STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5566

Generic Investigation Into the Regulation of Public Telephone and Operator Service Providers in Vermont	))))	Hearing at Montpelier, VT December 4, 1992

Order entered: 1/6/95

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Hearing Officer

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* Since the date of the hearing, First Phone of New England, Inc. has merged into and with LDDS Communications, Inc., d/b/a LDDSMETROMEDIA Communications. See Docket No. 5712, Petition of First Phone of New England, Inc. and LDDS Communications, Inc. for approval: (1) to merge First Phone into and with LDDS, and (2) to transfer First Phone's CPG to LDDS. Order of 2/16/94.

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INTRODUCTION

On March 4, 1992, the Board opened this generic investigation into the regulation of pay phone services and operator services in Vermont. The Board's reasons for initiating this investigation were as follows: (1) the pay phone industry had changed dramatically since the last time the Board had examined the industry in Docket No. 4946, Petition of Burlington Telephone Company requesting the Board to find that the restriction of resale of wide area telephone service (WATS) in New England Telephone Company tariff P.S.B. - Vt. - 20, Section 10.2.1.A, is invalid, Order of 2/21/86; and (2) the Board had never looked generically at the operator service industry, yet several telecommunications providers in Vermont had begun to offer operator services in conjunction with their other service offerings. The Board's goal in opening this investigation was to devise a regulatory structure that would be appropriate for these two developing industries as they exist in Vermont.

In its Order Opening Investigation, the Board outlined several issues that would be examined in this docket, including the following: (1) consumer protection issues; (2) standards for issuing certificates of public good (CPGs); (3) rates, terms and conditions of service; (4) adequacy of service; and (5) enforcement mechanisms. A procedural order issued on June 12, 1992, further delineated the issues that would be addressed. On March 18, 1992, a prehearing conference was held. On April 13, 1992, an informal workshop was held. Motions to intervene filed by the following parties were granted by Procedural Order entered April 29, 1992: First Phone of New England, Inc. (First Phone); Apollo Communications Inc. (Apollo); Contel of Vermont, Inc. d/b/a GTE - Vermont (GTE) and New England Telephone and Telegraph Company (NET). Waitsfield-Fayston Telephone Company, Inc. (Waitsfield-Fayston) filed a motion to intervene on October 30, 1992. Although filed several months after the deadline for intervention had expired, this motion was granted on November 5, 1992. Sprint Communications Company, L.P. (Sprint) and MCI Telecommunications Company (MCI) also filed late motions to intervene. These motions were also granted by Order dated November 13,

1992. Finally, on December 3, 1992, just one day before the hearing in this docket, AT&T filed a motion to intervene. This motion was granted for the limited purpose of allowing AT&T to cross-examine witnesses and file briefs.

On December 4, 1992, a technical hearing was held. Five witnesses testified: Mr. Lawrence Olmsted, for Apollo; Mr. Michael Bovalino, for NET; Mr. Charles Larkin and Ms. Susan Martin, for the DPS; and Mr. Michael Nelson, for Sprint. Between January 12, 1993, and February 9, 1993, the parties filed briefs, proposed findings of fact and reply briefs.

On January 27, 1993, the DPS filed a request to strike certain portions of Apollo's Reply Brief. On February 1, 1993, Apollo filed an objection to the Department's request to strike. Because I did not rely on any of the material objected to by the DPS, I view the DPS' motion as moot and decline to rule upon it.

PAY PHONES

I. Legal Background

In its Order of 2/21/86 in Docket No. 4946, the Board summarized the federal law surrounding regulation of pay phones. The Board pointed out that regarding interstate services, the Federal Communications Commission (FCC) had ruled that any customer-owned, coin-operated telephone (COCOT) that offers the resale and sharing of interstate services may be attached to the public switched network subject only to a registration requirement. Conditions regarding resale and sharing of intrastate services, the Board added, had been left by the FCC to the state public utility commissions. Moreover, the Board explained, the FCC had explicitly given the state commissions authority to impose reasonable conditions on the entry of COCOTs into the intrastate market.

Also in its Order in Docket No. 4946, the Board set forth a number of rules and regulations regarding the entry of COCOTs into the Vermont market. These requirements created the regulatory framework in which COCOTs now operate. The requirements outlined in the Board's Order are summarized below.

1. COCOTs must subscribe to measured business service where it is available.

2. COCOT rates for intrastate calling - local, long-distance and all other intrastate services - may be priced no higher than the tariffed coin rate charged by the LEC in whose service territory the COCOT is located.

3. Where coin-free access to the following services is provided by the LEC in whose service territory the COCOT is located, the COCOT must also provide coin-free access to these services: access to the operator, emergency numbers, directory assistance, 800 numbers, credit card, collect and third party billing numbers without charge where these are provided by the local telephone company.

4. COCOTs must provide service equal or better than that already provided by existing coin phones as follows:

    a. phones must be registered with the FCC and conform to its requirements for hearing aid compatibility and access for persons with disabilities;

    b. phones must accept nickels, dimes and quarters and refund payment for uncompleted calls;

    c. access to the operator and other services provided without charge must be made available without deposit of a coin;

    d. a measured call may not be disconnected without giving the caller sufficient opportunity to extend the call by depositing

more coins;

e. COCOTs must provide local and long distance calling and access to all IXCs offering service in the area; and

f. phones that are out of order shall be so posted as soon as the owner learns of the problem, and repairs shall be made within 24 hours thereafter.

5. The following information must be posted so as to be clearly visible by anyone using the COCOT:

a. the phone number of the COCOT;

b. full and clear instructions for use of the instrument;

c. the name of the owner of the COCOT;

d. the method of reporting complaints and obtaining refunds;

e. the address and telephone number of the Consumer Affairs Division of the DPS and a statement that they should be contacted if complaints are not resolved by the owner; and

f. a statement, in places where the COCOT is connected to a line with an extension, that privacy cannot be insured

The question posed by the Board in this docket, with respect to pay phones, is whether the regulatory framework outlined in Docket No. 4946 is appropriate for the industry as it exists in Vermont today and, if not, how it should be changed.

II. Positions of the Parties

The positions of the parties are set forth at length, below, in the Discussion section. (See infra at IV (Pay Phones.)) In a nutshell, the DPS takes the position that additional regulation is needed in several areas, in order to protect the public interest. Apollo argues in favor of lesser regulation on the ground that this will facilitate its operations, spur competition and thereby protect the public. NET's position is primarily in favor of the status quo.

III. Findings of Fact

Pursuant to 30 V.S.A. §8, I hereby report the following findings of fact, regarding COCOTs, to the Board.

A. Terminology

a. The term COCOT is an acronym for "customer-owned coin-operated telephone." The term COPT is an acronym for "customer owned pay telephone." The term COPT applies to coin-operated pay telephones as well as coinless pay

telephones, which are also known as "blue phones" or "charge-a-call" phones. Payment for calls made on coinless phones is via credit card, collect calling, or third party billing. Tr. at 153-56 (Bovalino).

b. NET offers both public telephone service and semi-public telephone service. See Findings 24, 25, 26.

B. Technology

i. Smart Phone Technology

c. "Smart phone" technology involves placement of a computer chip in the pay telephone instrument. The computer enables the phone to perform a variety of functions, including the following: calculation of rates, routing and processing of calls, emergency calling, remote diagnostic functions, remote maintenance and repair, provision of route management information, customization features (free calls, speed dialing, call messaging, etc.), touch tone emulation, etc. Olmsted pf. at 5-6; tr. at 57-61 (Olmsted).

d. Smart phone technology enables the phone to simulate some of the functions of a central office, thereby resulting in the provision of services that could not be made available at a traditional pay station. Olmsted pf. at 5-6.

e. Smart phones can provide services such as 911, dial tone first, touch tone and equal access even if such services are not available in the exchange where the phone is located. Olmsted pf. at 5-6.

f. The diagnostic and repair functions of smart phones reduce the need for field calls for repair and, generally, result in expeditious repair of disabled pay phones. Olmsted pf. at 5-6.

g. Smart phones have a higher value than traditional pay phones because they can be programmed to route certain calls, such as emergency calls. Larkin reb. at 2.

h. Smart phone technology enables the phone to automatically assess charges for a particular call. Tr. at 60-61 (Olmsted).

i. Apollo's pay phones are smart phones. Tr. at 60-61 (Olmsted).

j. NET's pay phones are not smart phones. Bovalino reb. at 4.

k. Smart phone technology is still evolving. Advances in the

technology will inevitably lead to the performance by smart phones of additional functions in the future. Olmsted pf. at 6.

l. Services that are equivalent to smart services are available through the central offices of NET and other LECs. If these services were unbundled and offered to COPT owners at a reasonable rate, the COPT owners could buy these services rather than buy smart phones. Tr. at 263-64 (Larkin).

m. It is of no consequence to the end user whether the intelligence that enables a particular service to exist resides in the phone set (as in smart phones) or in the central office (as in dumb phones). Bovalino reb. at 4; Larkin reb. at 7.

ii. Store and Forward Technology

n. Store and forward technology is a computer-based technology that enables a pay phone to automatically process credit card calls without the need for a live operator. The customer dials a 0+ call and programs the phone with his credit card information. The phone then validates the customer's credit card and transmits the call as a 1+ call. This lowers the transmission cost to the COPT owner. Tr. at 38-39 (Olmsted).

iii. Touch-Tone Phone vs. Rotary Phone

o. If a customer makes an NET calling card call from a rotary phone (which necessarily requires live operator assistance), NET will charge the customer the same rate as it would charge if the call had been made from a touch-tone phone without live operator assistance. NET does not penalize the customer, from the perspective of rates, for the lack of availability of a touch-tone phone. Tr. at 157-58 (Bovalino, 164 (Bovalino), 278 (Larkin).

p. All of Apollo's phones are touch-tone phones. Tr. at 61-62 (Olmsted).

C. Distribution of Pay Phones in Vermont

q. Apollo owns and operates 80 pay phones in Vermont and Hew Hampshire. Half, or 40, of these phones are located in Vermont. Tr. at 88 (Olmsted).

r. The distribution of Apollo's phones in Vermont tends to be

concentrated. For the most part, the phones are not located in rural areas. Tr. at 93-94 (Olmsted).

s. NET has 4,079 pay phones in Vermont. Of these, 274 are coinless. Tr. at 127 (Bovalino), 153-56 (Bovalino).

t. NET places coinless phones only in areas where there is not a great deal of coin traffic, i.e., locations where callers tend to use calling cards. In addition, most if not all of its coinless phones are located in places where it maintains coin-operated phones as well. Tr. at 153-56 (Bovalino).

u. In locations where there are multiple pay phones, it is economical to provide a combination of coin phones and coinless phones. Coinless phones are less expensive than coin phones to own and maintain because they do not have coin mechanisms and, therefore collection and maintenance costs are lower than with coin-operated phones. Tr. at 73-75 (Olmsted).

v. Apollo usually provides either coin-operated phones or a combination of coin and coinless phones. In the areas where it does have stand-alone coinless phones, it provides free local calling. If the Board were to rule that coinless phones could only be provided if accompanied by free local calling, and if for a particular location Apollo did not want to provide such calling, it simply would provide no phone at all. Tr. at 28 (Olmsted), 73-75 (Olmsted).

w. In deciding whether to install a public telephone in a particular location, NET looks for revenues of at least $4 per day per phone, although it will consider installing a pay phone if the projected revenues are more than $2 per day. Tr. at 126-27 (Bovalino), 296 (Bovalino).

x. NET offers both public telephone and semi-public telephone services. NET classifies these as two separate products and tariffs them differently.[1] Whether a phone is classified as semi-public or public depends on how much revenue NET expects it will generate. Tr. at 135, 158-59

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1. All references in this Proposal for Decision to pay phones -- whether to COCOTs, COPTs, or coinless phones -- are to public telephones, unless expressly provided otherwise.

(Bovalino).

y. If a location owner asks for a public telephone and NET does not think that the phone will generate at least $2 per day, then NET will offer to sell that location owner a semi-public telephone. The installation charge for a semi-public phone in Vermont is approximately $46. Owners also pay a monthly charge of between $36 and $38. Semi-public service is common in barber shops, bars and restaurants. Tr. at 158-59 (Bovalino).

z. Semi-public telephone service, as offered by NET, is a cross between public telephone service and private business service. The phones typically look like public telephones, but the subscriber pays a monthly bill for the service, does not receive a commission on it, and may advertise the number as his business number. While providers of public telephone service are required to obtain certificates of public good, providers of semi-public telephone service are not so required. Tr. at 271-74 (Larkin), 158-61 (Bovalino).

aa. NET's salespersons in public telephone service do not receive commissions. Tr. at 296 (Bovalino).

bb. Apollo's arrangements with location owners vary. Generally, however, the location owners receive a commission based on the volume of calls made. Tr. at 36-37 (Olmsted).

cc. Apollo does not charge its customers a monthly fee for service and does not distinguish between semi-public and public telephone service. Tr. at 78 (Olmsted).

D. Certification and Registration

dd. Under existing Board procedures, a COPT provider that wishes to offer COPT service in Vermont must file an application for a certificate of public good (CPG) with the Board. Martin pf. at 3.

ee. The existing certification requirement provides a mechanism for tracking those companies in the state that are offering pay phone services. Martin pf. at 3; Olmsted pf. at 2.

ff. In the past, the DPS has had some difficulty in ensuring that all COCOTs file Annual Reports and pay the gross revenue tax. Martin pf. at

3-5.

E. Access to and from Pay Phones

i. Access from Pay Phones

Generally

gg. Several parties to this docket agree that the following classes of calls should be coin-free: operator access, 800 calls, 950 calls and 0+ calls billed to other forms of payment such as calling cards or collect calls. Olmsted pf. at 3. Larkin pf. at 3; Nelson pf. at 2-3.

Emergency Services

hh. Police, fire and emergency medical services are generally provided directly, or through a contractor, by local town, city or county governments. NET has listings for ambulance services, or the equivalent, for each known community in Vermont. Bovalino reb. at 2.

ii. Neither Apollo nor NET has the information that would be necessary to enable them to be responsible for determining which emergency service provider would be the appropriate recipient of a particular emergency call. Obtaining and maintaining accurate information would be difficult. Bovalino reb. at 2; tr. at 28 (Olmsted).

jj. When a call to 911 is made from a pay phone in an area that does not have 911 service, the call goes to an NET operator. The operator will then specifically ask the caller what he or she wants to do. If the caller does not request a specific provider, the operator will decide where the best place is to terminate the call. The operator will then connect the caller to an emergency service provider. The operator will stay on the line until the two parties are connected - generally, until it is confirmed that the emergency provider has handled the call. This practice is the same for pay and non-pay phones in any NET service territory that does not yet have 911 basic or 911 enhanced. Tr. at 119-21 (Bovalino).

kk. NET's current operator practices regarding emergency calls are consistent with what the Department contends they should be. Bovalino reb. at 2-3

ll. NET's practices regarding treatment of emergency calls in non-

911 areas are not contained in its tariffs. Larkin reb. at 4.

Carriage of IntraLATA Toll Calls

mm. IntraLATA toll calls from pay phones may be carried by NET, through a competing toll carrier or through store-and- forward technology. The potential advantages of each choice include profit to the provider of service, quality of service, and acceptability to end users and location owners. COPT owners decide which method to use by considering these factors as well as incentives that may be offered by particular carriers, such as commissions for intraLATA traffic. Olmsted pf. at 4.

