suspended ITI's proposed tariff and consolidated the five captioned cases.

A prehearing conference was held on Wednesday, September 14, 1988 at the Commission's offices. The parties present at the prehearing conference are listed on pages 4 and 5 of the Hearing Memorandum, in evidence as Joint Exhibit 1. The hearing was conducted on September 20, 21, and 22, 1988.

### III. STATEMENT OF FACTS

#### A. The Competitive Operator Services Industry

##### 1. Industry and NTS Origins.

The divestiture of AT&T on January 1, 1984 opened the long distance telecommunications industry to competition. Although many telecommunications markets quickly attracted wide competition, including interstate and intrastate interexchange service, private line, and WATS, it was not until recently that competition appeared in the market for operator-assisted long distance traffic.

Prior to the advent of competition in the operator services market, the so-called "traditional" carriers (the local exchange telephone companies and AT&T Communications) had a de facto operator services monopoly. (Freels Direct, Ex. 6, at p. 27).<sup>1</sup> The entrepreneurs who recognized the prospect of operator service competition were responsible for the founding of such companies as NTS and ITI.

NTS has been doing business since December, 1985, under its present corporate name, American Operator Services, Inc. or that of a predecessor corporation. Initially incorporated as National Telephone Services, Inc., the Company was reincorporated in October, 1987 under the name American Operator Services, Inc., as

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<sup>1</sup>All references to prefiled testimony will refer to the witness, nature of testimony (direct or rebuttal), exhibit number, and page number. Transcript citations will refer to volume and page numbers.

reflected in the Company's certificate of incorporation. (Bryan Direct, Ex. 2, Schedule B). The Company intends to do business in Missouri under the name "National Telephone Services," which has been duly registered with the Secretary of State of Missouri.

The reincorporation of NTS did not change the Company's business operations. (Tr. Vol. II, at pp. 98-99). Founded for the express purpose of competing with AT&T in the operator-assisted long distance market, NTS began operations in December, 1985. The Company has experienced remarkable growth, to the point where today it has approximately 800 employees, including 650 operators at five operator centers throughout the United States, and generates revenues of over \$7,000,000 per month. (Bryan Direct, Ex. 2, at pp. 2-3 and 5).

NTS carries long distance calls which require operator assistance or billing to another telephone number, offering its services to owners of large numbers of telephones, such as hotels, hospitals, and universities. NTS markets directly to both multi-facility accounts and single-facility accounts, particularly in the hospitality industry. (Bryan Direct, Ex. 2, at p. 6; Tr. Vol. II, at p. 93). NTS also supplies operator services to interexchange carriers and resellers which have chosen not to provide those services internally. (Tr. Vol. II, at p. 58).

## 2. The Impact of Competition.

Competition in the operator services market has benefitted both telephone owners and end users. In both words and deeds,



the companies in the market have acknowledged the scope and effects of competition.

AT&T's Division Manager of Operator Services Marketing has conceded that the market is competitive: "We know that there is competition in the [operator services] marketplace. We know how they are competing, and we intend to compete." (Bryan Direct, Ex. 2, Schedule N, at p. 2). Testifying on behalf of NTS, James Bryan stated that "[t]he companies in the industry compete with each other in the non-dominant sense--the non-dominant companies compete with each other and with AT&T. There is vigorous competition for the subscriber base." (Tr. Vol. II, at p. 68). Staff witness John Van Eschen also acknowledged that operator services is a competitive industry. (Tr. Vol. III, at p. 374).

The customary arrangement for the competitive operator services providers (OSPs) such as NTS involves the sharing of revenues from "0" long distance traffic in the form of commissions to telephone owners.<sup>2</sup> One example of AT&T's response to operator services competition is the renewal of a previously-discontinued program of offering commissions to traffic aggregators for "0+" long distance calls. (Bryan Direct, Ex. 2, at p. 23). Known as the AT&T Hospitality Network Service, this

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<sup>2</sup>Throughout this brief, the term "OSPs" refers to companies providing operator services. "Competitive OSPs" refers to the companies which provide, or propose to provide, operator-assisted services in competition with AT&T and local exchange companies. The five petitioners in the case captions seek to be competitive OSPs for intrastate purposes in Missouri.

program provides for commission payments to hotels, hospitals, and universities. (Bryan Direct, Ex. 2, Schedule N, at pp. 22-23).

The competitive OSPs have altered their behavior to meet competitive pressures. Mr. Bryan testified that "[t]he rates of virtually all OSPs have declined substantially over the past six months, and rate levels in [the] OSP industry continue to fall," because "market forces [have begun] bringing rates back into line." (Bryan Rebuttal, Ex. 3, at p. 6). NTS's rates have declined dramatically, to the point where its interstate rates are close to AT&T's interstate rates and include time-of-day discounts. (Tr. Vol. II, at pp. 136-37).

The competitive OSPs have also responded to competition by offering innovative services to the calling public. NTS will bring to the market such services as voice mailbox, voice messaging, electronic yellow pages, concierge services and weather reports. (Bryan Direct, Ex. 2, at p. 26). NTS offers multiple billing options and state-of-the-art emergency services, which deliver emergency calls almost instantaneously to the appropriate emergency service provider. (Bryan Direct, Ex. 2, at p. 8; Tr. Vol. II, at pp. 60-61 and 77-78). For its part, ITI offers multilingual operators, teleconferencing, message forwarding, and it will soon offer directory assistance and a hearing enhanced program. (Freels Direct, Ex. 6, at pp. 19-20; Tr. Vol. II, at pp. 177-78).

Competition will force a "shakeout" in the operator services industry, in the same way there has been a competitive shakeout

in the interexchange carrier market industry. Some OSPs will survive, others will not. The shakeout may have already begun. In October, 1988, Pamtel, a competitive OSP in the Pacific Northwest, filed for protection under the bankruptcy laws.

Competition has also resulted in the recent founding of the Operator Service Providers of America (OSPA), a trade association formed as "a serious attempt at industry self-regulation." (Bryan Direct, Ex. 2, at p. 29). NTS is a charter member of OSPA, which has adopted a Code of Responsibility requiring members to identify themselves to callers, charge reasonable rates, and provide all services on a quality basis. (Tr. Vol. II, at p. 131; Bryan Direct, Ex. 2, Schedule T).

Competition will continue to force all OSPs, including AT&T, to minimize rates and maximize the quantity and quality of their services. The distinction between IXCs and OSPs will blur, as the OSPs move to create their own networks and the IXCs begin to offer operator services. (Van Eschen Direct, Ex. 11, at p. 4).

### 3. Investigations of the Industry by the FCC and NARUC.

This case is not the first to scrutinize competitive operator services. Federal and state regulatory authorities have conducted major investigations of the industry, concluding that the industry's supposed problems are largely unfounded and that competitive operator services can provide substantial benefits to the public.

The Federal Communications Commission conducted an extensive investigation in the spring of 1988. In his post-investigation report, FCC Chairman Dennis Patrick noted that the FCC's Common

Carrier Bureau had contacted all competitive OSPs about which the FCC had received complaints and had received substantial information from those companies. Based on that information, Chairman Patrick reached the following conclusions:

it appears that AOS companies are potential sources of new, innovative services for the public, such as bilingual operators and voice messaging services. There is already evidence that AT&T and some Bell Operating Companies have moved to diversify their operator services in response to this competition. Thus, it seems likely that competition in the operator services market can produce consumer benefits which should not be eliminated by regulatory action.

