

EXHIBIT A
AT&T's Motion to Dismiss, to Remand to the WUTC
and to Stay Proceedings

HONORABLE J. KATHLEEN LEARNED
Hearing Date: October 6, 2000
Hearing Time: 10:00 a.m.

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC;
NORTHWEST TELECOMMUNICATIONS,
INC., d/b/a PTI COMMUNICATIONS,
INC.; U.S. WEST COMMUNICATIONS,
INC.; T-NETIX, INC.,

Defendants.

Case No.: 00-2-17565-5 SEA

AT&T'S MOTION TO DISMISS, TO
REMAND TO THE WUTC AND TO STAY
PROCEEDINGS

INTRODUCTION AND SUMMARY OF ARGUMENT

The claims against Defendant AT&T Corp. ("AT&T") must be dismissed in their entirety. The statute upon which all of Plaintiffs' claims are based provides no cause of action against AT&T. That statute, RCW 80.36.520, is simply an enabling statute, directing the WUTC to adopt rules regarding disclosure of rates for certain collect calls, including those at issue in the present case. The statute imposes no obligations or requirements on AT&T or any other telecommunications provider and therefore cannot form the basis for any action against AT&T.

Additionally, the claims related to interstate long distance should be dismissed because the Washington Utilities and Transportation Commission ("WUTC") restricted the reach of the relevant

AT&T'S MOTION TO DISMISS, TO REMAND TO THE WUTC AND TO
STAY PROCEEDINGS - 1

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1 regulations to *intrastate* calls only — *interstate* calls are simply not part of the regulatory scheme.
2 Further, claims related to interstate long distance should be dismissed pursuant to the filed tariff
3 doctrine. At all times, AT&T's interstate long distance rates for collect calls from prison inmates have
4 been tariffed and on file with the Federal Communications Commission ("FCC"). Washington case
5 law is clear that where plaintiffs seek recovery for failure to disclose tariffed interstate long distance
6 rates, those claims must be dismissed under the filed tariff doctrine.

7 Finally, Plaintiffs' claims involving intrastate long distance should be referred to the WUTC
8 under the primary jurisdiction doctrine. The WUTC has been specifically authorized by the legislature
9 to regulate the disclosures at issue in this case, and it has been active in doing just that. After inviting
10 and receiving petitions for waivers from the disclosure requirements from telecommunications
11 providers, the WUTC recently granted GTE's waiver request. US West's petition is still pending. The
12 WUTC's rulings on those waiver requests directly affect AT&T's potential liability because GTE and
13 US West provide the operator services at issue in some of the facilities where AT&T provides long
14 distance service. *See* § II.A, *infra*. These matters should be addressed first by the WUTC, to ensure
15 consistency with its regulatory scheme.

16 I. RELIEF REQUESTED

17 Failure to State a Claim: AT&T requests that the Court dismiss Plaintiffs' Complaint for
18 failure to state a claim upon which relief can be granted.

19 Interstate Calls: AT&T requests the Court to dismiss, under the plain language of the WUTC
20 regulations and under the filed tariff doctrine, the portion of Plaintiffs' claims against AT&T for
21 damages premised upon nondisclosure of interstate long distance rates.

22 Intrastate Calls: AT&T requests that the Court refer to the WUTC under the primary
23 jurisdiction doctrine any remaining claims against AT&T, premised upon nondisclosure of intrastate
24 long distance rates. AT&T requests the Court to stay all claims against AT&T if the Court refers
25 claims against any other Defendant to the WUTC.

II. FACTS

A. Inmate Calling Arrangements

This case challenges the rate disclosure practices of several telecommunications industry defendants, including AT&T, for collect calls made by inmates from Washington prisons. In March 1992, AT&T entered an agreement with the Washington Department of Corrections (“DOC”) concerning inmate telephone system services. First Amended Complaint (“Complaint”), ¶ 14; *see also* Appendix 1.¹ In that Agreement, the DOC specifically approved AT&T’s use of GTE Northwest, Inc. (“GTE”), PTI Communications, Inc. and U.S. West Communications, Inc. (“US West”) as subcontractors to provide certain services. Appendix 1, ¶ 4, pp. 2-3. Later, in March 1999, T-Netix, Inc. was added to provide services for several DOC facilities. Complaint, ¶ 14.

