

EXHIBIT A

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD AND TARA)	DOCKET UT-042022
HERIVEL,)	
)	
Complainants,)	ORDER 25
)	
v.)	
)	FINAL ORDER AFFIRMING ORDER
AT&T COMMUNICATIONS OF THE)	23 IN PART ON OTHER GROUNDS
PACIFIC NORTHWEST, INC., AND)	AND RESPONDING TO
T-NETIX, INC.,)	QUESTIONS REFERRED FROM
)	SUPERIOR COURT
Respondents.)	
.....)	

1 **SYNOPSIS.** *This is a Final Order of the Commission that affirms Order 23, in part, on grounds other than those stated on that order. The Commission clarifies the application of its operator services rules to explain that an operator services provider (OSP), like other telecommunications service providers, is the company that has the direct business relationship with the consumers who use the services. The Commission finds that AT&T Communications of the Pacific Northwest, Inc. (AT&T), was the OSP for all intrastate collect calls placed from the four correctional facilities at issue in this proceeding for which AT&T provided operator-assisted toll services. The Commission affirms the conclusion in Order 23 that AT&T was not exempt from the definition of OSP in effect prior to 1999. The Commission also finds based on undisputed facts that the automated operator services platform used at the prisons during the relevant period did not make rate quotes available to consumers as required by Commission rules. Based on this finding, the Commission concludes that by using that platform to provide operator services, AT&T violated Commission rules for each collect call for which AT&T provided operator services. The Commission defers to the Superior Court for any additional fact-finding and for the ultimate disposition of the Complainants' claims.*

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2 **NATURE OF PROCEEDING.** This proceeding involves a formal complaint filed with the Washington Utilities and Transportation Commission (Commission) by Sandy Judd and Tara Herivel (Complainants)¹ against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix) (AT&T and T-Netix collectively referred to as Respondents). Complainants request that the Commission resolve certain issues under the doctrine of primary jurisdiction and pursuant to the referral by the Superior Court.

3 **APPEARANCES.** Chris R. Youtz, Sirianni Youtz Spoonemore, Seattle, Washington, represents Complainants. Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H. R. Peters, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Stephanie A. Joyce, Arent Fox LLP, Washington, D.C., represent T-Netix.

4 **PROCEDURAL HISTORY.** Order 23 summarizes the extensive history of this proceeding, and we adopt that summary for purposes of this Order.² In brief, Complainants filed a complaint in Superior Court in June 2000, alleging that they received collect calls from inmates in Washington State correctional facilities, that Respondents provided operator services to those correctional facilities,³ and that Respondents were operator service providers (OSPs)⁴ that violated RCW 80.36.520

¹ Zuraya Wright filed suit, in conjunction with Ms. Judd and Ms. Herivel, against Respondents in the Superior Court of Washington for King County (Superior Court or Court). *See* Ex. A-2. Ms. Wright's claim is restricted to interstate inmate telephone calls, and our jurisdiction extends only to intrastate telephone calls. Accordingly, we do not address Ms. Wright's claim.

² Order 23 ¶¶ 4-23. Similarly, we adopt those portions of Order 23 that summarize the governing law, undisputed facts, and party positions. *Id.* ¶¶ 25-39 and 41-88.

³ Complainants originally named five telecommunications companies in their suit in Superior Court. In addition to Respondents, Complainants also filed suit against Verizon Northwest, Inc., f/k/a GTE Northwest, Inc. (Verizon), Qwest Corporation, f/k/a U S West Communications, Inc. (Qwest), and CenturyTel Telephone Utilities, Inc., f/k/a CenturyTel Telephone Utilities, Inc. and Northwest Telecommunications, Inc., d/b/a PTI Communications, Inc. (CenturyTel). The trial court dismissed Verizon, Qwest, and CenturyTel, and the appellate courts affirmed those dismissals. *Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 198, 95 P.3d 337 (2004).

⁴ The statute and original Commission rule refer to entities that provide connections from call aggregators to local and interexchange carriers (IXCs) as "alternate operator services companies, but WAC 480-120-021 (1999) changed the term for these entities to OSP, which is the term the

by failing to assure rate disclosures for the collect calls Complainants received. The Superior Court held the complaint in abeyance and referred two questions to the Commission under the doctrine of primary jurisdiction:⁵

- 1) Whether AT&T or T-Netix were OSPs under the contracts at issue; and
- 2) If so, if the Commission's regulations were violated.⁶

5 On November 17, 2004, Complainants filed a formal complaint with the Commission pursuant to the court's referral. Complainants claim that Respondents are OSPs and that they violated the Commission's rule requiring that OSPs provide rate quote information to consumers.⁷ Both Respondents denied the allegations in the Complaint and filed motions and amended motions for summary determination requesting that the Commission find they were not OSPs during the period in question and did not violate the Commission's regulations applicable to OSPs.

6 On April 21, 2010, following extensive proceedings in both the courts and the Commission, the Administrative Law Judge issued Order 23, Initial Order Denying in Part AT&T's Amended Motion for Summary Determination and Granting T-Netix's Motion and Amended Motion for Summary Determination (Order 23). That Order concludes AT&T was an OSP during the relevant time period, T-Netix was not an OSP, and the Commission should schedule a prehearing conference to address the procedural steps to address the issue of whether AT&T violated Commission rules.

7 AT&T filed a petition for administrative review of Order 23 on May 11, 2010. On May 21, 2010, T-Netix and the Complainants filed answers opposing AT&T's petition. The Complainants also filed their own petition for administrative review of certain conclusions and findings in Order 23.

Superior Court uses. To minimize potential confusion, we will refer to these entities as OSPs in this Order.

⁵ Primary jurisdiction is a doctrine that requires issues within an agency's special expertise be decided by the appropriate agency. *E.g., Tenore, v. AT&T Wireless Servs.*, 136 Wn.2d 322, 345, 962 P.2d 104 (1998).

⁶ Ex. A-3 at 2.

⁷ See WAC 480-120-141 (1991) and (1999). For ease of reference, copies of the applicable Commission rules as they were in effect in 1991 and in 1999 are included in Appendix A to this Order.

- 8 On May 26, 2010, AT&T filed a reply in support of its petition and in opposition to the Complainants' petition, and T-Netix filed its response to the Complainants' petition. On June 1, 2010, Complainants filed a motion for leave to reply to AT&T's response to the Complainants' petition, and T-Netix filed a motion to strike AT&T's response or in the alternative to reply to that response. AT&T filed a response to each of these motions on June 7, 2010, and on June 8, 2010, T-Netix filed a motion for leave to file a reply in support of its prior motion.
- 9 The Commission reopened the record and issued Bench Requests Nos. 7-10 to the parties on October 6, 2010. The parties filed responses to those requests on October 20, 2010. On October 27, 2010, AT&T and the Complainants filed responses to other parties' Bench Request responses, and T-Netix filed a motion to strike a portion of the Complainants' response to Bench Request No. 7. On November 3, 2010, Complainants filed their response to T-Netix's motion to strike, and T-Netix filed a motion for leave to reply to Complainants' response to other parties' bench request responses. On November 9, 2010, T-Netix filed a motion for leave to file a reply in support of its motion to strike. On November 10, 2010, AT&T filed a motion for leave to reply to Complainants' response to T-Netix's motion to strike. Also on November 10, 2010, Complainants filed a response to T-Netix's motion for leave to file a reply in Complainants' response to other parties' bench request responses. On November 17, 2010, Complainants filed a response to AT&T's motion for leave to reply to Complainants' response to T-Netix's motion to strike.
- 10 On November 30, 2010, the Commission issued Bench Requests Nos. 11-15 to AT&T and T-Netix. Those parties filed responses on December 8, 2010. On December 15, 2010, Complainants, AT&T, and T-Netix filed responses to these Bench Request responses, and AT&T filed a supplemental response to Bench Request No. 13. On December 20, 2010, AT&T filed a motion to file a surreply to the replies to AT&T's response to Bench Request Nos. 12, and T-Netix filed motions to reply to (1) Complainants' replies to AT&T's and T-Netix's Bench Request responses; (2) AT&T's supplemental response to Bench Request No. 13, and (3) AT&T's reply to T-Netix's response to Bench Request No. 14. Complainants filed their opposition to AT&T's December 20 motion on December 29, 2010.

DISCUSSION

11 Complainants allege that they and a putative class of other consumers received operator-assisted collect calls between June 20, 1996, and December 31, 2000, from the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay state correctional facilities (collectively Correctional Facilities) and were not given the option of hearing rate quotes before accepting the collect calls. Complainants further allege the Respondents were the OSPs for these calls and thus each is responsible for violation of the Commission's regulations requiring disclosure of the rates applicable to the calls. The Complainants make these allegations in a complaint filed with the Commission as a result of a referral from the Superior Court in which the Court seeks a Commission response to two questions: (1) whether AT&T or T-Netix were OSPs during the relevant time period, and (2) if so, whether they violated the Commission regulations governing OSPs. In response, we find that (1) AT&T was the OSP for the intrastate calls placed from the Correctional Facilities for which AT&T provided the operator-assisted toll service, and (2) AT&T violated Commission regulations requiring OSPs to disclose the rates for those calls.

A. AT&T was the OSP for the Intrastate Calls Placed from the Correctional Facilities for which AT&T Provided the Operator-Assisted Toll Service.

1. An OSP is the Entity with the Direct Business Relationship with the Consumers of Operator Services.

12 We first examine the history and meaning of the Commission's definitions of "operator services" and OSPs. From 1991 to 1999, WAC 480-120-021 defined an OSP as:

any corporation, company, partnership, or person other than a local exchange company providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators. The term 'operator services' in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated, or (2) completion

through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.⁸

- 13 The Commission modified WAC 480-120-021 in 1999. The modified rule no longer included the exemption of local exchange carriers (LECs) from the definition of an OSP, but the remainder of the language largely remained unchanged. Both versions of the rule defined an OSP as an entity “providing a connection to intrastate or interstate long-distance or to local services from the locations of call aggregators,” and defined “operator services” as a service provided to such locations “that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call” except through certain specified methods.
- 14 AT&T interprets WAC 480-120-021 to establish the OSP as the company that provided the physical “connection” to the local or long distance service used to complete the calls. Order 23 accepted this view of the rule and concluded that AT&T owned the equipment used to provide that “connection” and thus was the OSP. We do not adopt this interpretation of the rule. Rather, we conclude that the OSP is the entity that has the direct business relationship with the consumer of the operator services, regardless of which company owns the physical facilities used to provide those services.
- 15 The definition of “OSP” in WAC 480-120-021 is virtually identical to the definition of “alternate operator services company” in RCW 80.36.520. The statute defines that term as “a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones.” This language requires that an OSP be “providing a connection” but does not specify *to whom* the OSP is providing that connection. Viewed in the light of the context and intent of both the statute and the Commission rule, we interpret this language to establish that the OSP is the entity that provides the connection *to the consumers* who are the parties to the call, particularly the called party who accepts and pays for the service or “connection” provided.

⁸ WAC 480-120-021 (1991).

- 16 The statute includes an expression of legislative intent, stating that “a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure *to consumers* is a deceptive trade practice.”⁹ The legislature directed the Commission to require that “any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure *to consumers* of the provision and the rate, charge or fee of services provided by an alternate operator services company.”¹⁰ The legislature was expressly concerned with companies that provide services to consumers without disclosing to those consumers the services the companies are providing and the rates those companies are charging.
- 17 The Commission’s rules reflect that concern. The Commission consistently has defined “operator services” as “any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance *to a consumer* to arrange for billing or completion, or both, of an intrastate telephone call” except under certain circumstances.¹¹ A “consumer” for purposes of the OSP rules is “the party initiating and/or paying for a call using operator services.”¹² Operator services by definition are provided to consumers, and to state the obvious, an OSP provides operator services.¹³ An OSP, therefore, is an entity that provides *to consumers* a connection to intrastate or interstate long distance or to local services from locations of call aggregators, and that entity must disclose *to those same consumers* both the service it is providing and the rates charged for the service and the call.

⁹ RCW 80.36.510 (emphasis added).

¹⁰ RCW 80.36.520 (emphasis added).

¹¹ WAC 480-120-021 (1991 & 1999) (emphasis added).

¹² WAC 480-120-141(1)(c) (1999). The prior version of the rule similarly defined “consumer” as “the party initiating and/or paying for an interexchange or local call.” WAC 480-120-141(3) (1991).

¹³ AT&T correctly observes, “By defining ‘operator services’ within the definition of an OSP, the WUTC recognized that, under pure common sense, an Operator Service *Provider* is a *provider* of operator services.” Ex. A-22HC ¶ 13 (emphasis in original).

- 18 This consumer-centric approach to determining which company is responsible for complying with our rules governing OSPs is fully consistent with the Commission's treatment of other telecommunications service providers. Resellers of local or long distance services, for example, are the service providers for the consumers of that service, even though the underlying facilities – or the entire service itself – are physically provisioned by another company. As the service provider, the reseller, not the company that owns and operates the physical infrastructure used to provide the service, has the direct business relationship with its customers and is responsible for all billing of, notifications to, and other communications with, the end users of that service, as well as for complying with all Commission rules governing the provision of those services to consumers.
- 19 We see no reason to identify OSPs any differently. The objective of the statute and Commission rules governing OSPs is to ensure that consumers are aware that they are using operator services and know or can request the rates they are paying for calls using those services. As with other telecommunications services, the company that charges, communicates with, and otherwise is identified as the service provider to, the consumer is obligated to make such disclosures.
- 20 Rather than focus on which company had the direct business relationship with the consumers of the operator services, the parties have disputed whether AT&T or T-Netix owned or controlled the equipment or facilities that were used to provide those services. That dispute is largely irrelevant. A company is no more an OSP solely because it owns and maintains some or all of the equipment used to provision operator services than a company could be considered a local exchange carrier simply because it supplies the switch used to originate and terminate telephone calls. Only the company that has the direct business relationship with the consumers who use operator services is an OSP.
- 21 T-Netix recognizes this requirement even while fully engaging in the debate over which company owned the underlying facilities. T-Netix's expert witness, Robert Rae, provided testimony that, based on "common practice," the term "connection" in the Commission's rules refers to the service provided to the consumer using and paying for that service:

I think the best way I can describe it is in the general sense of the carrier that is the – basically integrating the services of telecommunications, which could mean anything from purchasing hardware, purchasing software, procuring network connectivity and more importantly, even if they aren't doing any of those things, at a higher order, **providing the face to the customer in branding the calls, branding the billing, taking the responsibility for those elements being pulled together to deliver service to the customer and, therefore, representing to the customer that complex process behind it to make sure that the customer is serviced appropriately.**¹⁴

T-Netix contended that AT&T provided these functions for the consumers of the operator-assisted toll services that AT&T provided, and thus AT&T was the OSP:

T-Netix supplied equipment and services to AT&T; the LECs and AT&T provided the long-distance services of which operator services were a component. As such, under this Commission's precedent, AT&T was reselling the services it purchased from T-Netix to its own end users (call recipients), which makes AT&T and not T-Netix the common carrier for the operator services at issue.¹⁵

- 22 Complainants also take issue with the conclusion that the OSP is the owner of the equipment used to provide the service and suggest that the company responsible for providing operator services should be considered the OSP.¹⁶ By “responsible,” the Complainants mean the company with a contractual obligation to the DOC to make operator services available. The DOC, however, was the “customer,” not the “consumer” of the operator services at issue in this proceeding.¹⁷ The customer does

¹⁴ Ex. A-24HC at 172, line 23 through 173, line 10 (emphasis added). Although the quoted language is in a transcript that is marked “highly confidential” in its entirety, we find no basis for treating this language as highly confidential and accordingly do not afford it such treatment.

¹⁵ Ex. T-25 ¶ 25 at 15. T-Netix further notes, “In its 1998 Order adopting the verbal rate quote requirement, the Commission made clear that it is the OSP serving end users and holding itself out to the public, rather than a carrier or other service provider whose services the OSP is reselling, that is responsible for regulatory compliant [*sic*].” *Id.*, n.11.

¹⁶ *E.g.*, Complainants 1) Answer to AT&T's Petition for Administrative Review and 2) Petition for Administrative Review ¶¶ 24-40.

¹⁷ Commission rules distinguish “consumers” from “customers” of operator services. The “customer” is “the call aggregator or pay phone service provider, i.e., the hotel, motel, hospital,

not use or purchase the operator services. The consumers do. The contractual relationship the DOC had with AT&T and T-Netix, while potentially one indication of which entity is the OSP, does not in itself determine whether either Respondent was an OSP.¹⁸ The Complainants nevertheless appear to agree that the OSP is the company that provides operator services to the persons who use that service.

23 AT&T, on the other hand, adheres to its view that the facilities owner is the OSP based on AT&T's interpretation of the word "connection" in the Commission rule. AT&T's primary argument is that the language of the rule identifies the OSP as the entity that provides the connection from the call aggregator location to the local or toll service provider, which necessarily, in AT&T's view, is the physical link between those locations. As we discussed above, however, the proper focus is on the entity "providing" the connection to the consumer of the service, regardless of which company supplies the physical facilities used to make that connection.

24 AT&T contends that such an interpretation of the rule "results in complete ambiguity as to who actually is the OSP."¹⁹ We find no such ambiguity. To the contrary, defining the OSP as the company that has the direct business relationship with the consumer is clear and unambiguous and avoids the protracted disputes over the nature and ownership of the network facilities used to provide the service that have been litigated so extensively in this proceeding.

correctional facility/prison, or campus contracting with an OSP for service." WAC 480-120-141(1)(c) (1999) (emphasis added); accord WAC 480-120-141(3) (1991); see WAC 480-120-021 (1991) (defining "call aggregator" as "a person who, in the ordinary course of its operations, makes telephones available for intrastate service to the public or to users of its premises, including but not limited to hotels, motels, hospitals, campuses, and pay telephones"); accord WAC 480-120-021 (1999) (revising the prior rule remove the phrase "for intrastate service" and to add "for telephone calls using a provider of operator services" after "premises"). The customer, in conjunction with the OSP, has certain specified obligations to the consumers who use the telephones on the customer premises.

¹⁸ AT&T correctly notes that prior to the period at issue in this proceeding, the Commission amended its definition of an OSP to delete the provision stating that an OSP is the entity that contracts with a call aggregator to provide operator services to its clientele. Ex. A-22HC ¶ 28.

¹⁹ *Id.* ¶ 16 at 12.

- 25 AT&T nevertheless asserts that such an approach “essentially equates the OSP with the local or long-distance provider, which would be the common carrier for the call. . . . Had the WUTC wanted that outcome, it would *not* have defined an OSP as the entity providing the connection *to* local or long-distance services.”²⁰ That argument, however, ignores the definition of operator services as “intrastate telecommunications service provided to a call aggregator location that *includes as a component* any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call.”²¹ The Commission rules thus expressly contemplate that the OSP and the local or toll service provider may be one and the same.²² Neither logic nor the Commission rule precludes the same entity from providing local and long-distance services as well as the connection between those services and a call aggregator location.
- 26 AT&T similarly maintains that an OSP cannot be the company that bills the consumer because the Commission “repeatedly recognized that the OSP may very well be separate from the entity that billed the call.”²³ AT&T claims that rule provisions requiring OSPs to provide call detail to the billing company would be unnecessary and nonsensical if the OSP were the company that bills for the services. AT&T misunderstands our rules in this regard.
- 27 The Commission rules recognize that the OSP may not directly bill consumers largely because in 1991 when the Commission first promulgated the rule, the LECs billed their customers not just for the LECs’ services but for toll and related services that other carriers provided to those same consumers. Even after the LECs discontinued billing on behalf of other carriers, some companies have continued to use a billing agent to bill consumers in the companies’ names, rather than undertake that responsibility themselves. The Commission rules were designed to ensure that any OSP that used a LEC or other billing agent provide sufficient detail to enable accurate billing. Whether an entity bills consumers directly or through another company, however, the entity that actually charges consumers for the services provided is the

²⁰ *Id.* ¶ 26 (emphasis in original).

