

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF INTERNATIONAL)
TELECHARGE INC., FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO) CASE NO. 10002
OPERATE AS A RESELLER OF TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF KENTUCKY)

ORDER ON REHEARING

On August 24, 1988, the Commission issued an Order denying International Telecharge, Inc. ("ITI's") request for authority to provide telecommunications services within Kentucky. On September 13, 1988, ITI filed an Application for Rehearing, in which it claimed that through the presentation of new and additional evidence, ITI could demonstrate its ability to provide adequate, efficient, and reasonable service in compliance with KRS 278.030(2). By Order dated October 3, 1988, the Commission granted ITI's Application for Rehearing, with the exception of one issue. In that Order, the Commission gave its opinion that ITI should have the opportunity to convince the Commission that it could develop a plan that will benefit Kentucky ratepayers and provide adequate, efficient, and reasonable service.

On March 22, 1989, the Commission issued an Interim Order allowing ITI to provide interLATA operator-assisted service from Bell Operating Company pay telephones. This Order listed only the minimum conditions of service necessary to protect the public interest when using this type of telephone. It was indicated

that the Commission's Opinion and Order relating to the remaining authority requested in ITI's application, and including additional conditions of service, would shortly follow.

Case Background

ITI is one of a number of new companies which provide operator-assisted services¹ that are designed primarily for use by callers in hotels, motels, hospitals, business establishments, temporary housing units, and by callers from pay telephones, that is, in locations where transient end-users are likely to generate significant amounts of operator-assisted traffic. Typically, a host business, such as a hotel or motel, agrees to route its customers' operator-assisted calls to an operator services provider in return for a commission, or similar compensation. Some companies add a surcharge to the price of a call, ostensibly to recover costs related to the host business's telephone equipment. These charges are included in the end-user's billing and later remitted to the host business.

ITI's primary customer relationship is with the host business, and not with the actual user of its services, although the actual users of ITI's services are responsible for the payment of services received from ITI. As ITI has not established a formal relationship with end-users of its services,

¹ In this Order, the term "operator-assisted services" includes, but is not limited to, all traditional operator services, such as collect calls, third-party billing, calling card billing, and person-to-person calls, whether or not actual human operator intervention is required. Such services are usually accessed by dialing "0" or "00", with or without subsequent digits; however, such services are also frequently accessed by other dialing arrangements, such as 800 numbers.

it is impractical for ITI to directly bill for its services, but instead uses intermediaries, such as other carriers that have established billing mechanisms. These billing mechanisms include third-party billing, collect calls, and calling cards issued by other carriers. ITI also accepts major credit cards, such as VISA or MasterCard.

For a period of time, ITI operated in Kentucky without Commission authorization. The Commission has received several complaints, primarily because of unusually high rates charged to end-users of ITI's services, most of whom were unaware of ITI's existence. ITI has since been ordered to cease its Kentucky intrastate operations and to provide refunds to Kentucky customers.

In the August 24, 1988 Order, the Commission identified several concerns about the manner in which ITI operates and provides service. In that Order, the Commission summarized its opinion as follows:

Utilities operating within Kentucky are required to furnish adequate, efficient, and reasonable service. KRS 278.030(2). In evaluating ITI's application, we are mindful of this requirement. ITI's service appears to offer little to the ratepayers of Kentucky. ITI's customers may have their objectivity clouded by the promise of high commissions and the ability to collect unlimited surcharges. Only these financial considerations could account for the sudden, widespread appearance of ITI service within Kentucky. ITI's growth is certainly not fueled by the demands of end-users, to whom ITI is basically unknown. In our opinion, ITI's business practices, taken as a whole, seem less than reasonable. ITI's unusual use of the services of other carriers seems to be an inefficient use of the network. More importantly, ITI is not paying for its access to the local network to complete intrastate calls. ITI's use of the billing and

collection services of local exchange companies to collect customer determined surcharges is unreasonable and could lead to the blatant abuse of such billing services. For these reasons, ITI's application must be denied.

In addition, the Commission made the following findings:

1. ITI's business practices relating to its provision of operator-assisted long distance service have caused customer confusion and dissatisfaction in Kentucky.

2. ITI's practice of using interstate services to provide intrastate service results in underpayment and misclassification of access charge revenue paid to local exchange carriers within Kentucky.

3. ITI's practice of accepting telephone calling cards without the ability to validate the use of such cards is unreasonable.

4. ITI's practice of allowing customers to add a surcharge to the price of a call carried by ITI is unreasonable.

5. ITI lacks the ability to ensure that its customers provide notice to end-users that traffic originating from the customers' telephones may be intercepted by ITI.