10XXX Access, Other Forms of Access, and Fraud

nn. A COPT customer may access the interexchange carrier (IXC) of her choice by dialing the IXC's 1-800 telephone number, its Feature Group B (950-XXXX) number or its Feature Group D (10XXX) number. Nelson pf. at 4.

oo. A problem of fraud is associated with Feature Group D (10XXX) access. Calls made by dialing 10XXX-1+ are particularly vulnerable to fraud in that end users may direct dial calls and the charges will be billed back to the COPT line. Tr. at 290 (Nelson). Tr. at 24-25 (Olmsted), 33-35 (Olmsted), 289-90 (Nelson).

pp. Blocking of 10XXX access is technically possible. Tr. at 33-35 (Olmsted).

qq. The FCC has issued rules that prohibit the blocking of access to 10XXX-0+. These rules require that in equal access areas, such as Vermont, access to 10XXX-0+ dialing from all pay phones must be unblocked by January 10, 1993. Tr. at 24-25 (Olmsted). See 47 C.F.R. §64.704(c).

rr. The FCC also requires: (a) aggregators to unblock 800 and 950 access and set a schedule for unblocking; (b) LECs to offer screening services, by January 10, 1993, to alert OSPs of any restrictions on any lines to which a caller is attempting to bill the charges for his call, in order to protect COPT owners from fraud (i.e., billing back of the calls to the COPT line). Nelson pf. at 2-3. See CC Docket No. 91-35, In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation,

Order on Reconsideration (released 7/10/92), ¶¶ 6-14, 21.[2]

Directory Assistance

ss. COCOT owners are not allowed, under current Board rules, to charge customers for directory assistance calls. See Docket No. 4946, Order of 2/21/86 at 58.

tt. Apollo has entered into a contract with NET that provides that NET will give Apollo a 20% credit on any PAL that meets or exceeds $85 total billed intrastate revenue for a given month. The contract also provides that NET will charge Apollo a flat rate of $4.00 per month per phone for directory assistance regardless of actual usage. Bovalino pf. at 4.

uu. NET would offer the same arrangement to any COPT provider in the state, for any phone that generated at least $85 in revenues per month. Tr. at 139 (Bovalino)

ii. Access to Pay Phones: Incoming Calls

vv. Public telephone service is a two-way service. Tr. at 147 (Bovalino).

ww. Incoming service is an integral part of telephone service, including pay telephone service. It is essential for social reasons that persons who do not have access to a private telephone be able to receive telephone calls at a pay phone. Larkin pf. at 7.

xx. From the perspective of a pay phone owner or operator, four problems are associated with incoming service to pay phones. Olmsted pf. at 6; tr. at 85-88 (Olmsted).

yy. One problem is that an incoming call means a potential loss of revenue to the pay phone owner in that the line is tied up with a non-revenue generating call while it could theoretically have been used for a call that would have generated revenue. Olmsted pf. at 6; tr. at 48-51 (Olmsted); Bovalino reb. at 4.

zz. A second problem is that the risk of fraud increases in that charges for collect calls, including international collect calls, may be accepted but not paid for by users of the phones. Olmsted pf. at 6; tr. at

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2. 7 FCC Rcd 4355, 4357-59, 4361 (1992).

41-42, 44-46 (Olmsted); Bovalino reb. at 4; tr. at 133-34 (Bovalino).

aaa. A third problem in some areas of the country, although not in Vermont, is that state public utility commissions and law enforcement personnel have identified safety concerns in connection with incoming service. Olmsted pf. at 6; Tr. at 85-88 (Olmsted); Bovalino reb. at 4; tr. at 146-48 (Bovalino).

bbb. A fourth problem is that some location owners insist on unavailability of incoming calls as a precondition to placement of a pay station at their property. These owners refuse to allow placement of a pay phone if the phone is capable of receiving incoming calls. Apollo has encountered this argument two or three times in the past two years in its combined Vermont and New Hampshire territory. Olmsted pf. at 6; tr. at 85-88 (Olmsted).

ccc. Approximately 60%-70% of Apollo's pay phones restrict incoming calls. Tr. at 85-88 (Olmsted).

ddd. When it installs a pay phone, NET assumes that the phone will allow incoming service. However, NET restricts incoming calls either at the request of the location owner, the police or other governmental authority. Approximately 12% of its 4,079 Vermont phones are so restricted. Tr. at 146-48 (Bovalino), 153 (Bovalino).

iii. Screening and Fraud Detection Mechanisms

eee. Fraud is a problem for all pay phone owners. Tr. at 134, 297 (Bovalino).

fff. LECs provide services to COPTs, for a fee, to help prevent fraud. Bovalino reb. at 3-4.

ggg. NET offers two screening services: originating number screening and terminating number screening. Originating number screening prohibits the IXC, OSP or LEC that is carrying the call from billing the call to the originating number (i.e., to the pay phone line). In order for someone other than the caller to pay for the call, the caller must make either a calling card call or a 0+ call. Terminating number screening is the reverse. It prevents the billing of third party or collect calls to a pay phone line. Tr.

at 141-43 (Bovalino)

hhh. International screening is a new screening service that NET was planning to provide as of January 10, 1993. This service blocks access to international directory assistance and to 1+ dialing of international calls. Tr. at 141-43 (Bovalino).

iii. To help ameliorate the problem of fraud, Apollo validates its calls. The way in which it validates is it subscribes to a company to which it routes its information. This company, in turn, uses one of the line identification data base (LIDB) hubs at one of the Regional Bell Operating Companies (RBOCs) to validate the calls. Tr. at 80-81 (Olmsted).

F. Consumer Protection

i. Posting

jjj. Each COPT is currently required to post information as outlined on pages 53-60 of the Board's Order of February 21, 1986, in Docket No. 4946. Martin pf. at 5.

kkk. The information that must be posted, pursuant to Docket No. 4946, is as follows:

a. the phone number of the COCOT;

b. full and clear instructions for use of the instrument;

c. the name of the owner of the COCOT;

d. the method of reporting complaints and obtaining refunds;

e. the address and telephone number of the Consumer Affairs Division of the DPS and a statement that it should be contacted if complaints are not resolved by the owner; and

f. a statement, in places where the COCOT is connected to a line with an extension, that privacy cannot be insured

lll. Currently, none of Apollo's phones are presubscribed to multiple carriers or OSPs. Presubscription to multiple carriers is, however, technologically possible, and Apollo would like the option of arranging for such presubscription. For example, Apollo may not want to handle calls to certain overseas locations. With presubscription to multiple carriers, Apollo could have calls to such locations automatically switched to another carrier. Tr. at 25-28 (Olmsted).

mmm. NET does not currently post the location of its phones. If the

Board were to require it to do so, it would have to post individual labels on each its 4,079 Vermont pay phones. Tr. at 199 (Martin).

nnn. A requirement that the location of the phone be posted on it would impose high costs on the owner of the phone, and would be difficult to comply with. Olmsted pf. at 3.

ooo. Finding a location on or near the phone on which to post information can be difficult. Posting cards already contain a great deal of information and contain little additional space for additional information such as location. Stickers do not offer a reasonable alternative because they are often removed or destroyed, and because location owners sometimes object to their appearance. An additional problem is that because the stickers are often removed, the owner of the phone would often be in violation of the Board's rules. Tr. at 22-24 (Olmsted).

ppp. Apollo's past attempts at adding stickers for informational purposes have not been successful. Olmsted pf. at 3.

ii. Telephone Directories

qqq. Providing and maintaining telephone directories is expensive, in part, because the directories are a frequent target of vandalism. In addition, there is a hardware cost for the directory holder, and a high maintenance cost involved in checking and replacing books. Olmsted pf. at 7; tr. at 156-57, 164 (Bovalino), 269-71 (Larkin).

iii. Quality of COPTs vs. LEC Pay Phones

rrr. Standards regarding quality of service at COPTs and at LEC-owned pay phones should be identical. Olmsted pf. at 7; Larkin pf. at 10; tr. at 101-03 (Olmsted).

iv. Tracking Fraudulent Calls

sss. NET's current procedure regarding tracking trouble at phones is to report to the Board if there are seven or more troubles per month. Tr. at 152-53 (Bovalino).

G. Rate Structure, Rate Caps and Compensation to COPT Owners

i. Rate Structure

ttt. NET offers Public Access Line (PAL) service to COPTs. PAL service is similar to measured business service, although it has some additional screening features. Tr. at 138 (Bovalino).

uuu. While COPTs typically have PAL service, RBOC-owned pay phones typically have coin lines. NET does not unbundle either PAL or coin phone lines Tr. at 126 (Bovalino).

vvv. Installation charges and monthly rates are the same under PAL service as under measured business service and Semi-Public service. Usage is priced the same under PAL service as under measured business service, except that under PAL service, the subscriber pays for what he uses, while under measured business service, the subscriber has the option of choosing a usage cap. If the subscriber puts a lot of traffic over the line, at some point he will reach a break-even point where he is not paying for the traffic because he has exceeded the cap. Bovalino pf. at 4; tr. at 137-38 (Bovalino).

www. Article IX.B. of the Vermont Telecommunications Agreement (VTA) provided that the rates for PAL service could not be increased during the terms of the Agreement, that monthly caps would not apply to PAL service, that rates and/or charges could be reduced, and that new PAL services could be introduced. Bovalino pf. at 2-3.

ii. Rates Caps

xxx. Vermont is one of three states in the country that has a local pay phone call rate of $.10. Tr. at 165-67 (Bovalino).

yyy. The $.10 rate is inadequate to cover the cost of a local call. Tr. at 101 (Olmsted).

zzz. Apollo's cost of providing a local call from a pay phone is greater than $.10. Apollo is charged approximately $.05 by NET for the first two or three minutes and then $.02 per minute. Apollo incurs other costs in connection with a local call, other than transmission, e.g., collection, maintenance, line charge, purchase of the instrument, and office overhead. The $.10 rate causes financial losses on the provision of local calls. Tr. at 21-22 (Olmsted), 91-92 (Olmsted).

aaaa. COPTs pay the LECs for a variety of services such as fraud

detection services. Bovalino reb. at 3-4.

bbbb. In New Hampshire, Apollo is allowed to charge 20% more than NET on intrastate toll calls. It posts information to that effect on its phones and also posts a toll-free number for information regarding rates. Tr. at 90 (Apollo).

iii. Compensation to COPT Owners for Dial 1-800 and Dial-Around Calls

cccc. When a COPT is used to make an intrastate 1-800 call, or a call carried by an IXC other than the one to which the COPT is presubscribed (dial-around call), the COPT owner earns no revenue despite the fact that its phone is in use and is unavailable for a potential revenue-generating call. Tr. at 69-73 (Olmsted).

dddd. Under federal law, COPTs now receive $6 per month per phone to compensate them for interstate dial-around calls. Tr. at 70-71 (Olmsted); Larkin reb. at 6. See CC Docket No. 91-35, Memorandum Opinion and Order on Reconsideration (released September 16, 1993) at ¶¶ 1, 63.[3]

eeee. There is currently no basis for assessing reasonable compensation to COPTs for their losses in connection with 1-800 calls or dial-around calls. Larkin pf. at 4-5; Bovalino reb. at 3-4; tr. at 122-23 (Bovalino).

H. Correctional Institutions

ffff. Pay phone service in correctional institutions is a competitive service. NET tariffs the service as "inmate collect service" and offers collect calling only, for local as well as toll calls. Other providers may also compete against NET to provide the service. The subscriber to the service is the prison administration. Tr. at 294-95 (Bovalino), 221 (Martin).

gggg. The Department of Corrections, at the time of the hearings in this proceeding, was investigating the provision of pay phone service in correctional facilities. Martin pf. at 6; tr. at 221 (Martin).

IV. Discussion

3. 8 FCC Rcd 7151, 7159 (1993).

The primary question posed by the Board in this portion of this docket is whether the existing framework for regulation of pay phones promotes the public good and, if not, how it should be changed. A fundamental issue that must be addressed in order to answer this question is whether the goal of promoting competition should be the governing factor in making decisions regarding potential regulatory requirements, or whether a more specific public interest standard, i.e., whatever protects the public, should be employed. This basic question arises with respect to every area of regulation that is under consideration in this docket, and individual decisions regarding potential regulatory requirements will, to some extent, turn on how this question is answered.

The following statements of the Department and of Apollo aptly summarize the two sides of the issue. In the Department's view, "[t]he purpose of having public telephones and competition is for public usage, not for the profits of any particular COPT." Brief for DPS, filed 1/13/93 at 22. "Obviously," the Department goes on to say, "the Board must consider the potential costs to COPTs" of providing a particular component of pay phone service to the public (the example the Department gave was incoming call service), but the Board should not allow the existence of such costs to serve as a justification for the refusal to provide an important service to the public. Id.

Apollo, on the other hand, maintains that: "[i]t is the COCOT provider that is in need of protection [in] this proceeding . . . ." Reply Brief for Apollo, filed 1/26/93 at 12. While both the Board and the Department "have given much lip service to the benefits of increased competition," and have recognized "the benefits provided by companies such as Apollo . . . . [n]o steps have been taken to assure the long term viability of COCOTs." Id. at 11. Apollo's argument is thus, in effect, that competition promotes the public good and, therefore, any policies that promote competition and the existence of responsible competitive actors such as Apollo also promote the public good.

Apollo's argument confuses the concept of competition as a tool for the

public good with the concept of competition as an end in itself. It also assumes, erroneously, that whatever is good for competitors is also good for competition. While the FCC and the Board have ruled that competition in the provision of pay phone service is permissible, neither has ruled that competition should be promoted blindly and in a vacuum. Yet this is, in effect, what Apollo is proposing to do. I conclude that it would be ill-advised, at best, to institute policies that are intended to promote competition - or competitors - without examining the actual effects of those policies on the public.

I find the Department's argument to be similarly unconvincing. While I agree that ensuring profits for the COCOT industry should not be the standard by which the Board makes decisions, I find that such costs must be taken into account when considering what regulatory requirements to mandate. It is certainly conceivable that in some circumstances, the costs of providing a particular service will outweigh the benefits.

Instead of adopting either the approach advocated by the DPS or that advocated by Apollo, I find that decisions regarding potential regulatory requirements should be made after conducting a balancing test that examines the potential costs of a proposed requirement as well as the potential benefits, to both the pay phone provider and the public, but with greater weight given to the potential effects upon the public. In so finding, I note that the evidence in this docket did not show that the number of pay phones in this State is inadequate or that the public is dissatisfied with the quality of pay phone service provided by LECs. If it had, then I would perhaps have found more reason for the Board to take more active steps to encourage competition between COCOT providers and LECs. Such was not the case, however. The evidence did not establish that a problem exists either with respect to the number of pay phones or the quality of service provided by LEC-owned pay phones. See infra at (IV)(C) (Pay Phones).

In a related vein, Apollo maintains that the existing situation of COCOTs and LEC-owned pay phones is one of an unequal "playing field." In particular, Apollo contends that the LECs are able to subsidize their pay

phone operations from their many other business operations while Apollo, and other COCOT providers, do not have that option. Yet, Apollo, must not only charge customers the same rates as do the LECs but it must actually purchase services from the LECs. The net result of this, Apollo maintains, is a playing field that is not level. To remedy the situation, Apollo requests that it be allowed to charge rates for intrastate toll calls that are higher than those charged by the LECs: 10% higher for coin calls, and 20% higher for credit card and operator-assisted calls.

Apollo did not, however, present evidence to establish that LEC pay phone operations are subsidized by other operations. Nor did it produce any quantitative evidence regarding its actual costs. Instead, the evidence in this docket regarding costs consisted of assertion, conclusory statements and conjecture. Thus, just as the absence of evidence precludes me from finding generally that the Board needs to aggressively promote competition in pay phone service, so too does it preclude me from finding that the rate relief for COCOTs requested by Apollo is warranted.

