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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTHWEST PAYPHONE ASSOCIATION, A WASHINGTON NON-PROFIT CORPORATION, DIGITAL ACCESS COMMUNICATIONS CORP., NCS TELEWORK COMMUNICATIONS CO., PAYTEL NORTHWEST, INC., and PUBLIC COMMUNICATIONS OF AMERICA, Complainants, v. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. UT-920174 ORDER GRANTING COMPLAINT IN PART

SUMMARY

PROCEEDINGS: On February 7, 1992, the Northwest Payphone Association (NWPPA or complainants) and four of its members, Digital Access Communications Corp., NCS Telework Communications Co., Paytel Northwest, Inc., and Public Communications of America,[1] filed with the Commission a complaint against U S WEST Communications, Inc. (U S WEST or company), alleging that the rates, charges, rules, regulations, and practices of U S WEST regarding the payphone services of non-local exchange company (LEC) providers are unreasonable, discriminatory, illegal, and unfair. The complaint alleged that the competitive public payphone industry has been hindered by the anti-competitive abuses of U S WEST. In its answer, U S WEST denied the allegations and argued that competitive payphone providers (CPPs) must register with the Washington Utilities and Transportation Commission as telecommunications companies.

HEARINGS: The Commission held twelve days of hearings in this proceeding. Hearings were held in Olympia before Chairman Sharon L. Nelson, Commissioners Richard D. Casad, A.J. Pardini, and Richard Hemstad, who also reviewed all of the testimony and exhibits, and Administrative Law Judge Heather Ballash of the Office of Administrative Hearings.

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[1] After the complaint was filed, NCS Telework Communications Co. and Paytel Northwest, Inc., merged into the surviving entity Paytel Northwest, Inc.

APPEARANCES: The Northwest Payphone Association and the four other complainants were represented by Brooks Harlow and Clyde MacIver, attorneys, Seattle. The Staff of the Washington Utilities and Transportation Commission (Commission Staff) was represented by Sally G. Johnston, assistant attorney general, Olympia. U S WEST Communications, Inc., was represented by Edward T. Shaw, Steve Holmes, and Molly Hastings, attorneys, Seattle.

COMMISSION: The Commission orders U S WEST to reduce its public access line rate to the equivalent simple business line rate and to eliminate usage charges. The Commission also orders U S WEST to reduce its answer supervision-line side monthly recurring rate from $3.95 to $1.00. Based upon the Commission's imputation analysis, these two reductions eliminate the price squeeze created by the price charged to competitors for essential monopoly or "bottleneck" inputs and the $0.25 per call charged to end-users for a local call. Additionally, the Commission orders U S WEST to respond in writing to competitive payphone providers' requests for network services within 120 days of a request. U S WEST shall implement the request by offering the service under tariff if the service is feasible based upon currently available technology and if forecasted demand is sufficient to allow U S WEST to recover its costs. U S WEST shall implement the request as soon as practicable and no later than 6 months following the receipt of the customer's request.

SCOPE OF PROCEEDINGS

I. Procedural History

A pre-hearing conference in this complaint proceeding was convened on June 2, 1992; the parties agreed to reconvene for another pre-hearing conference at a later date.[2] On September 16, 1992, prior to the reconvening of the pre-hearing conference, oral argument on a motion to compel discovery was held. On October 16, 1992, the pre-hearing conference was reconvened.

The pre-filed testimony and exhibits of the NWPPA were cross-examined on February 1 and 2, 1993. On February 2, 1993, at the conclusion of the cross-examination of the complainant's direct case, U S WEST made an oral motion to dismiss the NWPPA's complaint for lack of jurisdiction. After briefs were filed and oral argument heard, the Commission denied the company's motion on February 10, 1993.

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[2] The continued pre-hearing conference was set October 5, 1992, but due to the Commission's schedule was moved to a later date.

The pre-filed testimony and exhibits of U S WEST and Commission Staff were cross-examined on October 11, 13, 14, and 15, 1993. Hearings for cross-examination of the NWPPA's rebuttal testimony and exhibits were held on December 13 and 14, 1993. Briefs were filed with the Commission on February 22, 1994.

II. Issues Presented

There are two fundamental policy issues inherent in the allegations of the NWPPA complaint. First, whether the complainants must be registered as telecommunications companies in order to invoke the jurisdiction of the Commission. Second, the merits of the complainants' allegations that U S WEST is acting in an anti-competitive manner. The latter issue relates to U S WEST's pricing strategies, service offerings, discrimination, and other alleged anticompetitive conduct in the provision of public payphone services.

III. Summary of the Parties' Recommendations

A. NWPPA

NWPPA alleges that U S WEST's pricing strategies and anticompetitive practices have subjected the competitive payphone providers to a price squeeze in the payphone market. To remedy this situation, they recommend the company create a separate subsidiary for its payphone operations or file an annual imputation study. They also ask that U S WEST reduce the rate for a public access line, the message rate (after the 300th call), and the answer supervision-line side rate. In their view, U S WEST also has subjected the competitive payphone providers to a price squeeze in the operator services market and therefore should pay commissions to PAL subscribers on non-sent paid calls.

NWPPA further claims that U S WEST provides inferior services to competitive payphone providers (CPPs) when compared to those provided to the company's payphone service. The company therefore must offer coin line service to CPPs, handle repair and refund requests in the same manner for PAL subscribers as for its own payphones, offer answer supervision in all central offices where it is technically feasible, and offer magnetic billing to PAL subscribers within six months.

