

TAB 22

**U S WEST COMMUNICATIONS, INC.
INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement is made and entered into as of the sixteenth (16th) day of March, 1992 by and between American Telephone and Telegraph Company, a New York corporation having an office at 295 N. Maple Avenue, Basking Ridge, New Jersey 07920 (hereafter referred to as "AT&T") and U S WEST COMMUNICATIONS, INC., a Colorado corporation having an office at 1600 Seventh Avenue, Suite 3204, Seattle, WA 98191 (hereafter referred to as "USWC").

WHEREAS, the State of Washington, acting by and through its Department of Corrections ("Department"), issued Request for Proposal No. CRFP2562, dated September 4, 1991, for an Inmate Telephone System and Recording/Monitoring at Department Correctional Institutions and Work Release Facilities (the "RFP");

WHEREAS, various parties submitted responses to the RFP, including AT&T, USWC, GTE Northwest Incorporated ("GTE") and Telephone Utilities of Washington, Inc. dba PTI Communications ("PTI");

WHEREAS, on December 20, 1991, the Department announced its selection of AT&T as the successful vendor, on the basis of a proposal under which AT&T would provide interLATA service and USWC, PTI and GTE would each supply portions of the services and equipment called for by the RFP (the "Combined Proposal");

WHEREAS, to implement the Department's action, the Department and AT&T entered into an Agreement for the Installation and Operation of an Inmate Telephone System at Department Correctional Institutions and Work Release Facilities, herein referred to as the "Prime Contract;"

WHEREAS, the Department has requested that AT&T enter into a subcontract with USWC to set forth the terms and conditions for that portion of the RFP and the Prime Contract that covers the provision of intraLATA and local service, public telephone equipment and monitoring and recording equipment in USWC territory, and USWC wishes to offer its services as subcontractor;

NOW THEREFORE, the parties agree as follows:

- 1) The terms used herein shall have the same meaning as in the Prime Contract, which is incorporated herein by reference and made a part hereof, except that:
 - (a) The term "Agreement" shall refer only to this Independent Contractor Agreement;
 - (b) The term "Public Pay Telephone" shall refer to all USWC public telephones on the premises of Department Correctional Institutions and Work Release Facilities, unless specifically identified either as (i) "Inmate Public Telephones," referring to the USWC public telephones made available to inmates, from which only collect calls can be made or (ii) "Staff Public Telephones," referring to USWC public telephones located on the premises of certain facilities for use by staff and

visitors but not inmates, from which both "1+" and "0+" telephone calls can be made.

(c) The term "Department" shall include Department employees having responsibility for implementation of inmate telephone service, including employees of the Department of Corrections and employees of individual Department Correctional Institutions and Work Release Facilities.

2) This Agreement shall be coterminous with the Prime Contract and shall commence as of March 16, 1992 ("Effective Date") and continue for five (5) years, unless the Prime Contract is terminated earlier, in which case this Agreement shall terminate upon termination of the Prime Contract. This Agreement shall be automatically renewed upon renewal of the Prime Contract.

3) In connection with the Prime Contract, USWC will provide the following services and equipment at Washington Corrections Center (Shelton), McNeil Island Penitentiary, Washington State Department Penitentiary (Walla Walla), Airway Heights, Tacoma Pre-Release, Cedar Creek Corrections Center and Larch Corrections Center, as required by the RFP or the Prime Contract or otherwise specified by AT&T:

a) USWC Public Pay Telephones, including enclosures, mounting posts, cabling and associated equipment. All such equipment shall meet the requirements of the RFP, the Prime Contract and this Agreement.

b) Delivery of interLATA traffic originating from the Public Pay Telephones to AT&T's Point of Presence over switched access facilities;

c) Completion of all "0+" local and intraLATA calls from Public Pay Telephones and all "1+" local and intraLATA calls from Staff Public Pay Telephones;

d) Provision of all station installation and local network and station maintenance on Public Pay Telephones in accordance with the requirements of the RFP, the Prime Contract and this Agreement;

e) Provision of advanced technological diagnostic systems to detect telephone troubles on Public Pay Telephones and the dispatching of technicians for repair of such troubles, as required by the RFP and the Prime Contract;

f) For Staff Public Telephones, provision of local directory assistance, access to the local operator and "911" Emergency Services as prescribed by tariff and the Prime Contract;

g) Provision of live or mechanical operator announcements for all personal calls made from Inmate Public Telephones that

the call is coming from a prison inmate and that it will be recorded and may be monitored and/or intercepted;