I recommend, however, that the Board give Apollo an opportunity to more thoroughly develop its rate case in Docket No. 5567, Investigation into petition of Apollo Communications, Inc. for an amendment to its Certificate of Public Good to permit it to charge rates higher than those charged by the local exchange carriers in its service territories. That docket was put on hold pending the outcome of the instant proceeding. Although I initially thought that the issues raised by Apollo in Docket No. 5567 would be resolved in this proceeding, as discussed above, the evidence that has been presented by the parties in this proceeding is inadequate to allow resolution of those issues. Rather than make a decision on the basis of inadequate evidence, or conclude that Apollo has failed to make its case and recommending dismissal of Docket No. 5567, I find that a fairer resolution would be to allow Apollo to make its rate case in a docket specifically devoted to that purpose.

Having set out the general principles that I believe should govern the

regulation of pay phones in Vermont,[4] it is now appropriate to examine, and make a recommendation, regarding each potential area of regulation that is under consideration in this docket. The discussion that follows does precisely that. It is organized in the same manner as are the Findings of Fact.

A. Terminology

I recommend that the terms COCOT (customer-owned, coin-operated telephone) and COPT (customer-owned pay telephone) be used interchangeably. While the term COPT is more accurate in that it acknowledges that not all pay phones are coin-operated, it does not appear to be a term of art in the industry or in the literature of the industry, as is COCOT. Allowing use of both terms seems like the most sensible approach.

B. Technology

i. Smart Phone Technology

The difference between "smart phones" and "dumb phones" is that in the former, the intelligence (a computer chip) is located in the telephone instrument itself, while in the latter, the intelligence is located in the LEC's central office. Smart sets are also more expensive to purchase than are dumb sets.

Pay phones provided by LECs are generally dumb phones while Apollo's phones and, presumably, the phones of other COCOT providers are usually smart phones. Although smart phones provide diagnostic and repair functions that dumb phones can't perform, the evidence does not suggest that this matters to end users. On the contrary, the facts show that it does not matter to the telephone user how the service is provided, so long as it is provided. With respect to diagnostic and repair functions, for example, it does not matter to the end user whether a location owner informs the COCOT owner that there is a problem with the phone or whether a computer in the phone so informs the location owner, so long as the owner is informed and the problem is corrected. Similarly, it does not matter to the end user whether rates are quoted by an

4. I recommend that the Board explicitly rule that all regulatory requirements regarding pay phones (those adopted in Docket No. 4946 and those adopted in this docket) apply to LEC-owned pay phones as well as COCOTS.

LEC operator or by a recording generated by the computer in a smart phone. It is also worth noting that no party has recommended that the Board require that pay phone providers provide smart phones. For all of these reasons, I conclude that there is no need to require that pay phone providers provide smart phones.

A second issue that arises in connection with smart services is whether NET should unbundle such services and offer them to COCOT owners individually. The DPS supports such a requirement while NET opposes it. See Finding 12; tr. at 298-99 (Bovalino), 300-02 (Bovalino). I recommend that rather than resolve this issue in this docket, the Board examine it in Docket No. 5713 Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks.

ii. Store and Forward Technology

The issue here is whether a pay phone that employs store and forward technology should be classified as providing an operator service, thereby subjecting the provider of that pay phone to regulation as an operator service provider as well as a pay phone provider.

The procedural order in this docket entered 6/12/92, identified as an issue to be addressed in this docket the related issue of whether smart phones should be classified as providing pay phone service or OSP service. The parties that addressed the issue did so in a perfunctory way, stating only that smart phones provide pay phone service and should be regulated as such. See, e.g., Brief for Apollo, filed 1/12/93 at 15. I find the issue to be more complex and reach the opposite conclusion, at least with respect to smart phones that employ store and forward technology.

This conclusion is consistent with the decision of the Minnesota Public Utilities Commission in Docket No. P-999/C-91-22, In the Matter of a Commission Investigation into the Use of "Store and Forward" Technology in Telephone Equipment Operated in Minnesota, Order of July 9, 1992. In that decision, the Commission explained that:

> Store and forward technology allows a new generation of telephones equipped with certain computer chips to store billing information.

> A customer can use such a telephone to charge the cost of a call to a credit card, without the use of a "live" operator or a local exchange' or interexchange carrier's automated calling card system. Some telephones equipped with store and forward technology also enable a customer to place a collect call without the assistance of a live operator.

Id. at 2.

The Minnesota Commission further explained that store and forward technology comes under the Minnesota definition of "operator service," which is defined as:

> [A]ny service using a live operator or mechanical (automated) operator function for the handling of a telephone service, such as toll calling via collect, third party billing, and calling or credit card services.

Id. at 2-3.

The Minnesota Commission added that store and forward service is closely related to alternative operator service (AOS), a subcategory of operator service. AOS is defined by that Commission as "operator-assisted long distance services provided to transient end-users at call aggregators' locations." Id. at 3.

The Minnesota definition of store and forward technology is essentially the same as that offered by Apollo (see Finding 14). Its definition of operator service is almost identical to the definition contained in the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), 47 U.S.C. §226(a)(7), which I recommend that the Board adopt. (See infra at (I)(OSP), (IV)(C)(i) (OSP).) I conclude, then, as a matter of law - as did the Minnesota Commission - that pay phones that use store and forward technology provide operator services and their owners are, as a result, subject to regulation as operator service providers.

iii. Touch-Tone Phone vs. Rotary Phone

The issue here is whether the Board should require that all pay phones be touch-tone phones. The evidence shows that all of Apollo's phones are touch-tone and that NET charges customers the same rates for calls from touch tone as from rotary phones. No evidence was presented regarding the policies and practices of other LECs and COCOT providers.

I find that the choice of phone type should be the provider's. However,

I also find that customers should not be penalized for the owner's choice in this regard. I therefore recommend that the Board explicitly rule that the rates for calls from touch-tone and rotary phones must be the same.

C. Distribution of Pay Phones in Vermont

The central issues to arise in connection with the distribution of pay phones are whether the Board should impose any requirements with respect to: (1) distribution of charge-a-phones; or (2) distribution of pay phones generally - public as well as semi-pubic.

With respect to charge-a-phones, the evidence shows that they are usually placed either in: (1) a multi-phone location where several coin-operated phones are available as well; or (2) a location, by a COCOT provider as distinct from an LEC, where no phone would otherwise be provided. The evidence also shows that charge-a-phones tend to be placed in addition to coin phones, not instead of coin phones. Thus, as a result of the placement of charge-a-phones, more pay phones are available to the public and persons without calling cards are not inconvenienced. I therefore find that, with one exception, no requirements in connection with charge-a-phones need be imposed. The one modification that I do recommend is to the requirement set forth in Docket No. 4946, Order of 2/21/86 at 59, that all public telephones be capable of handling coins. This rule should be modified to allow installation of coinless phones to the extent that installation of such phones does not result in limitation or reduction of availability of coin-operated phones.

With respect to the distribution of pay phones generally, the evidence showed that NET has 4,079 phones and Apollo has 40 phones. Even with the additional 35 or so phones owned and operated by COCOT owners other than Apollo,[5] COCOTs still occupy less than two percent of the pay phone market in Vermont.

Apollo argues that the Board's goals of wide availability of pay phones and low rates may be inconsistent. It maintains that private providers like

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5. This figure is taken from the Board's records regarding COCOTs. The records show that, in addition to Apollo, there are approximately 25 other certificated COCOT providers who own and operate approximately 35 phones.

itself, will not be eager to place phones in rural and low-density areas if the Board requires them to charge rates at which they will lose money. In New Hampshire, Apollo is allowed to mark up intrastate toll calls by 20%. This 20% applies to coin and credit or coin and 0+ calls. As of the date of the hearing in this docket, Apollo had handled thousands of calls in New Hampshire and had only one rate complaint. Olmsted pf. at 5; tr. at 39-40 (Olmsted). However, despite the higher rates it is allowed to charge there, it maintains approximately the same number of phones in New Hampshire as in Vermont.

The Department points out that decisions regarding location of pay phones are not governed by any definitive criteria and are not now regulated by the Board. To further explore the issue of how to make location decisions, the Department adds that the Board could conduct another phase to this docket. This phase would explore: (1) how much revenue is really necessary per phone in order to break even; (2) where phones should be located; and (3) how to create a pool to pay for placement and operation of such phones. Tr. at 265-69 (Larkin). NET suggests, alternatively, that location issues could be addressed in the Board's Lifeline docket. Bovalino reb. at 6; tr. at 144 (Bovalino).

I conclude that no additional regulation is necessary here because no evidence was introduced to establish that the number of pay phones in Vermont is inadequate, or that consumers are dissatisfied with either the current quality of service or the availability of phones. Absent such evidence, I can find no reason to suggest that additional regulation is necessary in this area or that the Board should conduct additional investigations or hearings into how to make location decisions. If, at any point, the DPS or other interested person believes that there is a problem, such person(s) could petition the Board to examine this question and the Board could look into the matter in more detail at that time.

D. Certification and Registration

The only question that arises with respect to certification and registration of pay phones is whether existing certification requirements provide the most efficient means of tracking pay phone providers and their

phones.

To provide the state with current information as to the ownership, operation and location of the various pay phones in the state, and to do so in a way that is not burdensome on the companies, Apollo and the DPS recommend that the Board institute a registration process that provides for one CPG for each provider. In this scenario, the provider would be free to install and remove phones as it sees fit, but would provide a list of changes (added or removed phones) semi-annually or quarterly. Olmsted pf. at 2; Martin pf. at 4 and 7.

The DPS also notes that it has encountered some difficulty in the past in ensuring that all COPTs file Annual Reports and pay the Gross Revenue Tax. To help alleviate this problem, the DPS recommends that a paragraph be added to the COPT application form stating that COPTs are required to file Annual Reports and Gross Revenue Tax payments for calendar year ends on forms provided by the DPS. Martin pf. at 3-5. No party has expressed any objection to any of these recommendations.

The parties' recommendations make sense and I recommend that the Board adopt them. Specifically, I recommend that the Board: (1) insert a paragraph to the COCOT application form requiring all providers of pay phones to file Annual Reports and Gross Revenue Tax payments for calendar year ends on forms provided by the DPS; (2) require all providers of pay phones to file the requisite forms and payment; and (3) require all providers of pay phones to update the Board and Department, on a semi-annual basis, of phones/locations that they have added or removed.

E. Access to and from Pay Phones

i. Access from Pay Phones Generally

Docket No. 4946 requires that "access to the operator and other services provided without charge must be made available without deposit of a coin." It would seem that this requirement applies to 911 service, 800 calls, 950 calls, 0- calls and 0+ calls billed to other forms of payment such as calling cards or collect calls. But, to clear up any ambiguity, I recommend that the Board

explicitly rule that all pay phones must provide coin-free access to these forms of calling. See also, infra, at (IV)(E)(I) (Pay Phones), 10XXX Access, Other Forms of Access and Fraud.

Emergency Services

The DPS takes the position that pay phones should provide free access to emergency services: 911, E-911, Operator, Ambulance, Hospital, Law Enforcement Agencies. The DPS further argues that where emergency calls default to an NET operator, instead of providing the telephone number of the appropriate emergency service provider, the NET operator should be required to dial the emergency number, at no charge, and remain on the line until the connection is established. Larkin pf. at 3; Larkin reb. at 2-4; tr. at 246-50 (Larkin). Sprint supports the Department's recommendations. Brief for Sprint, filed 1/12/94 at 1.

NET's position is that the LECs and COPTs should not be required to determine and maintain a catalogue of which hospitals should receive the calls for which service. NET believes that free access to an ambulance service alleviates the need for free access to hospitals.

Apollo believes that while it would be difficult to be responsible for determining which provider should receive which call, the technical aspects of transferring the call would not be difficult. If the Board were to assume responsibility for providing Apollo with the necessary information, Apollo states that it could implement the Department's suggestion. Tr. at 28 (Olmsted).

The issue of emergency services, in particular E-911 service, was, at the time of the hearing in this docket, under consideration by the Vermont Legislature, and NET and the DPS were members of a 65-member task force dedicated to addressing issues associated with the deployment of E-911 in Vermont. Docket No. 5614, Order of 1/29/93 at 24. The Legislature is still considering proposed legislation regarding E-911. See S.311 (1994), An Act Relating to an Enhanced 911 Emergency Resource System. It is possible that the Legislature will choose to act on implementation of E-911 service in Vermont during the current session. In light of the fact that substantial

resources are currently being devoted to examination of emergency service issues, and that the parties that have expressed an opinion on the matter state that it would be burdensome for them to conduct such an examination, I do not believe that such an examination should be conducted in this docket. Thus, I recommend that pay phone providers be required to comply with whatever requirements are issued in the future, by the Legislature and/or the Board, regarding 911 and other emergency services.

Carriage of IntraLATA Calls

The issue here is whether the Board should prescribe any requirements with respect to carriage of intraLATA toll calls from pay phones. Existing practice is that each pay phone is presubscribed to an IXC selected by the pay phone owner. As discussed below, however, at 10XXX Access, Other Forms of Access and Fraud, other IXCs may be accessed by dialing an 800 number, 950-XXXX, or 10XXX. My recommendations on this subject are discussed in that section as well.

10XXX Access, Other Forms of Access and Fraud

The issue here is whether all existing forms of access (1-800, 950-XXXX or 10XXX) to IXCs should be available from pay phones. The DPS supports coin-free access to all forms of "toll" services from all pay phones, coin-operated and coinless: 0-, 0+, Directory Assistance, 800, Feature Group B (950-XXXX), Feature Group D (10XXX), collect, third party billing, and calling card calls. Larkin pf. at 3-4. Sprint agrees that coin-free access to 1-800, 950, and 10XXX 0+ calling should be mandatory. Nelson pf. at 2. NET already provides coin-free access to 800, 950, and 10XXX calls. Brief for NET, filed 1/12/93 at 4. Apollo cites a problem of fraud as associated with 10XXX access but points out that the FCC has ruled that as of January 10, 1993, blocking of 10XXX access is unlawful.

By requiring that access to 10XXX be unblocked (see 47 C.F.R. §64.704(c)),[6] the FCC has rendered this issue moot; unblocking 10XXX access

6. See also, 47 U.S.C. §226(e)(1); CC Docket No. 91-35, In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking (August 9, 1991) at ¶1, ¶10 (6 FCC Rcd 4736, 4739 (1991)).

causes access to interstate as well as intrastate calling to automatically be opened up. Nonetheless, to alleviate any ambiguity, I recommend that the Board rule that all pay phones must provide coin-free access to 1-800, 950-XXXX, 10XXX, 0+ and 0- calling, as well as to directory assistance and 911.

Directory Assistance

Existing rules regarding directory assistance (DA) provide that the LECs may charge the COCOTs for DA services to COCOT customers, but the COCOTs may not charge their customers for such services.

The DPS takes the position that if the rate cap for local COPT calls is increased to $.25, LECs should be allowed to charge the COPTs for directory assistance. If the rate remains at $.10, the DPS believes that the LECs should not be able to charge the COPTs for DA. Larkin pf. at 9-10.

Apollo takes the position that it should be allowed to charge its customers for DA in areas where it is charged by the LECs for such services, and that the rate allowed should be that charged by the LEC to the COPT owner. Olmsted pf. at 4-5. Apollo has, however, entered into a contract with NET that provides that NET will charge Apollo a flat rate of $4.00 per month per phone for DA regardless of actual usage. Furthermore, NET has stated that it is willing to offer the same arrangement to other COCOTs.

A similar situation existed in New Hampshire. NET had entered into "special contracts" regarding DA, all identical, with five COCOT providers (including Apollo). NET ultimately decided to offer the DA arrangement as a tariffed service available to all customers, instead of on a special contract basis, only available to select customers. See New Hampshire Public Utilities Commission DE 91-213, Coin-Operated, Customer-Owned Telephone (COCOT) Providers and New England Telephone and Telegraph Company (NET), Order of 4/12/93. I recommend that the Board require NET to file a tariff amendment in which it offers as a tariffed service the same arrangement for DA that it has with Apollo.

ii. Access to Pay Phones: Incoming Calls

The Department's position is that all public phones should have incoming service available except that in exceptional circumstances, restriction of

incoming calls for certain phones may be appropriate: where specific written requests from law enforcement agencies have been received by the pay phone provider and reviewed by the DPS. The Department also takes the position that the restrictions should be removed as soon as possible after the law enforcement need has passed. Larkin reb. at 6; tr. at 260-63 (Larkin).

