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November 5, 1990

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

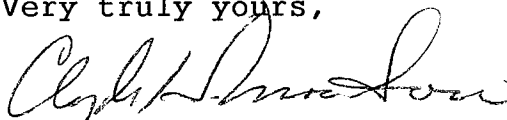
Subject: In the Matter of the Adoption of  
WAC 480-120-021,-106,-138 and -141  
Docket No. UT-900726

Dear Mr. Curl:

On behalf of the Northwest Payphone Association,  
enclosed are the original and nineteen copies of its reply  
comments in the above-designated rulemaking proceeding.

A copy was the comments was faxed to the Commission  
November 5, 1990. Hard copies of the comments are being mailed  
on November 6, 1990 to all parties who filed opening comments  
in this docket.

Very truly yours,

  
Clyde H. MacIver

cc: Mr. John Fletcher  
Mr. Ray Orme  
Mr. Mike Follett

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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Adoption )  
of WAC 480-120-021, -106, -138, ) Docket No. UT-900726  
and -141 )  
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I.

INTRODUCTION

The Northwest Payphone Association (NWPAA) submits the following reply comments in the above rulemaking docket. The proposed rules have elicited numerous objections from all segments of the telecommunications industry, including LECs, IXCs, AOSs and aggregators. In view of this fact and the fact that five meetings between industry members and the Commission staff are scheduled to occur in early November, this reply statement will not attempt to respond in detail to the lengthy comments of all other parties.

End User Comments:

It appears that all but one of the letters from end users were prepared in response to an October 10, 1990 article written Shelby Gitje which appeared in the Seattle Times, and

not in response to the proposed rules. The concerns of the general public, however, are important and the NWPA, as stated in its opening comments, joins the Commission in its desire to address abuses of end users. Rules must be promulgated, however, which are fair and appropriate for both end users and providers of service. Elimination of services to the public through confiscatory and unfair rules which do not address the realities of the market place and the true relationships between the involved industry members, would not be in the public interest.

Public Counsel Comments:

Public counsel did not address the substantive provisions of the proposed rules other than to simply state that "total prohibition" or "rate caps" at LEC levels are the alternative methods to protect end users. The end result of such a summary approach would clearly eliminate competition and service availability to the public. It is not believed that this is the Commission's goal in this rulemaking proceeding.

It is hoped that public counsel will attend the staff/industry meetings to become better informed and thereafter agree that a constructive approach to the problems the rules seek to address will ultimately inure to the public's benefit.

Local Exchange Company Comments:

U S West, in its comments, addresses many of the same concerns voiced by NWPA in its initial comments. Other than a

requirement that AOS companies register, U S West requests a delay in addressing many of the service provision requirements proposed by the rules until the FCC promulgates its rules concerning the same matters. U S West further objects to requirements that it "police" compliance with the proposed rules, objects to some of the posting requirements, objects to the requirement to display both the service providers and the billing agent on bills, and objects to the requirement to re-originate a caller to the IXC of the caller's choice. Many of U S West's objections are based on practical and/or technical limitations which would make compliance either unrealistic or impossible.

In addition, U S West states that it would have "numerous comments" regarding the AOS service provision requirements if these sections would to apply to it. This suggests that U S West also sees many legal and technical problems with the proposed AOS service provision requirements of the proposed rules. U S West's negative reaction to numerous aspects of the proposed rules serves to underscore and confirm the concerns previously voiced by NWPA.

U S West's negative reaction to the proposed rules is further exhibited by the fact that it stresses that it should be exempted from the definition of either an AOS service provider or an aggregator. U S West, however, is actively engaged in providing both types of services to the public and should not, therefore, be excluded from the proposed rules.

For example, U S West is providing AOS services to independent local exchange companies. It sells operator services to other local exchange companies such as Telephone Utilities.

Similarly, GTE has provided operator services to AT&T under contract. Local exchange companies providing alternate operator services should operate under the same rules that other AOS companies operate under.

In addition, U S West's payphones aggregate calls and pass off calls to IXCs such as AT&T, for a commission, just like privately owned payphones do. U S West payphones can be and are presubscribed to various AOS providers, such as Fone America, Inc., per the instructions of the site location owner.

At a minimum, the proposed rules must impartially apply to providers of AOS and aggregator services. To exclude LECs which in fact provide AOS and payphone services in competition with others would be discriminatory.

