

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**PETITION FOR EXEMPTION OF
PORTIONS OF WAC 480-120-263,
PAYPHONE SERVICE PROVIDERS**

**Docket No. _____
FSH COMMUNICATIONS, LLC
PETITIONER**

1 Pursuant to WAC 480-120-015, FSH Communications, LLC (“FSH”) hereby petitions the Commission for an exemption from certain provisions of WAC 480-120-263 as those provisions pertain to FSH’s limited access payphones located at prisons, correctional facilities, and other penal institutions. FSH respectfully requests that the Commission expedite its consideration of this matter.

RULES

2 WAC 480-120-263 became effective on July 1, 2003. It contains requirements for Payphone Service Providers (“PSPs”) who own, operate, or provide payphone services in Washington. As adopted, WAC 480-120-263 subsections (3), (4), (5), (6) and (7) read, in pertinent part, as follows:

(3) Access. At no charge to the calling party, pay phones must provide access to:

(b) Emergency services by dialing 911 without the use of a coin or entering charge codes;

(c) Operator;

(e) All available toll-free services; and

(f) All available interexchange companies, including the LEC

(4) Disclosure. PSPs must post clearly and legibly, in an unobstructed location on or near the front of the pay phone:

(a) The rate for local calls, including any restrictions on the length of calls in thirty point or larger type print or a different and contrasting color;

(b) Notice that directory assistance charges may apply, and to ask the operator for rates;

(c) Notice that the payphone does not make change, if applicable;

(d) The emergency number (E911);

(e) The name, address, phone number, and unified business identifier (UBI) number of the owner or operator;

(f) A toll-free number to obtain assistance if the pay phone malfunctions, and procedures for obtaining a refund;

(g) The name, address, and toll-free number of all presubscribed operator service providers (OSPs), as registered with the commission. This information must be updated within thirty days of a change in the OSP. Refer to WAC 480-120-262 for OSP definition and rules;

(h) Notice to callers that they can access other long distance companies;

(i) The phone number of the pay phone, including area code. When the pay phone is in an area that has had an area code change, the area code change must be reflected on the pay phone within thirty days of the area code conversion; and

(j) In contrasting colors, the commission compliance number for customer complaints, to include the following information: "If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(5) Operation and functionality. A PSP must order a separate public access line (PAL) for each pay phone installed. The commission may waive this requirement if a company demonstrates that technology accomplishes the same result as a one-to-one ratio by means other than through a PAL, that the service provided to customers is fully equivalent, and that all emergency calling requirements are met. This PAL must pass the appropriate screening codes to the connecting company to indicate that the call is originating from a pay phone. In addition:

(c) Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) must be that of the phone instrument if different from the public access line demarcation point and the phone number must be that of the pay phone. To comply with this subsection, PSPs must provide an emergency response location (ERL) to the LEC supplying the PAL within two working days of establishing the location, or changed location, of the phone instrument. The ERL must provide sufficient information to aid emergency personnel in the rapid

location of the phone instrument, e.g., building floor number, compass quadrant (e.g., northeast corner), and room number;

(d) Extension telephones may be connected to a PAL only for the purpose of monitoring emergency use. The pay phone must be clearly labeled to indicate that "911 calls are monitored locally." An extension phone must be activated only when 911 is dialed from the pay phone, and must be equipped with a "push to talk" switch or other mechanism to prevent inadvertent interruption of the caller's conversation with the PSAP;

(f) Pay phones may not restrict the number of digits or letters that can be dialed;

(h) Pay phones must provide two-way service, and no charge may be imposed by the PSP for incoming calls. Exceptions to two-way service are allowed under the following circumstances;

(i) Service provided to hospitals and libraries where a telephone ring might cause undue disturbance;

(ii) Service provided within a building on the premises of a private business establishment, at the discretion of the business owner. For purposes of this section, premises where people have access to public transportation such as airports, bus and train stations are not considered private business establishments; and

(iii) Service at locations where local governing jurisdictions or law enforcement find that incoming calls may be related to criminal or illicit activities and have provided proper notice under subsection (6) of this section. Each pay phone restricted to one-way service must be clearly marked on or near the front of the pay phone with information detailed in subsection (6) of this section.

(6) Restrictions. A PSP may only limit the operational capabilities of a pay phone when a local governing jurisdiction or other governmental agency submits a notice to the commission using prescribed forms a minimum of ten days prior to the restriction. Restrictions may include, but are not limited to, blocking incoming calls, limiting touch-tone capabilities, and coin restriction during certain hours. The notice must be signed by an agent of the local governing jurisdiction in which the pay phone is located who has authority to submit the request, and must state the jurisdiction's reasons for the restriction. A copy of the notice must also be served on the PSP no later than ten days prior to the restriction.

The requestor must post a notice prominently visible at the pay phone(s) ten days prior to the proposed restriction. The notice must explain what is proposed and how to file an objection with the governing agency.

Once the restriction is in place, the PSP must post on or near each restricted pay phone, in legible and prominent type, a description of each limitation in effect, the times when the restrictions will

be in effect, and the name and toll-free number of the governmental agency recommending the restriction.

(7) Telephone directories. The provider of the PAL must furnish without charge one current telephone directory each year for each PAL. The PSP must ensure that a current directory is available at every pay phone.