I conclude that incoming service capability is an integral component of telephone service, including public telephone service. Although NET and Apollo raised a number of potential problems associated with incoming service, at least two of these problems -- safety concerns and insistence of location owners on unavailability of incoming service -- were not well documented. Apollo's testimony established only that such problems had occurred rarely, if at all, in Vermont, despite the fact that 60-70% of its phones restrict incoming service. NET's testimony was somewhat stronger, establishing that it only restricts incoming service upon request of the location owner or a governmental agency, and that approximately 12% of its 4,079 pay phones are so restricted. Balancing the potential costs to pay phone owners of requiring incoming service, against the potential benefits to the public, I reach the following conclusion. The general rule should be that all pay phones allow incoming service. A waiver of this rule should, however, be permitted where: (1) a law enforcement agency makes such a request, in writing, for reasons of public safety; and (2) a location owner certifies, in writing, that he will not allow a pay phone to be placed on his property unless it restricts incoming service. Where the Board agrees to such a waiver, the owner of the phone should be required to post a notice on or near the phone that states that the phone cannot receive incoming calls. To be granted such a waiver, the pay phone owner should file a petition with the Board for a waiver in which it includes a copy of the governmental agency's or location owner's written statement.

I further recommend that the Board adopt these requirements on a prospective basis only and that existing pay phone service arrangements that restrict incoming calls be grandfathered. This will avert potential inconveniencing of existing location owners who, in the past, may have agreed

to installation of pay phones on the understanding that such phones would not accept incoming calls.

iii. Screening and Fraud Detection Mechanisms

The LECs offer several fraud detection services to COCOT providers, for a fee. It is in the COCOT provider's best interest to purchase the service. There is no evidence to suggest that the services are priced unreasonably. It does not appear that there is any need to institute any regulatory requirements in this area.

F. Consumer Protection

i. Posting

The issue here is whether any posting requirements, in addition to those already required by Docket No. 4946, should be instituted. The Department and Apollo agree, as do I, that posting of the following information should be required: (a) dialing instructions for emergency calls and for all other calls; (b) toll-free number to call to obtain rate information; and (c) toll-free or collect telephone number for reporting service problems or for obtaining refunds. Martin pf. at 5-6; Olmsted pf. at 2-3.

The parties are split, however, as to whether posting should be required of the names of all long distance providers and operator service providers to which the phone is presubscribed. The Department supports such a requirement. Apollo supports posting of the primary carriers, but states that where the phones are presubscribed to multiple carriers, it would be impractical to post all of the providers. Olmsted pf. at 3; tr. 25-28 (Olmsted); Martin pf. at 6.

I find that the costs of imposing such a requirement outweigh the benefits. First, the issue is at this point academic, at least with respect to Apollo, because none of Apollo's phones are presubscribed to multiple carriers or OSPs. Second, customers are able to dial a toll-free number to obtain rate information and, presumably carrier information. Third, where operator-assisted calls are involved, the branding requirement (see infra at (I) (OSP) and (IV)(C)(i) (OSP)) ensures that customers are informed of the company that is carrying their call.

An issue also exists here as to whether the Board should require that

the location of the phone be posted. The DPS supports such a requirement although none currently exists. Martin pf. at 6. The evidence shows that it would be costly and burdensome for Apollo, as well as for NET, to comply with such a requirement either by adding information to the posting cards or by installing stickers. Phone users presumably are either aware of the location of the phone from which they are calling or can ascertain it with little effort. It appears to me that the costs of instituting a requirement regarding location would outweigh the benefits.

ii. Telephone Directories

The DPS, Apollo and NET agree that provision of directories is expensive and that where directories are provided, they are the frequent target of vandalism. In light of the problem of vandalism, which is beyond the ability of the Board to address, it appears that the costs of providing directories would outweigh the benefits.

iii. Quality of COPTs vs. LEC Pay Phones

The Board's Order in Docket No. 4946 provides that COCOTs must provide service equal to or better than that provided by LEC-owned pay phones. Apollo and the DPS comment on this matter by stating that standards regarding quality of service provided by COCOTs and LEC-owned phones should be the same. I agree that the standards should be the same and I have recommended, in this Proposal for Decision, that the Board explicitly rule that all regulatory requirements that apply to COCOTs should apply to LEC-owned pay phones as well. See supra at 30, n.4. I do not, however, find the Board's requirement that COCOTs provide service equal to or better than that provided by LEC-owned pay phones to be inconsistent with this recommendation, in that the existing rule does not require COCOTs to provide superior service. I therefore find no change to this rule to be necessary.

iv. Tracking Fraudulent Calls

The DPS would like the pay phone industry to develop a procedure for tracking fraudulent calls, and believes that the LECs should be required to help the COPTs in this regard. Martin pf. at 8; tr. at 206-08 (Martin), 252-54 (Larkin). Apollo would be willing to work with the DPS to develop a

tracking procedure, so long as this would not involve an onerous time commitment. Tr. at 65-66 (Olmsted). It would probably be costly to track fraudulent calls and, unless the benefits outweigh the costs, NET is not interested in instituting a tracking procedure. Tr. at 151 (Bovalino).

All industry participants have an interest in curbing fraud. Since this incentive exists without regulation and since it would probably be costly to track fraudulent calls, I find that there is no point in mandating that such a tracking process be developed.

G. Rate Structure, Rate Caps and Compensation to COPT Owners

i. Rate Structure

The type of service to which COCOT owners subscribe from NET is PAL service. PAL service is similar to measured business service except: (1) PAL service offers additional screening services; and (2) with measured business service, the subscriber has the option of choosing a rate cap, regardless of usage, while with PAL service, the subscriber has no such rate cap option -- he pays for what he uses. Apollo believes that COPTs should have the option, as do businesses, of choosing flat rate or measured service. Tr. at 68, (Olmsted), 137-38 (Bovalino).

The Board currently has before it Docket No. 5700, Investigation of proposed Vermont price regulation plan and proposed interim incentive regulation plan of New England Telephone and Telegraph Company, and Docket No. 5702, Department of Public Service Petition for Investigation of New England Telephone and Telegraph Company Rates. I recommend that the Board examine the issue of terms and conditions of PAL service in those proceedings, as part of its comprehensive examination of NET's rate and tariff structure.

ii. Rate Caps for Local and Toll Calls

Apollo argues that the Board's stated goals of wide availability of pay phones and low rates may be inconsistent. Olmsted pf. at 4-5. To encourage it to deploy more phones, Apollo recommends that it be allowed to raise its rates for intrastate coin toll calls to 10% more than NET charges, and for intrastate 0+ calls to 25% more than NET charges. Apollo has found that it

incurs fewer costs in connection with intrastate coin calls than intrastate 0+ calls and, as a result, it believes that the 10% is appropriate for coin calls and the 25% for 0+ calls. Tr. at 56-57 (Olmsted).

The Department opposes the concept of allowing COPTs to charge more than the LECs for intrastate toll calls. Tr. at 244-45 (Larkin). Instead, the Department advocates a difference in rates for local calls. Specifically, the DPS argues that COPTs should be allowed to charge $.25 for local calls and that the LEC rate should remain at $.10. This, the Department contends, would help create a level playing field between COPTs and LEC-owned pay phones. Larkin pf. at 5-6; tr. at 242-46 (Larkin).

Apollo, however, states that if the Board were to authorize a local coin rate cap of $.20 or $.25 for COPTs but not for NET and the other LECs, Apollo would be unlikely to charge more than NET charges, for fear that customers would be unwilling to use its phones. Tr. at 89 (Olmsted). NET adds that creating a two-tier rate cap system for local calls could create opportunities for cream-skimming. It could also result in confusion among customers regarding pay phone rates, where such confusion does not now exist. Bovalino reb. at 4; tr. at 143 (Bovalino), 170-71 (Bovalino).

t up a two-tier local

call rate and wants to keep the rate at $.10 for all participants, the LECs should be required to do the following: unbundle all of their services and offer them to the COPTs at reasonable and equitable rates, and impute those same rates to themselves when they compute ratepayer charges. The Department is trying to avoid this alternative, because to pursue it at this time would be difficult. Although it would be just as easy to raise the intrastate toll call rate to 110% of NET's rates as it would be to raise the rate for COPTs to $.25, the Department does not support such an approach. This, the Department says, would be bending rate design principles too far. Tr. at 244-45 (Larkin).

I find that, with respect to intrastate coin toll rates, as discussed <u>supra</u> at (IV) (Pay Phones), Apollo has not presented sufficient evidence to warrant granting its request for a rate increase. As for the issue of local

coin calling rates, I find that, for a variety of reasons, the rate for all providers, LECs as well as COCOT providers, should remain at $.10. First, the Board's decision in 1986 to continue the $.10 rate was based on public policy reasons, not rate principles. See Docket No. 4946, Order of 2/21/86 at 54-60. It was clear to the Board at the time it issued its decision that the $.10 rate did not cover the cost of a local call. So, in terms of costs, one could argue that nothing of substance has happened since 1986 to warrant changing the rate: the rate didn't cover the costs then, and it doesn't cover the costs now, either. Second, regarding the argument that COCOT owners would have an incentive to install more phones if the rate were higher and, therefore, the rate should be increased -- this presupposes that the number of pay phones in the State is inadequate. Yet, no evidence to that effect was presented. Finally, Apollo's objection to raising the local rate unless the LECs raise the rate as well, on the ground that customer confusion and dissatisfaction with Apollo would result, has merit.

Since there is no evidence that the number of pay phones in this State is insufficient, I do not see how the public would benefit from a rate increase to local rates for COCOTS. Since Apollo opposes such an increase, I don't see how Apollo or other COCOT owners would benefit from it. I therefore conclude that the local calling rate should remain at $.10 for COCOTs as well as LEC-owned pay phones.

iii. Compensation to COPT Owners for Dial 1-800 and Dial-Around Calls

I would note, at the outset, that the FCC recently issued an order affirming an earlier ruling that IXCs must compensate pay phone owners in the amount of $6 per month per pay phone for originating interstate access code calls. CC Docket No. 91-35, Memorandum Opinion and Order on Reconsideration (released September 16, 1993).[7] Thus, pay phone owners are required to receive at least some compensation for originating access code calls albeit for interstate calls only.

I would also note that the FCC acknowledged in Docket No. 91-35 that:

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7. 8 FCC Rcd 7151 (1993).

> [T]here is no single correct way to establish a compensation rate for PPOs [pay phone owners], and there is no single correct amount that should be prescribed. Instead, there a number of possible reasonable approaches to compensation, each of which has a rational basis . . . . Rather than choose among these theories, we establish a compensation rate of $6 per phone per month, which is generally consistent with all of them.

Docket No. 91-35, Second Report and Order (released May 8, 1992) at ¶41.[8]

While Apollo has requested some form of compensation for intrastate 1-800 and dial-around calls, most of the other parties are opposed to the awarding of such compensation at this time on the ground that there is no reasonable basis upon which to set it. See Proposed Findings for First Phone, filed 2/5/93 at 2; Brief for DPS filed 1/13/93 at 29; Brief for MCI, filed 1/13/93 at 2-4. See also Brief for Sprint, filed 1/12/93 at 9-10. Even Apollo acknowledges that it has no idea what level of compensation would be appropriate. See tr. at 72 (Olmsted).

Since there is no basis at this time for assessing reasonable compensation to COPTs for their losses in connection with intrastate 1-800 calls and dial-around calls, I recommend that no regulatory action be taken in this regard.

G. Correctional Institutions

At the time of the hearing in this docket, the Department of Corrections was investigating the issue of pay phone service from correctional institutions. I recommend that the DPS follow the progress of that investigation and that it report to the Board, within 60 days of the date of entry of the order in this docket, on the following: (1) the status of the Department of Corrections' investigation; and (2) its recommendation as to whether the Board should open a separate proceeding devoted to that subject, as have the public utility commissions of several other states. See e.g., Idaho Public Utilities Commission, Case No. 31.D-R-91-1, In the Matter of the Commission's Consideration of an Amendment to its Rules Governing Customer Relations of Telephone Companies, IDAPA 31.D, with regard to telephone service from institutions of confinement, General Order No. 181 B,

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8. 7 FCC Rcd 3251, 3257 (1992).

March 2, 1992.

OPERATOR SERVICE PROVIDERS

I. Legal Background

In contrast to its experience with the pay phone industry, the Board has never before examined the operator service provider (OSP) industry in this state. A comprehensive framework for regulating this industry does, however, exist under federal law through the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), 47 U.S.C. §226 et seq. and regulations promulgated by the FCC thereunder (see 47 C.F.R. §§ 64.703-64.708).

As detailed below, TOCSIA imposes stringent consumer protection and other requirements on all "providers of operator services" and on all "aggregators." TOCSIA defines the term "operator services" as:

> [A]ny interstate telephone communications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than--
>
> (A) automatic completion with billing to the telephone from which the call originated; or
>
> (B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

47 U.S.C. §227(a)(7).

It defines "providers of operator services" as:

> [A]ny common carrier that provides operator services or other person determined by the Commission to be providing operator services."

47 U.S.C. §226(a)(9).

It defines "presubscribed provider of operator services" as:

> the [] provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

47 U.S.C. §226(a)(8).

It defines the term "aggregator" as:

> [A]ny person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator service."

47 U.S.C. §226(a)(2).

Under TOCSIA, each provider of operator services is required, at a minimum to:

a. identify itself ("brand") at the beginning of the call, before the consumer incurs any charge for the call ("single branding"), 47 U.S.C. §226(b)(1)(A);[9]

b. permit the consumer to terminate the call at no charge before the call is connected, 47 U.S.C. §226(b)(1)(B);

c. disclose, upon request: (i) a quote of its rates or charges for the call; (ii) the methods by which such rates or charges will be collected; and (iii) the methods by which complaints concerning such rates, charges or collection practices will be resolved, 47 U.S.C. §226(b)(1)(C);

d. ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services, is in compliance with the requirements of subsection (c), entitled "Requirements for Aggregators," 47 U.S.C. §226(b)(1)(D);

e. withhold payment if the OSP reasonably believes that the aggregator is blocking access to IXCs by means of "950" or "800" numbers, 47 U.S.C. §226(b)(1)(E);

f. not bill for unanswered telephone calls in areas where equal access is available, 47 U.S.C. §226(b)(1)(F);

g. not knowingly bill for unanswered telephone calls where equal access is not available, 47 U.S.C. §226(b)(1)(G);

h. not engage in call splashing, except upon request of the consumer to be transferred to another OSP, 47 U.S.C. §226(b)(1)(H); and

i. except as provided in paragraph (h), not bill for a call that does not reflect the location of the origination of the call, 47 U.S.C. §226(b)(1)(I).

TOCSIA further requires that each aggregator shall:

a. post on or near the telephone (i) the name, address, and toll-free telephone number of the provider of operator services; (ii) a written disclosure that the rates for all operator-assisted calls are available on request and that consumers have a right to obtain access to the IXC of their choice; and (iii) the name and address of the enforcement division of the FCC to which the consumer may direct complaints, 47 U.S.C. §226(C)(1)(A);

b. ensure that each of its telephones that is presubscribed to an OSP allows the consumer to use 800 or 950 access code numbers to obtain access to the consumer's chosen OSP, 47 U.S.C. §226(C)(1)(B); and

c. ensure that no charge by the aggregator to the consumer for using an "800," "950" or other access code number is greater than the amount the aggregator charges for calls placed using the presubscribed OSP, 47 U.S.C. §226(C)(1)(C).