Both under these agreements and in practice, the subcontractors provide telephones, telephone lines, maintenance and — critical to this case — the *operator services*. These subcontractors are the *operator service providers*, or OSPs. An OSP is defined in the WUTC rules as “any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.” WAC 480-120-021. The OSP connects the call placed by an inmate to the local or long distance provider selected by the prison to handle that type of call. Plaintiffs have not alleged that AT&T is an OSP. In fact, AT&T is not an OSP. AT&T provides intrastate and interstate long distance services, but does not provide the “connection” that is at the heart of the OSP definition. OSPs are the only entities the WUTC requires to disclose rates (*see* WAC 480-120-141(2)(b)), and AT&T simply is not covered by that regulation.

B. Statutory and Regulatory Historical Framework and Requirements

Plaintiffs allege that defendants violated RCW 80.36.520 and .530. Enacted in 1988, RCW 80.36.520 provides:

¹ AT&T’s agreement with the DOC is attached for the Court’s convenience and does not convert this motion into a motion for summary judgment. Where plaintiff references a document in the complaint, the defendant may attach the document to a motion to dismiss under CR 12(b)(6) without converting it to a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). There are no Washington cases on point, but because CR 12 is nearly identical to and is patterned after Fed. R. Civ. P. 12, federal court interpretations of Fed. R. Civ. P. 12 can be used by Washington courts to interpret CR 12. *See Bruneau v. Grant Cty.*, 58 Wn. App. 233, 237, 792 P.2d 174 (1990).

1 The [WUTC] shall by rule require, at a minimum, that any telecommunications
2 company, operating as or contracting with an alternate operator services company,
3 assure appropriate disclosure to consumers of the provision and the rate, charge or fee
4 of services provided by an alternate operator services company.²

5 Plaintiffs allege inadequate disclosure of collect call rates, and RCW 80.36.520 is central to
6 their claim. But this statute imposes no duties on any telecommunications company. Instead, the
7 statute is merely an enabling statute, delegating to the WUTC the task of crafting disclosure
8 requirements appropriate and consistent with the WUTC's pervasive regulatory framework, superior
9 knowledge of the technical capabilities of the telecommunications industry, and expertise. Acting
10 under authority of this enabling statute, the WUTC first implemented rate disclosure requirements in
11 1989 which required alternate operator services providers to make certain rate disclosures to
12 customers. See Appendix 2 (Washington State Register ("WSR"), Issue 89-04-044, p. 74).

13 **1. The WUTC Limited the Reach of the Regulations to Intrastate Calls In 1991**

14 In 1991, the WUTC removed interstate calls from the reach of the alternate operator services
15 disclosure requirements, specifying that "operator services" refers only to "*intrastate*
16 *telecommunications service provided to a call aggregator location that includes as a component any*
17 *automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate*
18 *telephone call . . .*" Appendix 3 (WSR, Issue 91-13-078, p. 108) (emphasis provided). This limitation
19 on the reach of the regulations continues to the present — the definition of "operator services" has not
20 changed since 1991. WAC 480-120-021.

21 **2. The WUTC Has Granted a Petition for Waiver of the WUTC's 1999 Verbal Rate**
22 **Disclosure Requirements, and Another Waiver Petition Is Pending**

23 The WUTC modified the disclosure requirements, effective January 1999. These recent
24 modifications included, for the first time, verbal rate disclosure requirements. As with the
25 earlier disclosure requirements, these requirements were imposed only on OSPs.

26 WAC 480-120-141; Appendix 4 (WSR, Issue 99-02-020, pp. 17-19). GTE petitioned for and
27 received a waiver from the 1999 disclosure requirements, and a similar petition filed by US

28 ² The WUTC defines the phrase "alternate operator services company" as the equivalent of an "OSP." WAC 480-120-021.

1 West is still pending before the WUTC. See GTE Motion to Dismiss; US West Motion to
2 Dismiss.³

3 III. ISSUES

4 1. Should Plaintiffs' Complaint against AT&T be dismissed for failure to state a claim
5 upon which relief can be granted where the statute at issue imposes no duty on AT&T?

6 2. Should Plaintiffs' claims against AT&T concerning interstate rate disclosure be
7 dismissed (a) where the WUTC regulations do not extend to interstate calls, and (b) under the filed
8 tariff doctrine where AT&T's rates were properly tariffed with the FCC?

9 3. Should Plaintiffs' claims concerning intrastate long distance rate disclosure be referred
10 to the WUTC under the primary jurisdiction doctrine?

