

Exhibit No.:
Witness/Type of Exhibit: Drainer/Rebuttal
Sponsoring Party: Public Counsel
Company: American Operator
Services, Inc.
Case No.: TA-88-218, et al.

REBUTTAL TESTIMONY

OF

M. DIANNE DRAINER

Submitted On Behalf Of
Office Of The Public Counsel

AMERICAN OPERATOR SERVICES, INC.

Case No. TA-88-218, et al.

August 1988

Exhibit No. 13
Date 9-20-88 Case No. TA-88-218 et al
Reporter Tweedy

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, et al.
authority to provide intrastate)
operator assisted resold)
telecommunications services.)

AFFIDAVIT OF M. DIANNE DRAINER

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

M. Dianne Drainer, of lawful age, being first duly sworn, deposes and states:

1. My name is M. Dianne Drainer. I am a Public Utility Economist for the Office of the Public Counsel.

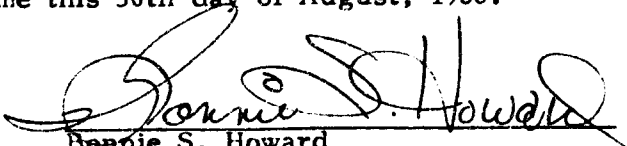
2. Attached hereto and made part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 13 and Schedules 1 through 3.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



M. Dianne Drainer

Subscribed and sworn to before me this 30th day of August, 1988.



Bennie S. Howard
Notary Public

My commission expires May 3, 1989.

AMERICAN OPERATOR SERVICES, INC.

Case No. TA-88-218, et al.

REBUTTAL TESTIMONY OF
M. DIANNE DRAINER

Q. Please state your name and business address.

A. My name is M. Dianne Drainer. My address is P.O. Box 7800, Jefferson City, Missouri 65102.

Q. Are you the same M. Dianne Drainer who filed direct testimony in this proceeding?

A. Yes, I am.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to the direct testimony of Paul Freels, International Telecharge, Inc. (ITI); James F. Bryan, American Operator Services, Inc. (AOSI); Dennis L. Ricca, Teleconnect Long Distance Services and Systems Company (Teleconnect); Meade C. Seaman, GTE North, Incorporated (GTE); Gary L. Pace, World Communications, Inc.; and John B. Van Eschen, Missouri Public Service Commission (PSC) Staff.

Although this rebuttal testimony responds to the issues raised in the direct testimony of the above parties, I want to stress that none of the parties have provided any evidence that AOS is in the public interest. Therefore, even if the concerns addressed in this rebuttal testimony were to be corrected, Public Counsel would continue to maintain that AOS is not in the public interest and should not be allowed within the State of Missouri.

Q. Would you please state the specific areas of ITI witness Paul Freels' direct testimony that you wish to rebut?

A. Yes. Paul Freels on pages 11 and 41 of his direct testimony respectively states that:

ITI's services provide cost savings as well as new sources of revenues to hotels and hospitals.

. . .

It is conceivable that the revenues that ITI provides could help hold down room rates or medical costs.

There are two points I would like to make with regard to these statements. First, Mr. Freels' assumption that the cost savings will result in reduced rates to end users is not based on any economic evidence. Second, the new revenues that the hotels and hospitals receive from ITI or any other alternative operator service (AOS) provider are generated from commissions paid to the institution. ITI must charge the end user inflated rates and/or additional surcharges in order to pay the hotel/hospital these commissions. Therefore, the "cost savings as well as new sources of revenue" do not currently benefit the end user, the true customer of the telephone service, but rather do currently cost her/him more in surcharges and commission coverage charges which are rolled into the rates. As a result, the end user is not receiving the benefits of any decrease in room rates or medical costs.