6. ITI lacks the technical ability to ensure the uniform return of traffic intercepted by ITI to its point of origin upon a request by an end-user who wishes to use a different carrier.

The Commission granted rehearing on all issues with the exception of the issue relating to surcharges. The Commission indicated that although ITI's customers could recover investments

made in providing access to telephone equipment, carriers were not permitted to serve as a billing conduit for these charges.²

Discussion

In its Memorandum in Support of its Application for Rehearing,³ ITI argued that:

The capability of furnishing operator services is an inevitable and unavoidable aspect of any interexchange carrier's right to an equal opportunity to compete against AT&T. Numerous interexchange carriers have utilized operators as part of their provision of travel services. ITI strongly believes that there is no reasonable or lawful basis upon which AT&T can be left to remain as the sole interexchange carrier which is permitted to offer "0" operator service. (Footnote omitted.)

ITI also noted that no party to this proceeding opposed certification of ITI. ITI contended that it had met all of the requirements imposed under the final Order in Administrative Case No. 273,⁴ and that as a result, the Commission should grant a Certificate of Public Convenience and Necessity to ITI. It further stated its belief that to do otherwise would be to discriminate unfairly against ITI in comparison with other carriers.

² For example, a hotel can include these charges in hotel bills. In this respect, the recovery of a hotel's investment in telephone equipment is no different than the recovery of costs related to accessing other utility services, such as indoor plumbing and electrical wiring. That a hotel elects to separately identify telephone equipment charges does not make this charge fall within the Commission's jurisdiction, nor make it appropriate for the hotel to collect for such charges through its clients' utility bills.

³ Filed September 14, 1988, page 2.

⁴ Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

ITI urged the Commission to develop and apply a uniform standard of requirements to protect the public interest, rather than reject individual applications. ITI stated that rather "than denying a certificate of convenience and necessity to a reseller such as ITI, this Commission should permit competitive operator services under guidelines designed to protect the public interest."⁵

The Commission has the responsibility of ensuring the availability of adequate, efficient, and reasonably priced utility services within the Commonwealth of Kentucky. Historically, the provision of utility services has been restricted to monopoly providers. It was assumed that these services were natural monopolies and that protection of these monopolies was necessary to ensure the availability of adequate, efficient, and reasonably priced utility services. In the area of telecommunications services, the Commission has determined in a number of instances that competition was in the public interest and should be allowed. The Commission is concerned that these decisions have been interpreted to mean that carriers have the right to compete in telecommunications markets. For instance, ITI has stated:⁶

Although growth in the competitive operator services is new, it is an inevitable and unavoidable aspect of the right of an interexchange carrier to compete with AT&T for interexchange traffic. AT&T has no greater right

⁵ ITI's Memorandum in Support of its Application for Rehearing, page 3.

⁶ Ibid., page 4.

to be the sole interexchange carrier capable of providing interLATA operator services than it has to be the only interexchange carrier in Kentucky.

The Commission is unaware of any basic right to compete for interexchange traffic and, in fact, carriers are required to obtain Commission authorization before being allowed to compete. In the instances in which the Commission has authorized competition in the interexchange toll market, the Commission has not determined that carriers have a right to compete, but rather that it was in the public interest to allow such competition. Specifically, and most relevant to this case, the Commission authorized the resale of intrastate Wide Area Telecommunications Services ("WATS") in Administrative Case No. 261⁷ and authorized competition in the interLATA toll market in Administrative Case No. 273. In both of these cases, the Commission based its decision on the expectation that the overall public interest was best served by allowing such competition. In Administrative Case No. 261, the Commission observed that:

. . . resale of WATS should provide for a more efficient utilization of available system capacity which will benefit all customers. The marketplace will indicate willingness of the resale users to accept higher levels of blockage and diminished quality of service, and this may lessen the need for further construction by the telephone utilities. A slowdown in construction and expansion may lower revenue requirements in the future, thereby providing benefit to all subscribers.

In Administrative Case No. 273,⁸ the Commission found that the potential benefits to consumers from interLATA competition

⁷ Administrative Case No. 261, An Inquiry into the Resale of Intrastate Wide Area Telecommunications Service.

⁸ Order dated May 25, 1984.

between telecommunications firms outweigh the costs of duplication of facilities and should be authorized. The Commission based its finding on the limited experience of competition in the interstate market and observed that there was an expansion in both market choices and technological innovation as a result of a pro-competitive regulatory policy.