11 IV. EVIDENCE RELIED UPON

12 Plaintiffs' First Amended Complaint and Appendices 1-6.

13 V. LEGAL ARGUMENT

14 A. Plaintiff's Complaint Fails To State a Claim Upon Which Relief Can Be Granted — 15 RCW 80.36.520 is An Enabling Statute and Imposes No Duty Upon AT&T

16 Plaintiffs allege a cause of action under RCW 80.36.530, which establishes penalties for the
17 breach of duties established under RCW 80.36.520:

18 [A] violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or
19 deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer
protection act. . . . It shall be presumed that damages to the consumer are equal to the
cost of the service provided plus two hundred dollars.

20 Thus, Plaintiffs have a cause of action under Section .530 *only* if AT&T violated Section .520.⁴ But
21 AT&T could not have violated Section .520. That statute provides as follows:

22 The utilities and transportation commission shall by rule require, at a minimum, that
23 any telecommunications company, operating as or contracting with an alternate operator
24 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.

25
26 ³ US West and GTE are filing Motions to Dismiss concurrently with this Motion.

27 ⁴ Although RCW 80.36.530 establishes penalties for violation of either Section .510, .520 or .524, Plaintiffs allege only a
violation of .520.

1 Under the clear language of this statute, no duty is imposed on AT&T. This is an enabling statute, *see*.
2 *e.g.*, *Rettkowski v. Department of Ecology*, 122 Wn. 2d 219, 226-227, 858 P.2d 232 (1993), conferring
3 on the WUTC the power to regulate and require rate disclosure. “[A]dministrative agencies are
4 creatures of the legislature without inherent or common-law powers and may exercise only those
5 powers conferred either expressly or by necessary implication.” *Kaiser Aluminum v. Department of*
6 *Labor & Industries*, 121 Wn. 2d 776, 780, 854 P.2d 611 (1993) (quotations omitted); *accord*,
7 *Municipality of Metropolitan Seattle v. Public Empl. Relations Comm’n*, 118 Wn. 2d 621, 633,
8 826 P.2d 158 (1992). In this case, RCW 80.36.520 authorizes — even requires — the WUTC to
9 compel rate disclosure, but that is all it does.

10 Any argument by Plaintiffs that a violation of the regulations constitutes a violation of
11 RCW 80.36.520, triggering the penalties of Section .530, must be rejected. Even if Plaintiffs’
12 Complaint were construed to state a claim for violation of the regulations, any such violation would
13 not result in a violation of the statute. The statute is explicit — the only action triggering a violation of
14 Section .530, and the resulting penalties, is a violation of Section .520.⁵ Thus, even if Plaintiffs could
15 in theory state a cause of action for violation of the regulations, their current claims would still require
16 dismissal because a violation of the regulations does not trigger a violation of the statute.⁶

17 **B. Plaintiffs’ Claims Challenging Disclosures for Interstate Calls Must Be Dismissed**

18 **1. The WUTC Regulations Do Not Extend to Interstate Calls**

19 The WUTC has made clear that the regulations at issue in this case apply only to intrastate
20 calls. Interstate calls are simply outside the reach of the regulations, and all claims related to such calls

21 _____
22 ⁵ It is possible that the Legislature contemplated creating a cause of action under the CPA for violation of the regulations
23 enacted by the WUTC pursuant to RCW 80.36.520. However, the plain language of the statute does not create such a cause
24 of action, and the court should not read into the statute language that the Legislature did not itself include. *See, e.g., Vita*
25 *Food Products, Inc. v. Washington*, 91 Wn. 2d 132, 134, 587 P.2d 535 (1978) (“We should not and do not construe an
26 unambiguous statute. . . . It is not within our power to add words to a statute even if we believe the legislature intended
27 something else but failed to express it adequately”); *Western Telepage, Inc. v. City of Tacoma*, 95 Wn. App. 140, 147,
28 974 P.2d 1270 (1999) (“Courts are not to read into statutes matters that are not there, or modify statutes by construction”).

⁶ Further, AT&T has not and cannot violate the regulations because it has never acted as an OSP. Plaintiffs do not even
allege that AT&T has acted as an OSP. It therefore has no duties under WAC 480-120-141. *See* § II.A, *supra*. AT&T
provides none of the services described in the regulation; instead, it is the long distance provider to which the OSP connects
the call. Thus, even if Plaintiffs were to amend their Complaint to allege a violation of the regulations, summary judgment
dismissing any such claims against AT&T would be appropriate.

