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March 26, 1991


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

Subject: In the Matter of the Adoption of WAC  
480-120-021, -106, -138, and -141 Relating  
to Telecommunications Companies  
Docket No. UT-9000726

Dear Mr. Curl:

Enclosed for filing in connection with the above-  
referenced matter are the original and 19 copies of reply  
comments of Northwest Payphone Association.

Very truly yours,

  
Clyde H. MacIver

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STATE OF WASH  
UTIL. AND TR. COMM.  
COMMISSION

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Adoption ) Docket No. UT-900726  
of WAC 480-120-021, -106, -138, )  
and -141 relating to )  
telecommunications companies. )  
REPLY COMMENTS OF  
NORTHWEST PAYPHONE  
ASSOCIATION  
\_\_\_\_\_ )

Comes now the Northwest Payphone Association ("NWPA") and submits its reply comments to the second round of initial comments submitted in this rulemaking proceeding.

A. LEC response to inclusion in definition of an AOS.

While it is difficult to find humor in the dry context of a rulemaking proceeding dealing with operator services and aggregators, a reading of the second round of initial comments of the two major LECs in Washington can be viewed as at least a little amusing, albeit wryly so. When these rules were initially considered, LECs were excluded. Their initial reaction to the rules was, at best, one of guarded indifference--little or no support for the legal and economic concerns voiced by the Northwest Payphone Association and other parties was offered.

Now, however, given the prospect of inclusion within the rules, the major LECs are recoiling with dismay and voicing

strong objections to both the legality of and the economic impacts of the proposed rules. The following are illustrative of the comments now voiced by U S West and GTE:

U S West:

- \* "U S West's costs to provide its services will increase if it is required to comply as an [operator services] provider within the proposed rules." (Page 3)
- \* "U S West supports [a per-call charge for use of a pay telephone for sent-paid access] but does not support that the charge be capped or determined as part of a rulemaking proceeding." (Page 7)
- \* ". . . U S West objects to rules that establish prices or price caps as part of a rulemaking proceeding." (Page 8)
- \* "U S West objects to . . . the standard of prevailing pay telephone rates being based on the rates of U S West Communications or AT&T." (Page 9)
- \* U S West objects to the ". . . language which requires a pay telephone owner to post a notice on the pay telephone when the presubscribed carrier charges are higher than AT&T's or USWC's." (Page 9)
- \* "The requirement for posting instructions for reaching a carrier (WAC 480-120-141(4)(b)(iii) '. . . would pose an administrative nightmare . . . ." (Page 10)

GTE

- \* "The cost of compliance would thus increase dramatically . . . ." (Page 2)
- \* ". . . to avoid . . . the onerous duties imposed on AOS providers . . . GTE Northwest strongly urges the Commission . . . to exclude LECs." (Page 3)

- \* ". . . GTE Northwest believes that the posting language changes regarding posting of notices should be deleted . . . ." (Page 4)
- \* "The administrative burden and associated costs would make it impossible to post the proposed information on the instrument card on an ongoing basis . . . ." (Page 4)
- \* "GTE Northwest cautions the Commission against extending this detailed, onerous set of regulations to LECs." (Page 4)

United Telephone Company of the Northwest similarly recoils from the proposed rules given the prospect of their inclusion:

"At a minimum, the rule as proposed would have to be re-thought if LECs were to be included . . . . as currently drafted the rule would define a local exchange company as both a call aggregator and an alternative operator service company--thus subjecting the company to all requirements for both. This would simply not make sense from a public policy or business point of view."

(Page 2)

Similarly, WITA rejects the proposed rules if applied to it, but supports the rules provided that the rules do not apply to it:

"WITA supports adoption of the proposed rules with one change . . . . The rules should expressly exclude local exchange companies."

U S West's and GTE's statements, in particular, lend credibility to both the legal and economic concerns previously voiced by the NWPA and other parties herein. If the major two LECs, with all the benefits of multiple revenue streams flowing to their pay telephones and operator services, ratebase/rate of

return benefits, and huge market dominance view the rules as illegal ratemaking, an "administrative nightmare," "onerous," and as "dramatically" increasing operating costs which would adversely impact ratepayers, it is too plain for argument that these same impacts will impact the independent pay telephone providers and operator services providers and their customers with even greater force.

While the LECs argue that the present "pervasive" regulation of their services provide adequate protection to the consumers, the fact is that the present regulation of LECs does not provide the consumer of the LEC's operator services and pay telephone services with the safeguards envisioned by the proposed rules. For example, current state regulation does not require that calls to other carriers not be blocked. Further, current state regulation does not require that LEC pay telephones meet the notice and branding requirements set forth in the proposed rules.