(Bryan Direct, Ex. 2, Schedule V, Attachment 2, at p. 4).

The National Association of Regulatory Utility Commissioners (NARUC) also commissioned an extensive investigation of the competitive operator services industry. The NARUC Task Force relied on questionnaire responses from all fifty state regulatory commissions and many state consumer counsels, telephone associations, and local exchange companies. Issued on June 24, 1988, the report concludes that rates are the major perceived problem of the competitive OSPs and that all other concerns are "byproducts" of the rate problem. (Bryan Direct, Ex. 2, Schedule U, Section 1, at p. 2).

The NARUC Task Force proposed guidelines for regulation of operator services. NARUC endorsed the proposal in a resolution adopted at its July, 1988 meeting. (Bryan Direct, Ex. 2, Schedules V and W). The NARUC resolution proposes a regulatory structure for competitive operator services. The proposal put

forward by Staff in these proceedings is largely similar to the NARUC resolution.<sup>3</sup>

B. The History and Management of National Telephone Services and Its Financial and Technical Ability to Provide Operator-Assisted Services.

NTS has the technical and managerial expertise and the financial ability to be a reliable telecommunications provider in Missouri.

The NTS management team has a wealth of experience in the telecommunications industry. NTS's managers have extensive experience with interexchange carriers (e.g., US Sprint, MCI, Satellite Business Systems, and LDX), local exchange companies (GTE, Contel, and Southwestern Bell), and other specialized telecommunications entities (BellCore and Metromedia Long Distance). They also have extensive experience in managing large business organizations. Joseph F. Switzer, Jr., the President of NTS, founded the Company after many years in senior management at the American Express Company, Manufacturers Hanover, and First Atlanta Corporation. Other managers of NTS have held positions with major national accounting firms and manufacturing companies. (Bryan Direct, Ex. 2, Schedule A).

Presently, NTS is authorized to carry intrastate operator-assisted long distance traffic in 23 states, including nine states which have expressly awarded certificates of public convenience and necessity. NTS carries interstate traffic in 48 states and the FCC has awarded NTS a certificate to carry international traffic. (Bryan Direct, Ex. 2, at p. 5).

NTS has developed a substantial network and operator service

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<sup>3</sup>See Section III (F) infra.

capability. In his direct testimony and attached schedules, Mr. Bryan describes in detail the engineering and technical configuration of NTS's network and how calls are processed over the network. Schedules E, G, and H to Mr. Bryan's direct testimony describe in detail NTS's call-handling procedures. Schedules F, G, and H contain detailed information concerning the configuration and design of NTS's call processing network. NTS uses state-of-the-art telecommunications equipment and purchases transmission capacity from several facilities-based interexchange carriers, including MCI, AT&T, and US Sprint. (Bryan Direct, Ex. 2, at p. 10).

The growth of NTS's operations has been dramatic. Less than three years after it began operation, NTS today handles more than 3 million calls per month. In March, 1988 NTS achieved its first profits and the second quarter of 1988 was solidly profitable. (Bryan Direct, Ex. 2, at pp. 4-5). The most recent balance sheet demonstrates that the Company's accounts receivable, fixed assets, and intangible assets exceed the amounts owed to lenders, showing that NTS has more than sufficient assets to fund its debt. The income statement for the first quarter of 1988 shows revenues in excess of \$14,250,000, or approximately \$4,700,000 per month, and a loss for that period of about \$1,000,000. (Bryan Direct, Ex. 2, Schedule D). Revenues have doubled since the first quarter of 1988, to the point where revenues now exceed \$7,000,000 per month. (Bryan Direct, Ex. 2, at pp. 4-5).

NTS is a young company. However, its managerial, technical,

and marketing abilities have fueled its rapid penetration into the competitive operator services market. NTS's ability to serve its customers is persuasive proof of its ability to provide reliable service of unquestioned quality.

C. The Terms and Conditions of the Services Which National Telephone Services Proposes to Offer in Missouri.

In his prefiled testimony and cross-examination, Mr. Bryan offered a detailed description of the services NTS proposes to offer in Missouri. Mr. Bryan committed NTS to full cooperation with the Commission's effort to craft appropriate regulations, and to full compliance with the Commission's regulatory orders. (Bryan Direct, Ex. 32, at p. 30).

1. Description of Proposed Services.

NTS proposes to provide "intrastate operator-assisted resold telecommunications services" in Missouri, as described in Exhibit B to its Application and in the proposed tariff. The rates and other conditions under which the services will be offered are described in detail in the tariff.

Sections 2.1 and 2.2 of the tariff describe in broad terms the services NTS seeks authority to provide in Missouri. Section 2.2 notes that although NTS does not propose to undertake this service in conjunction with any other telecommunications provider, the service will involve the resale of MTS and WATS services purchased from other carriers. (Bryan Direct, Ex. 2, Schedule K, at original p. 7). Those transmission services would be purchased principally from MCI, US Sprint, and AT&T. (Bryan Direct, Ex. 2, at p. 10).

Section 3.1 of the tariff describes the scope of operator assistance to be provided by NTS. The operator services would be supplied for "0" traffic over telephones owned by NTS customers. The operator services would include "provision of collect, approved telephone company calling card, credit card, room charge, billed to a third number (third party), and person-to-person call services... ." (Bryan Direct, Ex. 2, Schedule K, at original p. 8). As noted in Section III (A)(2) supra, NTS also proposes to provide various enhanced operator services, such as voice messaging, emergency call handling, directory assistance, weather reports, and concierge services. These services would be provided under tariffed terms, conditions, and rates, with the exception of emergency call handling, which would be provided at no charge.

## 2. Customer Arrangements.

To provide its services to callers, NTS proposes to enter into contractual agreements with telephone owners. In return for NTS's commitment to share revenues generated by "0" long distance traffic from the owners' telephones, the owners would agree to direct all such traffic to the NTS network. Typically, these arrangements would take the form of written contracts calling for a 15% commission, to be paid to telephone owners out of the revenues generated by the rates which NTS proposes to charge. (Tr. Vol. II, at p. 167; Bryan Direct, Ex. 2, Schedule Q).



### 3. Proposed Rates.

The rates which NTS proposes in its tariff are equal to the rates which Southwestern Bell charged for intrastate intraLATA toll calls in Missouri prior to July 1, 1988. (Bryan Direct, Ex. 2, at p. 15; Tr. Vol. II, at p. 59). The rates consist of two elements: (1) a time and distance sensitive rate and (2) a fixed operator service charge. (Bryan Direct, Ex. 2, at p. 15). The time and distance sensitive rate includes a per minute charge for service, broken down by separate charges for the initial minute and each additional minute.

Under Section 4.1 of the proposed tariff, the minimum charge for a call is one minute, and each additional fraction of a minute is counted as one full minute. Thus a call lasting 30 seconds would be counted as one minute, and a call lasting one minute and 30 seconds would be counted as two minutes. (Bryan Direct, Ex. 2, Schedule K, at original pp. 12-13).<sup>4</sup> NTS would impose no charge for emergency calls which enter its network, regardless of the operator time necessary for processing those calls through to the appropriate emergency service providers. (Bryan Direct, Ex. 2, at p. 22).