- h) For Inmate Public Telephones, provision and maintenance of call timing and call blocking functions;
 - i) Collection and accounting for all coins deposited in the Staff Public Pay Telephones; and
 - j) Provision of access from the Staff Public Pay Telephones to other interexchange carriers via carrier access codes.
- 4) In connection with the Prime Contract, USWC shall provide the following services and equipment at Washington Corrections Center (Shelton), McNeil Island Penitentiary, Washington State Penitentiary (Walla Walla) and Airway Heights:
- a) Dictaphone recording and monitoring equipment. All such equipment shall meet the requirements of the RFP, the Prime Contract and this Agreement.
 - b) Maintenance of Dictaphone recording and monitoring equipment in accordance with the requirements of the RFP.
- 5) In addition to the equipment and services set forth in Section 3 and 4 of this Agreement, other equipment or services may be requested by the Department or AT&T and mutually agreed upon by USWC and AT&T.
- 6) USWC agrees to perform all work subcontracted under this Agreement in accordance with the RFP (including schedules and attachments), the RFP response submitted by USWC ("USWC Proposal") and the Prime Contract, all of which are incorporated herein by reference as if fully set forth herein.
- 7) AT&T will be responsible for negotiations and contact with the Department or its designated representative. These contacts will include, but not be limited to negotiations involving all contract issues; introduction of new technology; and legal and regulatory updates. AT&T or the Department may request USWC to place additional Public Pay Telephones on the premises of the Correctional Institutions and Work Release Facilities covered by this Agreement. AT&T shall be solely responsible for contact with the Department regarding the provision of interexchange services.
- 8) For each Correctional Institution or Work Release Facility covered by this Agreement, USWC shall designate a single point of contact to receive trouble reports for Public Pay Telephones and monitoring and recording equipment. Prior to the effective date of this Agreement, USWC shall provide a list of designated contacts, with names and telephone numbers, both to the Department of Corrections at the address set forth in Section 21 and the Superintendent of each facility. USWC

shall promptly advise both such parties of any changes in this contact list.

- 9) USWC, through its designated points of contact, shall receive all trouble calls relating to the Public Pay Telephones and monitoring and recording equipment covered by this Agreement. Unless more stringent standards are provided in the Prime Contract or requested by the Department, USWC will dispatch a technician and repair such telephones or monitoring or recording equipment within 24 hours, excluding weekends and holidays, of receipt of notice from the Department. USWC will provide monthly written reports to AT&T itemizing its repair activities by location, Public Pay Telephone station and type of monitoring/recording equipment.
- 10) Commencing as of March 16, 1992, USWC shall pay to the Department monthly commissions at the rates set forth in Schedule A attached to this Agreement. USWC's monthly commission checks shall be sent to the Superintendent of each covered Correctional Institution or Work Release Program, made payable to the Inmate Welfare Fund, unless and until the Department shall specify a different payee for commission checks. The commission schedule set forth in Schedule A shall also apply to USWC public telephones at any new Department Correctional Institutions or Work Release Facilities which are constructed during the term of this Agreement
- 11) USWC's billing cycle begins on the ~~15~~¹⁶th day of each month and ends on the 16th day of the following month. If USWC fails to pay the commissions set forth in paragraph 10 and Schedule A within 45 days after the end of any billing cycle, interest at an annual rate of 10% shall be paid to the Department commencing as of the 46th day. This paragraph shall not apply to the true-up commission payments made by USWC with respect to the initial billing cycles of this Agreement.
- 12) USWC shall provide to the Department the following reports with respect to the traffic it carries:
 - a) A monthly call detail report for Inmate Public Telephones, by institution, and addressed to the superintendent of the institution showing the date, time, payphone number, called number and length of each call.
 - b) A monthly commission report for Inmate and Staff Public Telephones, by institution, showing total revenues generated by each Inmate and Staff Public Telephone for that monthly commission cycle. Each such report shall be sent to two locations: one copy to the institution and one copy to the Department of Corrections, Attention: Sharon Shue, Telecommunications Manager, P. O. Box 41110, MS: 61, Olympia, WA 98504-41110.
- 13) AT&T and USWC will mutually agree upon the selection and

placement of signage that appears on the Public Pay Telephones including enclosures. Staff Public Telephones shall comply with the signage and unblocking requirements of the Telephone Operator Consumer Services Improvement Act of 1990.