It is alleged that U S WEST discriminates in its installation of public access lines and in its access to customer proprietary network information, and therefore should be ordered to stop improperly delaying PAL order installations due to an existing U S WEST or other vendor payphone, and establish a separate computer system or install other security provisions that physically prevent its payphone personnel from obtaining access to the general payphone and the PAL data bases.

Complaint is made that U S WEST's advertising practices have been unfair and misleading and constitute improper anticompetitive behavior because competitive payphone providers are "captive competitors." The complaint asks that U S WEST therefore stop using the advertisements contained in Ex. 18 and Ex. 54 and any similar advertising. It contends that the company also should cease making any advertising claims that (1) it has the most reliable payphones or the fastest service; (2) non-U S WEST payphones will "cut-off" callers; (3) non-U S WEST payphone owners do not give refunds; and (4) non-U S WEST payphones do not return coins for uncompleted calls.

According to NWPPA, the company "locks" payphone site owners into long-term contracts using the unfair advantages of the price squeeze and its superior coin line service. Therefore, site owners should be allowed to "opt out" of their contracts during the 12 month period beginning with termination of the price squeeze and offering of coin line service, whichever is later.

Finally, NWPPA alleges the "one phone per PAL" rule is inefficient and places complainants at a competitive disadvantage. U S WEST should remove the one phone per PAL rule from its tariffs, and the Commission should commence a rulemaking proceeding to address the similar provision in WAC 480-120-138(13).

B. U S WEST

U S WEST answers that the complainants have failed to comply with state law and register with the Commission as telecommunications companies. They provide the same telecommunications services in their provision of public payphone service as do all other local exchange companies and until they are registered, the Commission cannot proceed with this complaint.

U S WEST posits that even if the Commission finds that public payphone service is not a telecommunications service subject to its jurisdiction, the complaint must still be dismissed: (1) if complainants are customers of U S WEST, and not telecommunications companies, complaining about rates charged to them, they have failed to comply with RCW 80.04.110; (2) regardless whether RCW 80.04.110 permits this complaint by customers, the Commission has no jurisdiction to consider the effect of U S WEST's rates upon the competitive interests of unregulated competitors; and (3) even if the Commission has jurisdiction to address such allegations of anticompetitive behavior, the evidence in this proceeding fails to support those allegations.

U S WEST responds that its payphone services rates and its PAL rates are fair, just, reasonable, and nondiscriminatory. It is therefore premature for the Commission to establish an imputation test for these local exchange services because there is no evidence that U S WEST's rates or its charges to competitive payphone providers are improper or that rates charged by U S WEST for its services to the public are unfair, unjust, unreasonable, or insufficient.

C. Commission Staff

Commission Staff recommended only that (1) there be no increase in the local coin rate of $0.25, and (2) there be no reduction in the public access line (PAL) rate.[3]

MEMORANDUM

The Commission faces numerous difficult issues as it attempts to facilitate the transition of the telecommunications industry from a monopoly market structure to a competitive market structure. One of the most difficult issues is determining what constitutes anticompetitive behavior. Yet, this is precisely what resolution of this complaint requires. The complainants argue that U S WEST's pricing strategies and business practices are anticompetitive and impede their ability to effectively compete in the public payphone market.

In response, U S WEST denies all allegations of anticompetitive behavior and argues that the competitive payphone providers must be registered as telecommunications companies in order to invoke the jurisdiction of the Commission.

The Commission first must address the question whether it has jurisdiction over this complaint. If the Commission determines it has the authority to decide the issues posited by the complaint, then we must address the complainant's allegations of anticompetitive behavior by U S WEST in the public payphone market.

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[3] During the hearing, the Commission expressed its dismay that Commission Staff took no position on several key issues in the NWPPA complaint. On brief, Staff argued that it is not unusual for it to assume a limited role in a private complaint case where both complainant and respondent are represented by counsel. Regardless whether Staff should have taken a more active role in this proceeding, the Commission finds the Staff's investigation in this case too narrow and too limited to support its recommendations.

I. Legal Jurisdiction

Based upon its assertion that competitive payphone providers must be registered as telecommunications companies, U S WEST maintains that this complaint must be dismissed because the complainants: (1) failed to register as telecommunications companies as required by state law; (2) raised issues beyond the jurisdiction of the Commission; and (3) failed to prove their allegations on issues within the Commission's power to decide, if its jurisdiction was properly invoked.

On February 10, 1993, after reviewing written and oral arguments on U S WEST's motion to dismiss the complaint, the Commission determined that the motion to dismiss should be denied. The basis of the Commission's decision was threefold.

First, Paytel Northwest, Inc., is a registered telecommunications company which makes it a public service company under Title 80 RCW. The Commission rejected the proffered U S WEST distinction that as a registered alternate operator service (AOS) provider, Paytel could complain only with regard to operator service matters.

Second, the Commission has jurisdiction to consider this complaint under the general terms of RCW 80.04.110; the complaint is not only against rates, but against other terms and conditions of service as well, which would authorize any person to bring such a complaint. In addition, the Commission found persuasive the complainants' argument that the purpose of the complaint statute is to assure that rate complaints are serious enough that substantially more than a single consumer is required to join in a complaint before the Commission may act. Not only are four companies represented by this complaint, but so is the Northwest Payphone Association which is comprised of numerous telecommunications companies registered with the Commission.

Third, the Commission has jurisdiction under RCW 80.36.135(6), which provides that a person may file a complaint against a company under an alternative form of regulation.[4] RCW 80.36.135(6) states in pertinent part:

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[4] U S WEST, at the time the complaint was filed, was regulated under an alternative form of regulation which expired December 31, 1994. <u>See</u>, Fourth Supplemental Order Accepting Settlement With Modifications, Resolving Complaint And Authorizing An Alternative Form Of Regulation, Docket Nos. U-89-2698-F and U-89-3245-P, January 16, 1990.