²¹ WAC 480-120-021 (1991) (emphasis added).

²² Indeed, as discussed below, the undisputed record evidence demonstrates that the toll service provider for the collect calls at issue in this proceeding was also the OSP.

²³ Ex. A-22HC ¶ 46 at 28.

OSP, regardless of which company collects or transmits the call detail for billing purposes.

28 We conclude under RCW 80.36.520 and the rules promulgated pursuant to that statute that an OSP is the entity with the direct business relationship with the consumers who use the operator services, not necessarily the company that owns the facilities used to provision that service.

2. The Undisputed Record Evidence Demonstrates that AT&T Was the OSP for the Intrastate Operator-Assisted Toll Calls AT&T Carried.

29 We determine which entity is the OSP by looking at indicia of a direct business relationship with the consumers using the operator services. Such indicia include evidence that the company holds itself out to consumers as the service provider, such as through “providing the face to the [consumer] in branding the calls, branding the billing, [and] taking the responsibility for those elements being pulled together to deliver [operator] service to that [consumer].”²⁴

30 The parties in their prior submissions focused on which company owned and maintained the automated operator services platform, rather than on the extent to which AT&T or T-Netix had any direct business relationship with the consumers who used the operator services at issue in this proceeding. Accordingly, the Commission reopened the record and issued Bench Requests numbers 7-15 to obtain additional evidence. The information the parties provided in response to those requests and in reply to other parties’ responses, in conjunction with evidence previously admitted into the record, provides sufficient undisputed facts to determine whether AT&T or T-Netix was an OSP in conjunction with the collect calls from the Correctional Facilities during the time period at issue in this proceeding.

31 As an initial matter, AT&T objects to these Bench Requests “to the extent that they are addressed to matters other than identifying which party actually connected the prison collect calls received by the Complainants at issue in this proceeding to local or long distance providers.”²⁵ AT&T “suggests that deviating from the express OSP

²⁴ Ex. A-24HC at 173, lines 5-8.

²⁵ AT&T’s Responses to October 6, 2010 Bench Requests at 2; *accord* AT&T’s Responses to the November 30, 2010 Bench Requests.

definition raises concerns regarding due process, fundamental fairness, prior notice, improper jurisdiction, and other constitutional and legal issues.”²⁶

32 We overrule AT&T’s objections. As explained above, the Commission rejects the view that WAC 480-120-021 ever defined an OSP on the basis of which entity owns or maintains the physical connection to the local or long-distance provider. The Bench Requests address the factual issues at the heart of the appropriate inquiry required in this proceeding, and we find no deviation from the express definition of “OSP” or any legitimate legal concerns in obtaining the information we requested. We therefore admit into the record the responses to Bench Requests Nos. 7-15 and the responses to those Bench Request responses.²⁷

33 The Bench Request responses largely confirm the evidence that was previously in the record. T-Netix provided copies of Complainants’ bills, and those bills demonstrate that Verizon and Qwest billed Complainants for the operator-assisted collect calls those companies carried. The Verizon bills have a separate category for “Operator Assisted Calls,” which include charges for prison-originated collect calls. The Qwest bills identify specific calls as “collect” from a correctional institution. Neither company’s bills reflect a separate charge for operator services or expressly identify Verizon or Qwest as the provider of operator services. The applicable Commission rule, however, expressly defined “operator services” as “any intrastate telecommunications service provided to a call aggregator location that **includes as a component** any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call.”²⁸ Verizon and Qwest each included operator services as a component of its operator-assisted toll service and imposed a single charge for this service.

34 Both Verizon and Qwest, moreover, acknowledged that they provided operator services to correctional institutions when each sought (and received) a temporary waiver of the Commission rule requiring OSPs to disclose rate information as part of

²⁶ *Id.*

²⁷ As we explain below, we deny T-Netix’s motion to strike a portion of Complainants’ response to Bench Request No. 7. We also deny the motions for surreplies to Bench Request response replies, all of which are extraneous or merely repeat the parties’ prior arguments and positions.

²⁸ WAC 480-120-021 (1991 & 1999) (emphasis added).

any collect call.²⁹ This undisputed record evidence is also fully consistent with the DOC-AT&T Agreement, which states that Verizon and Qwest “shall also provide local and intraLATA telephone service and operator service to the [Verizon and Qwest] Public Telephones.”³⁰

- 35 Based on the undisputed record evidence, we find that Verizon and Qwest provided operator services as a component of the intrastate toll telecommunications services they provided from the public telephones located at the Correctional Facilities between June 20, 1996, and December 31, 2000. These companies, however, were not “OSPs” or required to make rate quotes available under our rules in effect during the relevant time period because they either were excluded from the definition of “OSP” or received temporary waivers of this OSP requirement.
- 36 Verizon and Qwest, however, were not the only operator-assisted toll providers carrying collect calls from the Correctional Facilities during that time. In response to Bench Request No. 7, Complainants provided excerpts of two AT&T bills that include call detail for “Operator Handled – Domestic” collect calls to a Seattle consumer from the correctional facilities in Gig Harbor and Spokane in early 2000. These bills, like the Verizon and Qwest bills, show that AT&T billed consumers for operator services as a component of the intrastate collect toll calls it carried from the Correctional Facilities.³¹ AT&T concedes as much in response to Bench Request No. 13, stating “with respect to operator-assisted collect calls placed from the four correctional institutions at issue in this proceeding, for the period between June 20, 1996 and December 31, 2000, AT&T provided operator-assisted (‘0+’) interLATA, intrastate service.” AT&T also does not dispute that the automated operator

²⁹ Exs. A-13 through A-15.

³⁰ Ex. A-8 § 4.A & C.

³¹ Indeed, the AT&T bill notes, “An Operator Service Charge will apply when the customer has the capability of dialing the called number, but elects to have the operator dial the called number.” The tariff excerpts AT&T provided in response to Bench Request No. 13 confirm that AT&T bills consumers a single charge for all toll calls that include operator assistance. AT&T, like Verizon and Qwest, thus included charges for operator services in its rates for operator assisted collect calls from inmates at the Correctional Facilities because the calling party did not have the capability to dial the called number.

assistance platform in place at the correctional facilities branded the operator-assisted calls AT&T carried as AT&T calls.³²

37 T-Netix moved to strike or exclude the AT&T bill excerpts Complainants provided. T-Netix contends that these are bills to a third party, not to either of the Complainants, and thus the bill excerpts are untimely, irrelevant, and an improper attempt to reopen the record and expand the scope of this case to include additional parties.³³ Complainants respond that the Commission reopened the record and that this information is responsive to Bench Request No. 7.

38 We deny T-Netix's motion to strike or exclude these bill excerpts.³⁴ We agree with Complainants that the Commission reopened the record for receipt of additional evidence, and this document is responsive to Bench Request No. 7. Nor do we find that bills to consumers other than the Complainants are irrelevant or beyond the scope of our jurisdiction pursuant to the Superior Court's referral. The Court asked the Commission to determine "whether AT&T or T-Netix were OSPs under the contracts at issue," which is a broader question than whether either company provided operator services to the Complainants. Indeed, we make no findings on the latter issue, leaving that determination to the Superior Court.³⁵ Our charge is to determine whether AT&T or T-Netix was an OSP for collect calls placed during the relevant

³² Ex. T-25 ¶ 29.

³³ AT&T seeks leave to make similar arguments in a Reply to Complainants' Response to T-Netix's Motion to Strike. The Commission's procedural rules, however, do not authorize replies to evidentiary motions or even contemplate such a reply from a party who is not the original moving party. AT&T could have filed its own motion to strike or joined T-Netix's motion. AT&T did neither. We deny AT&T's motion for leave to file its proffered reply.

³⁴ We also deny T-Netix's and AT&T's motions for leave to reply to Complainants' response to this motion. The proffered replies are largely repetitive of the arguments both parties have made in prior filings and provide no assistance to the Commission in rendering a decision on the merits of that motion. In addition, AT&T's proffered reply raises issues that AT&T should have raised in its response to Complainants' response to Bench Request number 7. Accordingly, we have not considered either proposed reply.

³⁵ The parties dispute whether Ms. Herival accepted an interLATA collect call in Seattle from the Airway Heights correctional facility near Spokane, with each side providing declarations in support of its position. We make no finding on this issue, both because it is a contested factual issue that cannot be resolved through summary determination and because the Superior Court is the appropriate forum for resolving such issues.

time period from the Correctional Facilities. Bills to any consumers who accepted those calls are relevant to that inquiry.

39 We similarly disagree with AT&T's contention that our consideration of billing information "raises concerns about due process, fundamental fairness, inadequate notice, and the lack of opportunity to be fully heard."³⁶ T-Netix first asserted that an OSP is the company that interfaces with the consumer of operator services – including billing for those services – and AT&T fully responded to that position.³⁷ AT&T also had the opportunity to respond to Bench Request Nos. 7 and 13 and to reply to other parties' responses. No party, including AT&T, questions the accuracy of the bill excerpts the Complainants provided, and AT&T provided the response to Bench Request No. 13. AT&T's interpretation of the rule governing OSPs differs from that of the Commission, but that difference does not constrain us from making findings on undisputed facts pursuant to the correct interpretation.

40 AT&T also argues that Verizon and Qwest had the express responsibility under the DOC-AT&T Agreement to provide operator services from the public telephones they provided, while the Agreement imposes no such duty on AT&T. As discussed above, however, the business relationship with the consumer, not a contract between a service provider and the call aggregator, determines whether a company is an OSP under Commission rules. Even to the extent that such a contract can be one indication of such a relationship, the entire DOC-AT&T Agreement is not included in the record. The Agreement expressly incorporates the DOC's request for proposal for a telephone system and AT&T's responsive proposal,³⁸ but AT&T failed to provide those documents.³⁹ We cannot accept AT&T's argument that the Agreement does not obligate AT&T to provide operator services when the entire Agreement is not before us – particularly when an amendment to the Agreement contemplates that AT&T would be responsible for providing operator services under certain circumstances.⁴⁰

³⁶ AT&T's Response to Bench Request No. 13.

³⁷ Ex. A-22HC ¶¶ 16-17, 26-27 & 44-46.

³⁸ Ex. A-8 §§ 1 & 24.

³⁹ AT&T stated in response to Bench Request No. 11 that "AT&T has not located these documents in its possession, custody, or control."

⁴⁰ Ex. A-8, Amendment No.2, Attachment B ("In the event AT&T is unable to provide [Inmate Calling Service (ICS)] as of the effective date of this Agreement, then AT&T will provide its

41 We further observe that AT&T's interpretation of the Agreement conflicts with the undisputed record evidence. The bills from AT&T, Verizon, and Qwest, as well as AT&T's tariff provisions, consistently include operator services as a component of the intrastate service provided at the Correctional Facilities and billed in a single charge per call for "operator-assisted" or "operator handled" toll service. There is no evidence in the record that any company imposed a charge solely for operator services, either to a consumer or to the toll service provider, despite the Commission's request for such information.⁴¹ AT&T thus cannot reasonably contend that Verizon and Qwest not only provided and billed for operator services as part of the toll service they provided consumers, but those companies provided the operator services – without compensation or attribution – used in connection with AT&T's operator-assisted toll service. AT&T, moreover, offers no explanation for why it would charge consumers for "operator handled" toll service if AT&T was not also providing operator service as a component of those toll services. AT&T's position simply is not credible.

42 Finally, AT&T maintains that T-Netix, not AT&T, had the direct contact with the consumers of the operator services through the facilities those consumers physically used to connect to AT&T's toll service. This is the case in all telecommunications resale circumstances. The company that provides the actual service has direct physical contact with the subscribers, but the reseller is the company the consumer identifies as the service provider. AT&T identified itself as the service provider through its branding of, and bills for, the operator-assisted collect calls. There is no evidence that any consumers knew or had reason to know that T-Netix was involved in those calls. AT&T, not T-Netix, had the direct business relationship with those consumers.

43 Based on the undisputed record evidence, we find that AT&T provided operator services as a component of the operator-assisted intrastate toll telecommunications services it provided from the public telephones located at the Correctional Facilities

standard live operator services to connect the inmate's call to the called party until it is able to provide ICS." AT&T responded to Bench Request No. 12 that to the best of AT&T's knowledge, the company did not provide its standard live operator services to any of the Correctional Facilities.

⁴¹ See Bench Request No. 7.

during the time period at issue in this proceeding. AT&T, therefore, was the OSP for these calls.

- 44 There is no evidence in the record, however, that T-Netix billed consumers for operator services or operator-assisted calls, was identified to consumers as the provider of those services, or otherwise had any direct business relationship with the consumers of the collect calls at issue in this proceeding. To the contrary, T-Netix asserts that it had no such relationships,⁴² and no party offered contradictory evidence. Accordingly, we agree with the conclusion in Order 23 that T-Netix was not the OSP for these calls.⁴³

3. AT&T Was Not Exempt from the Definition of “OSP.”

- 45 AT&T claims that it could not have been an OSP for any of the collect calls at issue between 1997 and 1999 because AT&T was registered to provide local exchange services and the version of WAC 480-120-021 in effect at that time expressly excluded LECs from the definition of OSPs.⁴⁴ We disagree.
- 46 Order 23 concluded that the LEC exemption from the OSP definition in the 1991 rule does not apply to AT&T, a carrier that was registered as both an interexchange carrier⁴⁵ and a LEC beginning in 1997,⁴⁶ because AT&T was not acting as a LEC in connection with the collect calls at issue. The order observes that in the rule adoption order, the Commission stated that the reason for the LEC exemption in WAC 480-120-021 was that “[c]onsumers often expect that they are using their LEC when they use a pay phone; requirements that apply to [a] non-LEC compan[y] to inform the

⁴² T-Netix Responses to Bench Request Nos. 7 & 14.

⁴³ This conclusion, however, is based on the record before the Commission and should not be interpreted to preclude a finding in the Superior Court that T-Netix was an OSP if evidence is produced in the judicial proceeding sufficient to demonstrate that T-Netix had a direct business relationship with any consumers who accepted collect operator-assisted calls from any of the Correctional Facilities during the relevant time period.

⁴⁴ AT&T’s argument is limited to this time period because AT&T was not registered as a LEC prior to 1997, and the Commission amended the rule in 1999 to remove the LEC exemption.

⁴⁵ See AT&T’s Response to Bench Request No. 2 at 1.

⁴⁶ *Id.* at 2.

consumer that it is not the LEC are reasonable.”⁴⁷ Order 23 concluded, “AT&T was not acting as a LEC in the correctional facilities in question and the consumers would, therefore, have no reason to believe that they were using AT&T’s services absent disclosure.”⁴⁸

47 AT&T seeks Commission review of this determination. AT&T contends that the rule expressly states that LECs are excluded from the definition of “OSP,” and AT&T was registered as a LEC. The rule does not state that a LEC is not an OSP only if the LEC is acting as a LEC, and serious due process concerns result, according to AT&T, if the Commission now interprets the rule to include additional conditions that are not part of its plain language.⁴⁹

48 AT&T also observes that in addition to the justification quoted in Order 23, the Commission explained when it adopted the rule in 1991 that “[u]nlike LECs, [OSPs] can be seen as entering and [exiting] markets at will.” AT&T argues that the Commission recognized that OSPs were less stable than LECs and thus required greater regulation. AT&T maintains that if an applicant for registration as a telecommunications company “has sufficient financial resources and stability to qualify as a LEC, then the justification for giving the exemption is achieved, regardless of what kind of traffic the applicant might be handling at any particular time.”⁵⁰

49 We affirm Order 23 on this issue. As discussed above, both the legislature’s and the Commission’s concern with OSPs is to ensure that consumers know the identity of the company providing the service they are using and the rates they are being charged. The 1991 rule adoption order demonstrates that the Commission initially exempted LECs from the definition of OSPs primarily because consumers either assumed or were already aware that the LEC serving that area provided the operator services.⁵¹ The intent of the rule, therefore, was to exclude LECs only to the extent

⁴⁷ *Id.* at 107.

⁴⁸ Order 23 ¶ 121.

⁴⁹ AT&T Petition for Administrative Review ¶¶ 39-42.

⁵⁰ *Id.* ¶ 43.

⁵¹ The Commission also expressed the concern that OSP rates are often higher than the rates LECs charged for operator services. We observe that the rates reflected in AT&T’s bills for

that they were providing the local exchange service as well as the operator service for the calls placed from the call aggregator location.

50 AT&T's arguments to the contrary ignore the historic context of the 1991 rule. Only incumbent LECs (ILECs) were LECs when the exemption was included in the rule. Indeed, the Commission at that time interpreted Washington statutes to grant exclusive service territories to ILECs and refused to authorize any other company to provide competing local exchange service.⁵² There was no need to state in the rule in 1991 that LECs were not OSPs if they also provided the local exchange service used in connection with operator-assisted calls because those were the only circumstances that existed when the rule was enacted. Not surprisingly, the Commission revised the rule to remove the LEC exemption shortly after competitive LECs (CLECs) such as AT&T began entering the local exchange market. CLECs, too, could enter and exit markets at will and as competitively classified companies were subject to reduced regulation of their service rates, terms, and conditions.

51 Nor do we give any credence to AT&T's claim that interpreting our rule as we have would deprive AT&T of settled expectations in its status as a LEC in violation of due process. AT&T presented no evidence that it was aware of the exemption while it was in effect or that AT&T relied in any way on its status as a LEC to fulfill its obligations with respect to collect calls from the Correctional Facilities. Indeed, AT&T entered into the initial contract with the DOC long before AT&T registered as a CLEC, and none of the amendments to the contract in the record reference AT&T's subsequent registration to provide local exchange services, much less indicate that registration had any impact whatsoever on AT&T's rights or responsibilities with respect to operator services.

operator-assisted toll service included in Exhibit A to Complainants' response to Bench Request No. 7 are significantly higher – in some cases several times higher – than the rates in the Verizon and Qwest bills for comparable calls.

⁵² See *In re Consolidated Cases Concerning the Registration of Electric Lightwave, Inc., and Registration and Classification of Digital Direct of Seattle, Inc.*, 123 Wn.2d 530, 869 P.2d 1045 (1994). Congress rendered the issue moot in the Telecommunications Act of 1996 when it opened all local exchange markets to competition. See 47 U.S.C. §§ 251, *et seq.*

52 Because AT&T was not the provider of local exchange services at any of the Correctional Facilities, AT&T cannot claim the LEC exemption from the Commission rules governing OSPs.

B. AT&T Violated Commission Rules Requiring OSPs to Make Rate Quotes Available to Consumers of Operator-Assisted Collect Calls.

53 The Superior Court's second question to the Commission is whether any Commission rules were violated during the relevant time frame if AT&T or T-Netix was an OSP.⁵³ Order 23 did not reach that question, concluding that the Administrative Law Judge had "yet to hear evidence on whether AT&T, as the OSP, violated our disclosure regulations."⁵⁴ We disagree with this aspect of Order 23 and find sufficient undisputed evidence in the record to enable us to respond to the Court's question at this time.

54 The Commission rules in effect between June 20, 1996, and December 30, 2000, required an OSP to make available rate information to consumers of operator-assisted calls. Specifically, the rule in effect until 1999 stated that during each such call,

The [OSP] shall immediately, upon request and at no charge to the consumer, disclose to the consumer:

- (A) A quote of the rates or charges for the call, including any surcharge;
- (B) The method by which the rates or charges will be collected; and
- (C) The methods by which complaints about the rates, charges, or collection practices will be resolved.⁵⁵

The revised rule that became effective in 1999 was even more specific:

⁵³ In the context of this proceeding and the case before the Court, we construe this question as asking whether either company violated the Commission rules requiring OSPs to disclose rate quotes to consumers of operator-assisted calls.

⁵⁴ Order 23 ¶ 129.