In neither case did the Commission determine that carriers had the right to compete, but rather that competition in these markets was in the public interest. The Commission requires all carriers to comply with differing degrees of regulation in order to protect the public interest, which supersedes any perceived notion that a particular carrier has the right to compete. Whether or not it is in the public interest to allow a particular carrier to compete is the focus of all carrier certification cases, and is the focus of this case.

ITI has listed the services it believes are of value to Kentucky telephone users, although it has not demonstrated that there is any significant demand for these services in Kentucky. However, the Commission has established the policy of allowing competition within selected service markets when such competition could be expected to be in the overall public interest. In the August 24, 1988 Order, the Commission recognized that "AT&T's [AT&T Communications of the South Central States, Inc.] many competitors, in seeking to compete for the full range of services offered by AT&T, are likely to seek expansion into the offering of operator-assisted services" and concluded that such

competition may ultimately be beneficial to ratepayers.⁹ Therefore, the Commission is of the opinion that it is not necessary for ITI to demonstrate that competition in the operator services market is in the public interest, but rather that ITI must demonstrate that it can provide these services in a manner that is consistent with the public interest. In the Order denying ITI's request for intrastate authority, the Commission expressed its concerns that the manner in which ITI provided service was not consistent with the public interest. ITI has responded to these concerns and has proposed solutions that, in its estimation, should alleviate them. Nevertheless, the Commission is of the opinion that these proposals are insufficient to protect the public interest, and is therefore reluctant to grant ITI the authority to operate. However, the Commission is persuaded by ITI's argument that rather "than denying a certificate of convenience and necessity to a reseller such as ITI, this Commission should permit competitive operator services under guidelines to protect the public interest."¹⁰ Therefore, the Commission will allow ITI to operate, but only under the restrictions delineated in this Order. The Commission is of the opinion that because of the characteristics of ITI's operations, primarily its lack of a formal, prearranged relationship with the actual users of its services, the

⁹ The Commission also indicated that "any competition in the IXC market approved by this Commission should benefit the users of those services."

¹⁰ ITI's Memorandum in Support of its Application for Rehearing, page 3.

conditions of service ordered herein are necessary in order for the service being offered to be in the public interest, and that without such restrictions, the Commission would not allow ITI to operate. The Commission notes that the requirements imposed in this Order are similar to those mandated by several other states.¹¹ The Commission will monitor the effectiveness of these restrictions and may make further modifications to either increase or decrease these restrictions as the situation warrants.

Non-Dominant Carrier Status

In Administrative Case No. 273, the Commission adopted dominant/non-dominant classifications in its regulation of telecommunications carriers. Carriers that were certified as non-dominant carriers would be subjected to an abbreviated form of regulation relative to that applied to dominant carriers. In the Order, the Commission gave its opinion that:

. . .due to their lack of market power, nondominant carriers will not be in a position to violate the fair,

¹¹ For example see: Alabama Public Service Commission, International Telecharge, Inc., Applicant, Docket No. 20804, February 23, 1989; Florida Public Service Commission, In Re: Review of the Requirements Appropriate for Alternative Operator Services and Public Telephones; Georgia Public Service Commission, Rules and Regulations Relating to Providers of Alternative Operator Services, Docket 3783-U, November 10, 1988; Idaho Public Utility Commission, Investigation to Establish Rules for Alternative Operator Services, Case GNR-T-88-3, General Order 178, August 30, 1988; Indiana Utility Regulatory Commission, American Operator Services, Inc., Cause No. 38497, Telemarketing Commission of South Central Indiana, Inc., Cause No. 38563, One Call Communications, Inc., Cause No. 38564; Kansas Docket No. 88-ICTC-379-TAR; Massachusetts Department of Public Utilities, Investigation Into International Telecharge, Inc.'s Application to Operate as a Resale Value-Added or Interexchange Common Carrier, DPU 87-72, October 11, 1988.

just and reasonable requirement of KRS 278.030. The Commission has further found that equal regulation of dominant and nondominant carriers would act as a barrier to entry and expansion of nondominant carriers, thus impeding the development of workable and effective competition. Therefore, the Commission will impose only that amount of regulation that it deems necessary to protect the customer and provide for orderly entrance of companies into the competitive market.

Accordingly, the Commission does not require cost support documentation for non-dominant carriers' tariff filings, because such a carrier is incapable of extracting charges that are unfair, unjust, or unreasonable. The primary rationale for this is that full rate regulation of non-dominant carriers is unnecessary as long as adequate, efficient, and reasonable services are available to the public from the dominant carrier. That is, non-dominant carriers were incapable of imposing unreasonable rates or services on the public because of the option of obtaining service at reasonable rates from the dominant carrier. The marketplace determines the reasonableness of a non-dominant carrier's rates and services, making it unnecessary for the Commission to do so.