NTS will provide rate quotes upon request on a 24-hour basis. The operator will obtain the information by pressing the appropriate key on the operator console. Typically, a rate quote may be obtained within 10 to 15 seconds of the request. (Tr. Vol. II, at pp. 131-32 and 136).

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<sup>4</sup>Contrary to Public Counsel's suspicions, there is no three-minute minimum. (Tr. Vol. IV, at p. 539).

#### 4. Location Surcharges.

NTS's proposed tariff notes that some of its subscribers may desire to charge an amount for telephone calls in addition to the tariffed rates charged by NTS. Referred to in Section 2.4 of the tariff as "location surcharges," these charges are imposed in the subscriber's sole discretion. The tariff notes that "such surcharges are not included in the charges set forth in this tariff..." (Bryan Direct, Ex. 2, Schedule K, at original p. 7).

Surcharges allow telephone owners, such as hotels, to recover the cost of their telecommunications systems. (Tr. Vol. II, at pp. 140-41). However, NTS would not oppose a Commission prohibition against the collection of surcharges by OSPs. (Bryan Direct, Ex. 2, at p. 20). Mr. Bryan testified that "should there be a requirement across the board that such surcharges not be billed by the operator service provider,... we'd very happily comply with such a requirement." (Tr. Vol. II, at p. 129). NTS would be satisfied to have all charges to the caller included in the NTS tariff, including any compensation paid to the telephone owner by NTS. (Tr. Vol. II, at p. 142).

#### D. Benefits to Missouri Consumers and Telephone Owners from the Provision of Competitive Operator Services.

Competitive operator services will provide numerous benefits to both telephone owners and telephone users in Missouri. As has already occurred in the interstate operator services market, intrastate competition will compel AT&T to improve its service offerings and to share long distance revenues with telephone owners. NTS will allow callers to bill calls to their local

exchange company calling cards, bank credit cards, or hotel rooms, an array of choices not available as long as AT&T is the "only game in town." New services will be available, including voice mailbox, voice messaging, electronic yellow pages, and concierge services. Finally, sharing long distance revenues with pay telephone owners and traffic aggregators will allow those entities to recover their investments and will encourage them to increase the number of telephones available to the public. (Bryan Direct, Ex. 2, at pp. 23-27).

On behalf of the Midwest Independent Coin Payphone Association, Gary Pace testified that due to operator services competition, AT&T has expanded its commission program for the private coin payphone industry. (Pace Direct, Ex. 8, at p. 4). Local exchange companies, including Southwestern Bell and United Telephone of Missouri, have recently entered into agreements with pay telephone owners to share "0" long distance revenues. Such revenue-sharing would not have appeared without the prospect of competition for those accounts. (Pace Direct, Ex. 8, at pp. 4-5).

Mr. Pace emphasized that the sharing of "0" revenues is critical to the viability of the private payphone industry in Missouri: "[n]on-coin revenues are essential for association members, the private providers, to be profitable as private payphone vendors and therefore provide the benefits of competition to the public." (Pace Direct, Ex. 8, at pp. 9-10). Today, less than one percent of the pay telephones in Missouri are privately owned. If the Commission does not allow

competitive OSPs to share operator-assisted revenues with pay telephone owners, the Missouri private payphone market will die. (Tr. Vol. III, at pp. 350 and 356).

Competitive operator services will offer "trouble reporting," a service in which a caller encountering difficulty completing a call may dial "0" to receive assistance from an operator. The OSP notifies the telephone owner of the problem. Mr. Pace observed that such help with trouble calls is of great importance to the private payphone industry. This service is not provided by local exchange companies to private payphone owners, even though the LECs provide the access lines to the telephones. (Freels Direct, Ex. 6, at p. 19).

Staff witness Van Eschen noted that competitive operator services will allow IXCs and OSPs to become "full service" telecommunications companies. Carriers such as US Sprint and MCI may contract with existing OSPs or develop operator capabilities internally. Likewise, OSPs such as NTS and ITI could develop direct interexchange capabilities of their own. (Van Eschen Direct, Ex. 11, at p. 4).

#### E. Disputed Issues.

In mounting its opposition to NTS's Application, Public Counsel has attempted to raise objections to various aspects of the services which NTS proposes to offer. In each case, Public Counsel is in error.

1. Rates.

Public Counsel accuses NTS and other competitive OSPs of "price gouging" and "excessive rates." However, the rates which NTS proposes to charge are equal to Southwestern Bell's intraLATA rates prior to a July 1, 1988 rate reduction. (Bryan Direct, Exhibit 2, at p. 15). NTS's proposed rates would now average 5.9% higher than Southwestern Bell's rates for the first minute, and 5.6% higher for each additional minute.

The only other difference between NTS's proposed operator-assisted rates and Southwestern Bell's existing rates is the charge for the flat rate operator-assistance for credit card and third number-billed calls. Southwestern Bell charges .30¢ for such calls, while NTS proposes to charge \$1.05. However, NTS's proposed rate for "0-" directory assistance is less than the charge imposed by Southwestern Bell: .60¢ as opposed to .90¢ per call. (Van Eschen Direct, Ex. 11, Schedule 2).

NTS proposes to pay commissions to telephone owners out of the revenues derived from the tariffed rates. For many calls the revenues actually received by NTS, net of the commissions to the telephone owner, would be less than the revenues Southwestern Bell would receive if it carried the call.

Public Counsel alleges that rates would be necessarily excessive due to the addition of location surcharges to the tariffed rates. (Drainer Direct, Ex. 12, at p. 3). Public Counsel ludicrously accuses NTS and the other competitive OSPs of charging rates 200% higher than the rates callers are accustomed to pay the so-called "traditional" carriers, AT&T and Southwestern Bell. (Drainer Rebuttal, Ex. 13, at 11).

On cross-examination, Ms. Drainer conceded that toll rates in excess of Southwestern Bell or AT&T rates are not necessarily excessive or unreasonable. (Tr. Vol. IV, at pp. 526-27). Ms. Drainer conceded that Public Counsel is concerned only with the issue of surcharges, and not with the proposed rates or commission payments to telephone owners:

Q: ... Has Public Counsel formed an opinion as to whether the rates which NTS proposes are just and reasonable?

A: If we are looking only at the rates and if we can assume that they will not charge surcharges or bill for surcharges and that the customer will see no rate but that rate on their bill, that's all they have to pay, and they know of any other surcharges up front so they can make an educated choice in making that phone call, then, you know, they have proper notice and awareness, then those rates are not a serious problem, no.

(Tr. Vol. IV, at pp. 524-25).<sup>5</sup> Ms. Drainer admitted that Public Counsel objects only to bundling hotel surcharges with tariffed rates.