Mr. Freels further implies on page 15 of his direct testimony that the commissions paid to the pay phone owners by ITI lowers the cost of operation of the pay phone and thereby benefits the end user. Unfortunately, once again Mr. Freels has confused the flow of economic benefits to the end user with the flow of revenues to the pay phone owners. The PSC has already protected the end user from price gouging by the COCOT by

placing a ceiling on charges of 25 cents per call for local calls. With the addition of AOS, the end user of the pay phone would pay more for long distance calls. Therefore, the only economic benefit of AOS is received by the pay phone owner who receives higher profits, not the end user.

Q. Do you have concerns with Mr. Freels' customer notification position?

A. Yes. Mr. Freels on pages 14-15 of his direct testimony states:

ITI furnishes pay phone owners with a 'sticker' or information piece explains that [sic] ITI is the operator service provider for the telephone.

However, upon reviewing the sticker which he includes in his testimony as Exhibit D, the only reference to ITI is "Quality service by ITI". This statement does not give the end user sufficient information at all. The end user cannot possibly know that ITI is the operator service provider from this sticker. I will expand on the pay phone notification problem later in this testimony.

Q. Do you have concerns with Mr. Freels' interpretation of "competition"?

A. Yes.

Q. What is wrong with Mr. Freels' interpretation of competition?

A. Mr. Freels implies throughout his testimony that ITI and AOS providers in general give subscribers a choice and therefore increase competition. This implication is misleading, as Mr. Freels demonstrates on page 27 of his testimony, for the reason that ITI's customer or subscriber is the hotel, hospital, COCOT, etc., not the end user. The end user,

the true customer who needs to use the telephone, does not have a choice. The AOS industry has created a controlled monopoly, capturing the transient caller who must pay the higher rates through surcharges, which can be as much as \$2.00 a call, and commissions which are rolled into the tariffed rates. These results are directly opposite of the results which would be generated by competition.

Moreover, Mr. Freels indicates that if the end user is not satisfied, she/he can call the ITI operator. However, ITI's 1-800-number is not displayed on the Exhibit D sticker, making it clearly impossible for the end user to contact ITI.

Q. Does Mr. Freels' statement on page 28 that "Just the potential of regulation is sufficient to govern ITI's actions" appear adequate?

A. No. The Missouri Public Service Commission (PSC) requires approved tariffs before a company can begin offering services in Missouri. However, ITI, as my direct testimony shows, is currently operating in Missouri and practicing price gouging. It is obvious that not only the potential of regulation but regulation, itself, is totally ignored by ITI. Therefore, regulation has not been sufficient in controlling ITI's abuses against end users in Missouri.

Q. Are ITI's suggestions for Commission oversight adequate?

A. No. ITI's suggestions are far too liberal. ITI also suggested the local exchange companies (LECs) provide information regarding AOS at least twice yearly to customers (pages 34-35 of Mr. Freels' testimony). However, this information piece is totally unacceptable to Public Counsel as

it contains misinformation and is no more than a free advertisement for AOS providers.

Q. On page 35 Mr. Freels states, "The Missouri Public Service Commission does not set the rates of these companies." Do you agree with the implication that the PSC should not exercise its authority to set AOS rates?

A. No. If the PSC grants AOSI and others certificates to provide service, it should most certainly exercise its authority to regulate AOS providers' rates. Not only do AOS providers have a virtual monopoly over end users, they also have demonstrated that, absent enforced regulation, the AOS providers will take advantage of their monopoly power and charge excessive rates. The PSC is designed to protect the end users from exactly these types of abusive business practices.

ITI suggests only providing "an informational copy of the intrastate rates applicable to Missouri" to the Commission. ITI must surely realize that these tariffs are not provided to the Commission as information only but rather must be submitted to the Commission for approval. Once the PSC approves the tariffs, it is in effect giving Missouri consumers its stamp of approval for a company's services being offered at the rates contained in those tariffs.

Q. Having read Mr. Ricca's direct testimony for Teleconnect, do you have any concerns?

A. Yes, I have three concerns. First, on page 9 of Mr. Ricca's testimony, he states that Teleconnect cannot currently "splash back" calls

to the local operator. Public Counsel's position is that the AOS provider must be able to provide "splash back".