In ITI's particular case, ITI operated in Kentucky for a period of time without authorization. During that time, the Commission received numerous complaints about high rates being charged by ITI and other operator services providers. For example, in the August 24, 1988 Order, the Commission identified an instance in which an end-user was charged \$8.05 for a local call. Through this investigation it has become clear that one of the reasons operator services are capable of extracting unreasonably high rates is because of the billing mechanism, in

which calls are not billed to the calling number or by any other method which would require prearrangement between ITI and the end-user. The prearrangement occurs between ITI and its customer, the owner of customer premises equipment. There is little evidence to indicate that the level of rates affects the equipment owner's decision with respect to its choice of long distance carrier. In fact, in the absence of rate regulation, there is an incentive to charge high rates in order to be able to increase the compensation to the host business. There is also an incentive for the host business to deny or limit access to other carriers that do not provide commissions. These aspects of operator services were not apparent when the Commission established the non-dominant carrier classification.

Although it can be argued that ITI lacks market power, it is undeniable that ITI is in a position to violate the fair, just, and reasonable requirement of KRS 278.030. ITI has since modified its tariff so that its proposed rates are now commensurate with dominant carrier rates. However, it is not clear whether this change in rates was in response to competitive pressures or to regulatory scrutiny, so in the absence of rate regulation, there is no guarantee that ITI's rates would remain reasonable.

As a result of the manner in which ITI's service is provided and marketed, which has the effect of denying, or limiting, the end-user's choice of carriers, the Commission is of the opinion that the competitive market will not be able to determine the reasonableness of ITI's rates and services. Therefore, the

Commission is of the opinion that ITI's operator services should be subject to rate regulation. However, the Commission recognizes the difficulty of preparing and supporting rates. ITI would be required to maintain its accounts pursuant to the Uniform System of Accounts prescribed by the Federal Communications Commission ("FCC") and adopted by this Commission. ITI would also be required to perform jurisdictional separations studies to separate Kentucky operations from those of ITI's operations in other states, as well as separating Kentucky intrastate operations from interstate. Compliance with appropriate cost allocation procedures to separate regulated operations from unregulated operations would also be required. Full compliance with all of these requirements would be burdensome and costly to ITI, as well as to the Commission and its staff, in view of the number of operator services providers in existence. Therefore, the Commission will allow ITI a limited amount of rate flexibility, to the extent that its rates do not exceed the maximum approved rates of AT&T. "Maximum approved rates" is defined to mean the rates approved by this Commission in AT&T's most recent rate proceeding for measured toll service applicable to operator-assisted calls, as well as the additional charges for operator assistance. ITI is not permitted to include any other surcharges or to bill for uncompleted calls. Time-of-day discounts should also be applicable. ITI is also required to rate calls using the same basis that AT&T uses to rate calls, i.e., distance calculations based on points of call origination and termination; definitions of chargeable times; and

billing unit increments, rounding of fractional units, and minimum usages. In Case No. 9889¹² the Commission allowed AT&T a limited amount of rate flexibility in that it was allowed to reduce certain rates up to a maximum of 10 percent without filing the full cost support normally required in a rate proceeding. ITI is not required to match rate reductions that result from this rate flexibility. However, when there is any change in AT&T's maximum approved rates, ITI shall comply with the requirements herein within 30 days of the effective date of AT&T's rate change.

Except as otherwise indicated in this Order, ITI shall be subject to the non-dominant carrier regulations as delineated in the May 25, 1984 Order in Administrative Case No. 273, as well as any subsequent modifications to non-dominant carrier regulations. In the event of conflict, the terms of the instant Order shall take precedence, unless ITI is specifically relieved from compliance from any conditions contained herein.

Inefficiency of Network

ITI cited several specific instances in which it felt that the Commission's Order incorrectly characterized ITI's network in comparison with the network and operations of other carriers. With respect to the Commission's opinion that "ITI's unusual use of the services of other carriers seems to be an inefficient use

¹² Case No. 9889, Adjustment of Rates of AT&T Communications of the South Central States, Inc.

of the network,"¹³ ITI felt that its use of the services of other carriers is not unusual or inefficient.¹⁴ ITI described its network, in which it utilizes United States Transmission Services, Inc. ("USTS") as its facilities-based carrier. It noted that USTS has five switching centers and transports Kentucky calls to Atlanta, Georgia, because USTS's switch is located there.¹⁵ It further noted that the transport of calls to out-of-state locations for switching is not unusual in the telecommunications industry, and argued that no state can or should try to control such network operations.¹⁶

ITI also indicated that operator services are frequently provided through regional centers and that its operator service center is in Dallas, Texas. It stated that it did not have a separate operator center for each state and that not even AT&T provides interLATA operator services in such a manner. It further noted that the travel services of other carriers are provided through a single location nationwide for each company or, at most, a handful of locations across the nation.¹⁷ ITI argued that it would be inappropriate for the Commission to deny ITI certification because it utilizes interstate facilities since this is a common practice in the telecommunications industry.