- 14) Each party agrees to indemnify and hold the other harmless against all claims, loss, or liability arising from changes to or destruction of property or injury to persons occurring as a result of any negligent act by or on behalf of the indemnifying party or arising out of or connected with indemnifying party's telephone equipment or services or upon the indemnifying party's failure to perform or observe any obligation, condition or undertaking of the RFP, the Prime Contract or this Agreement.
- 15) In the event that the Department terminates the Prime Contract, whether with or without cause, including as a result of a material breach by AT&T and/or its subcontractors, AT&T shall have the right immediately to terminate this Agreement without liability to USWC for compensation or for damages of any kind, whether on account of the loss by USWC of present or prospective profits on services or anticipated services, or on account of any other cause.
- 16) AT&T may terminate this Agreement upon written notice if USWC has defaulted in the performance of its obligations under this Agreement. Such termination shall be effective thirty (30) days after receipt of written notice from AT&T, unless such default or breach has been cured, or in the event of a default or breach that cannot be cured within that time, USWC has commenced a cure and provided adequate assurances that it will conclude the cure to the satisfaction of AT&T and the Department.
- 17) USWC agrees that it is an independent contractor. The relationship between the parties as set forth herein shall be limited to the performance of the services set forth in this Agreement and shall not constitute either a joint venture or a partnership. Neither party may obligate the other to pay any expense or liability except upon the written consent of the other.
- 18) The failure of either party to enforce strict performance of any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision or any other provision of this Agreement.
- 19) Subject to the disclosure and reporting requirements of the Prime Contract:
 - a) The parties hereto expressly agree that all information relating to AT&T Non-Sent Paid Calls carried through the telephone instruments is proprietary to AT&T.

b) Other information deemed to be proprietary which is provided by one party to the other in connection with this Agreement will be marked in a manner to indicate that it is considered proprietary or otherwise subject to limited distribution. If such information is provided orally, the disclosing party shall clearly identify it as proprietary at the time of disclosure and reduce such information to tangible form within 10 business days.

c) With respect to the proprietary information defined in subsections (a) and (b) above, the party receiving such information will

(i) hold the information in confidence and protect it in accordance with the security restrictions by which it protects its own proprietary or confidential information which it does not wish to disclose;

(ii) restrict disclosure of such information to its employees or agents with a need to know and not disclose it to any other parties;

(iii) advise those employees and agents of their obligations with respect to such information; and

(iv) use such information only for the purposes of this Agreement, except as may otherwise be agreed upon in writing.

d) The party receiving such information will have no obligation to preserve the proprietary nature of any information which

(i) was previously known to it free of any obligation to keep it confidential;

(ii) is disclosed to third parties by the other party without any restriction;

(iii) is or becomes publicly available other than by unauthorized disclosure; or

(iv) is independently developed by it.

e) This paragraph 19 and the confidentiality obligations imposed hereunder shall survive and remain in effect notwithstanding the termination of this Agreement.

20) For the duration of the concession term, USWC shall maintain insurance coverage of at least the following types and amounts: (a) \$1,000,000 (One Million Dollars) Bodily Injury and Property Damage Combined Single Limit or its equivalent; (b) Workers' Compensation as required by Washington law; (c) \$1,000,000 (One Million Dollars) Employers' Liability and (d)

\$1,000,000 (One Million Dollars) Auto Liability covering Bodily Injury and Property Damage Combined Single Limit or its equivalent. USWC shall provide AT&T with a certificate of insurance evidencing such coverage prior to the signing of this Agreement. This certificate shall guarantee at least thirty (30) days notice to AT&T of cancellation and shall show AT&T as an additional insured. USWC may meet the requirements of this paragraph through a program of self-insurance and a certificate of self-insurance.