Second, Teleconnect bills through Operator Assisted Network (OAN). This company's billing and collection method creates an additional problem for the end user. When an end user receives her/his bill, instead of Teleconnect's name on the bill there will be charges from OAN. Therefore, when the customer wishes to complain or receive more information, she/he will first have to call the LEC, then call OAN, and finally call Teleconnect. Instead of one telephone call to clear up a problem, the customer must make at least three time-consuming calls in search for answers and possible satisfaction.

Third, Mr. Ricca states on page 13 that commissions will be offered to the property owners (host businesses). Yet, it will be the end user who will have to pay not only current charges but pay the commissions plus surcharges. This does not benefit the end user; only the AOS providers and the property owners.

Q. Meade C. Seaman of GTE North, Incorporated states on page 6 of his direct testimony that GTE North customer bills reflect the telephone number of the involved AOS provider for customers to call with their questions and complaints regarding those services. Furthermore, Mr. Seaman states that GTE customers perceive that the problems lie with the LEC when in fact it "has no bearing on GTE and the services it provides to its end users". Are these accurate statements?

A. No. As illustrated in Schedule 1, the GTE North customer bill for ITI services gives the GTE North customer service telephone number, not the ITI 1-800-number. The customer must first call GTE North and

explain the AOS complaint, second obtain the AOS 1-800-number, and third, call the AOS 1-800-number and seek a resolution to the complaint. Moreover, since GTE North is providing billing and collection agreements for AOS providers, it must accept some degree of responsibility for the problems its end users are encountering, especially since it is billing and collecting for uncertificated AOS providers' handling of intrastate calls.

Q. Early in this testimony you expressed a concern with pay phone notification procedures. Do you wish to expand on this issue now?

A. Yes. World Communications, Inc. witness Gary L. Pace states that posting a notice on the pay phone is not warranted and implied that customer notification that AOS providers' charges result in higher costs and have a negative impact on the pay phone industry. Mr. Pace suggests that customers will not use telephones that cost them more. Public Counsel agrees with Mr. Pace, and that is exactly why pay phones should and must post the facts about AOS providers' charges and provide the end user with all important AOS provider information. End users have a right to be informed as to the charges they will incur if they use an AOS provider.

Q. AOSI witness James F. Bryan repeatedly indicates throughout his direct testimony that the marketplace would and will regulate the AOS industry. Does Mr. Bryan present adequate evidence that this will in fact happen?

A. No. On page 20 Mr. Bryan states that the surcharges are controlled by the market and, furthermore, states on page 29 that his company has no market power. However, there is no evidence that

surcharges at hotels or motels are being decreased. Furthermore, the AOS provider has complete market power over the end user who is a captive customer and must pay the inflated charges. There are no current studies that prove that these captive end users have had any downward influence on the AOS providers' market nor that the end users have impacted the AOS providers' penetration into the marketplace.

Q. On page 8 of his testimony, Mr. Bryan indicates that the end user has a broader choice since AOSI accepts credit cards. Does the added use of credit cards give the end user more choices?

A. Allowing the end user to use her/his VISA, MasterCard, or American Express only increases her/his choice of credit; it does not give the end user more operators to choose from. The important point here is the end user is still a captive customer of the AOS provider with no other choice and is still forced to use AOS.

Q. Mr. Bryan implies that notification procedures to customers is cumbersome and anti-competitive. Do you agree?

A. No, pre-announcing to the end user the AOS provider name should not be viewed as cumbersome or anti-competitive. As a member of a new industry, I would think that AOSI would want to use its name often and proudly display its name so that customers would learn about the company and want its services. It would and should be seen as an advantage to establishing itself in the marketplace by developing name recognition.

Q. Mr. Bryan states that "NTS [AOSI] pays sizeable commissions to all of its customers". Does this justify AOSI's inflated rates to the end user?