¹³ August 24, 1988 Order, page 12.

¹⁴ ITI's Memorandum in Support of its Application for Rehearing, page 19.

¹⁵ Ibid., page 19.

¹⁶ Ibid., page 20.

¹⁷ Ibid., page 21.

ITI also felt that there was no evidence to support the conclusion that such a network is any more or less efficient than the network of any other carrier.¹⁸

In order to be able to accurately determine inefficiency, an extensive quantitative analysis would be required, possibly equalling or exceeding that of rate justification. In fact, if such an analysis resulted in costs higher than the dominant carrier, the Commission would consider this evidence of inefficiency and perhaps that operator services were best provided by monopoly carriers. Therefore, the Commission will accept ITI's opinion that it is efficient contingent upon it being able to provide reasonable service at AT&T rate levels. It should also be noted that the Commission considers the provision of operator services to be only a part of a general telecommunications offering and therefore is not inclined to view operator services costs on a stand-alone basis. It was ITI's decision to offer service to only a segment of the telecommunications market and to compete with full service carriers for that segment. Therefore, the Commission will not consider changing its current rate design policies with respect to operator services merely to accommodate carriers that wish to compete only in a segment of this market.

Benefits

In response to the Commission's conclusion that "the claim that ITI's proposal offers benefits for Kentucky ratepayers is

¹⁸ Ibid., page 21.

generally unsupported by the record in this proceeding," ITI provided illustrations of additional benefits which can occur through competitive operator services. For example, ITI indicated that:

1. The number of languages in which ITI can provide operator services has been increased to 18.

2. Subsequent to the hearing in this proceeding, ITI feels that it has become clear that its emergency services exceed the emergency capability presently available through most local exchange carriers and AT&T.

3. The percentage of major credit card usage has increased and that AT&T has responded to this competition by accepting major credit cards for billing of certain calls.

4. Message forwarding features are now available.

5. ITI has initiated cellular and mobile-marine operator services.

6. ITI plans to implement a program to provide translation services for the deaf.

The Commission acknowledges these benefits.

Public Confusion

ITI noted the Commission's finding that ITI's business practices have caused public confusion and dissatisfaction in Kentucky. In the opinion of ITI, to the extent that such confusion and dissatisfaction exist, this does not warrant rejection of ITI's application.¹⁹

¹⁹ ITI's Memorandum in Support of its Application for Rehearing, pages 9 and 10.

Although the Commission is still of the opinion that ITI's past business practices did result in public confusion and dissatisfaction, the Commission is of the opinion that ITI's compliance with the restrictions contained in this Order will do much to limit future problems. It does appear that the primary source of dissatisfaction was due to receiving large bills from a company that was unknown to the end-user. The Commission's requirement that rates not exceed AT&T rate levels should alleviate some of this dissatisfaction. However, in order to achieve true competition, it is important for consumers to have the freedom to choose among competing carriers. Therefore, the Commission will further require that access to the operator services of competing carriers not be blocked or otherwise intercepted. This requirement does not pertain in situations where the customers who have control of premises equipment are also the users and bill-payers of ITI's services. For example, a large business would continue to be permitted to restrict the choice of carriers for its own, and its employees', usage. The Commission will also require that access to the local exchange carrier's operators not be blocked or otherwise intercepted. This requirement will be expanded upon elsewhere in this Order. The blocking or interception prohibitions should be included in tariffs and contracts, with violators subject to immediate termination of service if the customer premises equipment is not brought into compliance within 20 days notice to owners of such equipment. The Commission will also require that operators provide, upon specific request, carrier identification codes of

other carriers that are used in 10XXX0 dialing sequences. Compliance with these requirements should help to reduce complaints and promote competition. The Commission will continue to monitor the situation, primarily through consumer complaints and will undertake further appropriate actions if necessary.