> The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Finally, the Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186.

Based upon the discussion of the aforementioned arguments, and the broad powers granted the Commission to guard against discrimination, the Commission reaffirms its ruling that it has jurisdiction to consider the complaint. The fact that some competitive payphone providers are not registered with the Commission does not prevent the Commission from granting the complainants such relief as is supported by the record evidence.[5]

II. Determination of Anticompetitive Behavior

A. <u>Price Squeeze</u>

The complainants allege that U S WEST is acting in an anticompetitive manner by creating a price squeeze and by discriminating between the services it provides for competitive payphone providers and the services it provides for its own payphone operations. The price squeeze results from the interaction of the rate charged the competitive payphone providers for access to the network -- the Public Access Line (PAL) rate -- and the rate U S WEST charges for use of its payphones by end-users. A price squeeze is defined by the NWPPA as the equivalent of selling below cost. The direct testimony of NWPPA witness Dr. Cornell states:

> A price squeeze exists when the monopolist sets the price for its monopoly input and for the "competitive" downstream product in such a manner that dependent competitors that are just as efficient as the

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[5] The Commission does not regulate cellular or voice mail providers. Nevertheless, if one of these service providers complained that U S WEST was abusing its monopoly position to unfairly compete against them, U S WEST could not assert lack of registration as defense against, or could not demand registration as a pre-condition to, the Commission's granting such relief as may be proven in a formal proceeding.

monopolist cannot charge the same price for the output that the monopolist charges and still cover all their costs due to the higher price that they must pay for the monopoly input.[6]

With respect to certain toll services, the Commission utilizes an imputation test to determine the appropriate imputed cost and price floor. The purpose of imputation is to establish a price floor for retail services in a market where the monopoly provider of the bottleneck network facilities competes against a competitor at the retail level. With respect to toll services, the Commission has already established an appropriate imputation methodology, i.e., tariffed rates for essential facilities plus any additional long-run incremental costs necessary to provide the service.[7] In this case, the bottleneck facility is the public access line and the retail service is the public payphone market.

While imputation requirements for toll services have been refined in prior proceedings, imputation in the public payphone market, and other local exchange services, is relatively new. The controversy over imputation is evidenced not only by the parties' arguments in this proceeding, but U S WEST's position that the Commission must first consider whether such a price test for a local exchange service is appropriate for the Commission to prescribe in the first instance. The Commission believes a price test based on imputation principles is appropriate. As stated in the Commission's CentrexPlus Order:

> [T]he Commission believes the principles of imputation are appropriate for pricing essential monopoly elements of competitive services.[8]

It remains the Commission's policy to require imputation where there is competition, or emerging competition, to U S WEST's services and the competitors are dependent upon U S WEST for certain essential bottleneck inputs in order to provide their services.

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6 Testimony of Dr. Nina W. Cornell, Ex. T-1, p. 13.

7 The Commission first approved the principle of imputation in Docket No. U-85-23; it was further refined in Docket No. U-87-1083-T and Docket No. U-88-2052-P.

8 Fourth Supplemental Order Denying Complaint; Accepting Tariffs Conditionally; Requiring Tariff/Price List Refiling, Docket Nos. UT-911488,-911490,-920252, November 18, 1993, p. 13.

B. U S WEST's Imputation Analysis

U S WEST presented two versions of an imputation test. Their initial imputation analysis showed the company's costs of providing a local call, on an imputed basis, was $0.273 per call.[9] The revised imputation test (Ex. C-27) estimated that the $0.25 per call barely covered relevant costs.[10]

In its revised imputation analysis, the company excluded public policy payphones. U S WEST witness Mr. Lanksbury testified that the revised imputation study reflected that 10.2 percent of public payphones were removed as public policy phones. When questioned about the definition of a "public policy" payphone, Mr. Lanksbury responded that neither the Commission nor the Washington Legislature has defined what is a public policy payphone. In Oregon, Mr. Lanksbury noted, a workshop has developed criteria in order to define a public policy payphone.[11]

In addition to excluding public policy phones, U S WEST argues that toll and operator service revenues should be included in the imputation analysis. The company states that if it were to include toll and operator service revenues and costs in an analysis of the profitability of its payphone operations, not

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[9] This non-confidential figure was discussed on the record. TR., pp. 593-594

[10] U S WEST revised its imputation test by 1) changing the Federal Communications Commission's rate for end-user access charge, 2) changing the total number of stations to reflect removal of public policy payphones, (3) changing the imputed PAL non-recurring rate, 4) removing the answer supervision-line side service element, 5) removing the outgoing screening service element, and 6) imputing the revenue from "Yellow Page" directory placement maintenance paid to U S WEST from U S WEST Direct, the directory publisher.