A. No. Mr. Bryan, as the other AOS providers in this case, appears to be arguing that the commissions paid to AOS customers should not only explain the inflated rates but validate that they are just and reasonable. Public Counsel firmly disagrees with this argument since these AOS providers have overlooked continually who must pay for these commissions -- the captive transient end user who has no choice. End users, through hundreds of complaints to all state commissions and the FCC, are clearly stating that they do not view these rates as just and reasonable. Moreover, if Mr. Bryan believes AOSI is paying sizeable commissions to all of its customers, then the end user is truly not viewed by AOSI as their customer since the end user does not receive such a commission.

Q. Does Mr. Bryan give the end user an acceptable alternative if she/he is dissatisfied with AOS providers?

A. No. Mr. Bryan states "A dissatisfied user simply will hang up the next time he accesses the operator services provider." This is an unacceptable solution. The end user may only be able to access the AOS provider from the instrument she/he is using, particularly if the AOS provider is unable or unwilling to splash back the call to another provider upon request. The end user does not wish to leave her/his hotel room and go searching in the lobby late at night or early in the morning to make a personal phone call. Even after searching the lobby for a pay phone, it is very possible that the pay phone also may be served by an

AOS provider. The end user does not wish to and possibly cannot leave a hospital bed to go searching in the lobby for another operator service. The end users should not be inconvenienced to this ridiculous degree.

Q. Mr. Bryan states, "Of course, NTS [AOSI] will comply with all lawful orders of the Commission." Is this in Public Counsel's view a correct statement?

A. Definitely not. As illustrated in Schedules 2 and 3*, AOSI is not now complying with the Commission since it is currently operating in Missouri unlawfully. Therefore, Public Counsel cannot accept that it will in the future when AOSI is showing such a blatant disregard for the Missouri Commission and its rules now.

Q. Mr. Bryan concluded in his testimony that the Communications Committee of NARUC changed the title of the resolution on AOS from "Recommended Guideline for Alternative . . ." to "Recommended Guidelines for Consideration by Regulatory . . ." because "they had for [sic] too little information and/or evidence available to them to recommend specific regulatory approaches at that time." Do you agree with Mr. Bryan's conclusion?

A. No. Having attended the Communications Committee meeting in San Diego where the resolution was discussed and amended, I did not witness any discussions that would have caused one to reach Mr. Bryan's conclusions. NARUC's Communications Committee wisely recognized that

* Schedule 3 contains some proprietary information.

each state's public service commission have differing degrees of regulatory power in the telecommunications arena. Therefore, each commission can view the Guidelines for Consideration and apply them only as they fit into that state's regulatory structure. I cannot speak for the Communications Committee, but I do not believe "too little information and/or evidence" was available. Rather, the AOS Task Force presented the Committee with extensive information, especially considering the relatively newness of the AOS industry.

Q. Does Public Counsel have other concerns based on the direct testimony filed by AOS providers and LECs?

A. Yes. First, the direct testimony of the AOS providers imply that they will be providing many new enhanced services. Although Public Counsel would agree that some end users could benefit from multi-lingual operators and teleconference, for instance, the majority of end users need plain old telephone service (POTS). These end users do not want, need, or wish to pay for these other enhanced services. The transient end user staying in a hotel or using a pay phone wants only to access POTS. None of the parties in this proceeding have submitted any evidence or provided any studies that show the demand for bilingual operators or teleconference capacity. Public Counsel strongly questions the demand by transient end users for these services. The end users in general should not be forced to pay for AOS providers creating such a network by being charged rates 200% higher than they normally pay.

Second, reference to the AOS providers new association and its Code of Responsibility was made by AOSI. (Schedule T in Mr. Bryan's testimony). The AOS providers present this Code as evidence that the

industry can be self regulating and protect their customers. Although Public Counsel recognizes this as a positive step by the Operator Services Providers of American (OSPA), Public Counsel has not seen any evidence that OSPA will and can enforce its Code of Responsibility among its members. Thus, the Code of Responsibility has no true regulatory power and to the best of my knowledge is totally ineffective as a regulatory tool. Moreover, it is important to remember that the entities touting this code, including AOSI, engage in price gouging and will probably continue to do so until the Commission orders otherwise.