Staff witness Van Eschen compared the rates proposed by NTS and several other OSPs with the rates presently charged by Southwestern Bell and AT&T. (Van Eschen Direct, Ex. 11, Schedule 2). Mr. Van Eschen testified that in Staff's opinion, the rates

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<sup>5</sup>Public Counsel appears to have abandoned its position that competitive OSP rates should be capped at AT&T rates. (Hearing Memorandum, Ex. 1, at p. 12). Staff and the competitive OSPs argued against an arbitrary cap on rates because AT&T and LEC costs have no relation to the costs of competitive OSPs. (Van Eschen Direct, Ex. 11, at pp. 6-7; Bryan Direct, Ex. 2, at p. 16). Any attempt to place an arbitrary cap on competitive OSPs' rates would run afoul of constitutional considerations, including Fifth Amendment protections against taking property without just compensation and Fourteenth Amendment prohibitions against taking property without due process of law.

which NTS has proposed are just and reasonable. (Tr. Vol. III, at p. 366). He voiced satisfaction with NTS's practice of providing rate quotes at no charge. (Tr. Vol. III, at p. 371). Finally, Mr. Van Eschen observed that Staff believes that many of the problems which have been occasioned by competitive OSP rates will be eliminated with rate quotations on request. (Van Eschen Direct, Ex. 11, at pp. 5-6).

## 2. Location Surcharges.

NTS's proposed tariff includes a reference to "location surcharges." NTS will play no role in determining whether surcharges are imposed, and if so, in what amount. (Bryan Direct, Ex. 2, Schedule K, at original p. 7).

Public Counsel is vehemently opposed to the imposition or billing of any location surcharges. Ms. Drainer incorrectly testified that such surcharges are included in the rates charged by the competitive OSPs. (Drainer Direct, Ex. 12, at p. 3). As noted above, surcharges will not be part of NTS's tariffed rates.

At the hearing Ms. Drainer conceded Public Counsel believes that the "rates" of competitive OSPs constitute "gouging" only because of the surcharges. (Tr. Vol. IV, at p. 551). On closer cross-examination, Ms. Drainer further refined Public Counsel's objection on the surcharge issue: Public Counsel believes that OSPs should not be allowed to bill location surcharges, unless surcharges can be unbundled in the caller's bill from the charges generated by the tariffed rates, and that local exchange service

should not be disconnected for non-payment of surcharges. (Tr. Vol. IV, at pp. 501, 538, 551, 573, and 579-81).

Staff argues that location surcharges are proper, but may not be billed by the OSP unless separately identified in the end user's bill. If the entity imposing the surcharge, such as a hotel, hospital, or payphone owner, is a certificated telecommunications provider, the OSP may bundle the surcharge in the bill. (Van Eschen Direct, Ex. 11, at p. 8; Tr. Vol. III, at p. 380).

NTS has concerns about the surcharge issue. Mr. Bryan testified that NTS would not oppose a Commission order that OSPs may not bill or collect location surcharges. (Bryan Direct, Ex. 2, at p. 20; Tr. Vol. III, at p. 129).

### 3. Carrier Identification.

One of the major difficulties for competitive OSPs has been a perception that they fail to identify themselves to callers, leading to caller confusion. (Van Eschen Direct, Ex. 11, at p. 5). Although Staff expressed satisfaction with NTS's efforts to identify itself to callers, Public Counsel claims that the competitive OSPs should observe notice requirements far more onerous than required of AT&T.

Mr. Bryan described NTS's efforts to identify itself to all callers. Noting that the two methods for providing notice are operator announcements and telephone postings, Mr. Bryan observed that NTS may only control its operator announcements, while postings are under the sole control of the telephone owner.



On "0+" calls in which the caller automatically inputs his or her calling card number, an electronic notice announcing that the call is being carried over the NTS network is given before the call is delivered to the called number. The caller may hang up, without charge, until the call is answered. On calls where the caller communicates billing information to a live operator, the operator identifies NTS as the carrier not once, but twice, before sending the call to the terminating number. Again, the caller may hang up, without charge, before the call is answered. (Bryan Direct, Ex. 2, at p. 13).

In the area of postings, NTS supplies telephone tent cards to all subscribers. (Bryan Rebuttal, Ex. 3, at p. 7). Because NTS does not own or have automatic access to the property on which the telephone is located, NTS cannot monitor the subscriber's postings. Requiring such postings could also have an adverse competitive impact. In response to Public Counsel's questions as to whether NTS would require such postings in its subscriber contracts, Mr. Bryan testified that "... insofar as other providers of service may not have to require a property owner to post such a notice, then I am at a significant competitive disadvantage in marketing to that location owner." (Tr. Vol. II, at p. 112).

Ms. Drainer disingenuously testified that NTS opposes any notification procedures. (Drainer Rebuttal, Ex. 13, at p. 8). In fact, NTS opposes notification procedures which are "overly cumbersome" and discriminatory because they are not applied to the dominant OSPs, including AT&T. (Bryan Direct, Ex. 2, at p.

12). At the hearing, Ms. Drainer was forced to concede that she had testified in error. (Tr. Vol. IV, at p. 551).

Staff witness Van Eschen expressed his approval of the call announcement procedures used by NTS. (Tr. Vol. III, at p. 365). Staff encourages the placement of tent cards at OSP-presubscribed telephones, but does not state that competitive OSPs should be required to use those notices. (Hearing Memorandum, Ex. 1, at p. 18). Staff is pleased that NTS has placed its name on local exchange company bills to customers. (Tr. Vol. III, at p. 371).<sup>6</sup>

#### 4. Access to Other Interexchange Carriers.

Public Counsel demands that all competitive OSPs provide free access to all interexchange carriers, alleging that OSPs have denied such access to callers by refusing to allow "splashback." (Drainer Direct, Ex. 12, at p. 7). Ms. Drainer conceded on cross-examination that AT&T refuses to deliver calls to other interexchange carriers if a caller so demands. Inexplicably, Public Counsel still believes that all other OSPs should be required to do so (Tr. Vol. IV, at p. 584), even if it results in unfair discrimination against some OSPs:

Q: On the question of toll free access to other interchange carriers, would that be required of all operator service providers?

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<sup>6</sup>In fact, NTS includes both its name and telephone number in local exchange bills, a procedure which even Public Counsel admits is satisfactory. (Tr. Vol. II, at p. 69; Vol. IV, at p. 499).

A: I believe that at this point we want the AOS providers to be able to provide toll free access to all other authorized IXC and local exchange carriers. That is our recommendation.

. . .

Q: Would you want them to do it--pardon me. Do you want the AOS providers to do it before AT&T does?

. . .

A: Yes. Yes.

(Tr. Vol. IV, at pp. 543-44).

Access to interexchange carriers is largely controlled by the owner of the telephone, not the OSP. If the telephone owner programs the telephone not to allow access to interexchange carriers other than the carrier to which the telephone has been presubscribed, the OSP can do nothing about that. (Freels Rebuttal, Ex. 7, at pp. 11-12).

Public Counsel overlooks the fact that NTS already provides splashback wherever possible, at no charge to callers, even though NTS incurs a non-recoverable access charge of .45¢ per call. (Bryan Direct, Ex. 2, at p. 25). An additional difficulty occasioned by splashing calls to AT&T is that because AT&T refuses to accept the Automatic Number Identification (ANI) of the originating number, AT&T cannot properly bill the call. The customer's AT&T bill reflects a call originating in the geographic location of the NTS operator center, where the call physically enters the AT&T network. If AT&T accepted the originating ANI, as NTS has proposed repeatedly, this billing confusion would be avoided. (Bryan Rebuttal, Ex. 3, Schedules 1 and 2). AT&T has simply refused to accept that information. (Tr. Vol. II, at pp. 26 and 151).