AT&T Comments:

AT&T, since it enjoys the benefits flowing from its monopoly provision of operator services from 1877 to the time of divestiture, supports the unblocking requirements of the proposed rules. This is where AT&T's support appears to end, however. AT&T objects to the requirement for entering into contracts with aggregators (apparently out of concern over disclosure of its commission arrangements with LEC payphones as contrasted to privately owned payphones) and further objects to the "policing" requirements proposed by the rule. AT&T, in

fact, is so alarmed by the prospect of disclosing its commission arrangements with aggregators that it suggests that the rules provide that a customer of an AOS be defined only as an aggregator which "receives commissions".

AT&T also has numerous objections to the proposed posting requirements and, similar to U S West's comments, acknowledges that its operators are frequently technically incapable of connecting end users to other IXCs. As with U S West, AT&T would prefer a hang-up and re-dial procedure.

AT&T also objects, albeit for reasons different than those presented by NWPA, to using its rates as the benchmark for other AOS companies. AT&T, like NWPA, acknowledges that operating costs vary significantly between AOS companies. AT&T is apparently concerned that such a requirement would in fact end up limiting its own rate flexibility for its AOS services. Also, forcing other AOS providers to AT&T's rate levels would not enhance AT&T's competitive position other than through the probable destruction of the businesses of certain other AOS providers.

United Telephone Company of the Northwest:

As a local exchange company which provides payphone and AOS services, United likewise objects to the proposed requirements that the rate and service standards of AT&T and U S West be adopted as benchmarks. While United does not object to the proposed requirements that AOS providers police aggregators, it does object to the requirement that local

exchange companies police AOS providers. By its comments, United in effect confirms many of the concerns already pointed out by NWPA relative to the unfairness presently existing in the marketplace.

#### CONCLUSION

A review of the proposed rules reveals that as between LECs, IXCs, AOS companies and aggregators, many common objections to the legality, fairness and practicality of the proposed rules exist. The emphasis of the objections shifts based on the competitive position of the commentor. These various positions serve to illustrate, however, the distinct disadvantages under which privately owned payphones currently operate. It is enlightening, in this regard, to note the following views expressed by Senators Breaux, Kerry, Burns and Lott, the sponsor and co-sponsors of S. 1660, which was recently enacted into law, concerning the present unfair competitive environment in which privately owned payphones operate:

"Local exchange carriers, the Bell operating companies, GTE, etc., earn revenue from access charges assessed on these calls. Also, to the extent that local exchange carriers include their investments in payphones in their rate bases, they are insured returns on all calls. Telephone call handlers in transit facilities such as hotels, motels and hospitals are able to access call charges on guests' bills.

In contrast, the independent payphone owner who invests in payphone equipment, and pays for installation and maintenance as well as on-going central office connection and line charges will receive no compensation for transferring consumer

calls, as is required by this bill, to their choice of long-distance carriers. The independent payphone owner may even lose revenue-generating calls as their payphones are made unavailable by non-compensating callers."

The senators, therefore, urge that the FCC consider a compensation arrangement for privately owned payphone providers in connection with the unblocking requirements contained in S. 1660.

Similar views on S. 1660 were expressed by Senators Gordon and Burns:

"The substantial gap in what AT&T frequently pays to the LEC versus any other OSP for billing, collection and validation services and the unavailability of those services at any price to AT&T's competitors suggest that these differences may be acting as a barrier to fuller development of operator services competition.

...The inability to obtain such services from the LECs has caused many problems for the industry. Today, AT&T is the only carrier capable of accepting, validating and collecting all billing methods. This situation poses unfair constraints on competitive carriers. We urge the FCC to consider ways to eliminate this problem.

The 'bottleneck' nature of billing, collection and the validation services does present the opportunity for discriminatory treatment of various competitors. Equally important is the effect that pricing differences for these services appears to be having on the ultimate rate charged to the consumer. If competition in the operator services market is to flourish on a price basis, the Commission will also need to examine the rates charged for billing, collection and validation to ensure that these essential services are provided to all OSPs on a nondiscriminatory basis."

It is the hope and goal of NWPAA that this Commission will address the proposed rules with the above concerns and



goals in mind. The proposed rules should not, as they currently do, preserve and foster discriminatory treatment between competitive providers of aggregator and AOS services.

Respectfully submitted this 5<sup>th</sup> day of November, 1990.

MILLER, NASH, WIENER, HAGER & CARLSEN

By: 

CLYDE H. MacIver

Attorneys for Northwest Payphone  
Association

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