Public Awareness

ITI also noted the Commission's concern that ITI did not independently advertise and, therefore, is not known to Kentucky residents. ITI was of the opinion that it is unreasonable to make the presence of name identification a condition for the right to do business,²⁰ although it did propose measures to increase end-user familiarity with ITI. Specifically, ITI proposed:²¹

1. ITI has provided in its proposed tariff that its customers should provide notice to end-users. ITI supplies tent cards and stickers to be placed near or on telephone equipment used to access its services. It noted the difficulty in forcing the owners of customer premises equipment to post such notice, although it indicated that it would willingly include a provision in tariffs and customer contracts to disconnect premises owners who fail to comply.

2. ITI, through its tariff, commits to identify itself at both the beginning and conclusion of every call.

²⁰ Ibid., page 13.

²¹ Ibid., page 15.

3. ITI will provide an indication of its rates upon request to any caller.

ITI also noted that none of the conditions of service set out above are imposed upon AT&T, although ITI willingly accepts these requirements as conditions that should exist for the entire interexchange industry.²² The Commission is of the opinion that these measures are reasonable and should be implemented.

ITI also proposed to have South Central Bell include a billing insert, describing ITI and its services, in bills that contain an ITI charge. ITI requested the Commission to require South Central Bell to include such an insert, at a reasonable charge to ITI.²³ Although the Commission encourages ITI to make such an arrangement with South Central Bell and other local exchange carriers, the Commission declines to make this a requirement.

IntraLATA Call Completion

With respect to intraLATA call completion, the Affidavit of ITI Representative, Jerry L. Ginnich,²⁴ indicates that ITI will comply with the Commission's policies on intraLATA call restrictions and will not provide intraLATA services within Kentucky unless and until such prohibition is lifted by the

²² Ibid., page 13.

²³ Ibid., pages 13 and 14.

²⁴ Filed on November 9, 1988, as an attachment to ITI's Proposed Supplemental Evidence in Support of its Application for Certification on Rehearing.

Commission. Mr. Gimnich's affidavit describes the manner in which ITI will enforce the intraLATA prohibition, as follows:

1. ITI will instruct its customers to block all intraLATA calls and to redirect such calls to the appropriate local exchange carrier. This will require that all customers be informed that customer premises equipment must have the capability of recognizing and directing all intraLATA traffic to the local exchange carriers.

2. ITI has the capability of identifying and redirecting intraLATA calls. This is accomplished by virtue of a database acquired from BellCore which identifies all exchanges within Kentucky on a LATA basis. Each call is compared on an originating and terminating telephone number basis to determine if it is an intraLATA call. Each call identified as intraLATA is routed to a live operator, who informs the end-user that ITI cannot handle the call and that the operator will redirect the call to the local exchange carrier. The operator sends a tone down the line to the originating customer premises equipment, causing the equipment to redirect the call to the local exchange carrier. In the event that the tone redirect fails, the operator informs the end-user to place the call from a telephone served by the local exchange carrier.

3. In the event that an intraLATA call is inadvertently completed by ITI, ITI will not bill the end-user for the call.

As previously indicated, the Commission is of the opinion that these procedures alone are insufficient, and therefore will require that access to the local exchange carrier's operators not

be blocked or otherwise intercepted. Specifically, this will require that all "0 minus" calls, that is, when an end-user dials zero without any following digits, be directed to the local exchange carrier operators.²⁵ In equal access areas, "0 plus" intraLATA calls should not be intercepted or blocked. This does not require the purchasing of premium access services, although it will require the use of intelligent customer premises equipment if this option is not selected in equal access areas. In non-equal access areas, it is prohibited to block or intercept "0 minus" calls; however, it is permissible to intercept "0 plus" calls because otherwise it would require the use of customer premises equipment that is capable of screening functions, in order for ITI to be able to provide service in these areas. Although ITI's proposed solutions assume the use of this type of equipment, as well as operator screening, the Commission views this as unnecessarily burdensome, especially since the Commission intends to universally apply these restrictions. These requirements should be included in tariffs and contracts, with violators subject to immediate termination of service if the customer premises equipment is not brought into compliance within 20 days' notice to the owners of such equipment.

The Commission recognizes that these requirements will not completely prevent the completion of unauthorized intraLATA

²⁵ It should be noted that this requirement has the added benefit of directing emergency calls to local exchange carrier operators, making it unnecessary to determine whether or not other operator services providers are capable of adequately responding to emergency calls.

traffic, but the expectation is that this traffic will be minimal. The Commission will allow ITI to bill for such traffic, since to do otherwise would be to encourage fraud, which would be detrimental to both ITI and the local exchange carriers. The issue of compensation to the local exchange carriers for the completion of unauthorized intraLATA traffic will be considered in Administrative Case No. 323²⁶ and is not addressed herein.