⁵⁵ WAC 480-120-141(5)(a)(iv) (1991).

Verbal disclosure of rates. Before an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line. This message must precede any further verbal information advising the consumer how to complete the call, such as to enter the consumer's calling card number. This rule applies to all calls from pay phones or other aggregator locations, including prison phones, and store-and-forward pay phones or "smart" telephones. After hearing an OSP's message, a consumer may waive their rights to obtain specific rate quotes for the call they wish to make by choosing not to press the key specified in the OSP's message to receive such information or by hanging up. The rate quoted for the call must include any applicable surcharge. Charges to the user must not exceed the quoted rate.⁵⁶

- 55 All toll providers, including AT&T, used the P-III Premise software platform to provide automated operator services in conjunction with the operator-assisted toll services they provided at the Correctional Facilities between June 20, 1996, and December 31, 2000.⁵⁷ Indeed, the DOC-AT&T contract required the use of such an automated operator services platform,⁵⁸ and AT&T confirmed that it did not provide its standard live operator services that the contract required if an automated platform was not in place.⁵⁹ No party contests these facts.
- 56 Similarly, no party disputes that the P-III Premise software platform did not make rate information available to consumers. The record includes a detailed call flow of an inmate-initiated operator-assisted collect call from the Correctional Facilities, and at no time during that call flow is there any indication that either the inmate or the party receiving the call was notified of the ability to obtain a quote of the rates or charges for that call.⁶⁰ Correspondence between AT&T and T-Netix confirms that as of

⁵⁶ WAC 480-120-141(2)(b) (1999).

⁵⁷ *E.g.*, AT&T Response to Bench Request No. 12 and record citations therein.

⁵⁸ Ex. A-8, Amendment No. 2, Attachment B.

⁵⁹ AT&T Response to Bench Request No. 12.

⁶⁰ Ex. A-20HC ¶ 14; Ex. A-19HC ¶ 18.

August 2000, T-Netix had not implemented the platform's capability to make rate quote information available to consumers.⁶¹ As late as September 2000, Verizon and Qwest sought and received temporary waivers of the Commission rule requiring OSPs to provide rate quotes from automated operator services platforms, specifically including the platforms in use at state correctional facilities. Verizon and Qwest explained that the waivers were necessary because the companies were "still in the process of developing the technology to allow the receiving party but not the originating party access to verbal rate disclosure."⁶²

57 The Commission orders granting Qwest and Verizon waivers of WAC 480-120-141 make abundantly clear the Commission's position that an OSP violates Commission rules when it fails to provide rate quotes to consumers of operator-assisted collect calls.⁶³ Indeed, the Commission in those orders initiated investigations into Verizon's and Qwest's compliance with that requirement, and both companies agreed to pay penalties for the rule violations uncovered as a result of those investigations.⁶⁴

58 We observe that the revised rule governing rate disclosures promulgated in 1999 uses different language than the prior rule. The 1999 rule required the OSP not just to provide a rate quote upon request but to "verbally advise the consumer how to receive a rate quote." The 1991 rule mandated only that the OSP provide rate quotes "upon request and at no charge to the consumer." This discrepancy is a distinction without a difference under the circumstances of this case. The P-III Premise software platform in use at the Correctional Facilities did not advise the consumer how to receive a rate quote, which is a violation of WAC 480-120-141(2)(b) (1999). That platform, however, also was not able to receive a consumer request and provide a rate quote, which violated both the 1999 rule and WAC 480-120-141(5)(a)(iv) (1991). Operator

⁶¹ Ex. C-4C.

⁶² *In re Request for a Waiver of Certain Provisions of WAC 480-120-141(2)(b)*, Docket UT-990043, Qwest Amendment to Petition for Waiver at 3, lines 11-12 (September 20, 2000); *accord id.*, Order Granting Full and Partial Temporary Waiver of WAC 480-120-141(2)(b) at 2 ("The waiver is necessary in order for the Company to deploy the technology in the correctional facilities throughout the state.") (included in the record as Ex. A-14).

⁶³ Exs. A-13 through A-15.

⁶⁴ *WUTC v. Qwest*, Docket UT-990043, Commission Order Accepting Settlement Agreement; *WUTC v. Verizon*, Docket UT-990401, Commission Order Accepting Settlement Agreement. Neither order is in the record in this proceeding, but the Commission takes administrative notice of these orders.

services provided using the P-III Premise software platform, therefore, failed to comply with Commission rules both before and after 1999.

59 In sum, Commission rules have consistently required OSPs to make rate quotes available to consumers of operator-assisted calls. AT&T used the P-III Premise software platform to provide operator services as a component of the intrastate toll services AT&T provided to the Correctional Facilities between June 20, 1996, and December 31, 2000. During that time period, the platform did not provide consumers of collect calls the ability to request or receive a rate quote for those calls. AT&T, therefore, violated WAC 480-120-141 each time AT&T used the P-III Premise software platform in conjunction with an operator-assisted collect call that AT&T carried.

60 Our conclusion, however, is necessarily a broad one. We have made no attempt to quantify the number of AT&T's violations or to identify any affected calls or consumers. Such a factual inquiry is beyond the scope of the Superior Court's referral. The court, not the Commission, is the appropriate forum for determining the extent of AT&T's violations and the resulting harm, if any, to Complainants or other consumers. Accordingly, we leave those determinations to the Superior Court.

FINDINGS OF FACT

61 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed discussion:

- 62 (1) In 1992, AT&T Communications of the Pacific Northwest, Inc., entered into a contract with the State of Washington Department of Corrections to provide telecommunication services and equipment for various inmate correctional institutions and work release facilities.
- 63 (2) The original contract was amended in 1995 to require AT&T to arrange for the installation of call control features for intraLATA, interLATA, and international calls through its subcontractor, Tele-Matic Corporation.

- 64 (3) In 1995, the Commission recognized the acquisition of Tele-Matic Corporation by T-Netix, Inc.
- 65 (4) The P-III Premise software platform T-Netix installed at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities provided call control services including automated operator services.
- 66 (5) AT&T provided operator-assisted toll services to consumers of collect calls originated by inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.
- 67 (6) AT&T had the direct business relationship with the consumers of operator-assisted collect calls AT&T carried that were originated by inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.
- 68 (7) AT&T was not providing local exchange service or otherwise acting as a local exchange company in connection with any of the operator-assisted calls originated by inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.
- 69 (8) All toll providers, including AT&T, used the P-III Premise software platform to provide automated operator services in conjunction with the operator-assisted toll services they provided at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.

- 70 (9) During the period from June 20, 1996 through December 31, 2000, the P-III Premise software platform did not allow the consumer receiving an operator-assisted collect call from an inmate at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities to request or obtain the rates applicable to the call, nor did that platform verbally advise the consumer how to receive a rate quote.

CONCLUSIONS OF LAW

71 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 72 (1) Summary judgment is properly entered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In resolving a motion for summary judgment, a court must consider all the facts submitted by the parties and make all reasonable inferences from the facts in the light most favorable to the nonmoving party.
- 73 (2) With regard to AT&T's and T-Netix's Amended Motions for Summary Determination, none of the nonmoving parties raised questions of material fact as to whether AT&T or T-Netix were operator services providers for the operator-assisted collect calls originated by inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.
- 74 (3) No party raised questions of material fact as to whether there were violations of Commission rules governing disclosure of rate quotes to consumers of operator-assisted collect calls originated by inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.

- 75 (4) An operator services provider under the Commission rules in effect between June 20, 1996, and December 31, 2000, was an entity that provided operator services to consumers. More specifically, the operator services provider was the entity that had the direct business relationship with the consumer who used and/or paid for the operator services.
- 76 (5) AT&T was the operator services provider for all collect calls from inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, or Clallam Bay correctional facilities for which AT&T provided operator-assisted toll service between June 20, 1996, and December 31, 2000.
- 77 (6) AT&T was not entitled to the exclusion of local exchange companies from the definition of an operator services provider under WAC 480-120-021 (1991) because AT&T did not provide local exchange services in conjunction with any of the collect calls from inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, and Clallam Bay correctional facilities between June 20, 1996, and December 31, 2000.
- 78 (7) AT&T violated WAC 480-120-141(5)(a)(iv) (1991) for each collect call from an inmate at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, or Clallam Bay correctional facilities for which AT&T used the P-III Premise software platform to provide automated operator services in conjunction with the operator-assisted toll service AT&T provided from June 20, 1996, until the rule was amended in 1999 by failing to allow the consumers to request or obtain the rates or charges for the call.
- 79 (8) AT&T violated WAC 480-120-141(2)(b) (1999) for each collect call from an inmate at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, or Clallam Bay correctional facilities for which AT&T used the P-III Premise software platform to provide automated operator services in conjunction with the operator-assisted toll service AT&T provided from the effective date of the rule until December 31, 2000, by failing to verbally advise the consumers how

to receive a rate quote or allow the consumers to request or obtain the rates or charges for the call.

ORDER

THE COMMISSION ORDERS:

- 80 (1) The Commission denies AT&T Communications of the Pacific Northwest, Inc.'s Amended Motion for Summary Determination.
- 81 (2) The Commission grants T-Netix, Inc.'s Amended Motion for Summary Determination.
- 82 (3) The Commission grants or denies all other motions filed since entry of Order 23 as stated in this Order or in Order 24. All motions not expressly granted in this Order are denied.
- 83 (4) The Commission responds to the Superior Court's first question as follows: AT&T was the operator services provider for all collect calls from inmates at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, or Clallam Bay correctional facilities for which AT&T provided operator-assisted toll service between June 20, 1996, and December 31, 2000.
- 84 (5) The Commission responds to the Superior Court's second question as follows: AT&T violated WAC 480-120-141(5)(a)(iv) (1991) or WAC 480-120-141(2)(b) (1999) for each collect call from an inmate at the Washington State Reformatory (a/k/a Monroe Correctional Complex), Airway Heights, McNeil Island Penitentiary, or Clallam Bay correctional facilities for which AT&T used the P-III Premise software platform to provide automated operator services in conjunction with the operator-assisted toll service AT&T provided by failing to verbally advise the consumer how to receive a rate quote and/or failing to allow the consumers to request or obtain the rates or charges for the call.

- 85 (6) The Commission refers further factual inquiry and the ultimate disposition of Complainants' claims to the Superior Court. Because Complainants initiated this proceeding in response to the Superior Court's referral, we direct them to file this Order with the Court and to serve the Commission with a copy of that filing.
- 86 (7) This docket is closed.

Dated at Olympia, Washington, and effective March 31, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Appendix A

Component	Zone I	Zone II
Opaque Envelope		
Minimum Nominal R Value		
Roof/Ceilings	R-30	R-30
Exterior Walls	R-11	R-11
Floors over		
Unconditioned Space	R-11	R-11
Below Grade Walls ¹	R-4	R-5
Slab on Grade Floors ²	((R-8)) R-7	R-10
Glazing		
Type	Double	Double
Maximum Total Area (Percent of Gross Exterior Wall)	32%	22%



shall be water-resistant material manufactured for this

**WSR 89-04-044
ADOPTED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Order R-293, Docket No. L-88-1882-R—Filed January 31, 1989]

In the matter of amending WAC 480-120-021, 480-120-041 and 480-120-106; and adopting WAC 480-120-141 relating to alternate operator services.

This action is taken pursuant to Notice No. WSR 88-23-043 filed with the code reviser on November 10, 1988. The rule change hereinafter adopted shall take effect pursuant to RCW 34.04.040(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and chapter 91, Laws of 1988, and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 88-23-043 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, January 18, 1989, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to December 23, 1988, and orally at 9:00 a.m., Wednesday, January 18, 1989, in the commission's hearing room above noted. At the January 18, 1989, meeting the commission considered the rule change proposal. Written

comments were received from American Operator Services, Inc., d/b/a National Telephone Services, Inc., AT&T Communications of the Pacific Northwest, Inc. (AT&T), GTE Northwest, Inc. (GTE), International Telecharge, Inc. (ITI), Military Communications Center, Inc., Payline Systems, Inc., US West Communications, and Whidbey Island Telephone Company. Oral comments were presented by Mr. Robert Snyder on behalf of Whidbey Island Telephone Company, Ms. Gretchen Hoover for International Telecharge, Inc., Mr. Carrington Phillip for the Public Counsel Division of the Office of the Attorney General, Mr. Dean Randall for GTE Northwest, Mr. Laddie Taylor for AT&T, Mr. Robert Saucier for International Pacific, Mr. Mike Moran for US West Communications, Mr. Jamie Bryant for National Telephone Services, Inc., and Mr. Roger Pease for Payline Systems, Inc.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-120-021, 480-120-041 and 480-120-106 should be amended; and WAC 480-120-141 should be adopted to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-120-021, 480-120-041 and 480-120-106 as amended; and WAC 480-120-141 as adopted will assure appropriate disclosure to consumers of the rates, fees, and charges for services provided by alternative operator service companies, as contemplated by chapter 91, Laws of 1988.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-120-021, 480-120-041, 480-120-106 and 480-120-141 as set forth in Appendix A, be amended and adopted as rules of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rules, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

DATED at Olympia, Washington, this 31st day of January, 1989.

Washington Utilities and Transportation Commission
Sharon L. Nelson, Chairman
Richard D. Casad, Commissioner
A. J. Pardini, Commissioner

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-250, Cause No. L-85-58, filed 5/12/86, effective 7/31/86)

WAC 480-120-021 **GLOSSARY**. Alternate operator services company - any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from places including but not limited to, hotels, motels, hospitals, campuses, and customer-owned pay telephones. Alternate operator services companies are those with which a hotel, motel, hospital, campus, or customer-owned pay

telephone, etc., contracts to provide operator services to its clientele.

Applicant - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.

Automatic dialing-announcing device - any automatic terminal equipment which incorporates the following features:

- (1)(a) Storage capability of numbers to be called; or
- (b) A random or sequential number generator that produces numbers to be called; and
- (c) An ability to dial a call; and
- (2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.

Base rate area or primary rate area - the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.

Central office - a switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission - the Washington utilities and transportation commission.

Competitive telecommunications company - a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service - a service which is classified as such by the commission pursuant to RCW 80.36.330.

Customer - user not classified as a subscriber.

Exchange - a unit established by a utility for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area - the specific area served by, or purported to be served by an exchange.

Farmer line - outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station - a telephone instrument installed and in use on a farmer line.

Interexchange telecommunications company - a telecommunications company, or division thereof, that does not provide basic local service.

Outside plant - the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices.

Station - a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

Subscriber - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.

Toll station - a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.

Utility - any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order R-142 Cause No. U-85-56, filed 11. 7 85)

WAC 480-120-041 AVAILABILITY OF INFORMATION. Each utility shall make known to applicants for service and to its subscribers such information as is needed to assist in obtaining adequate and efficient service.

Information relative to the rates, and rules and regulations (filed tariffs and/or price lists) of the telecommunications company shall be made available to the public upon request and at any of its listed business offices. In addition, each telecommunications company shall publish in its directory a consumer information guide which details the rights and responsibilities of a utility customer. Such guide shall describe processes for establishing credit and determining the need and amount for deposits, the procedure whereby a bill becomes delinquent, the steps which must be taken by the utility to disconnect service, and the right of the customer to pursue any dispute with the utility first by procedures within the utility and then to the commission by formal or informal complaint.

A copy of these rules (chapter 480-120 WAC) shall also be kept on file in each of the utility's listed business offices and made available to its subscribers or their representatives upon request.

AMENDATORY SECTION (Amending Order R-233, Cause No. U-85-35, filed 5. 23, 85)

WAC 480-120-106 FORM OF BILLS. Bills to subscribers shall be rendered regularly and clearly list all charges. Each bill shall indicate the date it becomes delinquent and notice of means by which a subscriber can contact the nearest business office of the utility.

The portion of a bill rendered by the local exchange company on behalf of itself and other companies shall clearly specify the provider of the service or its authorized billing agent, and a toll free telephone number the consumer can call to question that portion of the bill and, if appropriate, receive credit. Consumers requesting an address where they can write to question that portion of the bill shall be provided that information.

A local exchange company shall not provide billing and collection services for telecommunications service to any company not properly registered to provide service within the state of Washington, except to a billing agent that certifies to the local exchange carrier that it will submit charges only on behalf of properly registered companies.

All bills for telephone service shall identify and set out separately any access or other charges imposed by order of or at the direction of the Federal Communications Commission. In addition, all bills for telephone service within jurisdictions where taxes are applicable will clearly delineate the amount, or the percentage rate at which said tax is computed, which represents municipal occupation, business and excise taxes that have been levied by a municipality against said utility, the effect of which is passed on as a part of the charge for telephone service.

Subscribers requesting by telephone, letter or office visit an itemized statement of all charges shall be furnished same. An itemized statement is meant to include separately, the total for exchange service, mileage charges, taxes, credits, miscellaneous or special services and toll charges, the latter showing at least date, place called and charge for each call. In itemizing the charges of information providers, the utility shall furnish the name, address, telephone number and toll free number, if any, of such providers. Any additional itemization shall be at a filed tariff charge.

Upon a showing of good cause, a subscriber may request to be allowed to pay by a certain date which is not the normally designated payment date. Good cause shall include, but not be limited to, adjustment of the payment schedule to parallel receipt of income. A utility may be exempted from this adjustment requirement by the commission.

NEW SECTION

WAC 480-120-141 ALTERNATE OPERATOR SERVICES. All telecommunications companies providing alternate operator services shall conform to this and all other rules relating to telecommunications companies not specifically waived by order of the commission. Alternate operator services companies (AOS) are those with which a hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracts to provide operator services to its clientele.

For purposes of this section the "consumer" means the party billed for the completion of an interstate/intrastate or local call. "Customer" means the hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracting with an AOS for service.

(1) An alternate operator services company shall require, as a part of the contract with its customer, that the customer:

(a) Post on the telephone instrument in plain view of anyone using the telephone, in eight point **Stymic Bold** type, the following notice:

SERVICES ON THIS INSTRUMENT MAY BE PROVIDED AT RATES THAT ARE HIGHER THAN NORMAL. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR DIALING THROUGH THE LOCAL TELEPHONE COMPANY ARE ALSO AVAILABLE FROM THE OPERATOR

(b) Post and maintain in legible condition on or near the telephone:

(i) The name of the alternate operator services company, as registered with the commission.

(ii) Dialing directions so that a consumer may reach the AOS operator so as to receive specific rate information; and

(iii) Dialing directions to allow the consumer to dial through the local telephone company and to make it clear that the consumer has access to the other providers.

(2) The alternate operator services company shall:

(a) Identify the AOS company providing the service or its authorized billing agent at the beginning of every call, including those handled automatically; and

(b) Provide to the local exchange company such information as may be necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(3) The alternate operator services company shall assure that consumers are not billed for calls which are not completed. For billing purposes, calls shall be itemized, identified, and rated from the point of origination to the point of termination. No call shall be transferred to another carrier by an AOS which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

(4) For purposes of emergency calls, every alternate operator services company shall have the following capabilities:

(a) Automatic identification at the operator's console of the location from which the call is being made.

(b) Automatic identification at the operator's console of the correct telephone numbers of emergency service providers that serve the telephone location, including but not limited to, police, fire, ambulance, and poison control;

(c) Automatic ability at the operator's console of dialing the appropriate emergency service with a single keystroke;

(d) Ability of the operator to stay on the line with the emergency call until the emergency service is dispatched.

No charge shall be imposed on the caller from the telephone company or the alternate operator services company for the emergency call.

If the alternate operator services company does not possess these capabilities, all calls in which the caller dials zero (0) and no other digits within five seconds shall be routed directly to the local exchange company operator, or to an entity fully capable of complying with these requirements. AOS companies lacking sufficient facilities to provide such routing shall cease operations until such time as the requirements of this section are met.

(5) Consumer complaints and disputes shall be treated in accordance with WAC 480-120-101. Complaints and disputes.