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9. TOCSIA also requires that during the 3-year period beginning on the date that is 90 days after the date of enactment of this section, each presubscribed provider of operator services must identify itself a <u>second</u> time as well, before connecting the call and before the customer incurs any charge ("double branding"). 47 U.S.C. §226(b)(2).

Finally, TOCSIA requires the FCC to conduct a rulemaking on access that will result in a requirement that all aggregators and providers of operator services make available to their customers access to the provider of their choice by both "950" access codes and "800" access codes. 47 U.S.C. §226(e)(1).

The general question posed with respect to operator services is how to regulate this newly-emerging industry in Vermont.

II. Positions of the Parties

The positions of the parties are set forth in the Discussion section. (See infra at (III) (OSP).) There are two central issues before the Board. The first is whether the Board should adopt the requirements of TOCSIA and its implementing regulations as applicable to intrastate service. All of the parties agree that it should. The second issue is whether the Board should adopt any additional requirements. The DPS supports certain additional requirements. The other parties, for the most part, do not.

III. Findings of Fact

Pursuant to 30 V.S.A. §8, I hereby report the following findings of fact to the Board.

A. Certification/Registration

hhhh. All providers of telecommunications services, including operator services, are required to apply for and receive a certificate of public good as a precondition to doing business in Vermont. Martin pf. at 4.

iiii. The Board's review of the application for a CPG of a prospective provider of telecommunications services includes consideration of whether the services that the applicant proposes to offer are competitive services, whether the applicant has the financial and other capability necessary to provide the services it proposes to offer, and of issues pertaining to consumer protection. Martin pf. at 4.

jjjj. Currently in Vermont, all certificated providers of telecommunications services that provide operator services provide them in conjunction with several other services. No company in Vermont has a CPG to

provide only operator services. Tr. at 203-05 (Martin).

B. Consumer Protection

i. Telephone Operator Consumer Service Improvement Act (TOCSIA)

kkkk. It would be appropriate for Vermont to adopt, as applicable to intrastate service, the requirements of TOCSIA and the regulations promulgated thereunder. Bovalino pf. at 2; Martin pf. at 6-7.

llll. TOCSIA provides for sunset of the "double branding" requirement on January 15, 1994. Tr. at 187 (Martin). See 47 U.S.C. §226(b)(2), §226(b)(1)(A).

mmmm. If Vermont were to continue the double branding requirement after the date for sunset identified in TOCSIA, IXCs would have to continue the double branding for all of their calls nationwide, not just Vermont, because of the limitations of their software. Tr. at 182-84 (Martin).

nnnn. It would be simpler for nationwide carriers to have one set of standards for branding, rather than "a patchwork of branding regulations" that differs from state to state. Tr. at 290-92 (Nelson).

oooo. Single branding is sufficient if it succeeds in informing consumers exactly who they have reached. Tr. at 199 (Martin).

ii. Notice that OSP Charges are not Regulated by the Board

pppp. Telecommunications providers that provide operator services file tariffs with the Board that include the rates charged for operator services. The Department and Board have an opportunity to review those tariffs before they go into effect. The Department, after reviewing the proposed tariff, has an opportunity to ask the Board to suspend the filing. If rates are charged pursuant to tariffs that the Board has allowed into effect, those rates are lawful. Tr. at 184-86 (Martin); 187-89 (Martin), 210 (Martin), 213 (Martin).

C. Rates

qqqq. Under current Board rules, telephone service may be disconnected for failure to pay the OSP portion of the bill, if the bill is delinquent in an amount that exceeds $50.00. Tr. at 219 (Martin).

IV. Discussion

Among the matters that the Board must decide in this docket is whether

to adopt the requirements of TOCSIA and its implementing regulations as applicable to intrastate telephone service. In addition, regardless of whether the Board chooses to adopt TOCSIA, it must also decide whether to adopt any other regulatory requirements.

In considering these matters, it is important to bear in mind three things. First, the operator service provider industry is new to Vermont. Because the industry is so new, it was not possible to, and the parties did not, create an extensive record of the experience of this industry in Vermont; the industry had little experience in Vermont. Thus, the evidentiary record regarding Vermont will not provide the Board with a great deal of help in fashioning regulatory requirements for the industry.

Second, since the hearings were held in this docket, some providers of telecommunications services have amended their tariffs to allow for increases to their rates for operator services, and other providers of telecommunications services that did not previously offer operator services have begun to do so. The tariffs of these companies are a matter of public record, even though they are not part of the record of this proceeding. In addition, they provide information about rates that are currently in effect in Vermont. I find that it would be appropriate for the Board to consider these tariffs as it considers the broad issue of what regulatory requirements are necessary to ensure that the OSP industry in Vermont operates in a manner that is consistent with the public good.

Third, the parties presented little evidence or argument on the regulatory structure of this industry in other states, or on rules, regulations or case law from other states. While it is unfortunate that the parties did not present such information, this information, like the information contained in tariffs that are on file with the Board, is part of the public record and can be considered by the Board as it makes its decision in this proceeding.

A. Certification/Registration

Existing procedures for certification of providers of telecommunications services apply to providers of all forms of intrastate telecommunications

services and, therefore, apply to providers of operator services. These procedures include examination of issues pertaining to consumer protection and other matters that implicate the public good. Thus, there appears to be no need to institute a separate certification proceeding for companies that provide operator services.

The only issue to arise with respect to certification is whether companies that provide only operator services should be permitted to do business in Vermont. The DPS states that "[t]he Board should be wary of granting CPGs to companies that provide only operator services . . . [because] . . . [i]t is not clear that such companies offer any benefits to consumers (thus failing to promote the general good)." Brief for DPS, filed 1/13/93, at 33. The DPS did not elaborate further on this matter.

Although the Department has not explicitly asked for a per se prohibition on companies that provide only operator services, by recommending that the Board "be wary of granting CPGs to [such] companies," the Department has at least intimated that it would support such a prohibition. Yet it fails to detail the basis for its assertion that such companies may not provide any benefits to the public. The Department's recommendation here, and the reason for its recommendation, are vague at best.

To the extent that legitimate questions exist as to value of OSPs to the public, I find that such questions can be satisfied by a combination of existing statutes and regulations, and additional recommendations that I make in this Proposal for Decision. More specifically, I find that the combination of the Board's existing procedures for issuance of CPGs, together with rate caps for operator services (which I recommend below at (B)) and the requirements of TOCSIA and its implementing regulations, should provide adequate protection for the public. I therefore conclude that a per se prohibition on providers of operator services is, at this time, unnecessary.

B. Rates

The Department recommends that where a customer believes that an operator service charge is "excessive," the OSP should be required to refund the difference between the rate charged and the rate that would have been

charged by the "normal preferred" OSP. Martin pf. at 7-8; tr. at 194-98 (Martin). As for how to define either "excessive" or "normal preferred OSP," the Department is unclear. The Department also suggests that OSP charges from aggregator locations be capped in order to protect captive customers from unreasonable prices. The DPS suggests a cap of 10% above that charged by NET for operator assistance. Martin pf. at 8; tr. at 197 (Martin).

Several other state public utility commissions that have examined the subject of operator service providers in their states have devised rules or regulations that provide for a rate cap similar to that proposed by the DPS.

Arkansas, Florida and Kentucky, for example, cap intrastate rates at those charged by AT&T. See Arkansas Public Service Commission Docket No. 92-079-R, In the Matter of a Proceeding for the Development of Rules and Policies Concerning Operator Service Providers, Order No. 7 (September 7, 1993); Arkansas Public Service Commission Rule 3.05 (13); Florida Public Service Commission Docket 871394-T, In Re: Review of the Requirements Appropriate for Alternative Operator Services and Public Telephones, Order 20489 (December 21, 1988) at 23; Kentucky Public Service Commission, Conditions of Service for the Provision of Operator Services Adopted from Commission Orders in Administrative Case No. 330, Orders dated March 27, 1991 and May 3, 1991, at (1).

Maryland and Indiana cap their rates for intrastate intraLATA service at those charged by the LEC, and for intrastate interLATA service at those charged by AT&T. See Maryland Public Service Commission, Case No. 8209, In the Matter of the Investigation by the Commission on its own Motion into the Provision of Operator Services, Order No. 68969 (June 25, 1990) at 47, ¶(4); Indiana Utility Regulatory Commission, Cause No. 38812, In the Matter of an Investigation Regarding Alternative Operator Services, Order on Settlement Agreement (July 10, 1991) at 7 (see also Settlement Agreement at ¶7).

Rhode Island, a single LATA state like Vermont, caps its rates at those charged by the LEC. See Rhode Island Division of Public Utilities and Carriers, Rules and Regulations for Telephone Operator Service Providers in Rhode Island, Rule 2.3.1. A quick look at some of the rates on file with

the Board illustrates the prices that can result in the absence of a rate cap or other form of regulation, and is sufficient to convince me that rate caps for intrastate operator service calls are necessary in Vermont in order to protect the public good. One Call Communications, Inc. d/b/a Opticom (One Call), for example, has the following charges in effect for intraLATA calls:

	Minutes 1-9	Minutes 10 & Up
Day	$.3600	$.5100
Evening	$.3000	$.4500
Night	$.3000	$.4500

In addition to these per-minute charges, One Call also adds the following "operator service charges" to the first minute of each operator-assisted call:

	Automated Operator	Live Operator
Calling Card	$1.80	$1.80
Collect/Third Party	$2.88	$3.88
Person-to-Person	$4.50	$5.50

A 15-minute person-to-person call, made with the assistance of a live operator, at One Call's daytime rates, would thus be $11.77. At evening and night rates, it would be $10.90. In contrast, NET's and AT&T's rates, which are regulated, are 23-55 percent lower for the same 15-minute call.

NET's rates for operator-assisted calls vary depending on distance and time of day. NET charges one rate for the initial minute and a lower rate for each additional minute. Its highest rates are for calls made during the day to a location 56 miles or more from the caller. These rates are $.63 for the first minute and $.31 for each additional minute. Rate discounts of 28% apply to evening rates, and 57% to night rates. See Tariff for NET, P.S.B. - Vt. - No. 20, Part A, Section 9, Page 7, Sixth Revision. In addition to the per-minute charges, NET also adds the following charges to calls that require operator assistance:

Calling Card:	$ .55
Operator Station-to-Station (includes Collect)	$1.65
Person-to-Person	$2.70

Thus, the same 15-minute person-to-person call that One Call carries, during the day, for $11.77, will be carried by NET for, at most, $7.67. While One Call's evening and night rates would be $10.90, NET's evening rate would be $6.28, and its night rate would be $4.84.

AT&T's per minute rates for operator-assisted calls are as follows:

Day:	$.30
Evening:	$.25
Night:	$.20

It also adds the following charges to calls that require operator assistance:

	Automated Operator	Live Operator
Calling Card:	$ .80	$ .80
Operator Station-to-Station (includes Collect)	$1.88	$2.88
Person-to-Person	$3.50	$4.50

Thus, the same 15-minute person-to-person call will be carried by AT&T at a daytime rate of $9.00, an evening rate of $8.25 and a night rate of $7.50.

The following chart summarizes the rates charged by each of these companies for the same 15 minute call:

	Day	Evening	Night
One Call	$11.77	$10.90	$10.90
NET	$ 7.67	$ 6.28	$ 4.84
AT&T	$ 9.00	$ 8.25	$ 7.50

This variation in rates convinces me that a rate cap on operator service charges is necessary in Vermont in order to protect the public good, the requirements of TOSCIA and implementing regulations regarding branding, and unblocking of 10XXX, 1-950-XXXX and 1-800-XXXX notwithstanding. As the Maryland Public Service Commission observed, the end user at an OSP-presubscribed phone is "captive." See supra, Maryland Public Service Commission, Case No. 8209, Order No. 68969 (June 25, 1990) at 42.

While it would be preferable to have evidence in the record on this point, it is not necessary to have evidence in order to recognize the following: when a person makes a call from a transient location -- whether it is from a pay phone, hotel, motel or hospital -- he is unlikely to know what

the rates are of the OSP that handles his call. Nor is it likely that he will make a special phone call to determine what those rates are, although under TOCSIA, he certainly has a right to do so and although TOCSIA requires that a toll-free number for the provision of such information be listed on the phone.

It also does not take evidence or market studies to establish that: many persons who find themselves in the position of making a phone call from a transient location (imagine an outdoor pay telephone at a Vermont highway rest area in the winter, at night, or a patient recovering from surgery in a hospital) are not going to be thinking about 10XXX or 950-XXXX, are not going to read the small print on the phone and are not going to take the time and energy to inquire about rates for the phone call they are about to place.

The Board's responsibility to protect the public good extends to all members of the public, those who are knowledgeable about operator services as well as those, who I suspect are in the majority, who are not. To carry out this responsibility, I conclude that it is necessary to institute rate caps for operator services.

While the Board certainly has the option of opening a new docket, or conducting a second phase in this proceeding, to gather additional evidence upon which to base a rate cap, I do not find that such an approach would be the best use of the Board's, the Department's or the other parties' resources. Instead, I find that the record of these proceedings, together with the public record, provides ample basis on which to base a cap. Consequently, I recommend instead that the Board cap the rates at those charged by NET, in a way analogous to that chosen by the Rhode Island Division of Public Utilities and Carriers. I choose NET over AT&T for the simple reason that its' rates are lower. I also recommend that the total rate (including any and all surcharges) paid by the caller should not exceed the total rate that NET would charge for the same call.

C. Consumer Protection

i. Telephone Operator Consumer Service Improvement Act

All parties agree, as do I, that it would be appropriate for Vermont to adopt, as applicable to intrastate service, the requirements of TOCSIA (47

U.S.C. §226) and the regulations promulgated by the FCC thereunder (47 C.F.R. §§ 64.703-64.708). I therefore recommend that the Board require all providers of operator services (including operator services that are provided through store and forward technology (see supra at 31-33)) and all aggregators to comply with applicable sections of TOCSIA and its implementing regulations. In particular, providers of intrastate operator services should be required to comply with the requirements spelled out at 47 U.S.C. §226(b). Aggregators should be required to comply with the requirements set forth at 47 U.S.C. §226(c).

The only other issue with respect to TOCSIA is whether the Board should adopt the Department's recommendation that the double branding requirement continue beyond the sunset date. See Martin pf. at 6-7. Sprint, NET and MCI oppose such a requirement. See Bovalino reb. at 1; tr. at 290-92 (Nelson); Brief for MCI, filed 1/13/93 at 5-6.

I conclude that the double branding requirement should not continue beyond the sunset date. First, as the Department's witness concedes, the purpose of branding is to apprise the consumer of the provider he has reached. Since single branding accomplishes this goal, it is adequate. Second, the testimony establishes that double branding for intrastate calls after the sunset date would be costly and cumbersome for many companies to provide, particularly in light of the fact that they will only be performing single branding for interstate calls.

ii. Notice that OSP Charges are not Regulated by the Board

The Department testified that where LECs perform billing and collection services for OSPs, a statement should be included on the bill advising the customer that the competitive OSP is not affiliated with the LEC and that the charges on the OSP portion of the bill are not regulated by the Board. Martin pf. at 7. The statement to the effect that the OSP is not regulated by the Board is intended to mean that the OSP is not regulated pursuant to rate-of-return regulation. Tr. at 213. The DPS also recommended that bills contain a toll-free number for questions about billing. Martin pf. at 7.