1 should therefore be dismissed. Appendix 3 (WSR, Issue 91-13-078, p. 108); WAC 480-120-021; *see*
2 *also* US West Motion to Dismiss.

3 **2. AT&T's Filed Tariff Bars Plaintiffs' Claims Challenging the Disclosure of**
4 **Interstate Rates**

5 The rate structure for interstate calls relevant to this case is governed by a tariff filed with the
6 FCC. Appendix 5.⁷ Under *Hardy v. Claircom Communications Group, Inc.*, 86 Wn. App. 488,
7 494-95, 937 P.2d 1128 (1997), the filed tariff doctrine bars this Court from awarding damages on
8 Plaintiffs' claims related to interstate calls.

9 The filed tariff doctrine arises under the Federal Communications Act, 47 U.S.C. § 151.
10 *Hardy*, 86 Wn. App. at 490-91. Under the doctrine, telecommunications carriers are forbidden from
11 charging anything but the tariffed rate. Likewise, any claim asserting challenges to those rates or
12 requiring courts to award refunds of those rates is barred by the doctrine. This includes claims based
13 upon a failure to adequately disclose rates. *Id.* at 492.

14 The doctrine is intended to make rapid, efficient, nationwide wire and radio communication
15 services available, to preserve the agency's authority to determine whether rates are reasonable, and to
16 ensure that telecommunications companies charge only those rates that are approved by law. *Id.*
17 at 491. "The duty to file rates with the FCC and to charge only the rates that have been filed is
18 essential to preventing price discrimination and stabilizing rates." *Id.* at 491-92 (citing *Maislin*
19 *Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 126, 110 S. Ct. 2759, 2766, 111 L. Ed. 2d 94
20 (1990)).

21 In *Hardy*, the plaintiffs brought suit against providers of air-to-ground radiotelephone services
22 for commercial aircraft passengers, contesting the practice of rounding the duration of calls up to the
23 next minute. As Plaintiffs have done here, the *Hardy* plaintiffs alleged a violation of the Washington
24 Consumer Protection Act ("CPA"). *Hardy*, 86 Wn. App. at 490. The trial court dismissed the claims
25 under the filed tariff doctrine, and the Court of Appeals affirmed. *Id.* at 495.

26 ⁷ Appendix 5 contains a copy of the portion of the most recent FCC tariff containing AT&T's interstate long distance
27 inmate collect calling rates. Tariffs have been on file for all time periods relevant to this case. The Court may take judicial
28 notice of the existence of tariffs on file with the FCC, and doing so does not convert this motion to dismiss into a summary
judgment. *See Carter v. AT&T Co.*, 365 F.2d 486, 491-92 (5th Cir. 1966), *cert. denied*, 385 U.S. 1008 (1967).

1 The *Hardy* plaintiffs conceded that the filed tariff doctrine barred any challenge to the
2 reasonableness of the rates themselves. However, they attempted to skirt the reach of the doctrine by
3 arguing that they were not challenging rates, but only deceptive advertising practices and the failure to
4 adequately disclose the tariffed rates. *Id.* at 494.

5 In rejecting this claim, the Court of Appeals recognized that it could not award damages
6 without necessarily engaging in retroactive ratemaking, which is barred under the filed tariff doctrine:

7 In short, *Hardy's* and *Lair's* allegations are such that a court would necessarily have to
8 consider the reasonableness of the rates charged in order to resolve them on the merits.
9 Even assuming *Hardy* and *Lair* could prevail on any of their claims, any court-imposed
10 award of damages would by definition result in their paying something other than the
filed rate. [Citations omitted.] Significantly, neither *Hardy* nor *Lair* alleges that they or
any other customer has paid anything other than the filed rate. Both of their claims are
thus barred by the filed tariff doctrine.

11 86 Wn. App. at 494-95. The *Hardy* court held that claims based on failure to disclose rates, including
12 claims under the CPA, are barred by the filed tariff doctrine. The FCC "has exclusive authority to
13 determine and prescribe what are just and reasonable rates and what are just, fair and reasonable
14 classifications, regulations and practices. 47 U.S.C. § 205." *Id.* at 491.⁸

15 Plaintiffs' claims here for damages are likewise barred. *Id.* at 495 n.3.⁹ Plaintiffs' remedy, if
16 any, for nondisclosure of rates on interstate calls lies with the FCC.¹⁰ The interstate call claims must
17 be dismissed.