(6) Charges billed to a credit card company (e.g., American Express or Visa) need not conform to the call detail requirements of this section. However, the AOS shall provide consumers with specific call detail in accordance with WAC 480-120-106 upon request.

Date of Intended Adoption: July 26, 1991.

June 17, 1991
 David H. Rodgers
 Chief Deputy
 Insurance Commissioner

AMENDATORY SECTION (Amending Order R 88-4, filed 3/25/88)

WAC 284-91-025 PLAN OF OPERATION APPROVED. Pursuant to RCW 48.41.040(4) and after public hearing, the commissioner has determined that the Plan of Operation, as set forth in WAC 281-91-027, provides a sound basis for the fair, reasonable and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. It is ~~((hereby))~~ approved; PROVIDED HOWEVER, That if the plan of operation of the pool or any policy issued by the pool contains any condition or provision that does not conform to the requirements of chapter 48.41 RCW or this chapter, the plan of operation or any policy issued by the pool shall be construed and applied in accordance with such conditions and provisions as would have applied had the plan of operation or policy issued by the pool been in full compliance with chapter 48.41 RCW and this chapter.

NEW SECTION

WAC 284-91-050 INVOLUNTARY TERMINATIONS FOR OTHER THAN NONPAYMENT OF PREMIUMS. (1) For purposes of RCW 48.41.100, coverage under prior health insurance shall be deemed to have been involuntarily terminated for a reason other than nonpayment of premium, except where the insured person voluntarily ceased paying required premiums while otherwise eligible to continue such prior coverage. Therefore, as an example, loss of eligibility for group health insurance because of voluntary termination of employment by a person covered by an employer's group health insurance policy will not be deemed voluntary termination of the prior insurance coverage.

(2) For purposes of RCW 48.41.140(3), coverage under any prior health insurance will be deemed to have been involuntarily terminated for a reason other than nonpayment of premium, if the premium required to continue coverage under such insurance exceeds by one-third or more the premium required to cover the individual under the pool's one hundred dollar deductible plan.

WSR 91-13-077
 PERMANENT RULES
 UTILITIES AND TRANSPORTATION
 COMMISSION

[Order R-346, Docket No. TV-900716—Filed June 18, 1991, 12:02 p.m.]

In the matter of amending WAC 480-12-003 relating to motor freight carriers.

This action is taken pursuant to Notice No. WSR 91-10-081 filed with the code reviser on April 30, 1991. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and is intended administratively to implement that statute.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 91-10-081 the above matter was scheduled for consideration at 9:00 a.m.,

Wednesday, June 5, 1991, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to May 28, 1991, and orally at 9:00 a.m., Wednesday, June 5, 1991, in the commission's hearing room above noted. At the June 5, 1991, meeting the commission considered the rule change proposal. No written or oral comments were received.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-12-003 should be amended to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-12-003 will now reflect the proper reference to the rules pertaining to practice and procedure before the commission.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-12-003 as set forth in Appendix A, be amended as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 17th day of June, 1991.

Washington Utilities and Transportation Commission
 Sharon L. Nelson, Chairman
 Richard D. Casad, Commissioner
 A. J. Pardini, Commissioner

APPENDIX "A"

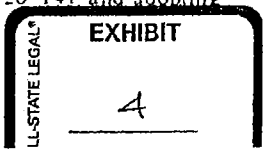
AMENDATORY SECTION (Amending Order R-24, filed 4/16/71)

WAC 480-12-003 PROCEDURE. Except as otherwise provided in this chapter, the commission's rules relating to procedure, chapter ~~((480-08))~~ 480-09 WAC shall govern the administrative practice and procedure in and before the commission in proceedings involving motor freight carriers.

WSR 91-13-078
 PERMANENT RULES
 UTILITIES AND TRANSPORTATION
 COMMISSION

[Order R-345, Docket No. UT-900726—Filed June 18, 1991, 12:05 p.m.]

In the matter of amending WAC 480-120-021, 480-120-106, 480-120-138, and 480-120-141 and adopting



WAC 480-120-143 relating to telecommunications companies.

This action is taken pursuant to Notice No. WSR 91-03-122 filed with the code reviser on January 23, 1991. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and chapter 80.36 RCW and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 91-03-122 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, May 1, 1991, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to March 6, 1991, with reply comments due on March 27, 1991, and orally at 9:00 a.m., Wednesday, May 1, 1991, in the commission's hearing room above noted. At the May 1, 1991, meeting, on the record, the commission continued the matter to the May 8, 1991, weekly meeting at the same time and place.

At the May 8, 1991, meeting, the commission considered the rule change proposal, and took oral comment. Decisions regarding adoption of the amendments were made, and the matter was continued on the record to the May 15, 1991, weekly meeting for final adoption.

Written comments have been received from various persons in this docket, under the above notice and under prior notices, including: U.S. Long Distance, Bettye Horn, Joan Addington, Intellical, Inc., ITI, Eric Torrison, GTE Northwest, Inc., MCI Telecommunications Corp., U.S. West Communications, Public Counsel, International Pacific, National Technical Associates, Operator Assistance Network, Zero Plus Dialing, Inc., Northwest Payphone Association, Fone America, AT&T Communications of the Pacific Northwest, Inc., David Fluharty, United Telephone Co., Bruce Bennett, F.G. Hazeltine, M.D., Lisa Bergman, Douglas Syring, Elaine Britt, James H. Culler, Dean S. Johnson, William J. Clancy, Warren Bover, Jim Lazar, The Friedrich Group, Public Communications of America, Inc., The Park Lane Motel & R.V. Park, Norwest Marketing, James R. Redfield, Holiday Inn, Crowne Plaza-Seattle, Holiday Lodge-Wenatchee, Anacortes Inn, The Evergreen Inn-Leavenworth, Tower Inn-Richland, The Westin Hotel, Northwest Lodging, Inc., Travelers Inns, Washington State Hotel & Motel Association, The Inn at Friday Harbor, The Westwater Inn, Sheraton-Seattle, The Inn at Virginia Mason, Guenther Management Company, The Salish Lodge, Holiday Inn-Bellevue, A.M. Vendettuoli, Patricia's Enterprise, Sheraton-Tacoma,

Mt. Rainier Guest Services, Semi-ah-moo, Comfort Inn at Sea-Tac, Robin Bloomgarden, Hyatt Regency-Bellevue, Washington Independent Telephone Association, Public Communications of America, Sheraton-Spokane, Four Seasons, Integretel, Inc., Whidbey Telephone Co., Telesphere Limited, Inc., Central Telephone, CSI Pay Telephone Investors, Raymond Ruhlen, and Robert P. Dick.

Oral comments were also received from various persons in this docket, at the May 8 and May 15 meetings, as well as at meetings under prior notices in this docket. Oral comments have been received in this docket from: Dean Randall, GTE-NW; Ray Ohrme, Paytel NW; Doug Owens, Paytel NW and CSI; Mark Hargenbrite, Fone America; Bill Eagles and Jim McAllum, AT&T; Robert Snyder, Whidbey Telephone; Clyde MacIver, NW Payphone & MCI; Jim Wright, International Pacific; Arthur Butler, TRACER; Michael Dohen, Fone America; William Garling, Public Counsel; Kay Godfrey, Steven Kennedy, TRACER; Cliff Webster, Washington State Hotel & Motel Association; Tom Kent, Red Lion; David Thompson, Westin Hotels; Jack Doyle, Pacific Telecom; Mike Miran, U.S. West; Jim Lazar; James Cadu; George Vinyl, Telesphere, Inc.; Reid Preston, Telecall, Inc.; Richard Finnigan, Terry Vann, WITA; Glenn Harris, United Telephone; and Jim Ray, International Pacific.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-120-021, 480-120-106, 480-120-138, and 480-120-141 should be amended and WAC 480-120-143 should be adopted to read as set forth in Appendix A shown below and by this reference made a part hereof. These rules, as amended and adopted, establish requirements for alternative operator services companies and connection of pay telephones to the network of exchange telecommunications companies.

Some changes were made between the text of the amendments issued pursuant to Notice No. WSR 91-03-122 and the text finally adopted by the commission. Pursuant to RCW 34.05.340(3) these changes are explained as follows:

Changes from noticed draft: Definitions: The definition of operator services is changed to more closely reflect federal definitions, and to emphasize that the alternative operator services, AOS, rules apply only to operator services, as defined, WAC 480-120-021.

Commission as a sum paid to an aggregator or location owner is defined to distinguish from the WUTC. *Id.*

Location surcharge and operator service charge are defined as separate elements to distinguish them from other charges and to exclude per-call fees assessed and collected directly by aggregators. *Id.*

Person is defined for clarity. *Id.*

Local exchange telephone companies LECs, are removed from the definition of alternate operator services company, consistent with the draft initially noticed in this docket. LECs may still be considered aggregators under the terms of the rule, if their conduct meets that definition. Unlike LECs, AOS companies can be seen as entering and existing markets at will. AOS companies were the subject of specific legislative enactment. AOS

companies often charge higher rates than LECs, leading to consumer complaints. Consumers often expect that they are using their LEC when they use a pay phone; requirements that apply to non-LEC companies to inform the consumer that it is not the LEC are reasonable. Id.

Changes from noticed draft: Form of Bills: The local exchange company, LEC, must provide a copy of a billing agent's customer list to the commission only when a carrier is added to or deleted from the list in order to reduce unnecessary administrative effort. WAC 480-120-106.

Pay phone rule changes from noticed draft: Coinless pay telephones are defined to exclude in-room phones provided by hotels, hospitals, campuses and similar facilities for use of guests or residents. Jurisdictional issues were presented which are resolved by this exclusion. WAC 480-120-138(b).

For directory assistance, pay phones may charge the prevailing rate for comparable directory services. The intent is that a pay phone may, when pertinent, charge the consumer the prevailing charges for credit card use and for intraLATA or interLATA directory assistance calls. A location surcharge is not permitted on directory assistance calls. WAC 480-120-138(4).

Requirements for posting information to consumers are changed; instead of specifying in the rule the mechanics for securing rate information, the rule now allows the aggregator to post its preferred method for obtaining without-charge information regarding all charges including fees, so that the consumer will be able to be informed about the charges it will pay. This allows flexibility for an aggregator to use the method compatible with its system. Id.

A provision which would have limited charges for local calls and for access to 1-800 numbers and preferred interexchange carriers to twenty-five cents was deleted in light of federal/state jurisdictional issues; the unsettled nature of comparable provisions in federal regulation; and possible adverse economic effect. Id.

Concerns were expressed regarding fraud resulting from the use of 10XXX dialing codes to reach an interexchange carrier. Selective blocking is increasingly available from local exchange companies to allow calls to go through an operator, but to block direct-dialed calls which could be billed to the aggregator rather than the consumer. That sort of selective blocking will reduce fraudulent billing to the pay phone while allowing access to the consumer's preferred carrier. Outgoing and incoming call screening are features which provide information to operators that billing should not be made to the screened line. WAC 480-120-130(10) requires the local exchange company to provide these selective blocking and screening services upon request when the technology to provide them is available in the central office serving the requesting line. The change from the noticed draft is to describe and make specific reference to the different services. WAC 480-120-138(10). WAC 480-120-141(12) provides for allocation of risk of loss when fraud occurs despite subscription to call screening.

Local exchange company field visits to pay phone locations shall be charged pursuant to tariff when a tariff

applies. This acknowledges and restates the general rule that tariffed rates must be charged for services provided. WAC 480-120-138(18).

References to adjudications are clarified to note that a range of adjudicative process is available to deal with complaints pursuant to pertinent administrative rules and law. WAC 480-120-138(19).

Changes from noticed draft: AOS rule: Prison service waivers can be accomplished on a case-by-case basis, so no express provision is required. WAC 480-120-141.

The list of operator service customers of each AOS is to be filed. The rule is changed to acknowledge that the list is proprietary, to protect confidential information, when the AOS complies with pertinent existing rules for identifying proprietary information. WAC 480-120-141(1).

The rule is clarified to state that AOS companies are required to secure compliance with their tariff provisions, as are other public service companies. Specific procedures to reduce disputes are identified for clarity. Existing pertinent commission adjudicative procedures are identified for completeness. To aid enforcement, when the commission has found that a customer/aggregator has knowingly and repeatedly violated commission AOS rules, it is to be refused AOS service until the commission finds the customer/aggregator will comply. Withholding of compensation is also required, consistent with federal requirements, on a location-by-location basis. WAC 480-120-141(2).

The consumer may be either, or both, the person initiating a call through an AOS company or the person paying for that call. The change is made to assure the availability of pertinent information and protections to the persons who may need them. WAC 480-120-141(3).

New posting requirements may be implemented later than initially proposed for practical considerations. Current posting rules must be complied with until then, for transition purposes. It is not feasible to require different notices for locations whose presubscribed AOS carrier exceeds prevailing rates and those which do not. WAC 480-120-141(4).

Notice to consumers of rates must include notice of the existence, nature and amount of location surcharges and other fees to better inform consumers. This provision is moved from noticed subsection 10(c). Id.

Proposed provisions to limit location charges to tariffed surcharge rates and to restrict local call, 1-800 and interexchange carrier access were deleted because of likely adverse economic effect on small business and because of potential interjurisdictional issues noted above. Id.

Audible notice, or branding, is required no later than, rather than "at" the beginning of the call, to allow compliance by reasonable notices either before or after the signal to enter billing information. WAC 480-120-141(5).

The branding message must use the carrier's name as registered with the commission, although the proposal is modified to allow the commission to grant a waiver to abbreviate or omit portions of the registered name if the full term is not necessary for clear consumer identification of the service provider. Id.

The proposed requirement to use specific branding language was deleted in light of difficulties in distinguishing between intrastate and interstate calls and because carriers demonstrated varying ways to provide adequate consumer notice of the carrier's identity. *Id.*

AOS carriers must maintain adequate facilities for a blockage rate not exceeding one percent in the time consistent busy hour, rather than a given busy hour, consistent with industry standards. If the AOS carrier provides facilities for access to consumers' preferred carriers, those facilities must also meet the stated adequacy standard. *Id.*

Location surcharges are allowed in AOS company tariffs, and can be waived by aggregators or may be established at a higher level for locations with demonstrably higher costs. This will help mitigate multi-tiered surcharges which may be discriminatory and confusing and may lead to unjustly high rates; will allow flexibility in pricing; and will avoid the need to spread the support of high-cost locations. WAC 480-120-141(10).

The section headings are changed to refer to variable rates and surcharges, the present subject of subsection (c). *Id.*

Clarification is added that the relevant rates for consideration are those which consumers are charged and that the relevant market means interLATA or intraLATA. *Id.*

The proposed cap upon location charges, fees or surcharges exceeding twenty-five cents for any call, above tariffed rates, was deleted because of potential adverse economic effect. The posting requirement related to such charges was moved to subsection (4) of this rule for proximity to other posting requirements, for clarity.

Departure from prevailing rates can be supported by an AOS. Such a demonstration can include evidence from aggregators about the economic necessity for location surcharges. This will assist AOS companies to support the economic need for charges paid to their customers. *Id.*

Subsection (12) is added in order to allocate risk of loss from fraud on toll traffic when loss from fraud occurs even through the local exchange company offers and an aggregator subscribes to call screening.

Local service to aggregators: A new section is added which requires LEC tariffs to provide that all aggregators who offer local calls on a per-call basis must provide without-charge access to 911, where available, and to the local exchange company operator. The requirement was noticed in WAC 480-120-141 (4)(c) as a condition required through AOS providers, but refers to a local services and is more appropriately associated with the provision of local exchange service. The requirement will assure that there is no impediment to dealing swiftly with emergency conditions affecting health or safety. WAC 480-120-143.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-120-021, 480-120-106, 480-120-138, and 480-120-141 as set forth in Appendix A, be amended and adopted as rules of the Washington Utilities and Transportation

Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 17th day of June, 1991.

Washington Utilities and Transportation Commission
Sharon L. Nelson, Chairman
Richard D. Casad, Commissioner
A. J. Pardini, Commissioner

APPENDIX 'A'

AMENDATORY SECTION (Amending WAC 480-120-021, filed 1/31/89)

WAC 480-120-021 GLOSSARY. Alternate operator services company - any corporation, company, partnership, or person other than a local exchange company providing a connection to intrastate or interstate long-distance or to local services from ((places including but not limited to, hotels, motels, hospitals, campuses, and customer-owned pay telephones. Alternate operator services companies are those with which a hotel, motel, hospital, campus, or customer-owned pay telephone, etc., contracts to provide operator services to its clientele)) locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.

Applicant - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.

Automatic dialing-announcing device - any automatic terminal equipment which incorporates the following features:

- (1)(a) Storage capability of numbers to be called; or
- (b) A random or sequential number generator that produces numbers to be called; and
- (c) An ability to dial a call; and
- (2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.

Billing agent - A person such as a clearing house which facilitates billing and collection between a carrier and an entity such as a local exchange company which presents the bill to and collects from the consumer.

Base rate area or primary rate area - the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.

Call aggregator - a person who, in the ordinary course of its operations, makes telephones available for intrastate service to the public or to users of its premises, including but not limited to hotels, motels, hospitals, campuses, and pay telephones.

Central office - switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission (agency) - in a context meaning a state agency, the Washington utilities and transportation commission.

Commission (financial) - in a context referring to compensation for telecommunications services, a payment from an AOS company to an aggregator based on the dollar volume of business, usually expressed as a percentage of tariffed message toll charges.

Competitive telecommunications company - a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service - a service which is classified as such by the commission pursuant to RCW 80.36.330.

Consumer - user not classified as a subscriber.

Exchange - a unit established by a utility for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area - the specific area served by, or purported to be served by an exchange.

Farmer line - outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station - a telephone instrument installed and in use on a farmer line.

Interexchange telecommunications company - a telecommunications company, or division thereof, that does not provide basic local service.

Location surcharge - a flat, per-call charge assessed by an alternate operator services company on behalf of a call aggregator in addition to message toll charges, local call charges, and operator service charges. A location surcharge is remitted, in whole or in part, to the call aggregator-customer.

Operator service charge - a charge, in addition to the message toll charge or local call charge, assessed for use of a calling card, a credit card or for automated or live operator service in completing a call.

Outside plant - the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices.

Person - unless the context indicates otherwise, any natural person or an entity such as a corporation, partnership, municipal corporation, agency, or association.

Station - a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

Subscriber - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.

Toll station - a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.

Utility - any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order R-293, filed 1/31/89)

WAC 480-120-106 FORM OF BILLS. Bills to subscribers shall be rendered regularly and shall clearly list all charges. Each bill shall indicate the date it becomes delinquent and notice of means by which a subscriber can contact the nearest business office of the utility.

The portion of a bill rendered by the local exchange company on behalf of itself and other companies shall clearly specify the alternate operator service company's billing agent and, where feasible, within ninety days after the effective date of this rule, the provider of the alternate operator service (or its authorized billing agent;) and a toll free telephone number the consumer can call to question that portion of the bill and, if appropriate, receive credit. A number may be used on this portion of the bill only if it connects the subscriber with a firm which has full authority to investigate and, if appropriate, to adjust disputed calls including a means to verify that the rates charged are correct. Consumers requesting an address where they can write to question that portion of the bill shall be provided that information.

A local exchange company shall not provide billing and collection services for telecommunications service to any company not properly registered to provide service within the state of Washington, except to a billing agent that certifies to the local exchange carrier that it will submit charges only on behalf of properly registered companies. As a part of this certification the local exchange company shall require that the billing agent provide to it a current list of each telecommunications company for which it bills showing the name (as registered with the commission) and address. This list shall be updated and provided to the local exchange company as changes occur. The local exchange company shall in turn, upon receiving it, provide a copy of this list to the

commission for its review whenever a carrier is added or deleted.