The issue of notification of customers that charges are not regulated by

the Board will become moot if the Board accepts my recommendation to impose rate caps. In the event that the Board does not accept that recommendation, I would note that a similar notification provision was considered by the Board in Docket No. 5071, Petition of GTE Sprint Communications Corporation for a Certificate of Public Good, Order of 10/1/86 at 12, 16, and rejected as anti-competitive. See also Docket No. 5608, Application of Hyperion Telecommunications of Vermont, Inc. for a Certificate of Public Good, Order of 3/16/94 at 90-92, 96-97. The proposed notice at issue in Docket No. 5071 would have informed the customer that Sprint's services and rates were not subject to traditional rate of return and cost of service regulation, and thus is substantially similar to the one recommended by the DPS here. I find that the decision in Docket No. 5071 governs and that there is no reason to reconsider this issue in this docket.

Regardless of the Board's decision regarding whether to institute price caps, I also recommend that the Board require the LECs to include on the OSP portion of the bill a toll-free number for inquiries regarding billing.

RESPONSE TO COMMENTS

The following parties have filed comments on the draft Proposal for Decision that was circulated on April 21, 1994 (Draft Proposal): LDDS (filed 5/5/94); Apollo (filed 5/6/94); MCI (filed 5/6/94); GTE (filed a letter on 5/6/94 stating that it had no comments on the draft Proposal); LDN (filed 5/6/94); Sprint (filed 5/19/94); NYNEX (filed 5/19/94); and the DPS (filed 6/7/94). In addition, the following parties have requested oral argument on the Draft Proposal: Apollo (request filed on 4/28/94); and LDDS (request filed on 5/5/94). The discussion that follows is a summary of the comments, focussing on arguments that the parties did not raise previously, and my response to those comments. The discussion is separated into comments on the portion of the Draft Proposal that pertains to: (I) Pay Phones; and (II) Operator Service Providers.

I. Pay Phones

A. Dial-Around Compensation

The DPS and Apollo both comment on this subject.

The DPS states that it agrees with the conclusion in the Draft Proposal that the record does not provide a reasonable basis for setting dial-around compensation. Comments for DPS at 6-7. It adds, however, its belief that "COPTs do suffer from lost revenues and incur some costs in association with dial-around calls." Id. The DPS' remedy for this alleged problem is "allowing COPTs increased local rate flexibility," i.e., charging up to $.25 for a local call. Id. "The Hearing Officer's conclusion," the DPS goes on to say, "leaves COPTs with no compensation and no means to recover the additional costs through higher rates." Id.

I would note at the outset that the question whether COPTs suffer actual lost revenues or incur additional costs as a result of intrastate dial-around calls is a question of fact that is not answered in this proceeding. The evidence certainly did not establish such losses or costs. At most, the evidence established that COPTs suffer a lost opportunity to earn revenues, but this is to be distinguished from actual loss of revenues or incurring of

costs. See Draft Proposal at 25, 52. See also, discussion below, regarding Re: Indiana Payphone Association, 1993 WL 597841 (Ind. Util. Reg'y Comm'n, Cause No. 39475, 10/20/93). As for the DPS' proposed "remedy" of allowing COPTs to charge more for local calls than do LECs, Apollo has testified that it is not interested in such a policy. See Draft Proposal at 48-50. Thus, the largest COCOT provider in the state would probably not view such an approach as a remedy to the alleged losses caused by dial-around calling. For all of these reasons, as well as those discussed below, I find the DPS's argument on this matter to be unconvincing.

Apollo criticizes the Draft Proposal's recommendation on dial-around calling for several reasons.

> First, it seems unreasonable to not remedy what the hearing officer recognizes as losses simply because there seems to be no good way. Secondly, our claim that we did not have a figure to which we were entitled was accurate a year ago but is not today.
>
> . . .
>
> . . . AT&T has just reached agreement with the American Public Communications Council whereby they will voluntarily pay compensation on both inter and intra-state dial around calls, whether originated by 800 or 10XXX access, in the amount of $0.25 per call. [] Surely if AT&T wants to pay intra-state dial around, and both they, the nation's largest carrier and biggest payer of such compensation, and we as the representative of the COCOT industry agree to this amount, it stands to reason that other carriers should be compelled to follow suit.

Comments for Apollo at 2.

Apollo also points out that the FCC has ordered dial-around compensation for interstate calls, and that several state commissions, e.g., those of Florida, Georgia and South Carolina, have required such compensation for intrastate calls.

Apollo's arguments have not convinced me to alter my recommendation on dial-around compensation. As discussed above in response to the DPS' comments on this subject, the record in this proceeding does not support a finding that COPTs experience losses as a result of dial-around calling, and I made no such finding in the Draft Proposal. Apollo's statement that I "recognize" the existence of such losses is thus apparently based on a misunderstanding of some component of the Draft Proposal. Similarly, its position that the absence of a "good way" to set compensation should not serve as an impediment to setting such compensation is at odds with my view as well as the views of

most of the other parties to this proceeding. See Draft Proposal at 51 (citing Proposed Findings for First Phone, filed 2/5/93 at 2; Brief for DPS filed 1/13/93 at 29; Brief for MCI, filed 1/13/93 at 2-4; and Brief for Sprint, filed 1/12/93 at 9-10).

As for Apollo's argument that an agreement voluntarily entered into between AT&T and the American Public Communications Council (APCC) regarding compensation for interstate and intrastate dial-around calls should serve as a compelling reason to require all IXCs in Vermont to abide by a similar compensation scheme, I disagree. The only information we have in this proceeding about that agreement is a one-page news release issued by the APCC. This news release fails to provide a rational basis upon which to make recommendations to the Board.

Finally, regarding the decisions of other state commissions on intrastate dial-around compensation, it is important to note that in addition to the three commissions that Apollo alleges have ruled in favor of awarding such compensation, at least one other state commission has considered the matter and reached the opposite result.

In Re: Indiana Payphone Association, 1993 WL 597841 (Ind. Util. Reg'y Comm'n, Cause No. 39475, 10/20/93), the Indiana Utility Regulatory Commission held, for a variety of reasons, that dial-around compensation to pay phone owners for intrastate calls would be inappropriate. The decision is worth discussing extensively, both because of its detailed analysis of the issue of dial-around compensation and its discussion of other aspects of the pay phone and operator service industries.

First, the Indiana Commission stressed that there had been no concrete financial testimony to establish any revenue reduction as a result of dial-around traffic. An independent pay phone (IPP) provider has two general sources of revenue: coin deposits made in the pay phone for local and sent-paid toll calls; and the commissions received by the IPP from the OSP(s) selected by the IPP to handle the non-sent paid calls. The IPP providers also have a limited number of expenses:

(1) the cost of acquiring and installing the phones (a fixed cost that remains constant regardless of the number of calls made

from the phone);

(2) the monthly charges that the IPP provider must pay to the LEC for service to the phone (generally a fixed cost although some elements of the LEC's monthly charges may be based on usage); and

(3) the commission that the IPP provider must pay to premise owners (which varies with the revenues generated by the phone).

The Indiana Commission then noted that the evidence had showed that the IPP providers incur no additional costs when a consumer uses an IPP and dials-around the presubscribed OSP, that the IPP industry is a fixed cost industry, that the expenses of the industry are totally unrelated to dial-around traffic, and that these fixed costs "do not vary at all whether end users make one, one hundred or more dial-around calls." 1993 WL 597841 at 9.

The Commission also stated that considerations of equity weighed against any per-phone payment of dial-around compensation. Id. at 10. IPP providers are already well-compensated for a service that costs them "nothing to provide" and that generates "no additional costs," the Commission pointed out, due to FCC rules that require IXCs to pay them $6 per phone per month for interstate dial-around calls. Id. The Commission "decline[d] to compound this inequity by requiring the IXCs to pay an additional subsidy to the IPP provider." Id.

Third, the Commission opined that an award of dial-around compensation "would remove the calling public's ability to influence the IPP providers' choice of presubscribed OSP." Id. The Commission explained that:

> Because IPP providers enter into commission agreements with OSPs, IPP providers receive no commission for calls dialed-around their presubscribed OSPs. Despite the IPA witnesses' claims that they have chosen their presubscribed carriers (Opticom, a division of One Call, and ITI/Oncor) on the basis of reasonableness of rates, calling quality and other consumer-friendly factors, evidence was submitted to the contrary. The evidence showed that the IPA witnesses' presubscribed OSPs have consistently scored at or near the top in all categories of customer complaints (unreasonableness of rates, call quality, call splashing and blocking and other indices of consumer dissatisfaction) made to the FCC.
>
> . . .
>
> . . . Were this Commission to order dial-around compensation, we would effectively insulate the IPP provider from its customer. Presently, the calling public can and has sent IPP providers in Indiana messages about their choice of presubscribed OSPs. As Mr. Nelson [President of both the Indiana Payphone Association and Indiana Telecom, an IPP provider in that State] testified, the volume of dial-around traffic at certain of his locations (35 to

> 40) was so high that he changed to AT&T as his presubscribed carrier at those locations in order to avoid the loss of commissions that the calling public forced on his company by dialing-around an unacceptable presubscribed OSP.

Id. at 10-11.

The Commission summed up the case before it as an attempt by the petitioner pay phone association to seek "protection from the competitive marketplace through the guise of seeking redress for a suffered loss." Id. at 11.

> Analogous to the situation presented is that an IXC suffers from a lost revenue opportunity when a caller selects another carrier to place a toll call. The IXC's remedy though, is not to demand that the carrier selected surrender a portion of the revenue derived from such a call but instead, the IXC must attempt to recapture such lost opportunities through the offering of innovated services and competitive prices. . . . To award per phone compensation would merely be providing a subsidy -- ordering IXCs to pay the IPP providers in order to help defray costs. There was no evidence that those costs are caused or even associated with the IXC traffic.

Id. at 11.

For all of these reasons, the Indiana Commission found that per phone compensation for intrastate dial-around calls would be contrary to the public interest and harmful to the continuing development of competition in the provision of telecommunications. In sum, it would be "a device by which IPPs [could] reap the benefits of an influx of cash while avoiding the risks inherent to providing services in a competitive marketplace." Id. at 12.[10]

The plethora of reasons discussed by the Indiana Commission is more than adequate to convince me that there is no justification for the Board to award intrastate dial-around compensation at this time, and that doing so would be contrary to the public interest. As in Re: Indiana Payphone Association, there is no concrete financial testimony in the instant case to establish any revenue reduction as a result of dial-around traffic. In addition, awarding such compensation could serve as a disincentive for pay phone owners to ensure that their phones are presubscribed to OSPs that provide reasonably-priced service to the public. With dial-around compensation, the pay phone owner can

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10. The Indiana Commission does, however, note that when the technology becomes available to track usage on a per-call or per-minute basis, it would be appropriate to consider a petition seeking intrastate dial-around compensation.

arguably afford to forego commissions paid by the presubscribed OSP because he receives payment anyway, regardless of quality of service. Finally, just as dial-around compensation could serve to insulate the pay phone owner from his customers, so too could it serve to insulate him from the market by subsidizing his service instead of encouraging him to make whatever modifications are necessary to make his service attractive to the public. I do, however, agree with the DPS and the Indiana Commission that if at any point in the future a rational basis for determining per-call compensation does emerge, it would be appropriate for the Board to reconsider this matter.

B. Incoming Calls

The DPS, NET and Apollo all comment on this subject.

The DPS generally agrees with the Draft Proposal's recommendation but states that it does not agree that the Board should automatically grandfather existing arrangements that restrict incoming calls. Instead, it suggests that "the Board should simply require COPTs to submit waivers for these phones with existing incoming call restrictions." Comments for DPS at 3.

NET opposes the requirement that to restrict incoming calls a COPT must demonstrate both: (1) that a law enforcement agency has made a request that incoming calls be restricted; and (2) that the location owner has applied for a formal waiver. NET recommends, instead, that the restriction be stated in the alternative. Comments for NET at 2.

Apollo reiterates arguments made in its brief that requiring incoming service will result in financial losses as a result of fraudulent collect calls in that COPT owners, and not the LECs or IXCs, pay the costs of such calls. Comments for Apollo at 3. Apollo also criticizes the conclusion in the Draft Proposal that safety concerns and insistence of location owners on availability of incoming service were not well documented. Id. It argues that NET's testimony that it only restricts incoming service upon the request of the location owner or a governmental body, and that approximately 12% of its 4,079 phones are so restricted, serves as documentation that such requests were made. Id. Apollo also points to its testimony that 60-70% of its phones block incoming calls, and states that "[i]t is because such service is

restricted that requests to restrict it are not made." Id.

The parties have not convinced me to alter my recommendation on this matter. Their comments simply serve to highlight the range of opinion on this matter and the fact that the approach I recommend is a hybrid of the varying perspectives. See Draft Proposal at 42-44.

C. Competition, Rates and Rate Structure

The DPS and Apollo each comment on some or all of these subjects.

Regarding competition, Apollo criticizes the portion of the Draft Proposal at p. 28, that reads as follows:

> Instead of adopting either the approach advocated by the DPS or that advocated by Apollo, I find that decisions regarding potential regulatory requirements should be made after conducting a balancing test that examines the potential costs of a proposed requirement as well as the potential benefits, to both the pay phone provider and the public, but with greater weight given to the potential effects upon the public. In so finding, I note that the evidence in this docket did not show that the number of pay phones in this State is inadequate or that the public is dissatisfied with the quality of pay phone service provided by LECs. If it had, then I would perhaps have found more reason for the Board to take more active steps to encourage competition between COCOT providers and LECs. Such was not the case, however. The evidence did not establish that a problem exists either with respect to the number of pay phones or the quality of service provided by LEC-owned pay phones. See infra at (IV)(C) (Pay Phones).

Apollo argues that the reason the evidence did not show dissatisfaction with LEC-owned pay phones is because "it was not one of the issues involved in the docket. Had the hearing officer considered this relevant and had she inquired, she would have discovered that there is indeed such dissatisfaction." Comments for Apollo at 4. In particular, Apollo states that the fact that LEC pay phones are not smart phones means that LECs do not always make prompt repairs, and that LEC-owned phones jam as a result of overflowing of the coin boxes. Id. Apollo also disagrees with the conclusion in the Draft Proposal that "[a]lthough smart phones provide diagnostic and repair functions that dumb phones can't perform, the evidence does not suggest that this matters to end users." Id. (quoting Draft Proposal at 31). On the contrary, Apollo asserts, it matters quite a bit. Id.

In response, I would note that quality of service of LEC-owned phones vs. COCOTs was explicitly an issue in this proceeding, albeit in a slightly different context: whether the requirement that the quality of service of

COPTs meets or exceeds the quality provided by LEC-owned phones, set forth in Docket No. 4946, should be continued. See Procedural Order re: Intervention and Issues and Notice of Status Conference, of 6/12/92, Attachment A at 5 (#9, #16). Even if it had not been an explicit issue, it was certainly implicitly within the scope of this proceeding and any party that wished to had an opportunity to present evidence on it. The fact of the matter is that few parties chose to present any evidence on this issue.

With respect to whether it should be allowed to charge more than the LECs for intrastate toll calling, Apollo goes on to say that:

> In further dismissing the need for competitive reforms, the hearing officer states 'Apollo did not, however, present evidence to establish that LEC pay phone operations are subsidized by other operations.' [Draft Proposal at 29] No we did not. We did not have to because this was common knowledge to all involved, and should have been to the hearing officer as well. It is a fundamental part of the rate making process, and as far as I know, no one disputes this fact.

Id. at 4.

I would have to disagree with Apollo's assertion that it is a fact that LEC pay phone operations are subsidized by other operations and its statement that no one disputes the assertion. The answer to the question whether such rates are subsidized is a question of fact that can be answered only through quantitative evidence, the likes of which was not presented in this docket. At this point in time, I think that we simply do not have an answer to the question. This fact, in combination with the fact that Docket No. 5567, Investigation into petition of Apollo Communications, Inc. for an amendment to its Certificate of Public Good to permit it to charge rates higher than those charged by the local exchange carriers in its service territories, is currently pending before the Board, leads me to reiterate the recommendation I made in the Draft Proposal. Specifically, I recommend that the Board give Apollo an opportunity to more thoroughly develop its rate case in Docket No. 5567, a docket specifically devoted to that purpose. See Draft Proposal at 29-30.