Splash Back

With respect to the Commission's finding that ITI lacked the technical ability to ensure the uniform return of traffic to its point of origin, ITI is of the opinion that it is fully capable of returning calls to its point of origin from virtually all equipment connected to the ITI network.²⁷ ITI refers to this capability as "splash back," which is accomplished by sending a tone down the line to the originating customer's premises equipment, causing the equipment to redial the call over the local exchange carrier's network. This capability is limited solely by the type of equipment used by the caller.

Because of the restrictions with respect to blocking access to other carriers, the Commission is of the opinion that its concerns with respect to ITI's splash back capability is now moot. End-users who wish to use another carrier need only redial

²⁶ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

²⁷ ITI's Proposed Supplemental Evidence in Support of its Application for Certification on Rehearing, filed November 9, 1988, page 13.

their calls through the desired carrier. If this fails, it will be clear to ITI that its tariff is being violated and it should take appropriate action to enforce the terms of its tariff.

Access Charges

ITI felt that the Commission mischaracterized ITI's use of autodialers by stating that "through the use of a device known as a 'DTS dialer', ITI has avoided the need to purchase access services in Kentucky"²⁸ in that ITI felt that autodialers are not used for the purpose of avoiding the payment of access charges.²⁹ ITI indicated that an autodialer is equipment placed on a customer's line to permit single digit access through Feature Groups A and B. ITI was of the opinion that dialers do not intercept calls or alter COCOTS,³⁰ that their usage is a common and accepted feature of interexchange operations, and that there was no basis for characterizing ITI's use of dialers as being any different than the use of dialers by other carriers.³¹

ITI also felt that there was no evidence to suggest that access charges were not being paid on all calls originated through ITI and is of the opinion that access charges are being paid on all calls originated through ITI. Nevertheless, ITI indicated its willingness to take reasonable steps to address the

²⁸ August 24, 1988 Order, page 4.

²⁹ ITI's Memorandum in Support of its Application for Rehearing, page 17.

³⁰ Customer-Owned Coin Operated Telephones.

³¹ ITI's Memorandum in Support of its Application for Rehearing, page 17.

Commission's concerns and provided proposals to assure payment of intrastate access charges, as follows:

1. ITI can begin acquiring feature group access in its own name. However, ITI feels that this would result in a decrease in the number of circuits obtained by USTS and thereby reduce the efficiency of that carrier, as well as produce a smaller trunk group for ITI's use, which would result in less efficient utilization of local exchange facilities by ITI. But it would enable ITI to directly report its own Percentage of Interstate Usage ("PIU").

2. ITI could report its PIU for Kentucky to USTS based on points of origination and termination. ITI agrees to require USTS to certify to ITI and the Commission on a monthly basis that ITI's report of intrastate calls is included in USTS's PIU reports to the Kentucky local exchange carriers. This is the approach preferred by ITI.

3. The Commission could prescribe direct compensation to local exchange carriers through means other than ordinary reporting and payment of access charges.

4. ITI, through USTS, can move to the exclusive use of Feature Group D access facilities where available. ITI is in the process of nationwide transitioning to the use of primarily Feature Group D facilities and agrees to submit a Kentucky specific plan within 30 days, if requested to do so by the Commission.

ITI contends that imposition of any one of these requirements would discriminate between ITI and other carriers.

In a subsequent filing,³² ITI noted that it is acquiring Feature Group D service and, pursuant to its preparation for participation in balloting for public pay telephones, is in the process of acquiring Feature Group D access from all equal access tandems in Kentucky.

The Commission agrees with ITI's assessment that autodialers are not used for the purpose of avoiding the payment of access charges and that such equipment is primarily used to permit single digit dialing through Feature Groups A and B access. The Commission disagrees with ITI's opinion that autodialers do not intercept calls, to the extent that autodialers do transmit dialing information used in routing telecommunications traffic that differs from what the end-user dialed. Clearly, depending upon the sophistication of the device, they can be used to intercept calls from the end-user's intended carrier. However, the effect of the Commission's restrictions with respect to blocking and interception of calls will be that autodialers, and other customer premises equipment that incorporate this function, will be useful primarily for dialing convenience.