18 C. The WUTC Has Primary Jurisdiction To Resolve Plaintiffs' Intrastate Disclosure Claims

19 The legislature has conveyed to the WUTC broad authority to address telecommunications
20 issues, including the specific rate disclosure issues raised in this case. The WUTC possesses the
21 expertise and authority to resolve the matters currently before the Court. The primary jurisdiction

22 ⁸ *Tenore v. AT&T Wireless Services*, 136 Wn. 2d 322, 962 P.2d 104 (1998), cert. denied, 525 U.S. 1171 (1999), also
23 supports this result, affirming that the filed tariff doctrine broadly bars suits involving rates and practices, and citing *Hardy*
24 with approval. 136 Wn. 2d at 335 ("In *Hardy*, both defendants . . . had tariffs on file with the FCC, and accordingly, to the
extent dismissal was predicated upon the 'filed rate' doctrine, the court's decision was correct."). *Tenore* reached a
different result because that case involved no filed tariff. *Id.* at 333.

25 ⁹ The filed tariff doctrine bars claims for misrepresentation or fraud, *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 19
26 (2d Cir. 1994), for RICO fraud claims, *H.J. Inc. v. Northwestern Bell Tel. Co.*, 954 F.2d 485, 494 (8th Cir.), cert. denied,
504 U.S. 957 (1992), and for willful misrepresentation of rates, *Marcus v. AT&T Corp.*, 938 F. Supp. 1158, 1170 (S.D.N.Y.
1996), *aff'd*, 138 F.3d 46 (2d Cir. 1998).

27 ¹⁰ In 1998, the FCC announced its own rate disclosure requirements for prisons. 47 C.F.R. § 64.710 (Appendix 6).

1 doctrine encourages courts to refer matters over which they have jurisdiction to an agency that also has
2 jurisdiction when “enforcement of a private claim involves a factual question requiring expertise that
3 the courts do not have or involves an area where a uniform determination is desirable.” *Vogt v.*
4 *Seattle-First National Bank*, 117 Wn. 2d 541, 554, 817 P.2d 1364 (1991). The doctrine is “‘predicated
5 on an attitude of judicial restraint’ and is applied when the court feels that the dispute should be
6 handled by an administrative agency created by the legislature to deal with such problems.” *Kerr v.*
7 *Department of Game*, 14 Wn. App. 427, 429, 542 P.2d 467 (1975), quoting 2 F. Cooper, *State*
8 *Administrative Law*, 564 (1965). Primary jurisdiction referrals are conferred to the sound discretion of
9 the trial court. *D.J. Hopkins, Inc. v. GTE Northwest, Inc.*, 89 Wn. App. 1, 4, 947 P.2d 1220 (1997).

10 Washington courts employ a three-factor analysis for primary jurisdiction referrals:

11 1. The administrative agency has the authority to resolve the issues that would
12 be referred to it by the court;

13 2. The agency must have special competence over all or some part of the
14 controversy which renders the agency better able than the court to resolve the issues;
15 and

16 3. The claim before the court must involve issues that fall within the scope of a
17 pervasive regulatory scheme so that a danger exists that judicial action would conflict
18 with the regulatory scheme.

19 *Hopkins*, 89 Wn. App. at 8, citing *In re Real Estate Brokerage Antitrust Litig.*, 95 Wn. 2d 297, 302-03,
20 622 P.2d 1185 (1985). All three factors are met in this case. The Legislature directed the WUTC to
21 order and regulate rate disclosure requirements and to penalize failures. Moreover, the WUTC just
22 granted one request for a waiver from those requirements, and one additional petition for waiver
23 remains to be decided. See § II.B.2, *supra*. The WUTC must be permitted to act upon that waiver
24 petition.

25 1. The WUTC Is Authorized To Resolve Plaintiffs’ Claims

26 The WUTC is fully capable of resolving all issues related to disclosure of intrastate call rates.

27 In fact, the WUTC is specifically authorized to enforce the disclosure requirements:

28 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.

1 WAC 480-120-141(9)(b). The WUTC has demonstrated its authority to resolve disclosure issues by
2 recently granting GTE's waiver request.

3 **2. The WUTC Has Special Competence Over Rate Disclosure Requirements**

4 The Legislature has expressly recognized the WUTC's special competence in dealing with
5 these issues by delegating to that agency the responsibility to establish and enforce disclosure
6 requirements. RCW 80.36.520. In response to this delegation of responsibility, the WUTC established
7 specific requirements for OSPs. WAC 480-120-141.