- 21) All notices required herein shall be in writing and delivered to the other party either in person, by first class mail or transmitted by facsimile to the following address or facsimile number:

If to AT&T:

AT&T
4460 Rosewood Drive, Room 6330
Pleasanton, CA 94588
Attention: State of Washington
Account Executive
Consumer Sales Division
Facsimile No.: (510) 224-5498
Telephone No.: (510) 224-4926

If to USWC:

U S West Communications, Inc.
14808 SE 16th, Basement
Bellevue, WA 98007
Attention: Susan Haynes
Facsimile No.: (206) 451-6011
Telephone No.: (206) 451-5328

If to the Department:

State of Washington
Department of Corrections
P.O. Box 9699, MS: FN-61
Olympia, WA 98504
Attention: Sharon Shue
Telecommunications Manager
Division of Information Systems
Facsimile No.: (206) 586-8723
Telephone No.: (206) 753-6339

The name, address or facsimile number for notice may be changed by giving notice in accordance with this Section. If mailed in accordance with this Section, notice shall be deemed given when actually received by the individual addressee or designated agent or three (3) business days after mailing, whichever is earlier. If transmitted by facsimile in accordance with this Section, notice shall be deemed given when actually received by the individual addressee or designated agent or one (1) business day after transmission, whichever is earlier.

22. Bond

USWC shall post a performance bond or a performance/payment bond in the amount of \$315,000 on a form acceptable to AT&T. Such bond shall be for the purpose of guaranteeing satisfactory performance by USWC of the services required hereunder and the payment of commissions due or owing to the Department.

23. Entire Agreement

This Agreement and the documents incorporated herein by reference constitute the entire understanding between the parties and supersede all prior understandings, oral or written representations, statements, negotiations, proposals and undertakings with respect to the subject matter hereof.

U S WEST COMMUNICATIONS, INC.

By:

Susan K. Haynes
(Signature)

Susan K. Haynes
(Typed or Printed Name)

Account Executive
(Title)

4/21/92
(Date)

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY

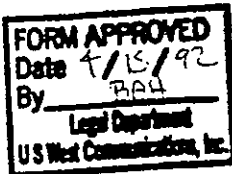
By:

John Powell
(Signature)

John Powell
(Typed or Printed Name)

Sales V.P.
(Title)

8/12/92
(Date)



COMMISSION SCHEDULE

USWC agrees to pay the Department a commission rate of 35% of billed revenues from operator-assisted local and intraLATA calls carried by USWC. At the end of each calendar year of this Agreement, USWC shall review billed USWC revenues against the schedule shown below and increase the compensation, if appropriate, as follows:

<u>Annual USWC Revenue</u>	<u>Adjustment Level & New Commission Rate</u>
\$2.0 Million	35%
\$3.0 Million	36%
\$4.0 Million	37%

The USWC commission rate will not fall below 35%. Once a level of commission has been achieved, it will remain in place throughout the remaining years of this Agreement unless the next appropriate level is attained.

SCHEDULE A

UNITED PACIFIC INSURANCE COMPANY

HEAD OFFICE, FEDERAL WAY, WASHINGTON

PERFORMANCE BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)
U S WEST COMMUNICATIONS, INC.

as Principal, hereinafter called Contractor, and UNITED PACIFIC INSURANCE COMPANY, a corporation of the State of Washington, with its Head Office at Federal Way, Washington, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

A T & T

as Obligee, hereinafter called Owner, in the amount of **FIVE HUNDRED THOUSAND AND NO/100**_____

_____ Dollars (\$ **500,000.00 * * †**, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated **April 10** 19**92**, entered into a contract with Owner for

**INMATE INSTALLATION
MAINTENANCE AND REPAIR FOR WASHINGTON STATE D.O.C.**

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

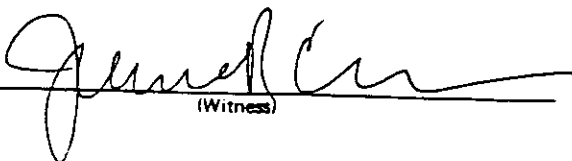
Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this **7th** day of **April** 19**92**



(Witness)

U S WEST COMMUNICATIONS, INC. (Seal)

(Principal)

(Title)



(Witness)