The Commission's primary concern with respect to access charges is that appropriate intrastate access charges be paid. As described in the August 24, 1988 Order, the source of this concern is due to the out-of-state location of USTS's switch. In most situations, this would not be the cause of jurisdictional

³² ITI's Proposed Supplemental Evidence in Support of Its Application for Certification on Rehearing, filed November 9, 1988, page 9.

misclassification of USTS's own traffic. With Feature Group D access, the local exchange carrier can usually correctly classify jurisdictional usage. With nonpremium access, it is assumed that USTS correctly reports its own jurisdictional usage based on points of origination and termination. However, when USTS provides service to a reseller such as ITI, there is a concern that USTS is unaware of the final terminating location of the call and therefore would classify it as interstate.

ITI has proposed solutions to assure the correct jurisdictional classification of calls. However, the Commission recognizes that the potential for jurisdictional misclassifications because of reselling the services of carriers with out-of-state switching locations is not unique to ITI. The Commission further notes that the presubscription of BOC pay telephones will encourage the use of premium access services and that ITI is in the process of a nationwide transition to the use of primarily Feature Group D facilities, which will reduce the potential for jurisdictional misclassifications. Therefore, the Commission will not place any special requirements on ITI with respect to access charges, although the Commission will continue to monitor the situation on an industry-wide basis.

Validation

ITI felt that the Commission's finding of fact with respect to validation was not substantiated by the evidence. To support this contention, ITI indicated that it currently has the capability of validating calls charged to Bell Operating Company calling cards and that it will validate such calls in the state

of Kentucky when it is certificated. ITI felt that it was "only the RBOCs' illegal, discriminatory and anti-competitive denial of data to interexchange carriers such as ITI that created a barrier in providing this type of service to Kentucky customers." ITI was also of the opinion that the evidence embodied in Mr. Freels' affidavit would support a withdrawal and a replacement of the Commission's finding with a finding that indicates that ITI is fully capable and willing to validate calling card calls placed by Kentucky consumers.

ITI has apparently misinterpreted the Commission's finding. The finding states that "ITI's practice of accepting telephone calling cards without the ability to validate the use of such cards is unreasonable." The original evidence indicates that this was ITI's practice, and it was unreasonable. The rehearing evidence indicates that ITI has changed this practice with respect to Bell Operating Company cards; however, the Commission will make validation a requirement for all calling cards. ITI appeared to agree with the necessity for calling card validation when it noted that:³³

Obviously, calling card validation is necessary to prevent fraudulent use of customers' calling cards. It is a necessary component of any operator service provision.

The Commission recognizes that not all issuers of calling cards make validation capabilities universally available, and therefore, ITI's inability to process a call billed to such a

³³ ITI's Proposed Supplemental Evidence in Support of Its Application for Certification on Rehearing, filed November 9, 1988, page 10.

card may be inconvenient to the customer. Customer complaints should be referred back to the issuing carrier.

ORDERS

IT IS THEREFORE ORDERED that:

1. ITI be and hereby is granted the authority to provide interLATA operator-assisted telecommunications services subject to the restrictions and conditions of service contained herein. This authority to provide service is strictly limited to those services described in this Order and contained in ITI's application.

2. ITI's operator-assisted services shall be subject to rate regulation and its rates shall not exceed AT&T's maximum approved rates as defined herein.

3. ITI shall not be permitted to add any surcharges, other than approved operator handling charges, to the price of a call, and it is not permitted to bill for uncompleted calls.

4. Except as otherwise indicated in this Order, ITI shall be subject to the non-dominant carrier regulations as delineated in the May 25, 1984 Order in Administrative Case No. 273, as well as any subsequent modifications to non-dominant carrier regulations. In the event of conflict, the terms of the instant Order shall take precedence, unless ITI is specifically relieved from compliance from any conditions contained herein.

5. Access to the operator services of competing carriers shall not be blocked or intercepted; however, this requirement does not pertain in situations where the customers who have

control of premises equipment are also the users and bill-payers of ITI's services.

6. Access, as described in this Order, to the local exchange carrier's operators shall not be blocked or otherwise intercepted.

7. Blocking and interception prohibitions shall be included in ITI's tariffs and contracts, with violators subject to immediate termination of service if the customer premises equipment is not brought into compliance within 20 days' notice to owners of such equipment.

8. ITI's operators shall provide, upon specific request, carrier identification codes that are used in 10XXX0 dialing sequences.

9. ITI shall provide tent cards and stickers to be placed near or on telephone equipment used to access its services and shall include provisions in tariffs and contracts, with violators subject to termination of service.

10. ITI shall identify itself at both the beginning and conclusion of every call.

11. ITI shall provide an indication of its rates upon request to any caller.

12. ITI shall not accept calling cards for billing purposes if it is unable to validate the card.

13. Within 30 days of the date of this Order, ITI shall file its revised tariff sheets to conform to the restrictions and conditions of service contained herein.