5. OSP Utilization of Telephone Company Calling Cards.

One of the benefits which the competitive OSPs will provide in Missouri is the option of billing calls to major credit cards and local exchange company calling cards. Public Counsel has no dispute with charging calls to those cards, but it questions why OSPs charge calls to AT&T-issued calling cards. Public Counsel accuses the OSPs of "misrepresenting themselves to the end users by accepting another company's credit card..." (Drainer Direct, Ex. 12, at p. 7). Such is not the case.

NTS and ITI cannot avoid accepting charges on the AT&T calling card. The number on the AT&T card is almost always identical to the number on the corresponding LEC calling card, which the OSPs may legitimately accept. Without contradiction, Mr. Bryan testified that NTS cannot identify a card as an AT&T card, unless the caller voluntarily identifies the card as such. (Tr. Vol. II, at pp. 67 and 88-89). Even AT&T cannot distinguish between those numbers: "[c]urrently AT&T and the local exchange companies issue cards with exactly the same number. ... AT&T can't distinguish current their card from a local exchange company [card] and I can't either." (Tr. Vol. II, at pp. 168-69).

If a caller identifies a calling card as having been issued by AT&T, NTS operators are instructed to refuse the card and to attempt to obtain another source of billing before completing the call. (Tr. Vol. II, at p. 67).

Notably, Staff witness Van Eschen acknowledged the problem faced by the OSPs in distinguishing between the AT&T and LEC

calling cards. Mr. Van Eschen acknowledged that the difficulty is unavoidable:

Q: Do you have any reason to doubt the explanation given by Mr. Bryan and the witnesses for ITI as to why the AT&T card may be used?

A: I understand why there may be a problem in that area in the respect that it's difficult to tell the difference between an AT&T calling card and a LEC calling card.

(Tr. Vol. III, at p. 372).

6. Billing for Uncompleted Calls.

In many areas OSPs, like other non-dominant carriers, must subscribe to non-premium access, such as Feature Groups A and B. With these forms of terminating access, the local exchange company may not provide answer supervision to the OSP. Without answer supervision, the OSP cannot determine whether a call has been answered. To have some method of reasonably measuring traffic carried over its network, an OSP must develop a "call timing substitute." This surrogate will not only unavoidably result in billing for some uncompleted calls, but it will also fail to bill short duration calls that are in fact answered. (Bryan Direct, Ex. 2, at pp. 22-23; Bryan Rebuttal, Ex. 3, at p. 9).

In her direct testimony on behalf of Public Counsel, Ms. Drainer accused the OSPs of engaging in a "practice" of charging for unanswered calls. She asserted that the OSPs charge for all unanswered calls. (Drainer Direct, Ex. 12, at p. 8). However, Ms. Drainer's testimony at the hearing undermined that accusation. She conceded that answer supervision is not available throughout Missouri. (Tr. Vol. IV, at p. 498). She

conceded that the billing problem exists, and that she has no reason to question the OSPs' explanation:

Q: Are you aware of the answer supervision problem that the AOS providers have to deal with?

A: Yes, I am now.

Q: Do you have any reason to question that's why there might be a problem with the billing for unanswered--for incomplete calls?

A: No, Mark. I don't question that.

(Tr. Vol. IV at p. 539). Staff witness Van Eschen also acknowledged the existence of the problem. (Tr. Vol. III, at pp. 369-70).

7. Disconnection of Local Exchange Service for Failure to Pay OSP Charges.

NTS seeks equal status with all interexchange carriers with respect to local exchange service disconnection for a caller's failure to pay undisputed NTS charges. (Bryan Direct, Ex. 2, at pp. 11-12; Bryan Rebuttal, Ex. 3, at p. 9). The LECs support NTS on this issue.

Southwestern Bell's local exchange service tariff allows for disconnection of local service for the non-payment of charges billed by Southwestern Bell to its customers. Southwestern Bell believes that this policy should be extended to non-payment of undisputed competitive OSP charges. (Bailey Direct, Ex. 17, at p. 7). The Independent LECs agree with that position. Contel witness Thomas Schmersahl stated that the absence of the power to disconnect would make his company's billing and collection service far less attractive to competitive OSPs. (Hearing Memorandum, Ex. 1, at p. 24; Tr. Vol. III, at pp. 438-39).

Staff also supports NTS, recommending that local service be disconnected if the OSP is certificated and the unpaid charges are based on a tariffed rate. (Tr. Vol. III, at p. 367). Mr. Van Eschen emphasized that the charge must be undisputed and delinquent, as required by Commission regulation and LEC tariffs. (Tr. Vol. III, at pp. 368-69).

Public Counsel stated categorical opposition to disconnection of local exchange service for non-payment of any OSP charges. (Drainer Direct, Ex. 12, at p. 8). At the hearing, Ms. Drainer modified Public Counsel's position by stating that her objection was to disconnection for failure to pay location surcharges, not for failure to pay the tariffed rates of OSPs. (Tr. Vol. IV, at pp. 538 and 579-80).

8. Alleged Misreporting of Intrastate Traffic as Interstate Traffic.

Because OSPs must subscribe to Feature Group B access in certain non-equal access areas, there is the theoretical possibility that an OSP could misreport intrastate traffic as interstate traffic. However, NTS can distinguish between interstate calls and intrastate calls on Feature Group B lines. (Tr. Vol. II, at p. 111). Not only can NTS detect the difference in the jurisdictional nature of the calls, but it also accurately reports the correct nature of the call. (Tr. Vol. II, at p. 107).

9. Emergency Call Handling by OSPs.

Public Counsel accuses the OSPs of failing to route emergency service calls properly and expeditiously. (Drainer Direct, Ex. 12, at pp. 5 and 7). However, Public Counsel's witness points to no evidence supporting that claim. In fact, NTS's state-of-the-art emergency call system delivers calls to the proper emergency service provider in seconds.

It is unlikely that many calls for emergency services have been or will be processed by OSPs. Even if a telephone is presubscribed to an OSP, emergency calls utilizing the customary 911 number or "0-" (in equal access areas) are automatically diverted to the local exchange company. (Tr. Vol. II, at p. 135). However, when an emergency call is delivered to the NTS network, the operator accesses the appropriate emergency service provider in the geographic location of the caller's telephone with two keystrokes. This process takes a matter of only a few seconds. (Tr. Vol. II, at pp. 60-61). This procedure is strikingly similar to the procedure called for by the emergency service provisions of the NARUC resolution, which suggests that such calls be routed to the appropriate emergency service entity "in the fastest possible way." (Bryan Direct, Ex. 2, Schedule W, at p. 2).

At the hearing, Ms. Drainer stated that Public Counsel would like to have OSPs apply state-of-the-art technology in the emergency call area, equivalent to the technology used by AT&T and the local exchange carriers. Ms. Drainer questioned whether NTS and ITI, both of which apply the most up-to-date technology



in the emergency service area, can in fact handle calls as expeditiously as possible. (Tr. Vol. IV, at pp. 535-36). Ms. Drainer admitted that she did not know how long it takes Southwestern Bell to process an emergency call, much less what period of time would be reasonable.

On the other hand, Staff witness Van Eschen testified that Staff advocates allowing competitive operator services in Missouri and is satisfied with the OSPs' emergency call-handling procedures. Staff would like to conduct a study as to the actual length of time the OSPs take to process emergency calls. (Tr. Vol. III at p. 372-74).