All bills for telephone service shall identify and set out separately any access or other charges imposed by order of or at the direction of the Federal Communications Commission. In addition, all bills for telephone service within jurisdictions where taxes are applicable will clearly delineate the amount, or the percentage rate at which said tax is computed, which represents municipal occupation, business and excise taxes that have been levied by a municipality against said utility, the effect of which is passed on as a part of the charge for telephone service.

Subscribers requesting by telephone, letter or office visit an itemized statement of all charges shall be furnished same. An itemized statement is meant to include separately, the total for exchange service, mileage charges, taxes, credits, miscellaneous or special services and toll charges, the latter showing at least date, place called and charge for each call. In itemizing the charges of information providers, the utility shall furnish the name, address, telephone number and toll free number, if any, of such providers. Any additional itemization shall be at a filed tariff charge.

Upon a showing of good cause, a subscriber may request to be allowed to pay by a certain date which is not the normally designated payment date. Good cause shall include, but not be limited to, adjustment of the payment schedule to parallel receipt of income. A utility may be exempted from this adjustment requirement by the commission.

AMENDATORY SECTION (Amending Order R-316, filed 3/23/90)

WAC 480-120-138 PAY TELEPHONES—LOCAL AND INTRASTATE. Every telecommunications company operating an exchange within the state of Washington may allow pay telephones to be connected to the company's network for purposes of interconnection and use of registered devices for local and intrastate communications. Every such telecommunications company offering such service shall file tariffs with the commission setting rates and conditions applicable to the connection of pay telephones to the local and intrastate network under the following terms and conditions: Local exchange companies that do not have a public access line tariff on file with the commission shall not be subject to these rules.

For purposes of these rules "pay telephone" is defined as equipment connected to the telephone network in one of the following modes:

(a) Coin operated: A telephone capable of receiving nickels, dimes, and quarters to complete telephone calls. Credit card or other operator-assisted billing may be used from a coin-operated instrument.

(b) Coinless: A pay telephone where completion of calls, except emergency calls, must be billed by an alternative billing method such as credit card, calling cards, collect, third-party billing, or billed in connection with the billing of meals, goods, and/or services. These pay phones include, but are not limited to, charge-a-call, cordless, tabletop, and credit card stations. The term

does not include in-room telephones provided by hotels, motels, hospitals, campuses or similar facilities for the use of guests or residents.

For purposes of these rules, the term "subscriber" is defined as a party requesting or using a public access line for the purpose of connecting a pay telephone to the telephone network.

(1) Pay telephones connected to the company network must comply with Part 68 of the Federal Communications Commission rules and regulations and the ((current)) National Electric Code and National Electric Safety Code as they existed on January 1, 1991, and must be registered with the Federal Communications Commission, or installed behind a coupling device which has been registered with the Federal Communications Commission.

(2) All pay telephones shall provide dial tone first to assure emergency access to operators without the use of a coin.

(3) The caller must be able to access the operator and 911 where available without the use of a coin.

(4) ~~((The subscriber shall pay the local directory assistance charge currently in effect for each pay telephone and may charge the user for directory assistance calls.))~~ The charge for each directory assistance call paid by the ((user)) consumer shall not exceed the ((current)) prevailing per call charge ((paid by the subscriber)) for comparable directory assistance. In the absence of persuasive contrary evidence, the charge of U S WEST Communications for intraLATA directory assistance or AT&T for interLATA directory assistance shall be accepted as the prevailing charge. A location surcharge is not permitted.

(5) Emergency numbers (e.g., operator assistance and 911) must be clearly posted on each pay telephone.

(6) Information consisting of the name, address, telephone number of the owner, or the name of the owner and a toll-free telephone number where a caller can obtain assistance in the event the pay telephone malfunctions in any way, and procedures for obtaining a refund from the subscriber must be displayed on the front of the pay telephone.

The following information shall also be posted on or adjacent to the telephone instrument:

(a) ~~An accurate quotation of all rates and surcharges is available to the user by dialing 0 and requesting costs.~~ The method by which the consumer may obtain without charge an accurate quotation of rates, fees and surcharges; and

(b) The notices required by WAC 480-120-141(((+))) (4).

In no case will the charges to the user exceed the quoted costs.

(7) The telephone number of the pay telephone must be displayed on each instrument.

(8) The subscriber shall ensure that the pay telephone is compatible for use with hearing aids and its installation complies with all applicable federal, state, and local laws and regulations concerning the use of telephones by disabled persons.

(9) The pay telephone, if coin operated, must return the coins to the caller in the case of an incomplete call

and must be capable of receiving nickels, dimes, and quarters. Local exchange company pay telephones shall not be subject to the requirements of this subsection.

(10) All pay telephones must ~~((be capable of providing))~~ provide access to all interexchange carriers where such access is available. If requested by the subscriber, the local exchange company providing the public access line shall supply, where available, (a) restriction where available, which prevents fraud to the by selective blocking of 10XXX 1+ codes and (b) call screening to identify the line as one to which charges may not be billed, at appropriate tariffed rates.

(11) Except for service provided to hospitals, libraries, or similar public facilities in which a telephone ring might cause undue disturbance, or upon written request of a law enforcement agency, coin-operated pay telephones must provide two-way service, and there shall be no charge imposed by the subscriber for incoming calls. This subsection will not apply to pay telephones arranged for one-way service and in service on May 1, 1990. Should an existing one-way service be disconnected, change telephone number, or change financial responsibility, the requirements of this subsection shall apply. All pay telephones confined to one-way service shall be clearly marked on the front of the instrument.

(12) Pay telephones shall be connected only to public access lines in accordance with the approved tariffs offered by the local exchange company. Local exchange company pay telephones are not subject to this requirement.

(13) A subscriber must order a separate pay telephone access line for each pay telephone installed. Extension telephones may be connected to a pay telephone access line when the instrument:

(a) Prevents origination of calls from the extension station; and

(b) Prevents third party access to transmission from either the extension ~~((of))~~ or the ~~((coin-operated))~~ pay telephone instrument.

Local exchange companies are exempted from (b) of this subsection.

(14) Credit card operated pay telephones shall clearly identify all credit cards that will be accepted.

(15) Involuntary changes in telephone numbers upon conversion of pay telephones from local exchange company-owned to privately-owned pay telephones are prohibited.

(16) No fee shall be charged for nonpublished numbers on a public access line.

(17) Cordless and tabletop pay telephones shall not be connected to the telephone network except under the following conditions:

(a) The bill for usage is tendered to the user before leaving the premises where the bill was incurred or alternatively billed at the customer's request; and

(b) The user is notified verbally or on the instrument that privacy on cordless and tabletop telephones is not guaranteed; and

(c) When other electrical devices are equipped with filters, as necessary, to prevent interference with the pay telephone.

(18) Violations of the tariff, commission rules pertaining to pay telephone service, or other requirements contained in these rules, including interexchange carrier access requirements, will subject the pay telephone to disconnection of service if the deficiency is not corrected within five days from date of written notification to the subscriber. WAC 480-120-081 (4)(g) shall not apply to such disconnections. Local exchange company field visits shall be charged to the subscriber if the charge is required by a pertinent local exchange company tariff.

It shall be the responsibility of every local exchange company to assure that any subscriber taking service pursuant to these rules and to tariffs filed pursuant to these rules meets all of the terms and conditions contained within these rules and the tariffs so filed. It shall be the duty of the local exchange company to enforce the terms and conditions contained herein.

It shall be the responsibility of the local exchange company to provide free of charge one current telephone directory each year for each public access line. It shall be the responsibility of the subscriber to make a reasonable effort to assure a current directory is available at every pay telephone location.

Public access lines will be charged at rates according to the relevant tariff as approved by the commission.

(19) Disconnection of, or refusal to connect, a pay telephone for violation of these rules may be reviewed by the commission in a formal complaint under WAC 480-09-420(5) through an adjudicative or a brief adjudicative proceeding under the provisions of chapters 34.05 RCW and 480-09 WAC.

Reviser's note: RCW 34.05.295 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order R-91 filed 1/31/89)

WAC 480-120-141 ALTERNATE OPERATOR SERVICES. All telecommunications companies providing alternate operator services (AOS), as defined in WAC 480-120-021, shall ~~((conform-to))~~ comply with this and all other rules relating to telecommunications companies not specifically waived by order of the commission. ~~((Alternate operator services companies (AOS) are those with which a hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracts to provide operator services to its clientele.))~~

(1) Each alternate operator services company shall file with the commission at least every six months a current list of operator services customers which it serves and the locations and telephone numbers to which such service is provided to each customer. A customer list provided pursuant to this rule is proprietary information and, if identified when filed as required in WAC 480-09-015, is subject to the protections of that rule.

(2) Each AOS company is responsible for assuring that each of its customers complies fully with contract and tariff provisions which are specified in this rule. Failure to secure compliance constitutes a violation by the AOS company.

(a) The AOS company shall withhold on a location-by-location basis the payment of compensation, including commissions, from a call aggregator, if the AOS company reasonably believes that the call aggregator is blocking access to interexchange carriers in violation of these rules.

(b) Violations of tariff, contract or other statements of conditions of service, in commission rules pertaining to AOS company service, or of other requirements contained in these rules, including interexchange carrier access requirements, will subject an aggregator to termination of alternate operator services if the deficiency is not corrected within five days from date of written notification to the aggregator. WAC 480-120-081 (4)(g) shall not apply to such terminations.

(c) AOS company actions in furtherance of this rule may be reviewed by the commission in a formal complaint under WAC 480-09-420 through an adjudicative or a brief adjudicative proceeding under the provisions of chapters 34.05 RCW and 480-09 WAC.

(d) An AOS company shall refuse to provide operator services to a call aggregator who the commission has found to have knowingly and repeatedly violated commission rules regarding the provision of alternate operator service until the commission has found that the call aggregator will comply with relevant law and rule.

(3) For purposes of this section ((the)), "consumer" means the party ((billed for the completion of)) initiating and/or paying for an ((interstate/intrastate)) interexchange or local call. "Customer" means the call aggregator, i.e., the hotel, motel, hospital, prison, campus, ((customer-owned)) pay telephone, etc., contracting with an AOS for service.

((+)) (4) An alternate operator services company shall require, as a part of ((the)) any contract with its customer and as a term and condition of service stated in its tariff, that the customer:

(a) Post on the telephone instrument in plain view of anyone using the telephone, in eight point or larger Sty-mie Bold type, the information provided in the following notice:

SERVICE ON THIS INSTRUMENT MAY BE PROVIDED AT RATES THAT ARE HIGHER THAN NORMAL. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR ((DIALING THROUGH THE LOCAL TELEPHONE COMPANY)) REACHING YOUR PREFERRED CARRIER ARE ALSO AVAILABLE FROM THE OPERATOR.

(b) Post and maintain in legible condition on or near the telephone:

(i) The name, address, and without-charge number of the alternate operator services company, as registered with the commission;

(ii) Dialing directions so that a consumer may reach the AOS operator ((so-as)) without charge to receive specific rate information; and

(iii) Dialing-d Directions to allow the consumer to ((dial through the local telephone company)) reach the

consumer's preferred carrier and to make it clear that the consumer has access to the other providers

(c) Provide access from every instrument to 1-800 services and all available interexchange carriers; and

(d) Shall post, on or near the instrument, a notice stating whether a location surcharge or any other fee is imposed for telecommunications access through the instrument, the amount of any fee or location surcharge, and the circumstances when it will apply.

(e) Posting under these rules shall begin no later than October 1, 1991, and shall be completed no later than January 31, 1992. In the interim, posting in compliance with the immediate prior posting provisions of WAC 480-120-141 is required and shall constitute compliance with this rule.

((+)) (5) The alternate operator services company shall:

(a) Identify the AOS company providing the service ((or its authorized billing agent)) audibly and distinctly at the beginning of every call, and again before the call is connected, including ((those handled automatically, and)) an announcement to the called party on calls placed collect.

(i) For purposes of this rule the beginning of the call is no later than immediately following the prompt to enter billing information on automated calls and, on live and automated operator calls, when the call is initially routed to the operator.

(ii) The message used by the AOS company shall state the name of the company as registered with the Commission whenever referring to the AOS company. Terms such as "company", "communications", "incorporated", "of the northwest", etc., when not necessary to clear consumer identification of the entity providing service may be omitted when authorized by letter from the secretary of the commission.

(iii) The consumer shall be permitted to terminate telephone call at no charge before the call is completed.

(iv) The AOS company shall immediately upon request, and at no charge to the consumer, disclose to the consumer:

(A) a quote of the rates or charges for the call, including any surcharge;

(B) the method by which the rates or charges will be collected; and

(C) the methods by which complaints about the rates, charges, or collection practices will be resolved.

(b) Provide to the local exchange company such information as may be necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(c) Reoriginate calls to another carrier upon request and without charge, when equipment is in place which will accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the AOS company shall give dialing instructions for the consumer's preferred carrier.

(d) Assure that a minimum of ninety percent of all calls shall be answered by the operator within ten seconds from the time the call reaches the carrier's switch.

(e) Maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including as pertinent the facilities for access to consumers' preferred interexchange carriers, does not exceed one percent in the time consistent busy hour. Should excessive blockage occur, it shall be the responsibility of the AOS company to determine what caused the blockage and take immediate steps to correct the problem. This subsection does not apply to blockage during unusually heaving traffic, such as national emergency, local disaster, holidays, etc.

((+)) (6) The alternate operator services company shall assure that ((consumers)) persons are not billed for calls which are not completed. For billing purposes, calls shall be itemized, identified, and rated from the point of origination to the point of termination. No call shall be transferred to another carrier by an AOS which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

((+)) (7) For purposes of emergency calls, every alternate operator services company shall have the following capabilities:

(a) Automatic identification at the operator's console of the location from which the call is being made;

(b) Automatic identification at the operator's console of the correct telephone numbers of emergency service providers that serve the telephone location, including but not limited to, police, fire, ambulance, and poison control;

(c) Automatic ability at the operator's console of dialing the appropriate emergency service with a single keystroke;

(d) Ability of the operator to stay on the line with the emergency call until the emergency service is dispatched.

No charge shall be imposed on the caller ((from)) by the telephone company or the alternate operator services company for the emergency call.

If the alternate operator services company does not possess these capabilities, all calls in which the ((caller)) consumer dials zero (0) and no other digits within five seconds shall be routed directly to the local exchange company operator, or to an entity fully capable of complying with these requirements. AOS companies lacking sufficient facilities to provide such routing shall cease operations until such time as the requirements of this section are met.

((5) Consumer)) (8) Complaints and disputes shall be treated in accordance with WAC 480-120-101. Complaints and disputes.

((6)) (9) Charges billed to a credit card company (e.g., American Express or Visa) need not conform to the call detail requirements of this section. However, the AOS shall provide ((consumers with)) specific call detail in accordance with WAC 480-120-106 upon request.

(10) "Public convenience and advantage"; surcharges; variable rates.

(a) For services, public convenience and advantage means at a minimum that the provider of alternate operator services offers operator services which equal or exceed the industry standards in availability, technical quality and response time and which equal or exceed industry standards in variety or which are particularly adapted to meet unique needs of a market segment. In

the absence of other persuasive evidence, a demonstration that operator service equals or exceeds that provided by U S WEST Communications for intraLATA services or AT&T for interLATA services will be accepted as demonstrating public convenience and advantage.

(b) Charges no greater than the prevailing operator service charges in the relevant market - intraLATA or interLATA - will be accepted as demonstrating that charges are for the public convenience and advantage. In the absence of persuasive contrary evidence, the charges for U S WEST for intraLATA service and AT&T for interLATA service will be accepted as the prevailing charges.

(c) Surcharges; variable rates. No location surcharge may be added to without-charge calls nor to a charge for directory assistance. No tariff may provide for rate levels which vary at the option of a call aggregator, provided, that an aggregator may waive application of the surcharge to calls from its instruments, and provided further, that an AOS company may establish a tariff rate for high-cost locations if the conditions for application of the rate confine it to locations with substantially higher than average operating costs.

(11) Rates to the consumer for the provision of alternate operator services, including directory assistance, shall not exceed the prevailing rates for such services in the relevant market - intraLATA or interLATA - unless need for the excess to produce rates which are fair, just and reasonable is demonstrated to the satisfaction of the commission. In the absence of persuasive contrary evidence, rate levels of U S WEST for intraLATA service and AT&T for interLATA service will be considered the prevailing rate.

(12) Fraud prevention.

(a) A company providing interexchange telecommunications service may not bill a call aggregator for charges billed to a line for calls which originated from that line through the use of 10XXX+0; 10XXX+01; 95-XXXX; or 1-800 access codes, or when the call originating from that line otherwise reached an operator position, if the originating line subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) A company providing interexchange telecommunications service may not bill to a call aggregator any charges for collect or third number billed calls, if the line serving to which the call was billed was subscribed to incoming call screening and the call was placed after the effective date of the call screening service order.

(c) Any calls billed through the local exchange carrier in violation of subparagraphs (a) or (b) above must be removed from the call aggregator's bill by the local exchange company upon identification. If investigation by the local exchange company determines that the pertinent call screening was operational when the call was made, the local exchange company may return the charges for the call to the interexchange telecommunications company as not billable.

(d) Any call billed directly by an alternate operator service company, or through a billing method other than the local exchange company, which is billed in violation of subparagraphs (a) and (b), above, must be removed

from the call aggregator's bill. The telecommunications company providing the service may request an investigation by the local exchange company. If the local exchange company, after investigation, determines that call screening which would have protected the call, which is offered by the LEC and was subscribed to by the call aggregator, was not operational at the time the call was placed, the AOS company shall bill the LEC for the call.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 480-120-143 LOCAL SERVICE TO AGGREGATORS. The local exchange company's tariff shall provide that every aggregator offering local calls on a per-call basis must provide without-charge access to 911, where available, and to the local exchange company operator.

WSR 91-13-079

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 90-62—Filed June 18, 1991, 1:40 p.m., effective September 18, 1991]

Date of Adoption: June 18, 1991.

Purpose: Regulate the discharge of toxic pollutants from new pollution sources and certain existing sources in order to prevent air pollution, reduce emissions to the extent reasonably possible and maintain such levels of air quality as will protect human health and safety.

Statutory Authority for Adoption: RCW 70.94.331.

Pursuant to notice filed as WSR 91-01-083 on December 18, 1990.

Changes Other than Editing from Proposed to Adopted Version: WAC 173-460-010 Purpose.

Subsection (1) was revised to clarify that ecology will use the lists in WAC 173-460-150 and 173-460-160 to define toxic air pollutant. This change was made to insure consistency with the definition of toxic air pollutant.

WAC 173-460-020 Definition.

"Acceptable source impact level (ASIL)" was revised to clarify that the rule does not apply to restricted or controlled areas. This change was made in response to public comment requesting clarification.

"Reasonably available control technology for toxics (T-RACT)" was added. This technology category was added for two reasons. Changes to the Washington Clean Air Act restrict applicability of new source review and T-BACT to pollutant increases. Public comments recommended that T-BACT apply only to sources increasing toxic pollutants.

WAC 173-460-030 Requirements, applicability, and exemptions.

Subsection (1) was deleted. This change was made in response to comment that it was duplicative and inconsistent with requirements in WAC 173-460-040.

Subsection (3)(a) relabeled subsection (2)(a) and was modified by deleting all text after the word "devices." This change was made in response to public comment that the section was confusing and incorrect grammar.

Subsection (3)(e) was added to exempt "process vents subject to 40 CFR Parts 264 and 265, Subpart AA." This was added in response to comment that regulation of these vents is duplicative with federal rule.

WAC 173-460-040 New source review.

Subsection (1), the explanation of notice of construction in subsection (1)(a) was moved to this section for clarity.

Subsection (1)(a), this subsection was rewritten to clarify. The phrase "unless conditions in subsections (c) and (d) of this subsection apply to the new source" was deleted and a second sentence used to explain when notification and notice of construction are not required. The term "application" was added to clarify that all new toxic sources must provide information to the authority. This change is made because of change of applicability of new source review to toxic increases, only. An application will be used to evaluate pollutant changes as increases or decreases.