In a related vein, the DPS criticizes the "unsubstantiated statement in the [Draft Proposal] that the $.10 rate does not cover the cost of a coin call." Comments for DPS at 6. The statement referred to by the DPS is that:

> [T]he Board's decision in 1986 to continue the $.10 rate was based on public policy reasons, not rate principles. See Docket No. 4946, Order of 2/21/86 at 54-60. It was clear to the Board at the time it issued its decision that the $.10 rate did not cover the cost of a local call.

Draft Proposal at 49-50. Yet the DPS concedes that "the Board may have reached such a conclusion in Docket 4946," id., and that Apollo testified that the $.10 rate does not cover the cost of a local call. The DPS has not convinced me to modify my recommendation that the rate for local calls for both COCOT and LEC-owned pay phones be capped at $.10.

As for rate structure, the DPS objects to the recommendation in the Draft Proposal that issues related to terms and conditions of PAL service be addressed in Docket Nos. 5700/5702, on the ground that the "recommendation appeared after all parties had filed their direct testimony in that proceeding and well after the bulk of parties' investigative work had occurred." Comments for DPS at 5. Apollo also objects to this recommendation on the ground that "PAL service is unique and much narrower than the focus in those dockets [and] belongs in this docket." Comments for Apollo at 5. I conclude that the most efficient way in which to proceed would be for the Board to look into this matter via an information request in Docket Nos. 5700/5702.

D. Emergency Services

The recommendation in the Draft Proposal was that in light of the fact that the Legislature was considering proposed legislation regarding E-911 service, it did not make sense for the Board to conduct an examination of similar issues in this docket. Accordingly, I recommended that pay phone providers "be required to comply with whatever requirements are issued in the future, by the Legislature and/or the Board, regarding 911 and other emergency services." Draft Proposal at 40. The DPS, in its Comments, states that even if the Legislature adopts the E-911 bill, service will not be available for several years and likely will not exist in all communities. Comments for DPS at 2. Consequently, the DPS requests that the Board require free access to emergency service as it recommended in its brief. Id.

On June 12, 1994, after the DPS filed its Comments, the Legislature enacted Act No. 197, An Act Relating to an Enhanced 911 Emergency Response

System. This statute creates a Vermont Universal Service Fund ("USF") that will finance three telecommunications services including E-911 service. The statute requires that by July 1, 1997, a fully operational E-911 system will be completed. The DPS has not filed an amendment to its Comments so, presumably, its position on emergency service is unchanged. For the reasons discussed in the Draft Proposal, I reiterate the recommendation made in the Draft Proposal on this subject.

E. Directory Assistance

The DPS objects to the recommendation in the Draft Proposal that NET be required to amend its tariff to offer as a tariffed service the same arrangement for DA that it has with Apollo, i.e., a flat rate of $4.00 per month per phone, regardless of actual usage. The DPS objects to this on the ground that there is no evidence concerning reasonableness of the charge, relation of the charge to costs, or whether other arrangements would be preferable. Comments for DPS at 3. NET states that it has no objection to filing a tariff for DA, provided that the rates and charges contained in the tariff are based on the amount of usage by the COPT purchasing from the tariff. Comments for NET at 1.

It appears from the parties' comments that they may be able to reach an agreement as to a tariff offering on directory assistance. I therefore revise my recommendation on this matter as follows. I recommend that the Board require NET to file, within 60 days of the date of entry of the Order in this docket a tariff amendment reflecting either: (1) a directory assistance service to which the DPS has stipulated its agreement; or (2) provision of directory assistance to COCOT owners, at a flat rate of $4.00 per phone per month, regardless of actual usage. Paragraph 10 of the Conclusion of the Draft Proposal has been amended to comport with this revision, as has Paragraph 2(10) of the Proposed Order.

F. Posting

Both Apollo and NET object to imposition of any new requirements regarding posting of information. See generally Comments for Apollo, Comments

for NET. The DPS, on the other hand, criticizes the Draft Proposal for its rejection of the DPS' proposed requirement that all carriers to which a pay phone is presubscribed be posted. The DPS argues that this conclusion is inconsistent with other recommendations in the Draft Proposal regarding provision of information to consumers. As discussed in the Draft Proposal, the issue is at this point academic. I therefore decline to revise my recommendation on this matter. See Draft Proposal at 45.

II. Operator Service Providers

A. TOCSIA

NET, in its Comments, takes the position that the record in this docket may be inadequate to support a conclusion that TOCSIA should be adopted by the Board as applicable to intrastate operator service. Comments for NET at 2. If the Board does elect to adopt the Hearing Officer's findings on TOCSIA, NET goes on to say, it should make specific findings on the issue of whether LECs are covered at all under TOCSIA. Id.

NET's testimony on this subject is at odds with the spirit of its Comments. Its testimony was that:

> NET is concerned that competitors provide clear labeling to avoid customer confusion with the Company's telephones and services. The Company believes consumer protection policies as provided by TOCSIA are appropriate for adoption on the state level. The NYNEX Telephone Companies support the TOCSIA provisions and are in full compliance with all federal regulations pertaining to TOCSIA.

Bovalino pf. at 2. See also Finding #89.

I would also note that the question whether the Board should adopt the requirements of TOCSIA with respect to provision of intrastate operator service by LECs is a different question than whether TOCSIA -- a federal statute that governs provision of interstate operator service -- applies to LECs. The latter question is a question of law, and the answer to that question would be binding upon providers of interstate operator services. It is not necessary to answer that question in this proceeding since the subject of interstate service is outside the scope of our inquiry. The former question, however, is a question of policy and not law. As a matter of public policy and consistency, I recommend that the Board adopt the requirements of TOCSIA as applicable to all providers of intrastate operator services,

including LECs.

One final matter is relevant with respect to TOCSIA. The DPS stated in its Comments that it no longer recommends continuation of the requirement regarding double branding, given the fact that the FCC's requirement in this regard has expired. Thus, the DPS' position is no longer different from that set forth in the Draft Proposal.

B. Inclusion of Toll-Free Number for OSP on Bills

The Draft Proposal includes a recommendation that the Board require the LECs to include on the OSP portion of the bill a toll-free number for inquiries regarding billing. Draft Proposal at 68-69. NET expresses concern that such a requirement could be costly. Comments for NET at 2. If the Board imposes such a requirement, it continues, adequate support for the requirement must be found in the record. Id.

The recommendation that a toll-free number be included on the OSP portion of the bill for inquiries about billing is consistent with the spirit of TOCSIA and the many other recommendations in the PFD to the effect that consumers should be provided with either actual information, or access to information, about the operator services they use. Consequently, in my view, adequate support for this recommendation does exist in the record.

C. Rate Caps

Sprint supports the recommendation in the Draft Proposal that the rates for intrastate toll calls carried by operator service providers should be capped at the rates charged by NET. MCI, LDDS, LDN and the DPS all object to it.

The DPS states that while it generally supports the recommendation that a rate cap be set, it does not believe that the cap should be set at the rates charged by NET. Instead, it believes that the Board should allow companies some flexibility to charge more. In particular, it states that its testimony recommends a cap of 110% of NET's rates for operator services, and it encourages the Board to adopt this cap. Comments for DPS at 7.

MCI presents a variety of arguments in opposition to the proposed rate cap. First, it argues that the cap represents a fundamental change in

regulation without sufficient notice in that the cap was never offered as a formal proposal in this docket, and that no party proposed and, as a result, no party had an opportunity to oppose, such a plan. Comments for MCI at 2-3. Second, it argues that the Draft Proposal does not discuss the costs that underlay the various OSPs' tariffed rates for operator services, thereby ignoring the fact that different carriers have different cost structures and that their costs may well justify their rates. Similarly, MCI argues, the Draft Proposal ignores the possibility that NET's operator service rates may not be sufficient to cover its costs and that it may be subsidizing its rates. Id. at 3-4. Third, MCI claims that use of NET's rates as a cap is arbitrary not only because it was not based on competitive conditions or costs, but because the Draft Proposal does not discuss the various caps that could have been considered. Id. at 5. Fourth, MCI maintains that rate caps are unnecessary at this time because consumers now have the protection of TOCSIA, in particular branding, unblocking, and toll-free means to access the carriers of their choice. Consequently, MCI concludes, the Board should wait and see if the new consumer protections are sufficient to protect the public before imposing rate caps. Id. at 4-5.

Finally, MCI claims that the proposed rate cap will place competitors in a price squeeze in that for calls in certain milage bands at certain times, competitors would have to pay more to NET for access than they would receive from the usage rates they would be allowed to charge. Id. at 5-6.

LDDS comments that the rate cap is based on two factors -- variation in rates charged for operator services in Vermont and improbability that a consumer in a transient location will bother to ascertain rates -- and states that these factors do not support the imposition of a rate cap. Comments for LDDS at 1.

LDDS also argues that if the rate cap is not eliminated, it should be revised to be set at the rates charged by AT&T rather than NET. Id. at 2.

LDN stated that it concurred in the Comments filed by MCI and LDDS, and stressed its opinion that the rate cap proposal has not been substantiated by any evidence. Comments for LDN.

For all of the reasons discussed in the Draft Proposal, I affirm my recommendation that a rate cap should be instituted and that it should be set at the rates charged by NET. I do, however, have a number of responses to the parties' comments on this subject. With respect to notice, the issue of rate caps for operator services was listed in the Procedural Order Re: Intervention and Issues, of 6/12/92, at 7 (#7). Thus, all parties had notice that this issue was within the scope of this docket. As for evidentiary or other bases on which to set a cap, circumscribing the choice of a rate cap as a choice between the rates of the dominant local exchange carrier versus the rates of AT&T can hardly be described as arbitrary, when several state utility regulatory commissions have chosen one or the other as the basis for their rate caps. See Draft Proposal at 61-62.

It is also important to bear in mind that the ultimate concern here is the public interest. It does not seem that customers who are essentially captive to a presubscribed OSP (again, despite the FCC's rules regarding unblocking, many customers using operator services will either not have the knowledge, or not take the time and effort, to dial-around the presubscribed OSP) benefit from rates that are higher than the only ones in the state that have been reviewed and determined to be just and reasonable. If a competitor is not able to meet the price charged by NET for operator services, then perhaps it is not in the public interest to have that competitor in that particular business. Or, if part of the problem for the competitors is, as MCI suggests, the price of access they must pay to NET, perhaps the remedy is a challenge to access prices, which would more properly be the subject of Docket No. 5713, Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks, or Docket No. 5700/5702, Investigation of proposed Vermont price regulation plan and proposed interim incentive regulation plan of New England Telephone and Telegraph

Company/Department of Public Service Petition for Investigation of New England Telephone and Telegraph Company Rates.

Finally, with respect to the argument that the Board should wait and see whether the unblocking rules and other protections to emerge from this proceeding are sufficient to protect the public, I disagree. This "wait and see" approach could permit a problem to develop with OSPs in this jurisdiction, as it has in other jurisdictions, of rates for operator services at up to 65-75% more than the rates charged by AT&T. See 1993 WL 597841 at 11. I see no reason to endorse such an approach where, as here, the Board has an opportunity to take a proactive stance and to provide guaranteed protection of the public through rate caps.

CONCLUSION

As discussed in this Proposal for Decision, I recommend that the Board adopt a variety of requirements for the public pay phone and operator service provider industries in Vermont, in addition to those that already exist. These proposed requirements are listed below.

1. The term COCOT (customer-owned, coin-operated telephone) may be used interchangeably with the term COPT (customer-owned pay telephone), and requirements that apply to one shall apply equally to the other. (See supra at 30.)

2. All requirements that govern COCOTs shall apply equally to LEC-owned pay phones. (See supra at 30, n.4; 46.)

3. The owner of a pay phone that uses store and forward technology shall be regulated as both a pay phone provider and an operator service provider. (See supra at 32-34.)

4. The requirements set forth in Docket No. 4946, Order of 2/21/86, and summarized above at pp. 7-8, are affirmed, except that ¶4(b) on p. 8 supra (requiring that all pay phones accept nickels, dimes and quarters) shall be modified to allow installation of coinless phones to the extent that installation of such phones does not result in limitation or reduction of availability of coin-operated phones. (See supra at 35.)

5. Rates for calls made from touch-tone pay phones and rotary pay phones shall be the same. (See supra at 34.)

6. Each COCOT owner shall include with its application for a CPG a list of all locations at which it intends to place a COCOT. Each COCOT owner shall update the Board in writing, on a semi-annual basis, as to any phones that it has added or removed. (See supra at 37.)

7. Each COCOT owner shall file its Annual Report, and the computation of its gross revenue tax, with the Department of Public Service, on forms provided by the Department of Public Service. (See supra at 37-38.)

8. All pay phones shall provide coin-free access to the following forms of calling: 911 service, 1-800 calls, 950-XXXX calls, 10XXX calls, 0- calls,

0+ calls, and directory assistance. (See supra at 38, 40-41.)

9. Owners of pay phones shall comply with any and all relevant requirements, issued in the future by the Legislature and/or the Board, regarding 911, E-911 and other emergency services. (See supra at 40.)

10. NET shall file, within 60 days of the date of entry of the Order in this docket, a tariff amendment reflecting either: (1) a directory assistance service to which the DPS has stipulated its agreement; or (2) provision of directory assistance to COCOT owners, at a flat rate of $4.00 per phone per month, regardless of actual usage. (See supra at 41-42, 84.)

11. All pay phones shall allow incoming service. Waiver of this rule shall, however, be permitted where: (1) a law enforcement agency makes such a request, in writing, for reasons of public safety; and (2) a location owner certifies, in writing, that he will not allow a pay phone to be placed on his property unless it restricts incoming service. Where the Board agrees to such a waiver, the owner of the phone shall post a notice on or near the phone that states that the phone cannot receive incoming calls. To be granted such a waiver, the pay phone owner shall file a petition with the Board for a waiver in which it includes a copy of the governmental agency's or location owner's written statement. The requirements set forth in this paragraph shall apply on a prospective basis only. Pay phone service arrangements in existence on the date of entry of this Order that restrict incoming calls shall be grandfathered. (See supra at 43-44, 78-79.)

12. The local calling rate shall remain at $.10 for COCOTs as well as LEC-owned pay phones. (See supra at 50, 71-72, 82.)

13. The DPS shall report to the Board, within 60 days of the date of entry of the Order in this docket, on the following: (1) the status of the Department of Corrections' investigation into pay phone services in institutions of confinement; and (2) its recommendation as to whether the Board should open a separate proceeding devoted to that subject. (See supra at 52.)

14. Rates for operator services shall be capped at the rates charged by NET. Thus, the total rate (including any and all surcharges) charged for a

particular call shall not exceed the total rate that NET would charge for the same call. (See supra at 63-66, 87-90.)

15. The requirements of the Telephone Operator Consumer Service Improvement Act (TOCSIA) (47 U.S.C. §226), and the regulations promulgated by the FCC thereunder (47 C.F.R. §§ 64.703-64.708), shall apply to intrastate service. All providers of operator services (including operator services that are provided through store and forward technology) and all aggregators shall comply with applicable sections of TOCSIA and its implementing regulations. In particular, providers of intrastate operator services shall comply with the requirements spelled out at 47 U.S.C. §226(b). Aggregators shall comply with the requirements set forth at 47 U.S.C. §226(c). (See supra at 33, 66-67, 85.)

16. Local exchange carriers shall include, on the OSP portion of the customer's bill, a toll-free number for inquiries regarding billing. (See supra at 67-68, 86-87.)