8 This issue goes to the heart of the WUTC's technical expertise. This is illustrated by the fact
9 that GTE's waiver petition was just granted by the WUTC, and US West's petition is pending. Only
10 the WUTC can act on those waiver requests, the resolution of which has an obvious and significant
11 impact on this case. Likewise, because of its years of experience in dealing with telecommunications
12 rates and disclosure of those rates, the WUTC is in a better position than this Court to determine
13 whether AT&T is bound by the disclosure requirements and, if so, what the impact on AT&T of the
14 waiver granted to GTE or any waiver that may be granted to US West might be.

15 **3. Plaintiffs' Claims Fall Within a Pervasive Regulatory Scheme, and Judicial
16 Conflict with that Regulatory Scheme Should Be Avoided**

17 The WUTC pervasively regulates the telecommunications industry, both generally and
18 specifically in connection with Plaintiffs' claims in this case. The verbal rate disclosure requirements,
19 WAC 480-120-141(2)(b), provide specifically who is obliged to disclose rates, what disclosures are to
20 be made, how those disclosures are to be made, what penalties attach for failure to abide by the
21 requirements, and whether some or all requirements should be waived, particularly in the prison
22 context. The WUTC is in the best position to answer these questions, and should be permitted to act
23 upon all of the waiver petitions filed by telecommunications providers before any court action
24 proceeds. Until the WUTC resolves those petitions, no liability can be ascertained.

25 Division One of the Court of Appeals recently affirmed referral of another nondisclosure case
26 to the WUTC. *Hopkins*, 89 Wn. App. 1. There, plaintiffs alleged that GTE failed adequately to
27 disclose a charge on its bills. The trial court dismissed the plaintiffs' CPA claims under

1 RCW 19.86.170 and, based on the primary jurisdiction doctrine, declined to exercise jurisdiction over
2 the remaining claims.

3 After describing the WUTC's pervasive regulatory scheme covering billing and billing
4 disclosures, 89 Wn. App. at 5-6, the court analyzed whether the three-part test for primary jurisdiction
5 had been satisfied. Hopkins argued that the first factor was not met because the WUTC was not
6 authorized to award damage claims. The court agreed that the WUTC could not award 'damages' per
7 se, but concluded that it could order refunds of overcharges. *Id.* at 9.

8 Hopkins also argued that the claims were not within the WUTC's special expertise. The court
9 disagreed:

10 Hopkins' argument ignores that GTE and other phone companies engaged in a lengthy
11 process with the WUTC in connection with 'deregulation' with respect to the kinds of
12 notice that went to customers at the time of deregulation. Hopkins must concede either
13 that GTE violated a WUTC customer notice order, or that the WUTC approved a
14 'misleading' or inadequate customer notice. Further, the WUTC regulates the content
15 of telephone bills. Thus, we agree with the trial court that the WUTC is the proper
16 place for these issues to be decided.

17 *Id.* at 8-9. The record in the WUTC proceedings reflects that the OSP defendants engaged in a similar
18 "lengthy process" with the WUTC concerning rate disclosure requirements. Appendix 4 (WSR
19 Issue 99-02-020, p. 9). During this process, several OSPs raised technical objections to the verbal
20 disclosure requirements, and others raised concerns that the WUTC's disclosure requirements would
21 conflict with FCC requirements. In announcing its requirements, the WUTC indicated that they were
22 subject to change, based upon FCC modifications of its rules, and that OSPs could file waiver
23 petitions. *Id.* at 8-9).

24 Finally, the *Hopkins* court concluded the third prong of the test was met because the allegations
25 concerned potentially industry-wide practices:

26 [I]f, as Hopkins alleges, this is a widespread practice of GTE, and possibly other phone
27 companies, then there is a danger that the court action might conflict with agency
28 resolution[.]

89 Wn. App. at 9. Similarly, Plaintiffs here challenge a widespread practice covering at least the six
defendants, and possibly other companies as well. *Hopkins* should be followed. The WUTC rate
disclosure requirements have been developed and changed through a lengthy process in which the

1 telecommunications industry has been closely involved and will continue to be, given that it is not yet
2 technically possible to comply with some announced regulations.