Third, throughout the various testimonies reference is given to the competition introduced into the Missouri telephony industry by AOS. It is a gross misconception to assume that all new services and/or firms are healthy for the Missouri economy and the Missouri end users by placing them under the generic "competitive" umbrella. These firms are only charging inflated rates to end users who are their "captive" customers. They are not giving the end users a choice. Public Counsel does not view the AOS industry with its current complaints/problems as a positive new force in the Missouri telecommunication market. In fact, as I stated in my direct testimony, AOS providers are not in the public interest and do not add competitive advantages for the end users and/or the State of Missouri. This is why Public Counsel is recommending that AOS providers not be certificated and that AOS tariffs filed by certificated interexchange providers in this consolidated proceeding be rejected.

Q. Do you have any comments on Staff witness John Van Eschen's testimony?

A. Yes. Although Public Counsel agrees with Mr. Van Eschen that there should be specific requirements for AOS providers should they be certificated, Mr. Van Eschen did not present any evidence that AOS providers are in the public interest. Public Counsel believes the verification of public interest is the cornerstone of the certification process and PSC regulation. Therefore, Public Counsel disagrees with Mr. Van Eschen's recommendation that the AOS providers be certificated and that AOS tariffs be approved.

Q. Does this conclude your rebuttal testimony?

A. Yes, thank you.

DRAINER REBUTTAL
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PAGE 5

GTE North Midwest Operations
BILLING FOR
ITI
625 E. Cherry
BILLING QUESTIONS CALL
JUL 16 1988

Columbia Mo 65201
876-3633

THE CALLS AND CHARGES LISTED BELOW WERE OPERATOR AS-
SISTED CALLS YOU MADE USING AN OPERATOR SERVICES
COMPANY. THAT COMPANY SENT THESE CALLS AND DETAILS TO
GTE FOR BILLING TO YOU. IF YOU HAVE QUESTIONS PLEASE
CALL THE NUMBER LISTED AT THE TOP OF THIS PAGE.

ITI ADJUSTMENTS

JUN 29 LONG DISTANCE SERVICE

ITI CURRENT CHARGES

510XHIBRDA

000230046

PLEASE SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

DRAINER REBUTTAL
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No. 3

AMERICAN OPERATOR SERVICES, INC.
Case No. TA-88-218

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: James F. Bryan

DATE REQUESTED: July 22, 1988

INFORMATION REQUESTED: On what dates did AOSI begin providing MTS, operator and payphone intrastate service in Missouri? List all types of businesses represented in AOSI's most recent Missouri customer service list, such as motels, hotels, hospitals, universities, and any other other. Does AOSI provide service to any hospitals in other states? Has AOSI in the past, or will AOSI in the future, market to hospitals in Missouri either directly or through sales agents?

REQUESTED BY: M. Dianne Drainer

INFORMATION PROVIDED: _____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE RECEIVED: _____ SIGNED BY: _____

DRAINER HOSPITAL
TA-88-218, et al.

AOS-3 RESPONSE TO INFORMATION REQUEST

AOSI initiated its interstate service in Missouri about August, 1987. Since that time, some incidental intrastate traffic has been completed as an accidental, unintended by product of this interstate service.

AOSI currently provides service to hotels, motels, hospitals, universities and privately owned payphones in the State of Missouri. AOSI has been selected by both AMI and Humana, two of the largest hospital management companies in the United States, as the provider of 0+ long distance on a national basis. It is AOSI's experience that its services are very beneficial to both hospitals and the users of hospital phones and expects to develop this market further.

DRAINER REBOYAL
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SCHEDULE 3 CONTAINS INFORMATION
DEEMED PROPRIETARY.

Schedule 3