[11] Mr. Lanksbury testified that Oregon uses the following criteria to identify "public policy" phones: (1) profitability -- does the payphone generate less than $100 a month in revenue; (2) the payphone can be either coin or coinless; (3) there must be at least one payphone available 24 hours a day in every municipal government entity; (4) the payphone must not be part of a contract with a space provider; and (5) special public sites with public access, where no fee is charged and there is no other telephone within 1/4 mile of the site. TR., pp. 604-606

only would it cover costs but it would be very profitable.[12] On brief, U S WEST argues:

> Properly analyzed, the revenues U S WEST directly derives from its public payphone service--local, toll, directory assistance and operator charges--are more than adequate to cover its long-run incremental costs for non-essential service elements and tariffed rates for essential elements that must be used by its competitors, even if an imputation test were to be required by this Commission for local exchange services like payphone service.[13]

C. <u>NWPPA's Imputation Analysis</u>

NWPPA witness Dr. Cornell developed an imputation test (Ex. C-3) which purported to show that U S WEST's pricing strategies have subjected competitive payphone providers (CPPs) to a price squeeze. Dr. Cornell's initial imputation analysis limited revenues to local coin, directory assistance, and the coin toll surcharge. Dr. Cornell included directory assistance revenues and expenses based on the argument that directory assistance is a bottleneck monopoly service, thus distinguishable from operator services. Dr. Cornell argues that payphone revenues are those revenues that U S WEST gets if it places the payphone, and does not get if it does not place the payphone but takes all reasonable steps to supply network services.

With respect to U S WEST's revised imputation analysis, complainants contend there are at least two problems with U S WEST's determination of what constitutes a public policy payphone: (1) U S WEST has used an inconsistent definition of such a payphone, and (2) the company's workpapers do not support it's claims as to the number of such payphones. According to the complainants, these errors reveal that U S WEST claims more than twice the number of public policy payphones as the company's data supports.

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[12] <u>Closing Memorandum of U S WEST Communications, Inc.</u>, p. 28.

[<u>N.B.</u>: It is interesting to note that if the Commission were to extend this same rationale to other markets, <u>e.g.</u>, the residential local exchange service market, then toll revenues, carrier access revenues, and revenues from custom calling features would need to be included in the imputation test for residential basic local service.]

[13] <u>Id.</u>, pp. 4-5

Although complainants disagree with the U S WEST imputation analysis which excluded public policy payphones, Dr. Cornell filed a revised imputation test (Ex. C-75) that excluded public policy payphones.[14] Dr. Cornell's revised imputation test also included as revenues directory payments from U S WEST Direct.[15] Based on Dr. Cornell's revised imputation test, the CPPs were still being subjected to a price squeeze.

D. Commission Discussion and Decision

1. Imputation

As evidenced by the testimony and exhibits in the record, there is considerable debate as to the proper imputation test for payphone service. It is especially unclear what position U S WEST advocates. Initially, the company claimed the $0.25 per local call didn't meet an imputation test. After the company made certain adjustments in its imputation analysis, the $0.25 per local call only barely covered imputed costs. Finally, on brief, the company argued that a completely different imputation test should be used -- an imputation test that accounts for toll and operator service revenues.[16] This inconsistency illustrates well U S WEST's ability to control cost information and, as a result, to frustrate efforts to penetrate the relationship between its costs, by whatever definition, and its prices.

Based upon the evidence presented in this case, the Commission believes the appropriate payphone imputation analysis compares the revenue derived from a local call with the tariffed rate for "bottleneck" network services, plus the additional incremental costs of providing local payphone service. Admittedly, this is a very narrow and conservative imputation test. The reason is twofold. First, if the Commission were to include toll and operator services revenues in the imputation

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14 The number of public policy payphones excluded from Dr. Cornell's analysis was slightly less than one-half the number of payphones excluded in U S WEST's analysis.

15 Dr. Cornell stated she was unsure whether it was appropriate to include U S WEST Direct revenues in the imputation analysis.

16 In U S WEST's conceptual proposal for a new alternative form of regulation (AFOR), the company states that several services will have to be adjusted to cover costs, including payphone local rates. U S WEST COMMUNICATIONS, INC.'S (USWC) AFOR PROPOSAL, Docket No. UT-931349, August 3, 1994.

analysis, then the toll and operator services costs would also have to be included. The Commission recognizes that when payphone providers, whether U S WEST or a competitive payphone provider, choose where to place a payphone their decision does not hinge solely upon whether $0.25 per call covers all of the costs of providing payphone service. Obviously, the provider takes into account all of the expected revenues and expenses to be incurred, including toll and operator services revenues. However, none of the parties presented evidence that included both the revenues and costs for these services in their imputation analysis.

Second, by limiting the imputation test to local payphone revenues ($0.25 per call) the Commission specifically addresses the concerns of the complainants that the relationship between the PAL rate and the local calling rate of $0.25 per local call is creating a price squeeze. If the $0.25 per local call is greater than the imputation price floor, then a price squeeze is not occurring. Conversely, if the $0.25 per local call is less than the imputation price floor, then a price squeeze is occurring.

The proper payphone imputation analysis includes the following expense elements: (1) the tariffed public access line rate and extended area service additive; (2) the federally-mandated subscriber line charge; (3) the tariffed rate for Answer Supervision - Line Side[17] (AS-LS) and Billed Number Screening;[18] (4) amortization of non-recurring charges;[19] (5) amortization of

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[17] Answer Supervision - Line Side (AS-LS) service sends a signal to a vendor's payphones indicating that a call has been answered. This allows less software to be built into a payphone instrument, and provides more accurate timing of calls for billing, coin collection, and coin return by the vendor's payphone. AS-LS is a feature that can be added to current public access lines that originate from certain central offices.

[18] U S WEST's response to complainant's Fourth Data Requests, Data Request No. 51, stated:

> Currently, USWC imputes the monthly Public Access Line, usage, End User Access Charges, Touchtone (where tariffed rates exist), Answer Supervision Line Side (where tariffed rates exist), and Billed Number Screening rates to its payphone services.

[19] The service order and line connection cost is calculated by taking the non-recurring charges assessed a PAL subscriber for both the access line and the answer supervision-

the terminal equipment and enclosures costs;[20] (6) long-run incremental costs for sales, public administration, advertising, refunds, and coin collection;[21] and (7) access line surcharges such as Enhanced 9-1-1 (E911), Washington Telephone Assistance Program (WTAP) and Telecommunications Relay Service (TRS).