The LECs do provide ". . . a connection to the intrastate or interstate long distance or to local services from locations of call aggregators" (WAC 480-120-021). The LECs unquestionably should offer the same consumer protections that are expected of any other provider of pay telephone and/or operator services with which the LECs compete. If the burdens of compliance with the proposed rules are too burdensome and onerous for the LECs to endure, the same is obviously true for

the providers of operator services and pay telephones with which the LECs compete.

B. AT&T - universal unblocking of 10XXX access.

It would be naive to expect the parties to commission proceedings not to take positions consistent with their economic interests. A party's position, however, is normally tempered with a good faith desire to recognize public interest factors as well. AT&T's statement herein, however, stands out from the others for being the most self-serving without any apparent redeeming public interest tempering.

The principal message in AT&T's statement is that AT&T wants assurance that the rules will mandate universal unblocking of its 10XXX dialing sequence. No mention is made concerning the fraud vulnerability associated with AT&T's 10XXX access. Also, no mention is made of the fact that AT&T is the only IXC which has chosen not to make 950 or 800 access available to its customers.

AT&T would have this Commission require aggregators to unblock 10XXX access and thereby incur the fraud risks which are created as the direct result of AT&T election not to provide 950 and 800 access. Thus AT&T would have the Commission position it to enjoy the benefits of its 10XXX access and resulting market control without sharing the fraud burdens it has created by its refusal to provide the other access codes which are offered by other IXCs.

The FCC is in the process of adopting regulations dealing with the issue of IXC access with the charge that it temper its resolution of the issues in a fashion which will "insure that aggregators are not exposed to undue risk of fraud" (47 U.S.C. § 226(g)). The FCC may well require AT&T to offer 950 or 800 access. It is respectfully submitted, therefore, that it would be sound public policy for this Commission not to require universal unblocking of 10XXX access in the state of Washington prior to learning how the FCC will, in the near future, deal with this same issue.

To the extent consistency with the FCC's treatment of this problem is possible without compromising the goals of this Commission, it would be good public policy to attempt to achieve uniformity and consistency. It is respectfully requested, therefore, that this Commission does not require uniform unblocking of 10XXX access before learning how the FCC deals with this issue.

#### CONCLUSION

The second round of initial comments of the two major LECs in Washington support both the economic and legal concerns addressed by the NWPA. Similarly, the current comments of the IXCs, taken as a whole, address the full range of concerns expressed in NWPA's comments. The only industry members which fail to offer constructive comments on the proposed rules are WITA and other independents, who merely indicate they do not

object to adoption of the rules provided that the rules do not apply to the pay telephones and/or operator services of local exchange companies. Even this summary approach highlights the fact that the rules, as currently proposed, require substantial revisions to meet both the legitimate legal and economic impact concerns of the affected parties.

NWPA is pleased, therefore, that the Commission has chosen not to act precipitously but instead has chosen to receive this second round of written comments followed by conferences with Commission staff prior to entertaining oral argument and adoption of rules. It is hoped that if all parties work in good faith to achieve rules which are fair and workable to both the industry members and the public and which do not exceed the legal parameters of a rulemaking proceeding, an acceptable product will ultimately be achieved.

As previously stated, the rules, as presently proposed, would likely end any hope for effective competition in the pay telephone arena. It is with the belief that the Commission does not wish such a result that the NWPA represents to the Commission that it will make its best effort to work with industry, the staff, and the Commission to achieve fair and workable rules which would provide adequate protection to the consumer while, at the same time, allow competing providers of the affected services a reasonable opportunity to survive.



Respectfully submitted the 26th day of March, 1991.

MILLER, NASH, WIENER, HAGER & CARLSEN



Clyde H. MacIver

Attorneys for Northwest  
Payphone Association

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served one copy of the foregoing document upon the following parties of record by mailing a copy thereof, properly addressed with postage prepaid:

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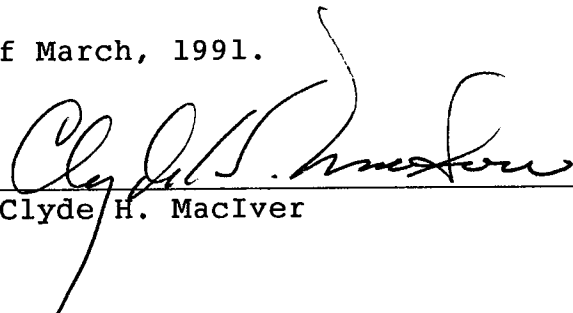
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DATED the 26th day of March, 1991.

  
Clyde H. MacIver