Subsection (c) was deleted because the notice of construction requirements were consolidated in subsection (1)(a). A new requirement becomes subsection (c). This limits new source review of modifications and "the air contaminants whose emissions may increase as a result of the modification." This change is made for consistency with change made to the Washington Clean Air Act and because of public comment requesting that new source review be limited to toxic pollutant increases.

Subsection (d) was deleted and rewritten as subsection (2)(a)(b)(c). Subsection (2) is the same as subsection (d). Subsection (2)(a) is the same as subsection (d)(i). Subsection (d)(ii) was relabeled subsection (2)(b) and changed by deleting the phrase "does not increase toxic air pollutant emissions significantly." Change was made based on public comment that this phrase was ambiguous in how it related to the small quantity emission tables. Subsection (d)(iii) was relabeled subsection (2)(c) and simplified to relate all minor material changes to the small quantity emission tables. The requirement for demonstrating no overall toxicity increase was dropped. This was changed because of public comment that this section was ambiguous. Subsection (d)(iv) was dropped because it was duplicative with the nonprocess fugitive emission exemption in WAC 173-460-030.

Subsection (2) is relabeled subsection (3).

Subsection (3)(a) is relabeled subsection (4)(a) and changed to add "and authority" after "state." Change is made to clarify that sources must be in accord with applicable local authority rules. Change is made in response to public comment recommending this addition.

Subsection (3)(b) is relabeled subsection (4)(b) and modified by adding "for the toxic air pollutants which are likely to increase." Change is made for consistency with the Washington Clean Air Act and because of

postmark is the date of submission for documents you send by mail. For documents you transmit by other means, the date we receive the document is the date of submission.

NEW SECTION

WAC 296-27-21045 What are the requirements related to movable equipment? (1) For serious, repeat, and willful violations involving movable equipment, you must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment if the violation has not already been abated. You must do this for hand-held equipment immediately after you receive the citation, and you must do this for other equipment before moving it within the worksite or between worksites.

(2) You must use a warning tag that properly warns employees about the nature of the violation involving the equipment and that tells them where the citation is posted. Nonmandatory Appendix A contains a sample tag that you may use to meet this requirement.

(3) For the construction industry, a tag designed and used in accordance with WAC 296-155-300(8) and 296-24-14011 meets the requirements of this section when the information required by subsection (2) of this section is included on the tag.

(4) You must make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(5) You must make sure that the tag or copy of the citation attached to movable equipment remains attached until:

- You have abated the violation and you have submitted all abatement verification documents required by this regulation to us;
- You have permanently removed the cited equipment from service;
- You no longer have control over the cited equipment; or
- A final order vacates the violation.

NEW SECTION

WAC 296-27-21050 Appendix A (Nonmandatory). What can a warning tag for movable equipment involved in serious, repeat, or willful violations look like? You may use a warning tag similar to the sample shown below. You must make sure the warning tag meets the requirements of and is used in accordance with the requirements of WAC 296-27-21045.



WARNING:

EQUIPMENT HAZARD

CITED BY L & I

EQUIPMENT CITED:

HAZARD CITED:

FOR DETAILED INFORMATION

SEE L & I CITATION POSTED AT:

BACKGROUND COLOR—ORANGE
MESSAGE COLOR—BLACK

WSR 99-02-020
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[General Order No. R-452, Docket No. UT-970201—Filed December 29, 1998, 3:42 p.m.]

In the matter of amending WAC 480-120-021, 480-120-138 and 480-120-141; and repealing WAC 480-120-137, 480-120-142 and 480-120-143, relating to pay phone and operator services providers.

STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission (commission of WUTC) takes this action under Notice No. WSR 98-17-068, filed with the code reviser on August 17, 1998. This commission brings this proceeding pursuant to RCW 80.04.160, 80.36.520, and 80.01.040.

STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

DATE OF ADOPTION: The commission adopted this rule on October 28, 1998.

PERMANENT

CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: The proposal requires pay phone service providers and operator service providers to provide a consistent level of service and to meet intrastate standards that are consistent with federal requirements. The rules will also preserve, to the extent possible, continued consumer protections in a largely-deregulated environment by measures including adequate disclosure to consumers at the pay phone itself, at the time of a call. The rules recognize federal mandates lifting economic regulation from pay telephones and operator services. Rule amendments delete provisions that are no longer applicable or are unduly burdensome, maintain a minimum level of service, provide a means to obtain limitations on service when needed for public purposes, impose consumer protections through disclosure at the pay phone, and inform consumers of their rights as pay phone users. The rules also reduce the level of bureaucratic involvement in this business to the minimum consistent with adequate consumer protection. Rules revisions are designed to meet standards set out in Executive Order 97-02.

REFERENCE TO AFFECTED RULES: This rule repeals, amends, or suspends the following sections of the Washington Administrative Code:

Amends WAC 480-120-021 Glossary, 480-120-138 Pay telephones—Local and intrastate and 480-120-141 Alternate operator services; and repeals WAC 480-120-137 Customer-owned pay telephones—Interstate, 480-120-142 Alternate operator services—Enforcement, and 480-120-143 Local service to aggregators.

PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on March 27, 1998, at WSR 97-08-036.

ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The statement advised interested persons that the commission was considering entering a rule making relating to pay telephones and alternate operator service providers. The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), by sending notice to all registered telecommunications companies, and by providing notice to the commission's list of telecommunications attorneys.

Pursuant to the notice, the commission held a workshop on May 5, 1997. The commission on July 3, 1997, wrote interested persons, summarizing the workshop and requesting comments. On September 12, 1997, the commission staff circulated a draft of possible rule changes, based on the discussions and comments, to interested persons, requesting further comments. Commission staff received comments, and prepared and sent a second draft of possible rules to interested persons on April 28, 1998, and requested comments on the possible changes.

Staff convened a meeting of interested persons on June 2, 1998, to discuss the economic impact of this rule making. Representatives from the Northwest Payphone Association, local and long distance telephone companies, and public counsel were invited to attend. Commission staff also circulated a questionnaire to gain more information about the cost impacts of the rule. Five companies responded to the ques-

tionnaire. This information and their participation in the discussion led to the results summarized in the small business economic impact statement.

NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on August 17, 1998, at WSR 98-17-068. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 98-17-068 at 9:30 a.m., Wednesday, October 28, 1998, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice also provided interested persons the opportunity to submit written comments to the commission.

COMMENTERS (WRITTEN COMMENTS): The commission received written comments from Fullers of Chehalis and Centralia, Jeffrey D. Glick of Seattle, GTE Northwest Inc. (GTE-NW), McDonalds in Vancouver, the Northwest Payphone Association (NWPA), William Paine of Maple Valley, the Public Counsel section of the Washington Attorney General (public counsel), the City of Seattle, Sentry Market in Goldendale, United Telephone Company of the Northwest (Sprint), Teltrust Communications Services, Inc. (Teltrust), US WEST Communications, Inc. (US WEST), the Washington Independent Telephone Association (WITA), and Washington State Representative Philip E. Dyer.

Based on the comments received, commission staff suggested revised language without changing the intent or ultimate effect of the proposed rule.

RULE-MAKING HEARING: The rule changes were considered for adoption, pursuant to the notice, at the commission's regularly scheduled open public meeting on October 28, 1998, before Chairwoman Anne Levinson and Commissioner Richard Hemstad. The commission heard oral comments from Suzanne Stillwell, representing commission staff; Brooks Harlow, representing the NWPA; Matt Steuerwalt, representing public counsel; and Theresa Jensen, representing US WEST. Oral commenters repeated concerns that were stated in their previous written comments.

SUGGESTIONS FOR CHANGE THAT ARE REJECTED: Although all participants worked diligently to achieve consensus, the participants and commission staff did not reach complete agreement on some topics. A summary of those areas follows.

1. Jurisdictional issues. Several commenters assert that the commission does not have jurisdiction over pay phones at all because, they argue, the Telecommunications Act of 1996 removed all regulation from the state. Commenters believe that the proposed rules are inconsistent with federal law and regulation and that the incumbent local exchange companies (LECs) will be disadvantaged in the competitive market. The commission rejects these arguments. While FCC rules ended state regulation of the local coin rate, it left to the states the authority to regulate other aspects of the pay phone industry, especially in the area of consumer protection. The rules are consistent with the intent of Congress and the FCC, and are competitively neutral as it relates to incumbent LECs.

2. Disclosure at the pay phone. Commenters argued that the disclosure that the rules require from both the pay phone service provider and operator service provider is unnecessary and costly, that too many numbers must be posted, and that

technical limitations may affect their ability to offer on-demand verbal rate quotes. The commission strongly believes that adequate disclosure at the pay phone site is essential to promote effective competition and to inform and protect users appropriately of pay phone services. The amount of posting will be nearly the same as prior rule language (adding one telephone number while removing other language). Adding the commission's compliance number is a necessary consumer protection measure. The commission will consider requests for waivers of the rules pursuant to WAC 480-120-141 (2)(b) if technical limitations reasonably prevent offering on-demand verbal rate quotes on request.

3. Compensation for incoming calls. Commenters argued that pay phone providers should be allowed to charge customers for calls made to pay phones (incoming calls), and that the rules' prevention of such charges violates federal law. The commission rejects this argument. Federal statute and FCC orders are at most ambiguous about the existence of an obligation to compensate incoming calls, and the commission finds no legal or policy reason to allow such charges.

4. Restrictions on call length. Some pay phone providers (PSPs) and/or location providers want the authority to restrict the length of local calls. These PSPs argue that all customers should have reasonable access to a phone. The rules require that a basic local call be a minimum of fifteen minutes, which will allow persons ample time to conduct business, wait on "hold," or deal with exceptional circumstances. Public counsel urges that there be no restrictions on length of local calls, except to meet needs due to illicit activity. The rule does not require the restriction of calls to fifteen minutes, but offers a balance between customer turnover and individual callers' needs. The requirement does not affect the rate for a local call, which pursuant to federal requirements is not regulated.

Other specific comments that the commission rejected in adopting the rules include the following:

WAC 480-120-138 Pay phone service providers (PSPs)

WAC 480-120-138 (3)(d), required access to telecommunications relay service calls for the hearing impaired. Public counsel urged retaining the broader language of the existing rule, WAC 480-120-138(8), to require that "... installation complies with all applicable federal, state, and local laws and regulations concerning the use of telephones by disabled persons." Although the commission does not support other violations of law, and if it learns of such violations will report them appropriately, it has no jurisdiction to act upon such violations. Other agencies have the responsibility for ensuring compliance with other federal, state and local laws.

WAC 480-120-138 (4)(a), posting of rates. The rule requires that the rate and any call length limitations be clearly and legibly posted on or near the front of the pay phone. Public counsel asks that all placards bear the rate in thirty-point or larger type and contrasting color. Contrasting colors can be an effective means of highlighting the local call charge, as well as larger type, and either one is reasonable.

WAC 480-120-138 (4)(c), notice that no change is provided. GTE argues that it is a commonly known fact that pay phones do not make change and that it needlessly uses space on an already overloaded placard. The commission rejects the argument; virtually all contemporary technology coin-

operated devices offer change, and there is no technological reason why the telephone instrument cannot be provisioned to do so. GTE can avoid the disclosure requirement by providing instruments that make change.

WAC 480-120-138 (4)(e) and (k), posting requirements. Subsection (4)(g) requires the PSP to post the name, address, and without-charge telephone number of all presubscribed operator service providers serving the instrument, and that the placard be updated within thirty days after a change. GTE argues that the thirty-day requirement will be burdensome in parts of its rural territory. In some areas, the company may only maintain telephones on an "as needed" basis. As to WAC 480-120-138 (4)(k), requiring updated placarding within sixty days after the effective date of a rule change, GTE asks that it be amended to permit change at the time of the next regularly scheduled visit to the pay phone. The commission rejects the suggestion that the time periods be extended. The trade-offs here are between consumer information and PSP convenience and expense. From the time of the change until the correct information is posted, consumers will not have on-site access to accurate information. The commission recognizes that an "immediate change" requirement would impose hardships on PSPs and sizeable expense. The time periods set in the rule appropriately balance the affected interests. PSP information shows that the time periods will allow changes to be made during "routine" site visits in the vast majority of instances. Thirty days is appropriate to change out placards when there has been a change in a presubscribed operator service provider, and sixty days is a reasonable time period to change out placards as a result of this or comparable rule changes.

WAC 480-120-138 (4)(i), commission toll-free number. This subsection requires posting, in contrasting colors, the commission's consumer complaint compliance number, to include a statement that, "If you have a complaint about service from this pay phone and are unable to resolve it with the pay phone owner/operator, please call the WUTC at 1-888-333-WUTC (9882)." NWP, US WEST, and GTE object to printing a Washington-specific placard that puts another number in very limited space. They contend that the public may become confused and fail to follow instructions for routine calls. They fear that this will lead to a costly level of misdirected complaints that should be managed by the PSP. The commission rejects this view. The commission compliance number is necessary to support its compliance efforts and to get information from consumers about pay phone problems.

Public counsel suggests retaining the existing rule language of WAC 480-120-138(14) that requires credit-card operated phones to identify all credit cards accepted. The commission believes that in today's market this is not critical for consumer protection, and the marketplace will address this issue.

WAC 480-120-138 (5)(c), one line per instrument. This subsection requires that a PSP obtain a separate pay phone access line (PAL) for each pay phone instrument. Pay phone providers oppose this, suggesting that it may stifle innovation and prevent PSPs from obtaining the most efficient and cost-effective service. The problem addressed by this rule is assuring that the pay phone is available for service - if a single line serves more than one instrument, the line cannot be

available for both instruments at the same time. The rule was modified in response to this objection and now specifically provides for commission waiver if a company demonstrates that technology accomplishes the same result as the rule's requirement.

WAC 480-120-138 (5)(d) and (e), extension, cordless or tabletop telephones. US WEST argues that the WUTC should not regulate the operational characteristics of extension telephones, cordless, or tabletop telephones because such phones, as customer provided equipment (CPE), are deregulated. We reject this argument. The rule does not regulate CPE. It does not prohibit such equipment, set a rental rate for such equipment, or regulate the dimensions, color, form, or style of the equipment. The rule regulates the services provided to the customer, a matter that remains within the commission's jurisdiction.

WAC 480-120-138 (5)(f), keypad restriction. The rule requires that a pay phone may not restrict the number of digits or letters that may be dialed. US WEST argues that the restriction is inconsistent with marketplace demands, and that whether or not to apply keypad restriction should be a decision between the PSP and location providers. The commission rejects US WEST's arguments. In today's environment, consumers need keypad access after dialing the number to enter billing codes, to retrieve voice messages, use pagers, access bank accounts and credit card accounts, call offices that use automated menus, etc. Keypad restrictions often mean that the cost of a call is wasted and the consumer has no means to conduct her or his activities. Keypad restriction is of little value in preventing professional crime, because portable tone generators are readily available to persons who know they will need them. If location-specific problems call for keypad restrictions, waiver is available under subsection (6) of the rule.

WAC 480-120-138 (5)(g), coin and credit operation. Pay phones may provide credit-only service, or coin and credit service. US WEST again states that it is inconsistent with marketplace demands, and should be a decision between the PSP and location providers to determine type of restrictions. A company may apply for waiver of the rules if necessary.

WAC 480-120-138(6), authorizing restrictions. This provision allows the commission to direct limitations on pay phone service upon request of local governing jurisdictions to support their efforts to prevent or limit criminal or illicit activities. Restrictions may include, but are not limited to, blocking of incoming calls, limiting touch tone capabilities, and imposing coin restriction during certain hours. US WEST argues that this is beyond the commission's jurisdiction and inconsistent with federal law; it argues that PSPs will implement such restrictions appropriately and willingly at the request of local communities, property owners, neighborhood groups, or others at the discretion of the company. The commission rejects the suggestion that such restrictions must be available without commission oversight. The commission does have the jurisdiction and the authority to ensure consumer protection and the minimum service and quality standards provided from pay phones. While the commission should not be an impediment to effective local police and

safety, regulation, interests of consumers must be a factor in the process.

WAC 480-120-138(7), telephone directories. The PAL provider must furnish without charge one current directory each year and the PSP must ensure that a current directory is available at every pay phone. GTE argues that this is costly and burdensome, and suggested that the PSP need only make "a reasonable effort" to make a current directory available at every pay phone location. We disagree. Providing a directory is a part of pay phone service. Consumers should not be forced to use directory assistance for numbers that are readily available in a local directory.

WAC 480-120-138(8), correcting malfunctions and rule violations. The rule imposes a five-day limit for correcting reported malfunctions or rule violations. US WEST argues that "Malfunction" aspect should be removed because it is beyond the WUTC's jurisdiction since pay phones are deregulated. As noted repeatedly in this order, the commission disagrees sharply with US WEST's limited view of our jurisdiction. Public counsel suggests retaining provisions of the existing WAC 480-120-138(18) that make a LEC responsible to ensure that its PSP customers comply with rules regarding the use of its PAL line. We reject this suggestion; in today's competitive marketplace it is inappropriate to require the LEC to police the activities of a competitor. Each company is independently responsible for compliance with WUTC rules.

WAC 480-120-141 Operator service providers (OSPs)

WAC 480-120-141 (2)(a), posting - rates. Public counsel asks the commission to retain the language from the prior rule that "Service on this instrument may be provided at rates that are higher than normal. You have the right to contact the operator for information regarding charges before placing your call..." The commission rejects the request. The adopted disclosures provide needed notice, especially coupled with the opportunity to receive an on-demand verbal rate quote.

GTE, NWPA, US WEST expressed the same concerns discussed above in WAC 480-120-138(4) on disclosure requirements for pay phone service providers. The commission notes that disclosure is reasonably required for consumer protection, and resolves these concerns in the same way.

WAC 480-120-141 (2)(b), verbal disclosure of rates. Before an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the caller how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line. The rate quoted for the call must include any applicable surcharge, and charges must not exceed the quote.

Teltrust argues that the proposal is premature in light of the FCC's reconsideration of the parallel federal rule, which is subject to change. It argues that the rule is burdensome and expensive and that it threatens to harm OSPs as well as consumers by leading to rate increases. GTE states that it does not have the technology to comply, but that it should be able to do so by late 1999. The NWPA does not object to the verbal requirement as long as it is consistent with federal requirements both in substance and in the timing of imple-

mentation. US WEST argues that the WUTC should postpone adoption of rule language concerning this issue until the FCC adopts its final rule, stating that the needed technology is not currently available for US WEST, and will take about fifteen months to implement once a final decision is made to use it. US WEST also argues that the rule generates costs and expenses to the company that they do not face today. Public counsel argues that provisions of existing rules, WAC 480-120-141 (10)(b) and (11) containing limits on OSP rates should be retained.

The commission adopts the FCC's verbal disclosure requirement on an intrastate basis. Staff recognizes that the FCC granted limited waivers and extensions of time to come into compliance to several specific petitioners for automated calls, collect call and inmate services (October 31, 1998, and December 31, 1998, for collect call and inmate services, respectively). Further, the FCC permitted OSPs that use store-and-forward technology, until October 1999, to come into compliance with its rules. The federal rule is stayed only as it applies to interstate intraLATA operator services until sixty days after release of the FCC's reconsideration order.

The verbal rate disclosure option is necessary to better inform consumers, fosters a more competitive environment, and it serves the public interest. Petitioners to the FCC rule have indicated they can use live operators for rate quotes during the interim period. Staff's intent is that the WUTC rules be as consistent with the FCC as local conditions permit. If there are significant changes to the FCC rule resulting from the FCC's review and resulting order, the commission will do an expedited rule making at that time to consider changes needed for consistency. Waivers will be considered during the interim period, consistent with the FCC approach.