The specific items and the revenues and expenses excluded from the proper imputation analysis include: (1) "public policy" phones; (2) directory assistance revenues and expenses; (3) U S WEST Direct[22] revenues; and (4) toll and operator services revenues and expenses. Public policy phones were excluded based on the fact that public policy phones have not been defined in the state of Washington. Directory assistance, toll and operator services revenues and expenses were all excluded.

In the Commission's analysis, one adjustment has been made with respect to commission expense.[23] The commission expense has been adjusted to reflect the fact that commissions are based on total intraLATA revenues, including non-sent paid operator and toll revenues. Mr. Lanksbury stated for U S WEST that:

> U S WEST does use all local, operator assisted call and intraLATA toll revenues as a measurement for paying rental for a location, but those rental costs are considered to be a local service cost and are not allocated to the toll and operator costs.

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line side service and converting those charges into a monthly charge. This is the same process used by U S WEST on pages TE-10A through TE-10G of Tab S of the "1991 Cost Workpapers."

[20] Terminal equipment costs were taken from NWPPA witness Dr. Cornell's Confidential Exhibit C-3, and were based on U S WEST's PUBLIC TELEPHONE SERVICE, SUMMARY OF COSTS, STUDY YEAR: 1991, STATE: WASHINGTON.

[21] These costs were included in Dr. Cornell's imputation analysis, Confidential Exhibit C-3.

[22] A wholly-owned subsidiary of U S WEST Communications which publishes the U S WEST white and yellow page directories.

[23] Commission expense is the revenue paid a location owner by the payphone provider for rental of the space occupied by the payphone.

If the Commission excludes the toll and operator services revenues in the imputation analysis, then it must be consistent and exclude the expenses related to those revenues.[24] The Commission has adjusted the commission expense by 30 percent based on the percentage of revenues the competitive payphone providers claimed to be other than local.

Based upon this imputation test, the cost of a local call is greater than $0.25 per call. The Commission believes the complainants have substantiated their allegation that they are subject to a price squeeze in the public payphone market.

2. Price squeeze remedies

To end the alleged price squeeze the complainants proposed new rates for three U S WEST monopoly service elements: (1) reduce the PAL rate by $8.94, from $28.45 to $19.51; (2) reduce the message rate from $0.06 per call to $0.03 per call (after the 300th call); and (3) reduce the monthly recurring rate for AS-LS from $3.95 to $1.00.

Although the Commission has determined that a price squeeze is in fact occurring, it will not order U S WEST to reduce its PAL rates to $19.51 as proposed by the complainants. In order to eliminate the price squeeze, the Commission orders U S WEST to reduce its monthly recurring PAL rate to the existing recurring simple business line rate in each rate group.[25] In addition, U S WEST is ordered to reduce the recurring rate for AS-LS from $3.95 to $1.00.

The Commission bases the reduction in the PAL rate on two factors. First, the elimination of the usage cost combined with the reduction in the AS-LS rate results in the current rate of $0.25 per local call passing the imputation test. Second, it was evident from the record that all parties consider a public access line technically and functionally equivalent to a business line. In fact, U S WEST argued on brief that the PAL provides the same thing as a business line -- local exchange access. The Commission therefore believes it is appropriate to reduce the PAL rate to the simple business rate, but no lower. The Commission agrees with U S WEST that a reduction below the simple business line rate would create a rate anomaly, discriminate against business customers, and create yet another opportunity for tariff arbitrage.

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[24] The commission expense imputed by all parties was based on total intraLATA revenues, including non-sent paid toll and operator services.

[25] As of the date of the instant order, the monthly recurring simple business line rates are as follows: Rate Group 1 - $18.40; Rate Group 2 - $23.10; and Rate Group 3 - $26.20.

The reduction in the AS-LS rate is also based on two factors. First, the requirement to pass an imputation test and eliminate the price squeeze. As stated previously, the combination of the reduced PAL rate and the reduced AS-LS rate results in the elimination of the price squeeze.[26] Second, U S WEST's marketing study showed a significantly higher demand for AS-LS at a price much lower than the tariffed rate of $3.95.[27] Not only has demand been constrained by the tariffed rate, but the study also showed that the revenue maximizing price is substantially lower than the tariffed rate. Therefore, the Commission agrees with NWPPA witness Dr. Cornell's recommendation that the tariffed recurring rate be reduced to $1.00.

3. Preventing reoccurrence

To prevent the price squeeze from re-occurring, the complainants present two alternatives: (1) ordering U S WEST to put its payphone operations in a separate subsidiary; or (2) requiring U S WEST to file an imputation cost study annually, using Dr. Cornell's methodology, and disallow any losses for rate-making purposes.[28]

The complainants argue that a separate subsidiary is the most effective way of ensuring that U S WEST's payphones and the CPP's payphones all receive monopoly services on the same terms and conditions. U S WEST argues that RCW 80.04.270[29]

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26 It seems quite evident from a public policy viewpoint that if the option is either to raise rates to end-users or to reduce the cost of inputs to competitors, the Commission should advocate the latter whenever feasible.

27 See, Confidential Exhibit C-25, RE: COIN MARKET DEMAND ANALYSIS, December 6, 1991.

28 Under this regimen, U S WEST would be required to perform annual cost studies to verify that the price charged for its payphone service covers all costs of providing that service, including the full tariffed rates that CPPs pay for all "bottleneck" monopoly inputs used to provide their service. If these studies showed that the price charged by U S WEST failed to cover costs, the losses would have to go below the line, rather than forming part of the revenue requirement.