Not only does NTS utilize an up-to-the-minute emergency network, it also maintains comprehensive data on emergency service provider telephone numbers. Gary Pace of MICPA testified that NTS requires prospective subscribers to fill out emergency service forms with relevant information for each telephone to be placed on the NTS network. (Tr. Vol. III, at p. 334).

#### 10. Operator Response Time.

To be competitive, OSPs must answer calls as quickly as possible. Mr. Bryan testified that NTS has studied call response times. Those studies demonstrate that NTS operators take from three to five seconds to answer a call after it has been delivered to NTS's point of presence. (Tr. Vol. II, at p. 69). When asked by counsel for Southwestern Bell whether NTS would comply with Commission rules on call response time, Mr. Bryan testified NTS would comply with any non-discriminatory Commission standards. He also testified that such standards should be

applied to all OSPs on a non-discriminatory basis. (Tr. Vol. II, at pp. 75-76).

F. Staff Proposal for Regulation of Competitive Operator Services Providers.

Staff witness John Van Eschen proposed a comprehensive set of regulations for the competitive operator services industry. NTS endorses Staff's proposal, which is similar to the recommendations adopted by NARUC.

Mr. Van Eschen noted that the competitive operator services industry has been the source of many complaints by end users. He attached to his direct testimony a schedule including the number and nature of complaints filed with the Commission against competitive OSPs. (Van Eschen Direct, Ex. 11, Schedule 1). In summarizing his conclusions concerning those complaints, Mr. Van Eschen stated that most of the complaints arose out of the "lack of operator identification and high rates." He observed that NARUC's Task Force reached a similar conclusion. (Van Eschen Direct, Ex. 11, at p. 5).

To eliminate these problems, Mr. Van Eschen proposed a set of guidelines for the Commission's consideration. The guidelines include the following:

1. No intentional billing of incomplete or emergency calls;
2. OSP identification during the initial verbal contact with a caller, as well as identification to the billed party on collect calls and third party calls;
3. Rate quotes upon request at no charge, broken down by rates for the initial minute and any additional minute, and charges for operator assistance;

4. Bundling charges on customer bills only if all charges are imposed by certificated carriers and included in Commission-approved tariffs, and proscription of disconnection of local exchange service for non-payment of any charge not previously approved by the Commission;
5. Where the LEC performs billing and collection services for the OSP, the customer's local exchange bill should contain the OSP's name;
6. Calls charged to telephone company calling cards must be accurately billed, including correct identification of the location of the caller and the called party; and
7. OSPs may handle "0-" traffic only upon satisfactory demonstration of appropriate emergency call-handling procedures.

(Van Eschen Direct, Ex. 11, at pp. 13-14). Staff believes that these guidelines should apply to all OSPs, including AT&T. (Van Eschen Direct, Ex. 11, at p. 14).

Mr. Bryan voiced NTS's agreement with Staff's proposal:

I would like to strongly endorse the rules proposed by Mr. John Van Eschen of the Commission Staff in his direct testimony. It is NTS's opinion that these rules effectively protect the public interest while allowing sufficient flexibility to allow all OSPs to adapt to a rapidly evolving environment.

(Bryan Rebuttal, Ex. 3, at p. 10).

#### IV. ARGUMENT

NTS wants to compete fairly with other operator services companies. It seeks no preferential treatment, only an understanding that all OSPs, including AT&T, should be subject to the same regulatory scheme.

A. The Innovative Services Offered by NTS  
and the Advantages of Competition  
Demonstrate that Certification of NTS  
As a Competitive Telecommunications Company  
is in the Public Interest.

This Commission has stated the public interest requires the development of competitive markets to replace regulated monopolies. In this case, the Commission has the opportunity to open the operator services market to competition. The evidence demonstrates that the Commission should take advantage of that opportunity and grant certification to NTS.

As the Commission's Order of April 5, 1988 states, the governing standard for certification is set out in Ch. 392.440, RSMo. 1987, which provides that the Commission shall grant interexchange certification if the applicant proves that certification is in the public interest. The "public interest" to be promoted by the Commission is defined in Ch. 392.530, RSMo. 1987, which outlines the policy of House Bill 360. Under that provision, the Commission must construe the statute to promote:

- (1) universally available and widely affordable telecommunications services;
- (2) efficiency and availability of telecommunications services;
- (3) diversity in the supply of telecommunications services;
- (4) flexible regulation of competitive telecommunications companies; and
- (5) full and fair competition as a substitute for regulation.

In the April 5 Order, the Commission expressed interest in six operator service issues:

- (1) access to emergency services;

- (2) notice of carrier identification to end users;
- (3) billing and collection procedures, including the possibility of local service disconnection for non-payment of competitive OSP charges;
- (4) OSP rates;
- (5) complaint procedures; and
- (6) service quality and call-processing times.

(Order of April 5, 1988, at p. 2). The evidence proves that NTS has responded satisfactorily to the Commission's concerns in each area and should be certificated.

The Commission has announced the standard for certification of intrastate interLATA long distance carriers (and by later ruling, intraLATA toll carriers). Applicants must describe their proposed service, demonstrate their financial ability to provide the proposed service, and pledge to abide by the Commission's orders, rules and regulations. Case No. TX-85-10, 10 Mo. Reg. 1048 (1985). If an applicant meets those standards, "the Commission will assume that additional competition ... is in the public interest, and a [certificate of service authority] should be issued." In the matter of the application of MidAmerican Long Distance Company (quoted in Van Eschen Direct, Ex. 11, at p. 3).

NTS should be certified as a competitive telecommunications company under Ch. 392.361, R.S.Mo. 1987. The scope of competition for operator-assisted traffic, particularly where AT&T and the LECs control the vast majority of such traffic, is such that competitive pressures will surely be sufficient to regulate NTS's prices and service offerings. As noted below, NTS has endorsed Staff's regulatory proposal, and considers that

proposal presently to be the "lesser degree of regulation" contemplated by House Bill 360.

House Bill 360 and recent Commission decisions make clear that fostering competition, subject to certain uniform guidelines, is now the focus of telecommunications regulation. In the context of toll service, the Commission has stated that:

...competition will result in new and improved services, lower prices and faster responses to customers' needs, which will benefit the public. Not only will the ratepayers be benefitted, the telecommunications industry in Missouri should be stimulated by the opening of this new market and encouraged to develop new technology and efficiencies in the industry.

In the Matter of the Investigation into WATS Resale by Hotels/Motels, 28 Mo. P.S.C. (N.S.) 535, 547 (1986). NTS and the other competitive OSPs have already created new services for the public, forced AT&T to renew its revenue-sharing program, developed state-of-the-art emergency switching capability, promoted the modernization and proliferation of pay telephones, and offered the end user multiple billing options. These are the types of benefits which certification of NTS will bring to Missouri customers. Competition and the new services and technologies it generates will stimulate the telecommunications industry in Missouri, to the benefit of all Missourians.

Competition among OSPs in other states has resulted in dramatic rate decreases over the past six months. (Bryan Rebuttal, Ex. 3, at p. 6). As the OSPs' pricing structures have moved closer to those of AT&T and the LECs, the OSPs have shifted their competitive strategies to the development of innovative services and billing options previously unavailable to end users.