UNITED PACIFIC INSURANCE COMPANY


Lori Whitted (Title) **Attorney in Fact**

UNITED PACIFIC INSURANCE COMPANY

HEAD OFFICE, FEDERAL WAY, WASHINGTON

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That the UNITED PACIFIC INSURANCE COMPANY, a corporation duly organized under the laws of the State of Washington, does hereby make, constitute and appoint

LORI WHITTED of SEATTLE, WASHINGTON-----

As true and lawful Attorney-in-Fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed

ANY AND ALL BONDS AND UNDERTAKINGS OF SURETYSHIP-----

and to bind the UNITED PACIFIC INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the UNITED PACIFIC INSURANCE COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of Article VII of the By-Laws of UNITED PACIFIC INSURANCE COMPANY which became effective September 7, 1978, which provisions are now in full force and effect, reading as follows:

ARTICLE VII -- EXECUTION OF BONDS AND UNDERTAKINGS

1. The Board of Directors, the President, the Chairman of the Board, any Senior Vice President, any Vice President or Assistant Vice President or other officer designated by the Board of Directors shall have power and authority to (a) appoint Attorneys-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney-in-Fact at any time and revoke the power and authority given to him.

2. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

3. Attorneys-in-Fact shall have power and authority to execute affidavits required to be attached to bonds, recognizances, contracts of indemnity or other conditional or obligatory undertakings and they shall also have power and authority to certify the financial statement of the Company and to copies of the By-Laws of the Company or any article or section thereof.

This power of attorney is signed and sealed by facsimile under and by authority of the following Resolution adopted by the Board of Directors of UNITED PACIFIC INSURANCE COMPANY at a meeting held on the 5th day of June, 1979, at which a quorum was present, and said Resolution has not been amended or repealed:

"Resolved, that the signatures of such directors and officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the UNITED PACIFIC INSURANCE COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed, this 14 day of August 19 91.



UNITED PACIFIC INSURANCE COMPANY

Lawrence W. Carlstrom
Vice President

STATE OF Washington }
COUNTY OF King }

On this 14th day of August, 19 91, personally appeared Lawrence W. Carlstrom

to me known to be the Vice-President of the UNITED PACIFIC INSURANCE COMPANY, and acknowledged that he executed and attested the foregoing instrument and affixed the seal of said corporation thereto, and that Article VII, SECTION 1, 2, and 3 of the By-Laws of said Company and the Resolution, set forth therein, are still in full force.

My Commission Expires

May 15, 19 94



Pamela Young
Notary Public in and for State of Washington
Residing at Tacoma

Marjorie S. Hansen, Assistant Secretary of the UNITED PACIFIC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said UNITED PACIFIC INSURANCE COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this

7th day of April 19 92.



Assistant Secretary *Marjorie S. Hansen*
Marjorie S. Hansen

CERTIFICATE OF SELF-INSURANCE
U S WEST Communications, Inc.

This is to certify to: AT&T
4460 Rosewood Drive, Rm. 6330
Pleasanton, CA 94588

Attn: Patty Martland

that The Company is self-insured as follows:

DESCRIPTION OF COVERAGE

LIMITS

Comprehensive General Liability

Premises/Operations
Completed Operations
Contractual Liability
includes X, C and U.

Not less than \$1 million
per occurrence combined
single limit.

Comprehensive Automobile Liability

All owned, non-owned and hired
motor vehicles.

Not less than \$1 million
per occurrence combined
single limit.

Employer's Liability

Not less than \$100,000
each accident.

Workers' Compensation

Qualified self-insurer in the
state of Washington.

Statutory.

Effective Date: March 16, 1992

Expiration Date: March 16, 1997

RE: Placement and/or maintenance of Inmate telecommunication facilities for the State of Washington Department of Corrections. Thirty (30) days written notice will be provided to the certificate holder should any of the above be materially changed or canceled. AT&T is an additional insured as their interest may appear.

Issued by:

U S WEST Communications, Inc.
Manager Risk Finance & Insurance
9785 Maroon Circle, Suite 400
Englewood, CO 80112
(303) 792-4711

Signature: _____

Alison Buchanan

Date Issued: April 10, 1992

Sue Haynes, USWC, 14508 SE 10th, Bellevue, WA 98007
206-451-5328