BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the requirements appropriate for Alternative Operator Services and Public Telephones.	)	DOCKET NO. 871394-TP ORDER NO. 21051 ISSUED: 4-14-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR STAY PENDING RECONSIDERATION

BY THE COMMISSION:

On December 21, 1988, we issued Order No. 20489 in the above-referenced docket, which set forth the provisions and requirements Alternative Operator Service (AOS) providers must comply with to provide intrastate operator services. Under the terms of the Order the majority of its provisions were to go into effect within thirty (30) days of the Order's issuance date. Several parties have filed Motions for Reconsideration of the Order that we will address at an upcoming Agenda Conference. Our decision in this Order is only intended to address the motions requesting stay of Order No. 20489, which were filed by Central Corporation (Central), Southland Systems, Inc. (Southland), National Telephone Service, Inc. (NTS) and International Telecharge, Inc. (ITI).

Our rules do not specifically provide for the stay of an Order pending reconsideration. However, Rule 25-22.061, Florida Administrative Code, sets forth the criteria to be applied in considering a party's request for the stay of an Order pending further judicial proceedings. We have used that rule in judging the merits of the current motions for stay pending reconsideration. Rule 25-22.061(1)(a), Florida Administrative Code, provides for an automatic stay when the motion requests the stay of an Order imposing a refund or a rate reduction. In all other instances we are required to apply the following criteria to reach our decision whether to grant, deny or modify a motion for stay:

(a) Whether the petitioner is likely to prevail on appeal;

(b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and

(c) Whether the delay will cause substantial harm or be contrary to the public interest.

By Order No. 20489 we directed AOS providers to file tariffs reflecting AT&T Communications, Inc. (ATT-C) time-of-day rates. Our Order prohibited AOS providers from

charging more than ATT-C would charge for a comparable call. In most instances, our decision resulted in a rate reduction for AOS providers. Not surprisingly the parties seek a stay of this portion of our Order, which we shall grant, pursuant to the Rule. However, as provided by the Rule, we shall condition our stay upon the posting of good and sufficient bond, or the posting of a corporate undertaking. We note that whatever method a company chooses shall be subject to our approval, prior to the effective date of the new rates.

We shall not grant a stay of our decision to require AOS providers to amend their contracts with their customers, such as hotels, hospitals and universities, to state that the aggregator shall not engage in call blocking. Our initial decision imposing this requirement was predicated upon our policy of insuring that callers are given access to all locally available interexchange carriers. We find no compelling reason to stay this requirement. We believe a stay would be contrary to the public interest and that, considering what is occurring on a national level, as well as a state level, it appears unlikely the parties would prevail on reconsideration. Further, the movants have failed to demonstrate that they will suffer irreparable harm if the stay is not granted. One party alleged economic harm would occur because many of its customers would be unable or unwilling to comply with this requirement. If an AOS provider's customer is unwilling to sign the contract addendum imposing this requirement and the AOS provider continues to serve the customer, the AOS provider is in violation of our rules and will be subject to further Commission action. However, if an existing customer of an AOS provider is technically unable to comply with the restriction against call blocking, the AOS provider may seek Commission waiver of this requirement, as it applies to a specific customer, upon demonstrating good cause. As of the date of this Order, an AOS provider shall not enter into a contract with a traffic aggregator that is unable to deliver traffic to all locally available IXCs in compliance with our decision.

We shall not stay our decision to require AOS providers to post notice in the form of tent cards and stickers at or near the phones of their customers, nor shall we stay our requirement that AOS providers double brand all calls, whether the call is handled by a live operator or an automated operator. We believe that the calling public's lack of notice about the AOS industry was and continues to be a significant factor contributing to complaints. It is, therefore, contrary to the public interest to grant this stay. The movants argued irreparable financial harm if they were required to print such notice and display it at each of the phones that it serves, particularly in view of pending motions for reconsideration on this issue. We find this concern does not override the public's right to receive sufficient notice of who is handling their long-distance calls and how they can obtain rate information, etc. Finally, in reaching our decision, we are undecided as to whether the parties will prevail on this issue

on reconsideration.

We have applied the same rationale to deny the stay of our double branding requirement as we did to deny the stay of our disclosure and notice requirement. Therefore, all AOS providers must provide double branding on their live, as well as they automated calls. However, we shall grant NTS' request for a brief waiver of the double branding requirement until March 31, 1989, in order that NTS has sufficient time to install the software capability to perform the double branding function on its automated operator assisted calls.

We also deny the movants' request that we stay our ruling in the Order, which directed that all zero minus (0-) traffic be routed to the local exchange companies (LECs). Zero minus traffic occurs when an end user dials 0 without dialing any additional digits within five seconds. We find that this ruling is consistent with our prior decisions regarding 1+, 0+, and 0- traffic, as well as our recent action in Docket No. 860723-TP. Furthermore, we believe the movants have failed to demonstrate that they will suffer irreparable harm, inasmuch as all interLATA 0- calls shall be returned to the AOS provider.

Based upon the above considerations, we grant the movants' requests to stay the rate reduction. We note here that the movants also requested stay of that portion of our Order which imposed a refund. Our imposition of the refund was found to be an invalidly promulgated rule and we have appealed that decision. Therefore, until a ruling on our appeal, we find that the appeal acts as a defacto stay and we will, therefore, not address the stay as to the refund decision in this Order. We have also denied the movants' requests to stay all other portions of the Order. This docket shall remain open pending the results of reconsideration.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motions for Stay of Order No. 20489 filed by Central Corporation, National Telephone Services, Inc., International Telecharge, Inc. and Southland Systems, Inc. are granted in part and denied in part as set forth in the body of the Order. It is further

ORDERED that Alternative Operator Service providers shall be required to post a good and sufficient bond or file a corporate undertaking, subject to our approval, prior to charging rates greater than ATT-C's time-of-day rates. It is further

ORDERED that National Telephone Service, Inc.'s request for waiver of the double branding requirement on its automated operator assisted calls is granted as set forth in the body of the Order. It is further

ORDERED that this docket shall remain open as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 14th day of APRIL, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DWS

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.