DISCUSSION

- 3 FSH Communications, LLC is registered to provide payphone service in the State of Washington and has been issued UBI # 602-376-571. On August 23, 2004 FSH purchased substantially all of the payphone assets of Qwest Corporation (“Qwest”). These assets include, but are not limited to, the Qwest inmate payphones located at prisons, correctional facilities, and other penal institutions in the state of Washington.
- 4 Prior to the sale of the payphone assets to FSH, Qwest sought and received two waivers from the Commission for their limited access inmate payphones.¹ The Commission found that it was appropriate to grant the waivers due to the restricted and specialized nature of payphone services provided to prisons, correctional facilities, and other penal institutions.
- 5 Inmate payphone services provided by FSH are provided pursuant to specific requirements of the various state, county, or city correctional facilities. At the request of correctional facility administration, providers of inmate calling systems are required to provide several restrictions which will allow inmates telephone access, while at the same time ensuring the public’s health, safety, and welfare.
- 6 The Revised Code of Washington, Title 9 Crimes and Punishments, has established statutes that support the unique requirements for inmate calling services for facilities that

¹ Docket No. UT-910193, dated and effective 6/5/91
Docket No. UT-000046, dated and effective 2/9/00

are “under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons”. Specifically, RCW 9.73.095 (2)(a) states “All personal calls made by offenders shall be made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.”

7 In consideration of the concerns for public safety and security, and for fraud that can take place when an inmate has unlimited access to a payphone, FSH is requesting a waiver of WAC 480-120-263 (3) (b), (c), (e), and (f) for their limited access inmate phones. This waiver will allow for the blocking of all calls to 911, operators, toll-free services, and interexchange carriers.

8 FSH is also requesting a waiver of the disclosure requirements in WAC 480-120-263 (4) (a-j). The posting of instruction cards or notices at the inmate payphone is not appropriate as the inmates are limited to collect calling or debit calling only. Additionally, for security purposes all of the posting requirements for access to local coin calls, directory assistance, emergency 911, Payphone Service Provider contact information, repair/refund contacts, Operator Service Provider contact information, and the Commission’s complaint line are blocked.

9 Due to the restrictions necessary for public safety and security and the specialized requirements of serving penal institutions FSH is requesting the Commission waive some of the operation and functionality requirements of WAC 480-120-263 for the reasons noted below:

(5) A PSP must order a separate public access line (PAL) for each pay phone installed.

In the correctional facility environment the use of call management platforms are often necessary to provide the specialized functions such as call blocking, call timing, automatic rate quoting, call monitoring/recording, 3-way call detect, debit accounting, etc.. These functions are required by correctional facilities to ensure and maintain security of communications and fraud prevention. These platforms operate like a PBX switch in which the number of inmate phones served by the platform is greater than the number of PAL lines needed. Aggregating inmate phones in this manner is a cost effective solution for providing communications services to correctional facilities, as not all inmate phones located throughout a facility are in use at the same time.

(5)(c) Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) must be that of the phone instrument if different from the public access line demarcation point and the phone number must be that of the pay phone.

Inmate phones provided in correctional facilities block access to 911. Emergencies are handled by correctional facility administration.

(5)(d) Extension telephones may be connected to a PAL only for the purpose of monitoring emergency use. The pay phone must be clearly labeled to indicate that “911 calls are monitored locally.”

Inmate phones provided in correctional facilities block access to 911.

(5)(f) Pay phones may not restrict the number of digits or letters that can be dialed.

Inmate phones provided in correctional facilities often utilize a “maximum digit” feature. This feature restricts the number of digits dialed to prevent fraud.

(5)(h) Pay phones must provide two-way service, and no charge may be imposed by the PSP for incoming calls.

Payphone service provided to correctional facilities is provided on a collect call or debit call basis only. For safety and security and to prevent fraud, incoming calls are blocked at the request of correctional facility administration.

- 10* Due to the necessity of limiting the operational characteristics of the payphone to serve correctional facilities (as noted above), FSH is requesting the Commission waive the process for placing restrictions on payphones as required in WAC 480-120-263 (6). The posting of notices explaining the specific restriction and providing the governing jurisdiction's contact number as required in (6) is not appropriate in a correctional facility environment for public safety and security reasons.
- 11* FSH requests the Commission waive the requirement in WAC 480-120-263(7) that all Payphone Service Providers must ensure that a current directory is available at every payphone. Directory placement is not appropriate in correctional facilities due to the concern for public safety and security, the fact that most facilities restrict the inmate's calling to a select list of approved numbers, and to assist in the prevention of fraud.
- 12* By this petition, FSH requests a permanent exemption of WAC 480-120-263 (3)(b)(c)(e)(f), (4)(a-j), (5)(c)(d)(f)(h), (6), and (7) for their limited access inmate payphones located at prisons, correctional facilities, and other penal institutions.
- 13* WAC 480-120-015 provides that the Commission may grant an exemption from the provisions of a rule in Chapter WAC 480-120 if such is "consistent with the public interest, the purposes underlying regulation, and applicable statutes." FSH submits that, pursuant to RCW 9.73.095(2)(a) and due to the restricted and specialized nature of providing payphone service to prisons, correctional facilities, and penal institutions, the exemption requested is squarely in the public interest and consistent with all the applicable regulations and statutes.

CONCLUSION

14 Due to the restricted and specialized nature of providing payphone service to prisons, correctional facilities, and penal institutions, Petitioner respectfully requests that the Commission grant Petitioner a permanent exemption from WAC 480-120-263 (3)(b)(c)(e)(f), (4)(a-j), (5)(c)(d)(f)(h), (6), and (7) for their applicability to inmate payphones located at prisons, correctional facilities, and other penal institutions.

DATED this 23rd day of November, 2004.

FSH COMMUNICATIONS, LLC

Carol L. McGuane
Director - Regulatory Affairs
1600 7th Avenue, Room 2605
Seattle, WA 98191
Phone: (206) 346-2011

Michael L. Johnson
Vice President- General Counsel
200 S. Michigan Avenue, Suite 1210
Chicago, Illinois 60604
Phone: (312) 291-0565