29 RCW 80.04.270 provides in relevant part:

> Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed

gives the Commission power only to require an accounting separation of non-utility services or products offered by a regulated company.

While the Commission believes the concept of ordering the company to put its payphone operations into a separate subsidiary may have merit, we are unwilling to mandate such a separation at this time. The Commission believes there are too many questions, from both a policy and an accounting perspective, which have yet to be fully explored on a proper record, to determine if ordering a separate subsidiary for the company's payphone operations is in the public interest.

Additionally, the Commission believes that an annual imputation cost study is not required. The Commission is confident that the indicated price squeeze has been corrected by our decisions in the instant order. Any future increase in the PAL rate, which is the majority of the CPP's network costs, would have to be approved by the Commission, and the NWPPA and its members could intervene and argue their case for a new imputation cost analysis. The Commission must abstain from imposing unnecessary and overly burdensome reporting requirements, unless the public interest is clearly affected and can be remedied by such requirement. If a U S WEST rate case is conducted in the future, nothing prohibits a party to that proceeding from addressing issues of the reasonableness of an expense item, such as imprudent commission payments to location providers, and advocating exclusion of that expense from recovery in the company's revenue requirement.

4. Other price squeeze issues

In addition to the price squeeze evidenced by the imputation cost analysis, the NWPPA complains that a price squeeze is created through the interaction of the compensation paid by U S WEST to location providers to place a payphone, and the revenue sources from which that compensation is made. The complainants recommend therefore that the Commission require U S WEST to compensate PAL subscribers for non-sent paid calls. The amount of compensation should be at the same level as the highest commission paid by U S WEST to a site owner with a comparable volume of traffic.

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in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company.

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U S WEST maintains that the decision to pay compensation for delivery of toll or operator-assisted traffic to U S WEST by non-regulated payphone providers is a business decision that cannot be mandated by a regulatory agency. U S WEST urges there are extensive revenue generating opportunities from other providers of toll and operator services available to competitive payphone providers. Therefore, U S WEST reasons that complaints about these revenues not being made available to CPPs are at best irrelevant.

The Commission agrees with U S WEST on both counts. Based on the record in this case, the Commission does not believe that it should mandate that competitive payphone providers are entitled to any compensation from U S WEST for non-sent paid calls. It is a business decision that should be the province of U S WEST alone. Part of the reason consumers have an overwhelming preference for U S WEST's calling card or credit card calls stems from past negative experience with alternative operator services providers. U S WEST should not be required to compensate its competitors for consumers' reactions to prior abuses by the alternative operator services industry.

III. Discrimination in Service Provision

A. Availability of Service

The NWPPA also alleges that U S WEST discriminates between the services it provides CPPs and those it provides its own payphone operations. This includes differences in how quickly public access lines are provisioned, access to customer proprietary network information, and the actual services provided CPPs compared to those which serve U S WEST payphones.

A principal concern of the Commission is whether U S WEST provides CPPs with services and features equal in quality to those used by U S WEST in its own payphone operations. "Coin Line" service is a primary example.[30] By not providing Coin Line service, a service U S WEST provides itself, U S WEST forces

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30 Coin Line service is a central office based line very similar to that utilized by U S WEST in its payphone operations. A Coin Line sends signals to the payphone instrument which detect coin deposit, coin collection or return (depending on whether or not the call was completed), and additional coins needed during toll calls. Currently these functions must be programmed into the payphone instrument, because the Public Access Line U S WEST sells the CPPs does not differ functionally from a simple business line.

the CPPs to incur additional capital investment.[31] With Coin Line service, U S WEST operators get screening information "hard coded" into the automatic number identification (ANI) stream. Without further effort, the operator knows the call is being placed from a payphone. With PAL screening, there is no screening information in the ANI stream. Instead, the alternative operator services provider is signaled that it must undertake a data base inquiry. U S WEST in turn charges the operator services provider for that data base inquiry. The following is the response of U S WEST witness Mr. Lanksbury to counsel for NWPPA:

> Q. Would you please explain for the record how originating call screening works from a U S WEST payphone?
>
> A. Originating call screening from a U S WEST payphone is part of the ANI -- auto number identification -- indication to the operator and it's hard-coded into the ANI stream of number to allow the operator when the call comes in to see that the call is placed from a U S WEST payphone.
>
> Q. Now please explain for the record how originating call screening works from a PAL line, from a competitive payphone.
>
> A. The code similarly comes into the operator, although the code indicates to the operator that they will have to do a look-up in the billing validation system to see that this is in fact a payphone. It's a screening function that requires them, one, to see that they need to do a look-up and then to subsequently do the look-up. TR pp. 689-690.

The NWPPA urges the Commission to order U S WEST to provide a Coin Line service similar to what it provides itself. U S WEST responds that, like AS-LS, there is neither genuine demand nor willing purchasers for such a service even if U S WEST were to offer it.

There are significant problems with U S WEST's claim that there is no real demand for Coin Line service and AS-LS. First, these are services that the company already provides itself. By not providing a similar service to competitive payphone providers, U S WEST has granted itself undue preference

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31 This additional capital investment is due to the extra functionalities built into the payphone instrument, e.g., automatic polling and answer supervision.

or advantage in the public payphone market. The company's unwillingness to offer these services forces CPPs to invest in more expensive "smart" payphones. Therefore, demand now may be limited due to the investment in smart phones already incurred by competitive payphone providers.

Second, U S WEST's own studies show there is in fact some level of interest in these services at a reasonable price.[32] However, with AS-LS, for example, U S WEST elected to price the service at a rate that severely restricted demand.