17. All providers of operator services shall, within 60 days of the date of entry of the Order in this docket, file tariff amendments with the Board so as to ensure that all of their tariffs are in compliance with the requirements of the Board's Order.

I further recommend that the Board include in its Order the following references to action that I recommend it take in the future:

18. The Board will amend the COCOT application form to include the following paragraph: "Each COCOT owner shall file its Annual Report, and the computation of its gross revenue tax, with the Department of Public Service, on forms provided by the Department of Public Service." (See supra at 37-38.)

19. The Board will address the issue of whether NET should unbundle smart services and offer them to COCOT owners individually in Docket No. 5713, Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks. (See supra at 32-33.)

20. The Board will examine the issue of terms and conditions of PAL

service in Docket No. 5700, Investigation of proposed Vermont price regulation plan and proposed interim incentive regulation plan of New England Telephone and Telegraph Company, and Docket No. 5702, Department of Public Service Petition for Investigation of New England Telephone and Telegraph Company Rates, as part of its comprehensive examination in those proceedings of NET's rate and tariff structure. (See supra at 47-48, 82-83.)

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. §8.

Pursuant to 3 V.S.A. §811, this Proposal for Decision has been served upon all the parties.

DATED at Montpelier, Vermont, this 19th day of September, 1994.

s/Sharon Appel
Sharon Appel, Esq.
Hearing Officer

BOARD DISCUSSION

We adopt the findings, conclusions and recommendations of the Hearing Officer, except to the extent modified below. We also comment upon some of the policy issues discussed in the Proposal for Decision.

I. PAY PHONES

With respect to pay phones, we address the following issues: (1) dial-around compensation; (2) incoming calls; (3) rates for local calls; (4) posting; and (5) line classification.[11]

1. Dial-Around Compensation. We decline to require dial-around compensation in this proceeding for two central reasons. First, we agree with the Hearing Officer and the DPS that, at this time, no reasonable method for calculating a rate for such compensation exists.

Just as importantly, however, we concur in the Indiana PUC's observation in Re: Indiana Payphone Association that dial-around compensation may serve

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11. We also note that Docket No. 5567, Investigation into petition of Apollo Communications, Inc. for an amendment to its Certificate of Public Good to permit it to charge rates higher than those charged by the local exchange carriers in its service territories, is still pending. That docket was placed on hold pending the Board's Order in the instant proceeding, because the matters at issue in Docket No. 5567 were to be addressed in this proceeding. See Docket No. 5567, Procedural Order of 3/24/92. The matters at issue were listed in the Prehearing Conference Procedural Order in Docket No. 5567 (Order of 3/24/94) and are as follows:

(1) should COCOTs be allowed to charge up to ten percent (10%) more than the tariffed rate for intra-state calling offered by the local phone company where the COCOT is located, for coin paid calls?

(2) should COCOTs be allowed to charge up to twenty-five percent (25%) more than the tariffed rate for intra-state calling offered by the local phone company where the COCOT is located, for charge card and collect calls?

(3) should COCOTs be allowed to charge for directory assistance calls in locations where the COCOT owner is charged for these calls by the local exchange company, at a rate identical to that charged to the COCOT owner?

As to the first two issues, the Hearing Officer has found in this docket, and we concur, that there is insufficient evidence upon which to conclude that an increase in rates should be allowed. As to the third issue, this was resolved by the agreement between NYNEX and Apollo, and we accept that agreement. In this connection, we also note that our Order requires NYNEX to file a tariff amendment regarding directory assistance. See Order at ¶ 2(10).

The Hearing Officer has recommended that Apollo be given an opportunity to more thoroughly develop its rate case in Docket No. 5567. See supra at 29-30, 81-82. We accept this recommendation and clarify it as follows: Apollo shall be given an opportunity to come forward with an offer of proof regarding the need for the rate increases it has requested. Such offer of proof shall be filed in Docket No. 5567 within 60 days of the date of entry of this Order. Absent such a showing, Docket No. 5567 will be closed.

to insulate pay phone providers and aggregators from the public's views regarding pre-selected operator service providers. Where such compensation is allowed, the owners of the phones are compensated for all calls made from their phones, regardless of the end users' views of the presubscribed OSP and the service provided. Thus, where knowledgeable end users "vote with their feet" and choose an alternative OSP, the pay phone provider or aggregator will still be compensated. Where dial-around compensation is not awarded, however, and customers dial around the presubscribed OSP, the pay phone provider or aggregator loses revenues. Thus, the pay phone provider or aggregator will have an incentive to presubscribe to an OSP that end users will not dial around.

For these reasons, we agree with the Hearing Officer that refraining from awarding dial-around compensation will best serve the public at this time.

2. Incoming Calls. We agree with the Hearing Officer and the DPS that pay phone service is a public service and that incoming service is an essential component of that function. While we are sympathetic to the COCOT owners' concern that they may have to reimburse IXCs for the costs of international collect calls fraudulently received at their phones, we also note that there is no quantitative evidence as to the degree to which this problem currently exists in Vermont. Because of this lack of evidence, we are unable to grant the relief requested. Should sufficient evidence be presented in the future, however, this ruling would be subject to revision.

3. Rates for local calls. Since 1986, when the Board last took a comprehensive look at the pay phone industry in Vermont, substantial changes in the technology employed by that industry have occurred. These changes in technology have, presumably, generated changes in the total costs incurred by providers of pay phone service. Labor costs, and other costs associated with provision of pay phone service have, presumably, changed as well. While it is true, as the Hearing Officer pointed out, that the Board's view in 1986 was that the rate for a local coin call did not cover its cost (see, e.g., Docket No. 4946, Order of 2/21/86 at 54-55), the relationship between costs and rates

is not at all clear. Since there is no evidence in this record on costs, nor on what would constitute a reasonable cost allocation, we conclude that there is no evidentiary basis to support a change in rates. Moreover, particularly in light of the lack of solid evidence on costs, we agree with the Hearing Officer that public policy issues militate in favor of maintaining the rate at its current level.

4. Posting. As a general principle, we conclude that in this era of increasing competition in telecommunications services, it is critical that consumers have sufficient information available to them to enable them to make informed decisions regarding all components of telecommunications services for which they will be charged. We find the provision of basic information regarding rates and identification of the provider of the service, to be essential. Without such information, the market cannot work effectively and cannot serve to promote consumer choice, or to protect consumers from unfair and deceptive practices. The DPS also argued for the provision of additional information to consumers.

To ensure that consumers have adequate information to enable them to make rational decisions about pay phone service, we therefore direct all providers of pay phone services to post on the face of each of their phones in easily readable type, format and language the following: (1) the identity of any and all presubscribed providers of local, toll, directory assistance and operator service; (2) a statement that users can access the provider of their choice; and (3) clear instructions to users regarding how to access their provider of choice. An additional paragraph will be incorporated into the Hearing Officer's proposed Order as paragraph 2. (18) to reflect this requirement.

5. Line classification. The Hearing Officer's recommendation was for the Board to consider this issue in Docket Nos. 5700/5702. The Board has, however, issued its Order in that proceeding (Order of 10/5/94) and, therefore, we cannot accept this recommendation. Instead, we will direct the Hearing Officer in Docket No. 5713, Investigation into NET's tariff filing re:

Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks, to address the issue of line classification as a separate issue in that docket. Paragraph #5 of the proposed Order has been rewritten to reflect this change. As amended, it reads as follows:

> The Board will direct the Hearing Officer in Docket No. 5713, Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks, to address in that proceeding the issue of terms and conditions of PAL service.

II. OPERATOR SERVICE PROVIDERS

There are two fundamental points to bear in mind when considering how to regulate the operator service provider industry. The first is that a distinction should be made between situations where the OSP is providing service from a transient location (e.g., a highway, street corner or gas station, or hospital, dormitory or hotel room) and situations where the OSP is providing service from a more permanent location (e.g., the end user's home or business). This distinction is based on knowledge and choice. Where the location is transient, the owner of the phone (e.g., aggregator, or pay phone provider) and the end user will not be the same person and the phone will be presubscribed to an OSP that the owner of the phone, rather than the end user, has chosen. Where the location is more permanent, on the other hand, the owner of the phone and the end user are likely to be the same person. Thus, the phone will presumably be presubscribed to a provider that the owner/end user has affirmatively selected, after opportunity to investigate a variety of alternatives.

The second point to bear in mind is that competition in this industry, at least as far as the end user at a transient location is concerned, is more a theoretical concept than a practical reality. Aggregators and other pay phone providers have an incentive to compare and contrast the rates and service offerings of prospective OSPs and to make a studied decision, at their leisure, as to which OSP to select. If they are not satisfied with their choices, they can "vote with their feet" and select an alternative provider. In other words, this class of customers will have access to information, at

reasonable transaction costs, that will enable them to make informed decisions.

The situation for end users at transient locations, on the other hand, is dramatically different. Unlike the aggregator, pay phone provider or person arranging for phone service at a home or business, the individual end user at a transient location will not necessarily be familiar with the presubscribed OSP or have the incentive or time to gather the information that is necessary to make an informed decision as to which OSP to choose. In sum, the transaction costs that such an end user would have to incur in order to make a rational, informed decision would be unacceptably high.

Many of the IXCs that participated in this docket (e.g., LDDS, MCI and LDN) argued that the provisions of TOCSIA are adequate to protect end users. These IXCs maintain that all end users need do if they do not wish to use the presubscribed OSP is to access their preferred OSP, by dialing a toll-free "10XXX," "950-XXXX" or "1-800" number. Yet these IXCs have produced no evidence to show either that end users are aware that rates for calls from transient locations may vary substantially, or that they know how to gain toll-free access to alternative providers.

The Board is concerned about those customers who are not expert in the rapidly changing field of telecommunications. These customers stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent. Consequently, we accept the Hearing Officer's recommendation for rate caps for operator services, set at the rates charged by NYNEX, with the following qualification: (1) the rate cap shall apply to calls (except dial-around calls) made from aggregator and other transient locations; (2) the rate cap shall not apply to calls from those locations where the subscriber selecting the presubscribed OSP carrier is also the person or entity who will be paying the bill; and (3) the rate cap will not apply to dial-around calls, which involve services selected by the caller and outside the control of the presubscribed AOS provider.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are adopted, except as modified herein.

2. All providers of pay phone services and operator services in Vermont shall comply with the following requirements:

(1) The term COCOT (customer-owned, coin-operated telephone) may be used interchangeably with the term COPT (customer-owned pay telephone), and requirements that apply to one shall apply equally to the other. (See supra at 30.)

(2) All requirements that govern COCOTs shall apply equally to LEC-owned pay phones. (See supra at 30, n.4; 46.)

(3) The owner of a pay phone that uses store and forward technology shall be regulated as both a pay phone provider and an operator service provider. (See supra at 32-34.)

(4) The requirements set forth in Docket No. 4946, Order of 2/21/86, and summarized above at pp. 7-8, are affirmed, except that ¶4(b) on p. 8 supra (requiring that all pay phones accept nickels, dimes and quarters) shall be modified to allow installation of coinless phones to the extent that installation of such phones does not result in limitation or reduction of availability of coin-operated phones. (See supra at 35.)

(5) Rates for calls made from touch-tone pay phones and rotary pay phones shall be the same. (See supra at 34.)

(6) Each COCOT owner shall include with its application for a CPG a list of all locations at which it intends to place a COCOT. Each COCOT owner shall update the Board in writing, on a semi-annual basis, as to any phones that it has added or removed. (See supra at 37.)

(7) Each COCOT owner shall file its Annual Report, and the computation of its gross revenue tax, with the Department of Public Service, on forms provided by the Department of Public Service. (See supra at 37-38.)

(8) All pay phones shall provide coin-free access to the following

forms of calling: 911 service, 1-800 calls, 950-XXXX calls, 10XXX calls, 0- calls, 0+ calls, and directory assistance. (See supra at 38, 40-41.)

(9) Owners of pay phones shall comply with any and all relevant requirements, issued in the future by the Legislature and/or the Board, regarding 911, E-911 and other emergency services. (See supra at 40.)

(10) NET shall file, within 60 days of the date of entry of the Order in this docket, a tariff amendment reflecting either: (1) a directory assistance service to which the DPS has stipulated its agreement; or (2) provision of directory assistance to COCOT owners, at a flat rate of $4.00 per phone per month, regardless of actual usage. (See supra at 41-42, 84.)

(11) All pay phones shall allow incoming service. Waiver of this rule shall, however, be permitted where: (1) a law enforcement agency makes such a request, in writing, for reasons of public safety; and (2) a location owner certifies, in writing, that he will not allow a pay phone to be placed on his property unless it restricts incoming service. Where the Board agrees to such a waiver, the owner of the phone shall post a notice on or near the phone that states that the phone cannot receive incoming calls. To be granted such a waiver, the pay phone owner shall file a petition with the Board for a waiver in which it includes a copy of the governmental agency's or location owner's written statement. The requirements set forth in this paragraph shall apply on a prospective basis only. Pay phone service arrangements in existence on the date of entry of this Order that restrict incoming calls shall be grandfathered. (See supra at 43-44, 78-79.)

(12) The local calling rate shall remain at $.10 for COCOTs as well as LEC-owned pay phones. (See supra at 50, 71-72, 82.)

(13) The DPS shall report to the Board, within 60 days of the date of entry of the Order in this docket, on the following: (a) the status of the Department of Corrections' investigation into pay phone services in institutions of confinement; and (b) its recommendation as to whether the Board should open a separate proceeding devoted to that subject. (See supra at 52.)

(14) Rates for operator services shall be capped at the rates

charged by NET. Thus, the total rate (including any and all surcharges) charged for a particular call shall not exceed the total rate that NET would charge for the same call. (See supra at 63-66, 87-90.)

(15) The requirements of the Telephone Operator Consumer Service Improvement Act (TOCSIA) (47 U.S.C. §226), and the regulations promulgated by the FCC thereunder (47 C.F.R. §§ 64.703-64.708), shall apply to intrastate service. All providers of operator services (including operator services that are provided through store and forward technology) and all aggregators shall comply with applicable sections of TOCSIA and its implementing regulations. In particular, providers of intrastate operator services shall comply with the requirements spelled out at 47 U.S.C. §226(b). Aggregators shall comply with the requirements set forth at 47 U.S.C. §226(c). (See supra at 33, 66-67, 85.)

(16) Local exchange carriers shall include, on the OSP portion of the customer's bill, a toll-free number for inquiries regarding billing. (See supra at 67-68, 86-87.)

(17) All providers of operator services shall, within 60 days of the date of entry of the Order in this docket, file tariff amendments with the Board so as to ensure that all of their tariffs are in compliance with the requirements of the Board's Order.

(18) All providers of pay phone services shall post on the face of each of their phones in easily readable type, format and language the following: (a) the identity of any and all presubscribed providers of local, toll, directory assistance and operator service; (b) a statement that users can access the toll or operator service provider of their choice; and (c) clear instructions to users regarding how to access their provider of choice. Such customer notices shall be in place on all phones no later than six months from the date of this Order.

3. The Board will amend the COCOT application form to include the following paragraph: "Each COCOT owner shall file its Annual Report, and the computation of its gross revenue tax, with the Department of Public Service, on forms provided by the Department of Public Service." (See supra at 37-38.)

4. The Board will address the issue of whether NET should unbundle smart services and offer them to COCOT owners individually in Docket No. 5713, Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks. (See supra at 32-33.)

5. The Hearing Officer in Docket No. 5713, Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks, is directed to address in that proceeding the issue of terms and conditions of PAL service.

DATED at Montpelier, Vermont, this 6th day of January, 1995.

s/Richard H. Cowart	)	PUBLIC SERVICE
s/Suzanne D. Rude	)	BOARD
s/Leonard U. Wilson	)	OF VERMONT

OFFICE OF THE CLERK

FILED: January 6, 1995

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.