WAC 480-120-141 (6)(b), operational capabilities - adequate facilities. This rule requires the OSP to determine cause of excessive blockage and take steps to correct the problem. US WEST argues this is not enforceable, stating that the responsible party is the Interexchange Carrier (IXC), since the IXC is provisioning trunking. The commission believes that the OSP needs to pursue any service problem directly with the IXC or other responsible party to resolve a blocking problem.

WAC 480-120-141 (6)(c), operator service standards. US WEST asks the commission to reject this language as ambiguous and not measurable. The commission believes that the language as stated is a reasonable public expectation, and that it is stated with sufficient clarity.

WAC 480-120-141 (6)(d), operational capabilities - reorigination. The rule requires an OSP to reoriginate calls to another carrier upon request and without charge when equipment that will accomplish reorigination with screening and allow billing from the point of origin of the call, is in place. If reorigination is not available, the OSP must give dialing instructions for the consumer's preferred carrier. US WEST asks the commission to eliminate this provision because its operators do not have dialing instructions for customers who wish to reoriginate a call to another carrier. Customers are transferred to directory assistance to learn their preferred carrier's access number. The company argues that OSPs should not have to incur the expense of increased call handling time. The commission notes that this is not new rule language and

that it requires no new technology. The required service is appropriate and should continue to be required.

WAC 480-120-141(9), enforcement. Public counsel asks the WUTC to retain language from WAC 480-120-142, which includes specific RCWs and WACs detailing minimum service levels. The commission rejects the proposal because revised rule incorporates needed references.

COMMISSION ACTION: After considering all of the information regarding this proposal, the commission repealed the three rules proposed for repeal and adopted the proposed rule amendments, with the changes described and discussed in this order. Appendix A of this order sets out the rule as adopted.

CHANGES FROM PROPOSAL: The commission adopted the proposal with the following changes from the text noticed at WSR 98-17-068. Note that the changes described below are in addition to nonsubstantive grammatical, editorial, and minor clarifying changes.

WAC 480-120-021 Glossary

Pay phone services definition was changed to "provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls." This amendment was offered by the NWPAA. We adopt it for the reasons advocated in its support.

WAC 480-120-138 Pay phone service providers (PSPs)

WAC 480-120-138(4)(b) is changed to state that "notice must be posted that directory assistance charges may apply, and to ask the operator for rates," rather than the proposed requirement to state the rate. Public counsel asks that the commission retain a rate cap at dominant carrier's rates. The FCC requirement appears to be clear that PSPs, if charged for directory assistance, may pass those costs on to the consumer/caller. The adopted language is consistent with the intent of the rule and the need for appropriate disclosure from pay phones.

WAC 480-120-138 (5)(h), one way call restriction. Many commenters want the flexibility to deal on their own with the question of whether or not to ban incoming calls. They argue that pay phone owners and location providers should be allowed to restrict phones against incoming calls whenever they choose. The commission believes that, generally, two-way service should be available from pay phones. However, the commission proposed exceptions to this policy to meet concerns that were expressed. Present exceptions allowing restricting incoming calls in libraries and hospitals, where quiet is necessary for the operation of the institution, would continue. The commission proposed a new exception, inside the building of a private business, where the pay phone provider and the location owner may decide whether to restrict against incoming calls. Phones located outside such private business locations, and in or on premises where people have access to public transportation such as airports, bus and train stations, must provide two-way service unless the commission grants a waiver. Adopted language addresses concerns heard in the comments, and it is consistent with the intent of the rule and appropriate consumer protection.

WAC 480-120-138(6) is revised to remove repetitive and unnecessary language, to correctly identify the appropriate subsection for requesting a waiver, and to shorten the

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comment period from thirty to twenty days when there has been a request to restrict a pay phone, as the City of Seattle suggests. It is consistent with the intent of the rule and with appropriate consumer protection.

STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the commission determined that WAC 480-120-021, 480-120-138, and 480-120-141 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, and WAC 480-120-137, 480-120-142, and 480-120-143 should be repealed, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 3, repealed 3; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 3, repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

ORDER

THE COMMISSION ORDERS:

1. WAC 480-120-021, 480-120-138, and 480-120-141 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, and WAC 480-120-137, 480-120-142, and 480-120-143 are repealed, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

2. This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

3. The commission adopts the commission staff memorandum, presented when the commission considered filing a preproposal statement of inquiry, when it considered filing the formal notice of proposed rule making, and when it considered adoption of this proposal in conjunction with the text of this order, as its concise explanatory statement of the reasons for adoption of the proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington, this 28th day of December 1998.

Washington Utilities and Transportation Commission
Anne Levinson, Chair
Richard Hemstad, Commissioner
William R. Gillis, Commissioner

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-384, Docket No. UT-921192, filed 2/26/93, effective 3/29/93)

WAC 480-120-021, Glossary. Access line - a circuit between a subscriber's point of demarcation and a serving switching center. Access code - sequence of numbers that, when dialed, connect the caller to the provider of operator telecommunication services associated with that sequence.

Aggregator - is referenced in these rules as a call aggregator defined below.

Alternate operator services company - ((any corporation, company, partnership, or person other than a local exchange company providing a connection to intrastate or interstate long distance or to local services from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than: Automatic completion with billing to the telephone from which the call originated, or completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier)) is referenced in these rules as an operator service provider (OSP), defined below.

Applicant - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.

Automatic dialing-announcing device - any automatic terminal equipment which incorporates the following features:

- (1)(a) Storage capability of numbers to be called; or
- (b) A random or sequential number generator that produces numbers to be called; and
- (c) An ability to dial a call; and
- (2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.

Automatic location identification/data management system (ALIDMS) - ALIDMS is a feature that forwards to the public safety answering point (PSAP) a caller's telephone number, the name and service address associated with the telephone number, and supplementary information as defined in the DMS for automatic display at the PSAP. The DMS is a combination of manual procedures and computer programs used to create, store, manipulate, and update data required to provide selective routing, ALL, emergency service numbers, and other information associated with the calling party's telephone number.

Billing agent - a person such as a clearing house which facilitates billing and collection between a carrier and an entity such as a local exchange company which presents the bill to and collects from the consumer.

Base rate area or primary rate area - the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.

Call aggregator - ((a)) any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available ((for intrastate service)) to the public or to users of its premises for telephone calls using a provider of operator services, including but not limited to hotels, motels, hospitals, campuses, and pay ((telephones)) phones (see also pay phone service provider).

Centrex - a telecommunications service providing a subscriber with direct inward dialing to telephone extensions and direct outward dialing from them.

Central office - a switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission (agency) - in a context meaning a state agency, the Washington utilities and transportation commission.

Commission (financial) - in a context referring to compensation for telecommunications services, a payment from an AOS company to an aggregator based on the dollar volume of business, usually expressed as a percentage of tariffed message toll charges.

Competitive telecommunications company - a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service - a service which is classified as such by the commission pursuant to RCW 80.36.330.

Consumer - user not classified as a subscriber.

Customer premises equipment (CPE) - telecommunications terminal equipment, including inside wire, located at a subscriber's premises on the subscriber's side of the standard network interface point of demarcation (excluding pay telephones provided by the serving local exchange company).

Emergency calling - the ability to access emergency services by dialing 911, or dialing a local number to police and/or fire where 911 is not available, without the use of a coin or the entering of charge codes. Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) shall 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.

Exchange - a unit established by a ((utility)) telecommunications company for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area - the specific area served by, or purported to be served by an exchange.

Farmer line - outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station - a telephone instrument installed and in use on a farmer line.

Foreign exchange service - a communications exchange service that uses a private line to connect a subscriber's local central office with a distant central office in a community outside the subscriber's local calling area.

Interexchange telecommunications company - a telecommunications company, or division thereof, that does not provide basic local service.

Interoffice facilities - facilities connecting two or more telephone switching centers.

Local coin call - a connection from a pay phone within the local calling area of not less than fifteen minutes.

Location surcharge - a flat, per-call charge assessed by an ((alternate operator services company)) operator service provider (OSP) on behalf of a call aggregator/pay phone service provider in addition to message toll charges, local call charges, and operator service charges. A location surcharge is remitted, in whole or in part, to the call ((aggregator customer)) aggregator/pay phone service provider.

Operator service charge - a charge, in addition to the message toll charge or local call charge, assessed on the calling card, a credit card, or for automated or live operator service in completing a call.

Operator service provider (OSP) - any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than: Automatic completion with billing to the telephone from which the call originated; or completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier.

Outside plant - the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices.

Pay phone or pay telephone - any telephone made available to the public on either a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated by calling collect or using a calling card.

Pay phone access line, public access line, pay telephone access line, pay station service, pay phone service (PAL) - is referenced in these rules as an access line, see above.

Pay phone services - provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

Pay phone service provider (PSP) - any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

Pre-subscribed provider of operator services - the provider of operator services to which the consumer is connected when a call is placed without dialing an access code.

Person - unless the context indicates otherwise, any natural person or an entity such as a corporation, partnership, municipal corporation, agency, or association.

Private branch exchange (PBX) - customer premises equipment installed on the subscriber's premises that functions as a switch, permitting the subscriber to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk leading to another PBX or to access an outside trunk to the public switched telephone network.

Private line - a dedicated, nonswitched telecommunications channel provided between two or more points.

Public safety answering point (PSAP) - an answering location for enhanced 911 (E-911) calls originating in a given area. PSAPs are designated as a primary or secondary. Primary PSAPs receive E-911 calls directly from the public; secondary PSAPs receive E-911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

Reverse search of ALI/DMS data base - a query of the automatic location identification (ALI/DMS) data base initiated at the public safety answering point (PSAP) to obtain electronically the ALI data associated with a known telephone number for purposes of handling an emergency call when the searched telephone line is not connected to the PSAP.

Special circuit - an access line specially conditioned to give it characteristics suitable for handling special or unique services.

Standard network interface (SNI) - the point of interconnection between telecommunications company communications facilities and terminal equipment, protective apparatus, or wiring at a subscriber's premises. The network interface or demarcation point is located on the subscriber's side of the telecommunications company's protector, or the equivalent thereof in cases where a protector is not employed.

Station - a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

Subscriber - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.

Toll station - a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.

Trunk - a single or multichannel telecommunications medium between two or more switching entities which may include a PBX.

Utility - any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order R-422, Docket No. UT-940049, filed 9/22/94, effective 10/23/94)

WAC 480-120-138 (~~Pay telephones—Local and Intrastate~~) **Pay phone service providers (PSPs)**, ((Every telecommunications company operating an exchange within the state of Washington may allow pay telephones to be connected to the company's network for purposes of interconne-

~~tion and use of registered devices for local and intrastate communications. Every such telecommunications company offering such service shall file tariffs with the commission setting rates and conditions applicable to the connection of pay telephones to the local and intrastate network under the following terms and conditions. Local exchange companies that do not have a public access line tariff on file with the commission shall not be subject to these rules.~~

For purposes of these rules "pay telephone" is defined as equipment connected to the telephone network in one of the following modes:

(a) ~~Coin-operated—A telephone capable of receiving nickels, dimes, and quarters to complete telephone calls. Credit card or other operator-assisted billing may be used from a coin-operated instrument.~~

(b) ~~Coinless—A pay telephone where completion of calls, except emergency calls, must be billed by an alternative billing method such as credit card, calling cards, collect, third-party billing, or billed in connection with the billing of meals, goods, and/or services. These pay phones include, but are not limited to, charge-a-call, cordless, tabletop, and credit card stations. The term does not include in-room telephones provided by hotels, motels, hospitals, campuses or similar facilities for the use of guests or residents.~~

For purposes of these rules, the term "subscriber" is defined as a party requesting or using a public access line for the purpose of connecting a pay telephone to the telephone network.

(1) ~~Pay telephones connected to the company network must comply with Part 68 of the Federal Communications Commission rules and regulations and the National Electric Code and National Electric Safety Code as they existed on January 1, 1991, and must be registered with the Federal Communications Commission or installed behind a coupling device which has been registered with the Federal Communications Commission.~~

(2) ~~All pay telephones shall provide dial tone first to assure emergency access to operators without the use of a coin.~~

(3) ~~The caller must be able to access the operator and 911 where available without the use of a coin.~~

(4) ~~The charge for each directory assistance call paid by the consumer shall not exceed the prevailing per call charge for comparable directory assistance. In the absence of persuasive contrary evidence, the charge of U-S-WEST Communications for intra-LATA directory assistance or AT&T for inter-LATA directory assistance shall be accepted as the prevailing charge. A location surcharge is not permitted.~~

(5) ~~Emergency numbers (e.g., operator assistance and 911) must be clearly posted on each pay telephone.~~

(6) ~~Information consisting of the name, address, telephone number of the owner, or the name of the owner and a toll-free telephone number where a caller can obtain assistance in the event the pay telephone malfunctions in any way, and procedures for obtaining a refund from the subscriber must be displayed on the front of the pay telephone.~~

The following information shall also be posted on or adjacent to the telephone instrument:

(a) The method by which the consumer may obtain without charge an accurate quotation of rates, fees and surcharges; and

(b) The notices required by WAC 480-120-141(4). In no case will the charges to the user exceed the quoted costs.

(7) The telephone number of the pay telephone must be displayed on each instrument.

(8) The subscriber shall ensure that the pay telephone is compatible for use with hearing aids and its installation complies with all applicable federal, state, and local laws and regulations concerning the use of telephones by disabled persons.

(9) The pay telephone, if coin-operated, must return the coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters. Local exchange company pay telephones shall not be subject to the requirements of this subsection.

(10) All pay telephones must provide access to all inter-exchange carriers where such access is available. If requested by the subscriber, the local exchange company providing the public access line shall supply, where available, (a) restriction which prevents fraud by selective blocking of 10XXX + codes and (b) call screening to identify the line as one to which charges may not be billed, at appropriate tariffed rates.

(11) Except for service provided to hospitals, libraries, or similar public facilities in which a telephone ring might cause undue disturbance, or upon written request of a law enforcement agency, coin-operated pay telephones must provide two-way service, and there shall be no charge imposed by the subscriber for incoming calls. This subsection will not apply to pay telephones arranged for one-way service and in service on May 1, 1990. Should an existing one-way service be disconnected, change telephone number, or change financial responsibility, the requirements of this subsection shall apply. All pay telephones confined to one-way service shall be clearly marked on the front of the instrument.

(12) Pay telephones shall be connected only to public access lines in accordance with the approved tariffs offered by the local exchange company. Local exchange company pay telephones are not subject to this requirement.

(13) A subscriber must order a separate pay telephone access line for each pay telephone installed. Extension telephones may be connected to a pay telephone access line when the instrument:

(a) Prevents origination of calls from the extension station; and

(b) Prevents third party access to transmission from either the extension or the pay telephone instrument.

Local exchange companies are exempt from (b) of this subsection.

(14) Credit card operated pay telephones shall clearly identify all credit cards that will be accepted.

(15) Involuntary changes in telephone numbers upon conversion of pay telephones from local exchange company owned to privately owned pay telephones are prohibited.

(16) No fee shall be charged for nonpublished numbers on a public access line.

(17) Cordless and tabletop pay telephones shall not be connected to the telephone network except under the following conditions:

(a) The bill for usage is tendered to the user before leaving the premises where the bill was incurred or alternatively billed at the customer's request; and

(b) The user is notified verbally or on the instrument that privacy on cordless and tabletop telephones is not guaranteed; and

(c) When other electrical devices are equipped with filters, as necessary, to prevent interference with the pay telephone.

(18) Violations of the tariff, commission rules pertaining to pay telephone service, or other requirements contained in these rules, including interexchange carrier access requirements, will subject the pay telephone to disconnection of service as follows. When the local exchange company becomes aware of a violation, prior to disconnection of service, it shall immediately send written notification to the subscriber outlining all deficiencies. If any deficiency is not corrected within five days from the date of written notification to the subscriber, the local exchange company shall discontinue service. Prior to effecting the disconnection of service, the local exchange company shall make two bona fide attempts to reach the subscriber by telephone to advise the subscriber of the impending disconnection. WAC 480-120-061 shall not apply to such disconnections. The local exchange company shall ensure that any costs associated with the field visits for public access line services be recovered from the subscriber of the public access line service in question.

It shall be the responsibility of every local exchange company to assure that any subscriber taking service pursuant to these rules and to tariffs filed pursuant to these rules meets all of the terms and conditions contained within these rules and the tariffs so filed. It shall be the duty of the local exchange company to enforce the terms and conditions contained herein.

It shall be the responsibility of the local exchange company to provide free of charge one current telephone directory each year for each public access line. It shall be the responsibility of the subscriber to make a reasonable effort to assure a current directory is available at every pay telephone location.

Public access lines will be charged at rates according to the relevant tariff as approved by the commission.

(19) Disconnection of, or refusal to connect, a pay telephone for violation of these rules may be reviewed by the commission in a formal complaint under WAC 480-09-420(5) through an adjudicative or a brief adjudicative proceeding under the provisions of chapters 34.05 RCW and 480-09 WAC. (1) General. This section sets out the standards applicable to providing pay phone service in the state of Washington. All pay phone service providers (PSPs) must comply with this and all other rules relating to pay phone services.

Every local exchange company within the state of Washington must allow pay phones to be connected to its network, and must file a tariff or price list with the commission to include the rates and conditions applicable to providing service to pay phones via its network.

The absence from these rules of specific requirements of the Americans with Disabilities Act and of other local, state or federal requirements does not excuse PSPs from compliance with those requirements.

(2) Registration and application of rules.

(a) Pay phone service providers (PSPs) operating a pay phone within the state of Washington must register by:

(i) Submitting a master business application to the master license service, department of licensing; and

(ii) Obtaining a unified business identifier (UBI) number. A PSP that already has a UBI number need not reapply.

(b) Except where pay phone services or PSPs are specifically referenced, the rules of general applicability to public service companies or telecommunications companies do not apply to pay phone services. This does not exempt pay phone service providers from rules applicable to remedies or sanctions for violations of rules applicable to PSP operations.

(3) Access. Pay phones must provide access to:

(a) Dial tone;

(b) Emergency calling;

(c) Operator;

(d) Telecommunications relay service calls for the hearing impaired;

(e) All available subscriber toll-free services; and

(f) All available interexchange carriers, including the local exchange company.

Access to services (a) through (e) of this subsection, must be provided at no charge to the calling party.

(4) Disclosure - What must be posted. The following information must be clearly and legibly posted on or near the front of the pay phone, and must not be obstructed by advertising or otherwise:

(a) The rate for local calls, including any restrictions on the length of calls. Clear and legible posting of the rate can be accomplished by using 30 point or larger type print, or contrasting color;

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

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

(d) The emergency number (911);

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

(f) A without-charge number to obtain assistance if the pay phone malfunctions, and procedures for obtaining a refund;

(g) The name, address, and without-charge number of all presubscribed operator service providers, as registered with the commission. This information must be updated within thirty days of a change in the OSP.

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

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

(j) In contrasting colors, the commission compliance number for consumer 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/refund number or operator, please call the commission at 1-888-333-WLTC (96821); and

(k) Placarding shall be in place within sixty days after the effective date of an applicable rule change.

(5) Operation and functionality.

(a) The pay phone, if coin operated, must return coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters.

(b) Pay phone keypads must include both numbers and letters.

(c) A PSP must order a separate pay phone 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 one to one ratio by means other than through a PAL, that the service provided to consumers is fully equivalent, and that all emergency calling requirements are met. This PAL must pass the appropriate screening codes to the connecting carrier to indicate that the call is originating from a pay phone.

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

(e) Cordless and tabletop pay phones may be connected to the telephone network only when the bill is presented to the user before leaving the premises where the bill was incurred, unless the consumer requests that the call be alternatively billed.

(f) The pay phone may not restrict the number of digits or letters that may be dialed.

(g) Pay phones may provide credit-only service, or coin and credit service.

(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, in 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 obtained an order under subsection (6) of this section. Each pay phone confined to one-way service must be clearly marked on or near the front of the pay phone.