In order to limit U S WEST's ability to discriminate between the network services it provides itself and those it provides competitors, the Commission orders U S WEST to respond in writing to all legitimate requests for those network services from competitive payphone providers within 120 days. U S WEST shall implement the request by offering the service under tariff, if the service is feasible based on currently available technology and if forecasted demand is sufficient to allow U S WEST to recover its cost. U S WEST shall implement the request as soon as practical and in any event no later than 6 months following the receipt of the customer's request.[33]

B. Repair and Refund Service

The complaint alleges that U S WEST's operators discriminate between their payphones and competitors' payphones. When an end-user calls a U S WEST operator from a U S WEST payphone to request repair service or a refund, the operator's equipment indicates the call is coming from a U S WEST payphone. By contrast, if an end-user calls a U S WEST operator from a competitor's payphone, the operator's equipment provides no information about the payphone. The only assistance the U S WEST operator can offer is to suggest that the caller look on or near the payphone for a referral card or sticker. On this subject, the U S WEST witness Mr. Lanksbury testified:

> Q. Is there any service that U S WEST offers to competitive payphone providers that would allow U S WEST's operators to handle refund and repair requests the same way that U S WEST operators handle those calls from their own payphones?

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32 See, Confidential Exhibit C-25.

33 The complainants requested that U S WEST be given a deadline of not more than six months to offer magnetic billing to PAL subscribers.

> A. No, there's not. There are other ways that the vendor can handle their repair outside the U S WEST operator. TR pp. 672-673

The NWPPA asks the Commission to order U S WEST's operators to handle payphone repair and refund requests in the same manner for both CPPs and U S WEST. The Commission believes its decision requiring U S WEST to offer services within 6 months of a request from a CPP, as more fully discussed in the preceding section, provides an opportunity for the parties to undertake discussions which could lead to a satisfactory resolution of the repair and refund service problem.

C. Service Requests and Misuse of Customer Proprietary Network Information

The complaint alleges that U S WEST delays the installation of public access lines. U S WEST witness Mr. Lanksbury testified the company has never marketed to location providers based on information obtained from orders for public access lines. He maintained that U S WEST has policies in place to prevent use by its payphone marketing personnel of PAL service order information received by vendor service marketing personnel.

In spite of U S WEST's claims of "safe harbor" policies to preclude any advantage over its competitors, the NWPPA argues that U S WEST continues to retain an advantage. According to the complaint, the ability to delay installation of an access line is an advantage that only U S WEST, and no other competitor, can have. Any contract or arrangement that would permit U S WEST to exploit this monopoly advantage to the detriment of its competitors should be declared void as against public policy. When U S WEST receives a PAL work order, it should promptly complete the order.

In response to questions from complainants' counsel, company witness Mr. Lanksbury testified:

> Q. As I understand it, both the public access line team, if you will, and the U S WEST account executives have access to the same computer system of U S WEST?
>
> A. That would be correct.
>
> Q. And they share a database that shows records for both U S WEST payphones and public access lines; is that correct?
>
> A. The database shares records for virtually all accounts. It covers residence, business, PAL lines and public telephones, yes. TR. 746-747.

NWPPA witness Mr. Coulson stated in his direct testimony that U S WEST no longer markets to location providers based on information obtained from PAL orders. However, in Mr. Coulson's supplemental direct and rebuttal testimony there is a lengthy discussion of U S WEST's contract with Southland Corporation and the problems encountered when a CPP attempted to install a payphone at a Seven-Eleven convenience store. If the Commission doesn't order U S WEST to put its payphone operations into a separate subsidiary, Mr. Coulson recommends the Commission prohibit U S WEST's vendor services from ever giving any information about PAL orders to U S WEST's payphone marketing personnel.

The Commission agrees with NWPPA that U S WEST is the only payphone provider with the ability to delay the installation of public access lines. However, the Commission believes that the company has established a policy that prevents information on PAL orders from being accessed by payphone marketing personnel. The basis for this allegation appears to be a contract between Southland Corporation and U S WEST. It is Commission policy not to interfere in such contracts, just as the Commission does not interfere in contracts between competitive payphone providers and location providers.

Except for the Southland Corporation example, the complainants failed to substantiate instances of U S WEST intentionally delaying installation of public access lines. Therefore, the Commission will take no action on the allegations that the company discriminates in either installation of payphone service requests or misuses customer proprietary information. The company's assurances that policies exist to prevent misuse of proprietary marketing information, and the Commission's quality of service rules governing installation of new services, should sufficiently protect complainants.

D. Advertising Practices

The complaint alleges U S WEST has made claims in its advertising that unfairly and deceptively disparage the service of competitive payphone providers. The NWPPA requests the Commission prohibit U S WEST from using unfair or misleading advertising. They also seek protection against U S WEST's advertising which takes advantage of the price squeeze it has created, or the inferior service it provides complainants.

U S WEST denies all allegations of unfair advertising, and additionally argues that the alleged detrimental advertising is no longer in place. U S WEST also contends the Commission has no authority to grant the requested relief.

The Commission will take no action with respect to the allegation that U S WEST's advertising has been unfair and misleading. The Commission does not believe it is the proper authority to judge whether advertising is unfair or deceptive. In response to questions from the bench, NWPPA witness Mr. Coulson agreed that the courts are a better place to resolve claims of unfair advertising.