The potential benefits of competition in operator services were recognized by FCC Chairman Patrick, who observed that "it appears that AOS companies are potential sources of new, innovative services for the public ... it seems likely that competition in the operator services market can produce consumer benefits which should not be eliminated by regulatory action." (Bryan Direct, Exhibit 2, Schedule V, Attachment 2).

NTS has complied with the three-part certification test outlined in Case No. TX-85-10: 1) it has supplied a comprehensive description of the services it proposes to offer, 2) it has demonstrated financial ability to provide operator services, and 3) it has committed itself to following the Commission's orders. In addition, the evidence proves that competitive operator services are in the public interest. The certification of NTS and approval of its tariff will further the goals outlined in Ch. 392.430, RSMo. 1987.

B. NTS is Technically and Financially Qualified to Provide Operator Services in Missouri.

NTS has proved that it is technically and financially competent to provide operator services in Missouri. The un rebutted evidence clearly demonstrates that NTS is operated by a highly experienced team of telecommunications managers and has developed a state-of-the-art telecommunications network, allowing it to provide reliable service to all end users.

As clearly outlined in Section III(A)(1) supra, since its founding barely three years ago NTS has become a multi-million dollar company, with dramatic growth in traffic volumes and

revenues. NTS has substantial capital to finance its operations and since the first part of 1988 has been a profitable company. (Bryan Direct, Ex. 2, at pp. 4-5 and Schedule D). No party, even Public Counsel, questioned NTS's evidence that its network can handle all traffic delivered to it.

The NTS network utilizes state-of-the-art technology to handle traffic. From its five operator centers NTS can provide service throughout the United States. Even emergency calls delivered to the NTS network are routed to the appropriate emergency service provider, without charge, through a highly sophisticated procedure unsurpassed in the industry.

NTS has demonstrated its commitment to high quality service. Mr. Bryan provided extensive unrebutted testimony concerning NTS's efforts to identify itself to callers, provide rate quotes on request, splash calls to AT&T, and create new and innovative services. NTS is a founding member of the Operator Service Providers of America, a group organized to deal with many of the perceived problems in the industry. NTS subscribes to OSPA's Code of Responsibility, which mandates that all members must provide quality service at reasonable prices.

NTS meets every requirement of responsibility necessary to be a certificated telecommunications provider in Missouri. It is an established and profitable company, with a long term business and marketing strategy. It intends to do business in Missouri as a conscientious and reliable company.



C. Public Counsel's Objections to Competitive Operator Services are Totally Without Merit.

In espousing its opposition to NTS's Application, Public Counsel argues that competitive operator services have nothing to offer Missourians. Nothing could be further from the truth.

On cross-examination, Public Counsel's witness admitted that services such as voice messaging, teleconferencing, multilingual operators, weather report services, and multiple billing options will benefit end users. (Tr. Vol. IV, at pp. 383-84). Moreover, competition in the operator service market will also benefit users by multiplying the number of pay telephone locations available to them, through the sharing of long distance revenues with the owners of pay telephones.

Although admitting that NTS's proposed rates are reasonable (Tr. Vol. IV, at p. 551), Public Counsel lists a number of miseries which competitive operator services will allegedly inflict on Missourians. Unfortunately, Public Counsel predicates its position on stale and erroneous information. Public Counsel cavalierly accuses competitive OSPs of having a "monopoly." In fact, recent studies indicate that the competitive OSPs control only 4.9% of the operator services market, the other 95% being controlled by AT&T and the local exchange carriers. In the interLATA market, AT&T carries no less than 91% of all "0" traffic. Memorandum Opinion and Order, File No. ENF-87-19, AT&T Private Pay Phone Commission Plan (released October 3, 1988), at ¶26. Public Counsel cannot seriously argue that the competitive OSPs are a monopoly.

During cross-examination, it became apparent that Public Counsel's only objection to competitive operator services in Missouri is that companies such as NTS may include hotel surcharges on the bill to the end user. Ms. Drainer conceded that, "Public Counsel's major problem with AOS seems to be as it relates to the hospitality industry." (Tr. Vol. IV, at p. 569). Although surcharges are aimed at allowing telecommunications systems owners to recover their investment, NTS would not object to a Commission ruling that surcharges may not be billed or collected, unless included among tariffed rates of a certificated company.

The problems which the competitive OSPs encountered in their initial operations have been largely resolved. Rates throughout the industry have dropped substantially in 1988, largely in response to competitive pressures. The industry trade association, OSPA, was founded to ensure responsibility in the industry.

The balance of Public Counsel's objections to competitive operator services are specious. There is simply no evidence that NTS knowingly charges for uncompleted calls, refuses to splash calls to AT&T, or knowingly accepts AT&T calling card charges. It is clear that NTS charges reasonable rates, reports the jurisdictional nature of its traffic accurately, and informs callers that NTS is carrying their calls.

D. Teleconnect Should Not Be Treated More Favorably Than NTS and ITI.

Teleconnect seeks preferential treatment for its operator services, a position ironically supported by Public Counsel. In arguing for a level of regulation which would give Teleconnect a substantial competitive advantage over NTS and ITI, Teleconnect and Public Counsel make specious arguments entirely lacking in legal or factual support.

Prior to the third day of the hearing, Public Counsel espoused a position of total opposition to the provision of competitive operator services in Missouri. (Drainer Direct, Ex. 12, at p. 3). At the hearing Public Counsel curiously reversed itself, arguing that Teleconnect, Dial U.S., and Dial U.S.A. should be allowed to provide competitive operator services.<sup>7</sup> Public Counsel's reasoning for recommending approval of the tariffs proposed by those companies, but denial of NTS's and ITI's petitions, is fatally flawed.

Public Counsel attempts to distinguish between Teleconnect on the one hand and NTS and ITI on the other by claiming that "Teleconnect is like the local companies and AT&T and other IXCs. They are responsible to their end user." (Tr. Vol. IV, at pp. 505-506). In attempting to rationalize Public Counsel's radical change in position, Ms. Drainer testified that

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<sup>7</sup>Dial U.S. and Dial U.S.A. will purchase operator services from Teleconnect, so any statement concerning Teleconnect is applicable to both Dial U.S. and Dial U.S.A. (Tr. Vol. III, at p. 327).

Teleconnect should be treated differently because it does not bill for location surcharges. (Tr. Vol. IV, at p. 508). However, Ms. Drainer admitted that there is nothing in Teleconnect's tariff stating that it will not bill for such surcharges; she is simply relying on Teleconnect's good faith. (Tr. Vol. IV, at pp. 518-19). Ms. Drainer also testified that operator-assisted services would simply be "an ancillary service" for Teleconnect, "a part of [Teleconnect's] total revenues but not the majority of their total revenue." (Tr. Vol. IV, at p. 515). Finally, Ms. Drainer stated that customers can complain to the Commission, if Teleconnect's service is unsatisfactory. (Tr. Vol. IV, at pp. 522-23).<sup>8</sup>

Public Counsel's reasoning is wholly defective. First, Dennis Ricca, the witness for Teleconnect, undermined many of the "reasons" put forth by Public Counsel to support its position. Mr. Ricca reluctantly testified that Teleconnect would market its operator services as a separate product from its "1+" interexchange service. (Tr. Vol. III, at p. 299). Mr. Ricca conceded that Teleconnect would compete directly with NTS and ITI by marketing its operator services to the same types of traffic aggregators, including hotels, to which NTS and ITI would market their operator services. (Tr. Vol. III, at p. 289). Further, Mr. Ricca admitted that a caller in a hotel room would perceive

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<sup>8</sup>Ms. Drainer neglected to note that other operator service companies, such as NTS and ITI, would also be subject to the Commission's formal and informal complaint procedures under 4 C.S.R. 240-33.110.

no difference between operator services provided by Teleconnect, NTS, or ITI. (Tr. Vol. III, at p. 300).