(6) Restrictions. A PSP must limit the operational capabilities of pay phones only when directed by the commission. The commission may direct such limitations upon request of local governing jurisdictions (or other governmental agencies) in their efforts to prevent or limit criminal or illicit

activities. Restrictions may include, but are not limited to, blocking of incoming calls, limiting touch tone capabilities and coin restriction during certain hours.

Requests for a commission order directing the restriction of a pay phone (or pay phones in a certain geographic area) must be made by petition to the commission for waiver of subsection (5) of this section to allow one or more specific restrictions and for an order directing restriction of the phone. The petition may be made on a form provided by the commission. The petition must include a request for the restriction signed by an agent of the local government jurisdiction in which the pay phone is located who has authority from the jurisdiction to submit the request and must state the jurisdiction's reasons for the request.

The petitioner must serve a copy of the petition on the pay phone service provider no later than the date the petition is filed with the commission. The petitioner must post a notice prominently visible at the pay phone(s) of the proposed restriction, no later than the day it is filed with the commission, and maintain it at the location until the commission acts on the petition. The notice must explain what is proposed and how to file an objection to the petition with the commission. The petition is for an administrative, and not an adjudicative, decision and will be processed administratively.

If no objection is made by any person or by commission staff within the twenty-day comment period, the commission will enter an order directing the restriction. If an objection is filed, the commission will hear the petition after notice to the objector and the petitioner.

Once restrictions are in place at the telephone, the PSP must post on or near each pay phone so limited, in legible and prominent type, a description of each limitation in effect, times when the restrictions will be in effect, and the name and without-charge number of the governmental agency that recommended the restriction.

(7) Telephone directories. The provider of the pay phone access line must furnish without charge one current telephone directory each year for each pay phone access line (PAL).

The PSP must ensure that a current directory is available at every pay phone.

(8) Malfunctions and rule violations. Malfunctions of the pay phone, or rule violations reported to the repair/refund number or the commission, must be corrected within five days.

(9) Complaints and disputes. Complaints and disputes regarding pay phone service providers shall be treated in accordance with WAC 480-120-101.

AMENDATORY SECTION (Amending Order R-430, Docket No. UT-950134, filed 4/28/95, effective 5/29/95)

WAC 480-120-141 ((Alternate operator services:))
Operator service providers (OSPs). ((All telecommunications companies providing alternate operator services (AOS), as defined in WAC 480-120-021, shall comply with this and all other rules relating to telecommunications companies not specifically waived by order of the commission.

(1) Each alternate operator services company shall maintain, revise and provide to the commission upon request a

current list of operator services customers which it serves and the locations and telephone numbers to which such service is provided to each customer. A customer list provided pursuant to this rule is proprietary information and, if identified, when filed as required in WAC 480-09-015, is subject to the provisions of that rule.

(2) Each AOS company is responsible for assuring that each of its customers complies fully with contract and tariff provisions which are specified in this rule. Failure to secure compliance constitutes a violation by the AOS company.

(a) The AOS company shall withhold on a location-by-location basis the payment of compensation, including commissions, from a call aggregator, if the AOS company reasonably believes that the call aggregator is blocking access to interexchange carriers in violation of these rules.

(b) Violations of tariff, contract or other statements of conditions of service, in commission rules pertaining to AOS company service, or of other requirements contained in these rules, including interexchange carrier access requirements, will subject an aggregator to termination of alternate operator services as follows. When the AOS becomes aware of a violation, prior to disconnection of service, it shall immediately send written notification to the aggregator outlining all deficiencies. If any deficiency is not corrected within five days from the date of written notification to the aggregator, the AOS shall terminate service. Prior to effecting the termination of service, the AOS company shall make two bona fide attempts to reach the subscriber by telephone to advise the subscriber of the impending termination. WAC 480-120-081 shall not apply to such terminations.

(c) AOS company actions in furtherance of this rule may be reviewed by the commission in a formal complaint under WAC 480-09-120 through an adjudicative or a brief adjudicative proceeding under the provisions of chapters 21-05 RCW and 480-09 WAC.

(d) An AOS company shall refuse to provide operator services to a call aggregator who the commission has found to have knowingly and repeatedly violated commission rules regarding the provision of alternate operator service until the commission has found that the call aggregator will comply with relevant law and rule.

(2) For purposes of this section, "consumer" means the party initiating and/or paying for an interexchange or local call. "Customer" means the call aggregator, i.e., the hotel, motel, hospital, prison, campus, pay telephone, etc., contracting with an AOS for service.

(1) An alternate operator services company shall require, as a part of any contract with its customer and as a term and condition of service stated in its tariff, that the customer:

(a) Post on the telephone instrument in plain view of anyone using the telephone, in eight point or larger, **Strike Bold** type, the information provided in the following notice:

SERVICE ON THIS INSTRUMENT MAY BE PROVIDED AT RATES THAT ARE HIGHER THAN NORMAL. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR REACHING YOUR PREFERRED CARRIER ARE ALSO AVAILABLE FROM THE OPERATOR.

(b) Post and maintain in legible condition on or near the telephone:

(i) The name, address, and without charge number of the alternate operator services company, as registered with the commission;

(ii) Dialing directions so that a consumer may reach the AOS operator without charge to receive specific rate information; and

(iii) Directions to allow the consumer to reach the consumer's preferred carrier and to make it clear that the consumer has access to the other providers.

(e) Provide access from every instrument to 1-800 services and all available interexchange carriers; and

(d) Shall post, on or near the instrument, a notice stating whether a location surcharge or any other fee is imposed for telecommunications access through the instrument, the amount of any fee or location surcharge, and the circumstances when it will apply.

(e) Posting under these rules shall begin no later than October 1, 1991, and shall be completed no later than January 31, 1992. In the interim, posting in compliance with the immediate prior posting provisions of WAC 480-120-141 is required and shall constitute compliance with this rule.

(5) The alternate operator services company shall:

(a) Identify the AOS company providing the service audibly and distinctly at the beginning of every call, and again before the call is connected, including an announcement to the called party on calls placed collect.

(i) For purposes of this rule the beginning of the call is no later than immediately following the prompt to enter billing information on automated calls and, on live and automated operator calls, when the call is initially routed to the operator.

(ii) The message used by the AOS company shall state the name of the company as registered with the commission whenever referring to the AOS company. Terms such as "company," "communications," "incorporated," "of the northwest," etc., when not necessary to clear consumer identification of the entity providing service may be omitted when authorized by letter from the secretary of the commission.

(iii) The consumer shall be permitted to terminate the telephone call at no charge before the call is connected.

(iv) The AOS company shall immediately, upon request and at no charge to the consumer, disclose to the consumer:

(A) A quote of the rates or charges for the call, including any surcharge;

(B) The method by which the rates or charges will be collected; and

(C) The methods by which complaints about the rates, charges, or collection practices will be resolved.

(b) Provide to the local exchange company such information as may be necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(c) Reoriginate calls to another carrier upon request and without charge, when equipment is in place which will accomplish reorigination with sequencing and allow billing from the point of origin of the call. If reorigination is not available, the AOS company shall give dialing instructions for the consumer's preferred carrier.

(d) Assure that a minimum of ninety percent of all calls shall be answered by the operator within ten seconds from the time the call reaches the carrier's switch.

(e) Maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including as pertinent the facilities for access to consumers' preferred interexchange carriers, does not exceed one percent in the time consistent busy hour. Should excessive blockage occur, it shall be the responsibility of the AOS company to determine what caused the blockage and take immediate steps to correct the problem. This subsection does not apply to blockage during unusually heavy traffic, such as national emergency, local disaster, holidays, etc.

(6) The alternate operator services company shall assure that persons are not billed for calls which are not completed. For billing purposes, calls shall be itemized, identified, and rated from the point of origination to the point of termination. No call shall be transferred to another carrier by an AOS which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

(7) For purposes of emergency calls, every alternate operator services company shall have the following capabilities:

(a) Automatic identification at the operator's console of the location from which the call is being made;

(b) Automatic identification at the operator's console of the correct telephone numbers of emergency service providers that serve the telephone location, including but not limited to, police, fire, ambulance, and poison control;

(c) Automatic ability at the operator's console of dialing the appropriate emergency service with a single keystroke;

(d) Ability of the operator to stay on the line with the emergency call until the emergency service is dispatched.

No charge shall be imposed on the caller by the telephone company or the alternate operator services company for the emergency call.

If the alternate operator services company does not possess these capabilities, all calls in which the consumer dials zero (0) and no other digits within five seconds shall be routed directly to the local exchange company operator, or to an entity fully capable of complying with these requirements. AOS companies lacking sufficient facilities to provide such routing shall cease operations until such time as the requirements of this section are met.

(8) Complaints and disputes shall be treated in accordance with WAC 480-120-101, Complaints and disputes.

(9) Charges billed to a credit card company (e.g., American Express or Visa) need not conform to the call detail requirements of this section. However, the AOS shall provide specific call detail in accordance with WAC 480-120-106 upon request.

(10) "Public convenience and advantage," surcharges, variable rates:

(a) For services, public convenience and advantage means at a minimum that the provider of alternate operator services offers operator services which equal or exceed the industry standards in availability, technical quality and response time and which equal or exceed industry standards in variety or which are particularly adapted to meet unique needs of a market segment. In the absence of other persuasive

evidence, a demonstration that operator service equals or exceeds that provided by US WEST Communications for intralATA services or AT&T for interLATA services will be accepted as demonstrating public convenience and advantage.

(b) Charges no greater than those prevailing charges in the relevant market—~~intraLATA or interLATA~~—will be accepted as demonstrating that charges are for the public convenience and advantage. In the absence of persuasive contrary evidence, \$0.25 higher per call than AT&T daytime charges for intraLATA and interLATA service will be accepted as the prevailing charges.

(c) Surcharges, variable rates. No location surcharge may be added to without charge calls nor to a charge for directory assistance. No tariff may provide for rate levels which vary at the option of a call aggregator, provided, that an aggregator may waive application of the surcharge to calls from its instruments, and provided further, that an AOS company may establish a tariff rate for high cost locations if the conditions for application of the rate confine it to locations with substantially higher than average operating costs.

(11) Rates to the consumer for the provision of alternate operator services, including directory assistance, shall not exceed the prevailing rates for such services in the relevant market—~~intraLATA or interLATA~~—unless need for the excess to produce rates which are fair, just and reasonable is demonstrated to the satisfaction of the commission. In the absence of persuasive contrary evidence, \$0.25 higher per call than AT&T daytime charges for intraLATA and interLATA service will be considered the prevailing rate.

(12) Fraud prevention:

(a) A company providing interexchange telecommunications service may not bill a call aggregator for charges billed to a line for calls which originated from that line through the use of 10XXX-0, 10XXX-01, 950-XXXX, or 1-800 access codes, or when the call originating from that line otherwise eched an operator position, if the originating line subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) A company providing interexchange telecommunications service may not bill to a call aggregator any charges for collect or third number billed calls, if the line serving to which the call was billed was subscribed to incoming call screening and the call was placed after the effective date of the call screening service order.

(c) Any calls billed through the local exchange carrier in violation of subparagraphs (a) or (b) above must be removed from the call aggregator's bill by the local exchange company upon identification. If investigation by the local exchange company determines that the pertinent call screening was operational when the call was made, the local exchange company may return the charges for the call to the interexchange telecommunications company as not billable.

(d) Any call billed directly by an alternate operator service company, or through a billing method other than the local exchange company, which is billed in violation of subparagraphs (a) and (b), above, must be removed from the call aggregator's bill. The telecommunications company providing the service may request an investigation by the local exchange company. If the local exchange company, after

investigation, determines that call screening which would have protected the call, which is offered by the LEC and was subscribed to by the call aggregator, was not operational at the time the call was placed, the AOS company shall bill the LEC for the call.) (1) General. This section gives information to operator service providers (OSPs) that provide operator services from pay phones and other aggregator locations within Washington. All telecommunications companies providing operator services (both live and automated) must comply with this and all other rules relating to telecommunications companies not specifically waived by order of the commission. The absence from these rules of specific requirements of the Americans with Disabilities Act and of other local, state or federal requirements does not excuse OSPs from compliance with those requirements.

(a) Each operator service provider (OSP) must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(b) No OSP may provide service to a PSP that is not fully in compliance with the rules.

(c) For purposes of this section, "consumer" means the party initiating and/or paying for a call using operator services. In collect calls, both the originating party and the party on the terminating end of the call are consumers. "Customer" means the call aggregator or pay phone service provider, i.e., the hotel, motel, hospital, correctional facility/prison, or campus, contracting with an OSP for service.

(2) Disclosure:

(a) What must be posted. The following information must be clearly and legibly posted on or near the front of a pay phone, and must not be obstructed by advertising or other messages:

(i) The name, address, and without charge number of all presubscribed operator service providers, as registered with the commission. This information must be updated within thirty days after a change of OSPs;

(ii) Notice to consumers that they can access other long distance carriers;

(iii) In contrasting colors, the commission compliance number for consumer 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/refund number or operator, please call the commission at 1-888-333-WUTC (9882)"; and

(iv) Placarding as a result of rule changes shall be in place within sixty days after the effective date of the rule change.

(b) Verbal disclosure of rates. Before an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line. This message must precede any further verbal information advising the consumer how to complete the call, such as to enter the consumer's calling card number. This rule applies to all calls from pay phones or other aggregator locations, including prison phones, and store-and-forward pay phones or "smart" telephones. After hearing an OSP's message, a consumer may waive their right to obtain specific

rate quotes for the call they wish to make by choosing not to press the key specified in the OSP's message to receive such information or by hanging up. The rate quoted for the call must include any applicable surcharge. Charges to the user must not exceed the quoted rate.

(3) Access. Pay phones must provide access to the services identified in WAC 480-120-138(3).

(4) Branding. The operator service provider must:

(a) Identify the OSP providing the service audibly and distinctly at the beginning of every call, including an announcement to the called party on calls placed collect.

(b) Ensure that the beginning of the call is no later than immediately following the prompt to enter billing information on automated calls and, on live and automated operator calls, when the call is initially routed to the operator.

(c) State the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. Terms such as "company," "communications," "incorporated," "of the northwest," etc., may be omitted when not necessary to identify clearly the OSP.

(5) Billing. The operator service provider must:

(a) Provide to the billing company applicable call detail necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(b) Ensure that consumers are not billed for calls that are not completed. For billing purposes, calls must be itemized, identified, and rated from the point of origination to the point of termination. No call may be transferred to another carrier by an OSP unless the call can be billed from the point of origin of the call.

(c) Charges billed to a credit card need not conform to the call detail requirements of this section. However, the OSP must provide specific call detail in accordance with WAC 480-120-106, Form of bills, upon request.

(6) Operational capabilities. The operator service provider must:

(a) Answer at least ninety percent of all calls within ten seconds from the time the call reaches the carrier's switch.

(b) Maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including as pertinent the facilities for access to consumers' preferred interexchange carriers, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, it is the responsibility of the OSP to determine what caused the blockage and take immediate steps to correct the problem.

(c) Offer operator services that equal or exceed the industry standards in availability, technical quality, response time, and that also equal or exceed industry standards in variety or are particularly adapted to meet unique needs of a market segment.

(d) Reoriginate calls to another carrier upon request and without charge when the capability to accomplish reorigination with screening and allow billing from the point of origin of the call is in place. If reorigination is not available, the OSP must give dialing instructions for the consumer's preferred carrier.

(7) Emergency calls. For purposes of emergency calls, every OSP must have the following capabilities:

(a) Be able to transfer the caller into the appropriate E-911 system and to the public safety answering point (PSAP) serving the location of the caller with a single key stroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made;

(b) Have the ability for the operator to stay on the line with the emergency call until the PSAP representative advises the operator that they are no longer required to stay on the call; and

(c) Be able to provide a without-charge number for direct access to public safety answering points should additional information be needed when responding to a call for assistance from a phone utilizing the provider's services. That emergency contact information must not be considered proprietary.

(8) Fraud protection.

(a) A company providing telecommunications service may not bill a call aggregator for the following:

(i) Charges billed to a line for calls which originated from that line through the use of carrier access codes (i.e., 10XXX+0, 10XXX+01, 950-XXXX), toll-free access codes, or when the call originating from that line otherwise reached an operator position, if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order;

(ii) Collect or third-number billed calls, if the line serving the call that was billed had subscribed to incoming call screening (also termed billed number screening) and the call was placed after the effective date of the call screening service order.

(b) Any calls billed through the access line provider in violation of (a)(i) or (ii) of this subsection must be removed from the call aggregator's bill by the access line provider. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the telecommunications company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of (a)(i) and (ii) of this subsection, must be removed from the call aggregator's bill. The telecommunications company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have protected the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(9) Enforcement. Operator service providers are subject to all pertinent provisions of law.

(a) Suspension. The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or fails to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

(i) Suspension may be ordered following notice and opportunity for hearing as provided in RCW 80.04.110 and the procedural rules of the commission.

(ii) No operator service provider may operate while its registration is suspended.

(iii) Except as required by federal law, no provider of pay phone access line service may provide service to any operator service provider whose registration is suspended.

(b) Penalty. The commission may assess a penalty as provided in RCW 80.36.522 and 80.36.524, upon any company providing operator services if the company fails to meet minimum service levels or fails to provide disclosure to consumers of protection available under chapter 80.36 RCW.

(c) Alternatives. The commission may take any other action regarding a provider of operator services as authorized by law.

(d) Complaints. Complaints and disputes will be treated in accordance with WAC 480-120-101.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-137	Customer-owned pay tele- phones—Interstate.
WAC 480-120-142	Alternate operator services— Enforcement.
WAC 480-120-143	Local service to aggregators.

**WSR 99-02-023
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

(Filed December 30, 1998, 11:00 a.m., effective March 30, 1999)

Date of Adoption: December 30, 1998.

Purpose: Chapter 296-24 WAC, General safety and health standards.

Subject: First aid relating to longshore, stevedore, and related waterfront operations. State-initiated adopted amendments are made to delete a reference to chapter 296-56 WAC in WAC 296-24-06105, which exempts applicability of chapter 296-24 WAC first aid requirements to longshore, stevedore, and related waterfront industries. This exemption previously existed because first aid requirements were included in the vertical standard.

However, under a separate rule amendment adoption (see this Washington State Register for other WISHA rule adoptions), the department replaced existing first aid requirements in chapter 296-56 WAC with a reference to first aid requirements in chapter 296-24 WAC. Deletion of the exemption in chapter 296-24 WAC was necessary to make first aid requirements applicable to longshore, stevedore and related waterfront operations.

Both rules are adopted and become effective on March 30, 1999.

Citation of Existing Rules Affected by this Order:
Amending WAC 296-24-06105 What workplaces does this rule apply to?

Statutory Authority for Adoption: RCW 49.17.040

Adopted under notice filed as WSR 98-20-079 on October 6, 1998.

Changes Other than Editing from Proposed to Adopted Version: No public comments were received on this proposal. Therefore, WISHA is adopting the rule as proposed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0; Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: March 30, 1999.

December 30, 1998

Gary Moore

Director

AMENDATORY SECTION (Amending WSR 98-06-061, filed 3/2/98, effective 6/1/98)

WAC 296-24-06105 What workplaces does this rule apply to? This rule applies to all workplaces, except for the ones listed below. They are, instead covered by separate individual rules (vertical standards):

Rule Title	Chapter
• Agriculture	296-307 WAC
• Compressed Air Work	296-36 WAC
• Construction	296-155 WAC
• Fire Fighters	296-305 WAC
• Logging	296-54 WAC
(*) Longshoring/Stevedoring	296-56 WAC
• Sawmills	296-78 WAC
• Shipbuilding and Repairing	296-304 WAC

**WSR 99-02-024
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

(Filed December 30, 1998, 11:05 a.m., effective March 30, 1999)

Date of Adoption: December 30, 1998.