E. Effect of long-term contracts on price squeeze

The complainants argue that current location providers under contract with U S WEST should be allowed a "fresh look" at their choice of payphone provider without incurring penalties for rescinding their contract. They argue this is necessarily part and parcel of requiring U S WEST to pass the proper imputation test. Otherwise, current customers will be locked into contracts that only exacerbate the price squeeze, and many more years must pass before the public payphone market sees the full benefit of fair competition.

U S WEST responds that the Commission has no authority to grant this relief, even if it were desirable and in the public interest.

As previously stated, the Commission ordinarily refrains from interfering in contracts between U S WEST and its customers. The Commission therefore will take no action with respect to the contracts between U S WEST and its location providers.

E. Use of Public Access Lines

Complainants allege that the "one payphone per PAL" requirement is inefficient and places them at a competitive disadvantage. WAC 480-120-138(13) requires subscribers to order separate public access lines for each pay telephone installed. U S WEST has incorporated this language into its tariffs. The complainants argue that since the PAL rate is such a large portion of their costs, the rule in effect drives their costs. They request the Commission initiate a rulemaking proceeding to amend this rule to provide reasonable circumstances and conditions which would permit the attachment of more than one payphone per public access line.

The Commission is concerned that public payphone service be provided in the most efficient manner possible. However, the Commission is not convinced by the evidence presented here that a rulemaking to eliminate the existing rule requirement is necessary. If competitive payphone providers can prove to the Commission that the one payphone per public access line rule is not in the public interest, then a waiver of WAC

480-120-138(13) could be granted.[34] The Commission will utilize the information from specific waiver requests to determine if an amendment to WAC 480-120-138(13) is necessary.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts and conclusions. Those portions of the preceding detailed findings pertaining to the ultimate findings and conclusions are incorporated by this reference.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. The complainants, Northwest Payphone Association by and through its individual members, are engaged in the business of furnishing payphone telecommunications services within the state of Washington.

3. Respondent U S WEST Communications, Inc., is engaged in the business of furnishing telecommunications service within the state of Washington as a public service company.

4. The Commission may require an imputation test whenever competition, or emerging competition, exists for U S WEST services, and competitors are wholly dependent upon U S WEST for essential monopoly inputs in order to provide service.

5. The imputation test for the public payphone service market should include these expense elements: (1) the tariffed public access line rate and extended area service additive; (2) the federally- mandated subscriber line charge; (3) the tariffed rate for Answer Supervision - Line Side (AS-LS) and Billed Number Screening; (4) amortization of non-recurring charges; (5) amortization of the terminal equipment and enclosures costs; (6) long-run incremental costs for sales, public administration, advertising, refunds, and coin collection; and (7) access line surcharges such as Enhanced 9-1-1 (E911), Washington Telephone Assistance Program (WTAP) and Telecommunications Relay Service (TRS).

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[34] In granting a waiver of WAC 480-120-138(13), the Commission would also require U S WEST to waive its tariff provisions to permit attachment of more than one phone per public access line.

6. The imputation test for the public payphone service market should not include these revenue and expense elements: (1) "public policy" phones; (2) directory assistance revenues and expenses; (3) U S WEST Direct revenues; and (4) toll and operator services revenues and expenses.

7. Based upon the Commission's imputation test, the cost of a local telephone call is greater than $0.25, and the complainants have substantiated their allegation that they are subject to a price squeeze in the public payphone service market. The Commission should eliminate the price squeeze by reducing the price of essential monopoly inputs in the public payphone services market:

A. Because a public access line is technically and functionally equivalent to a simple business line, the monthly recurring rate for both services should be the same and in each rate group and the PAL message rate should be eliminated; and

B. The monthly recurring rate for answer supervision-line side service should be reduced from $3.95 to $1.00.

8. The Commission should not require U S WEST to transfer its public payphone operation to a separate subsidiary, nor should the company be required to file an annual imputation cost study.

9. U S WEST should not be required to compensate competitive payphone providers for non-sent paid calls.

10. U S WEST discriminates in the provision of network public payphone services. The company should respond in writing within 120 days to all legitimate requests for any network services from competitive payphone providers. The company should implement the request by offering the service under tariff, if the service is feasible based upon current technology and if forecasted demand is sufficient to permit U S WEST to recover its costs of providing the service.

11. The Commission is not the appropriate agency to decide claims of deceptive and unfair advertising.

12. The Commission should not interfere with contracts between U S WEST and payphone location providers.

13. A rulemaking to amend WAC 480-120-138(13) is premature at this time, but waiver of the rule's requirement is appropriate if proven to be in the public interest. The Commission prospectively may determine from specific waiver requests that amendment of the rule is necessary.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and the parties to, this proceeding.

2. The Commission should require U S WEST to file a new Public Access Line tariff to conform prices with the simple business line rates in each of the existing three business line rate groups, and to eliminate the message rate.

3. The Commission should require U S WEST to lower the monthly recurring answer supervision-line side rate from $3.95 to $1.00.

4. U S WEST should be required to respond in writing within 120 days of a request for network public payphone services, and to offer services under tariff within 180 days if technically and economically feasible.

O R D E R

THE COMMISSION ORDERS:

1. U S WEST must file a new PAL tariff within 20 days of this order to conform the monthly recurring rates for this service with the simple business line rates in each of the company's three existing rate groups, and to eliminate the message rate;

2. U S WEST must file a new AS-LS tariff within 20 days of this order to reduce the monthly recurring rate from $3.95 to $1.00; and,

3. U S WEST must develop internal company policies to respond to legitimate requests for network services to support competitive public payphones within 120 days of such request, and must offer such services under tariff within 180 days if the service is technically feasible and recovers the company's costs of providing the service.

DATED at Olympia, Washington, and effective this 17th day of March 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

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NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).