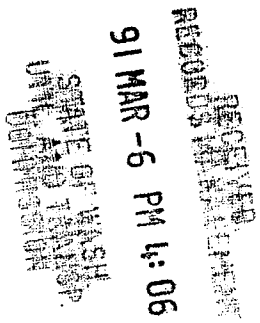
Washington State Hotel & Motel Association

Member, American Hotel & Motel Association

March 6, 1991



Mr. Paul Curl
Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 Evergreen Park Drive S.W.
Olympia, Washington 98504

Re: **Docket No. UT-900726**
Amendment of WAC 480-021, -106, -138, and -141
Relating to Telecommunications Companies

Dear Mr. Curl:

These comments are intended to supplement, and to some extent reiterate, the initial filing of the Washington State Hotel and Motel Association (Association) dated December 11, 1990. A copy of the initial filing is attached for your convenience.

The concerns of the Association fall into three broad categories. The proposed rule, which would regulate as public utilities the telephone services hotels and motels provide their guests, needs further consideration in the following respects:

(1) The statutory authority to undertake such regulation has not been established;

(2) Imposition of a rate cap by rule is not contemplated by the public service laws and raises serious constitutional problems; and

(3) Procedural requirements have not been satisfied in that no measurement of the impact of the proposal on the lodging business consistent with the requirements of Chapter 19.85 RCW has been developed.

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I. Applicable Statutes

We noted in our earlier comments that hotels[1] are described by the public service laws (RCW 80.36.520) as "customers" of telecommunications companies. The term "aggregator" does not appear in Washington law, and there is no evident connection between hotels and any standard definition of that term. To aggregate generally means to accumulate, assemble, combine or gather. Hotels provide customer premises equipment (CPE) for the comfort and use of their guests - they do not "aggregate" in any proper sense of the word.

Nor do hotels fall within any other definition found in the public service laws. They are not in the business of providing utility service to the general public for compensation. On the contrary, they are in the business of providing lodging, and in the course of so doing, provide a number of utility type services. They provide their guests (not the general public) with heat, electricity, water, and the use of proprietary telephone equipment.

Hotels are not electric or water utilities, even though the cost of that service is obviously charged to guests. It is equally incorrect to suggest placing a telephone in a guest room makes a hotel a telecommunications company, even though there may be a nominal charge for its use. As noted in our earlier comments, the only reason telephone service is billed separately is because, unlike the hair dryer or the twenty-minute shower, the use can be identified to a specific customer. Unlike telecommunications companies, hotels do not promote the use of telephones. They are placed merely for the convenience of guests who wish to use them, and guests are universally aware of the charges for that use. Unlike other utility-type services, the cost of telephone usage need not, and should not, be spread to all guests.

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[1] We are using the term generically, to include both hotels and motels, and other elements of the lodging industry.

II. Constitution

In our original comments, we observed that generic ratemaking by rule is not contemplated by the public service laws. Each utility is entitled to recover its costs and receive a fair rate of return on its investment. There is no evidence in this proceeding (or any other) which would justify the rate cap prescribed by WAC 480-120-141 (10)(c). There is no evidence that would justify the cap for any hotel, to say nothing of all hotels.

If regulated as a utility, each hotel would be entitled to file its own tariffs, and to have its rates based on its own investment, capital structure, capital costs, revenue requirements, operating costs, and any other characteristics particular to the operation. If those factors are not taken into consideration, and obviously they have not been in development of the proposed rate cap, the result might well be confiscation of property - a constitutional problem of considerable magnitude.

III. Procedure

The Association continues to have serious problems with the assessment of economic impact. The Small Business Impact Statement has been revised but appears to be at best an embryonic effort to assess the impact of these rules on the lodging industry. Moreover, the SBIS tends to obscure rather than clarify the Commission's jurisdictional position.

The SBIS states at page 3 that the Commission has not presently determined whether hotels are telecommunications companies, nor does it **directly**[2] regulate the provision of telecommunications service. Chapter 80.36 RCW applies only to telecommunications companies. The public service laws do not contemplate regulation, direct or indirect, **unless and until** jurisdiction is established. If hotels are not public service companies (and we respectfully submit they are not), rules which purportedly apply to them are legally flawed.

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[2] We are unsure what is meant by this language. We perceive the establishment of a $.25 cap on "consumer instrument access charge" to be direct regulation.

Secondly, the SBIS categorizes the impact on hotels as "unquantifiable". (Page 4). This is clearly not in compliance with Chapter 19.85 RCW. We would point out only that difficulty in assessing economic impact does not excuse lack of compliance.

Conclusion

As we observed in our prior filing, the competitive nature of the lodging industry has served effectively to control or eliminate excessive surcharges to guests for the use of room telephones. Agreements with AOS companies have been terminated in response to customer complaints. The industry has responded quickly and appropriately to concerns of its clientele. While there may be customer relations problems yet to be solved, we do not concede regulation to be a better instrument for addressing them than responsive management in a very competitive arena.

Based on the foregoing as well as our filing of December 11, 1990, we suggest the following:

1. Delete the definition of "Call aggregator" from WAC 480-120-021 and restore the original language which identifies hotels as customers of telecommunications companies, consistent with RCW 80.36.520.

2. Delete WAC 480-120-141 (10 (c) from the proposed rule.

We would welcome the opportunity to review with the Commission and its staff the rationale behind these sections, and to address further our concerns.

Respectfully submitted,

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Enclosure