There are additional difficulties presented by providing preferential treatment to Teleconnect. First, through Teleconnect's use of a billing agent, Teleconnect's name does not appear on a customer's bill. (Tr. Vol. III, at p. 301). Teleconnect proposes to offer "customized greeting services," in which the Teleconnect operator would never notify the end user that the call is being carried by the Teleconnect network. (Tr. Vol. III, at p. 302). Teleconnect's proposed services would lead to substantial customer confusion, a possibility which Mr. Ricca himself even admitted. (Tr. Vol. III, at p. 312).

It is also apparent that Teleconnect's splashback and rate quote capabilities are nonexistent. Mr. Ricca candidly admitted that Teleconnect cannot and does not transfer calls to AT&T. (Ricca Direct, Ex. 4, at p. 9). Ms. Drainer admitted on cross-examination that Public Counsel is aware of that fact, although it seems to have had no impact on Public Counsel's reasoning. (Tr. Vol. III, at p. 533). Teleconnect is also unable to provide precise rate quotes on request. In his direct testimony, Mr. Ricca stated that Teleconnect would have that capability "within six weeks," or by the middle of September, 1988. At the hearing, Mr. Ricca revised his testimony to reflect the fact that Teleconnect may not have that service available until the end of 1988. (Tr. Vol. III, at p. 296). Both NTS and ITI presently have the capability to provide immediate rate quotes on request, without charge.

Teleconnect made a similar appeal for preferential treatment before the Wisconsin Public Service Commission. In a decision issued less than two months ago, that Commission rejected Teleconnect's argument and ordered that Teleconnect's operator services would be subject to the same level of regulation as the operator services of all other competitive OSPs. Application of Teleconnect for Intrastate Authority to Provide Operator Services in Wisconsin, Docket No. 7101-TI-101 (Wisc. P.S.C., October 6, 1988).

Teleconnect's request for preferential treatment is unsupported by the evidence and is an invitation to unlawful discrimination. The evidence demonstrates conclusively that in the area of operator services, Teleconnect, NTS, and ITI propose to provide identical services. Granting a regulatory preference to Teleconnect would blatantly violate the spirit of House Bill 360, which calls for "full and fair competition." Ch. 392.530(6), R.S.Mo. 1987. There is absolutely no credible legal or evidentiary support for any regulatory distinction among the OSPs, particularly one favoring Teleconnect.

E. The Proposal of the Commission Staff Provides a Reasonable Structure for Future Regulation of Operator Services Providers in Missouri.

The regulatory structure suggested by Staff would protect the interests of end users in Missouri. NTS already complies with most of the items proposed by Staff, and to the extent it is not in compliance, it is technologically unable to do so. NTS believes that the Commission should adopt the proposal, with the proviso that NTS should not be punished for actions beyond its control.

Staff's proposal largely reflects the regulatory guidelines recently adopted by NARUC. That fact alone demonstrates the reasonableness of Staff's proposal and argues for adoption.<sup>9</sup> Staff's proposal also addresses comprehensively the issues identified by the Commission in its April 5, 1988 Order.

By requiring identification of the OSP prior to completion of the call, Staff's proposal would prevent the customer confusion which has appeared to plague the industry. The requirement of additional identification of the OSP in the customer's local exchange bill would reinforce the protection of the caller from unscrupulous providers. In addition, the requirement that the OSP provide detailed rate quotes on request would prevent any problem with confusion about charges.

As noted above, Public Counsel's principal objection to competitive operator services in Missouri is that competitive OSPs should not bundle location surcharges with call charges on the end user's bill. NTS has already told the Commission that it would not object to a Commission ruling that location surcharges cannot be billed by OSPs. Mr. Van Eschen's proposal that bundling be allowed only if all of the charges are made pursuant to Commission-approved tariff and certification would protect the end user from paying unapproved location surcharges. The

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<sup>9</sup>It is significant that Staff does not propose a rate cap, whereas the NARUC proposal does. In that respect, Staff's proposal accurately reflects the fact that OSPs' costs bear no relation to the costs of AT&T or any LEC, so OSP rates should not be tied to AT&T or LEC rates.

proposed rule against local exchange disconnection for non-payment of unapproved surcharges would further protect the end user and is consistent with the Commission's disconnection regulation, 4 C.S.R. 240-33.070.

Two of Mr. Van Eschen's suggestions may present difficulty for many competitive OSPs, including NTS. In both cases, the difficulty arises due to circumstances beyond the OSPs' control. First, Mr. Van Eschen suggests that OSPs should not knowingly bill for incomplete calls. It is impossible for NTS to avoid that problem completely where the LEC does not provide answer supervision. Without answer supervision, the OSP cannot determine whether a call has been answered, necessitating the use of a surrogate based on the number of times the caller allows the called party's telephone to ring. At the hearing, Mr. Van Eschen conceded the difficulties raised by that situation.

Second, in the area of utilization of telephone company calling cards, the difficulties raised by AT&T's use of calling cards with numbers identical to LEC calling cards were clearly explained. Again, there is nothing the OSPs can do about this problem. NTS is committed to attempting to resolve this problem, but it would be unfair for the Commission to penalize NTS or any other competitive OSP.

Several issues are not addressed in Staff's proposal, indicating that Staff does not consider them to be of substance. Public Counsel proposes a rate cap on competitive OSPs, but Staff and all other parties do not consider a cap necessary to protect end users (assuming that a rate cap would be



lawful--a doubtful assumption). Staff expresses no concern about possible incorrect jurisdictional reporting or OSPs' operator response times.

As a whole, NTS believes that the proposal espoused by Staff addresses the necessary issues. It is fair and equitable. The interests of Missourians would be adequately protected by Staff's proposal, and NTS urges its adoption by the Commission.<sup>10</sup>

#### V. CONCLUSION

The evidence demonstrates that the provision of operator services on a competitive basis in Missouri is in the public interest. NTS is fully qualified to provide operator services in Missouri, and has responded to the issues raised in the Commission's Order of April 5, 1988.

Competition will afford telephone owners and users many benefits in the form of new services and competitive rates, and will not inflict any corresponding harms. Notwithstanding Public Counsel's protests, competitive operator services will benefit Missourians.


WHEREFORE, American Operator Services, Inc. respectfully requests that the Commission grant its Application for a Certificate of Service Authority and competitive status, and approve its proposed tariff.

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<sup>10</sup>NTS agrees with Staff that all OSPs, including AT&T and the LECs, should be subject to similar regulation on operator services. In the absence of a level playing field, the competitive OSPs will be severely and discriminatorily disadvantaged in their attempt to compete with the entrenched providers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to All Parties on November 19, 1988.