3 There is a clear danger that Court action might conflict with the agency resolution, because the
4 WUTC has granted GTE's petition and has not yet acted on US West's waiver petition.¹¹ The Court
5 cannot act until the WUTC decides whether to grant or deny all of the pending waiver petitions.

6 **D. Plaintiffs' Claims Against AT&T Should Be Stayed**

7 In the alternative, the Court should stay all claims against AT&T pending WUTC resolution.
8 This will result in more efficient handling and uniformity in resolution and will eliminate a piecemeal
9 resolution to the litigation. This Court has wide discretion to issue scheduling orders consistent with
10 the orderly management of its caseload and the process of justice. *See, e.g., Kamaya Co. v. American*
11 *Property*, 91 Wn. App. 703, 720, 959 P.2d 1140 (1998). If claims against other defendants are referred
12 to the WUTC, the Court should stay all claims against AT&T.

13 **VI. CONCLUSION**

14 AT&T requests for the reasons stated above that the Complaint be dismissed for failure to state
15 a claim upon which relief can be granted. In the alternative, AT&T requests that the interstate call
16 nondisclosure claims against it be dismissed and that the claims against it related to intrastate calls be
17 referred to the WUTC or stayed pending WUTC action on all of the waiver petitions of its
18 codefendants.

19 DATED this 25th day of August, 2000.

20 STOKES LAWRENCE, P.S.

21
22 By: Kelly Twiss Noonan
23 Kelly Twiss Noonan (WSBA #19096)
24 Laura J. Buckland (WSBA #16141)
25 Attorneys for Defendant AT&T Corp.

26 ¹¹ The WUTC's ultimate rulings on the waiver petitions have a direct effect on AT&T's potential liability because both
27 GTE and US West have acted and continue to act as the OSP in a number of correctional facilities where AT&T is the long
28 distance provider. Appendix 1, pp. 2-3.

EXHIBIT A-1
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

C 540572

AGREEMENT BETWEEN STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS
AND AMERICAN TELEPHONE AND TELEGRAPH COMPANY
FOR INSTALLATION AND OPERATION OF AN INMATE TELEPHONE SYSTEM
AT STATE CORRECTIONAL INSTITUTIONS AND WORK RELEASE FACILITIES

This Agreement is made and entered into this 16th day of March, 1992, by and between the State of Washington Department of Corrections ("Department"), and American Telephone and Telegraph Company ("Contractor").

WHEREAS, Department issued Request for Proposal No. CRFP2562, dated September 4, 1991, for an Inmate Telephone System and Recording/Monitoring at Department Correctional Institutions and Work Release Facilities (the "RFP");

WHEREAS, on November 12, 1991, Contractor responded to the RFP with a total solution, combining a proposal by Contractor, an interexchange carrier, to provide interLATA long distance service, with proposals by three local exchange companies ("LECs"), GTE Northwest Incorporated ("GTE"), Telephone Utilities of Washington, Inc. dba PTI Communications ("PTI") and U S West Communications ("USWC"), to provide inmate telephone stations and enclosures, recording and monitoring equipment and local and intraLATA telephone service (collectively, the "Combined Proposal" and individually, the "AT&T Proposal," the "GTE Proposal, the "PTI Proposal" and the "USWC Proposal");

WHEREAS, on December 20, 1991, the Department announced its selection of Contractor as the successful vendor on the basis of the Combined Proposal, with the understanding that Department and Contractor would enter into an Agreement covering the entire project as set forth in the RFP and that Contractor would enter into Subcontracts with GTE, PTI and USWC to cover those portions of the RFP for which those three LECs would be responsible;

NOW, THEREFORE, Department and Contractor do mutually agree as follows:

1. Incorporation by Reference of RFP and Proposals.

Contractor hereby agrees to provide the equipment and services required by the RFP, on the basis set forth in the Combined Proposal. The RFP and the Combined Proposal, including the AT&T Proposal, GTE Proposal, PTI Proposal and the USWC Proposal (except for USWC's response to Attachment B to the RFP), shall constitute and hereby are made a part of this Agreement as though fully set forth herein. As used herein, the term "Contractor" shall include and refer to AT&T, its subcontractors and suppliers, and the subsidiaries, affiliates, employees and agents of each of them.

2. Scope of Agreement.

A. The terms and conditions of this Agreement apply to the LEC Public Telephones at Department Correctional Institutions and Work Release Facilities listed on Attachment A to the RFP, as well as to new and expanded facilities for which the Department requests service.

B. This Agreement applies to two types of LEC Public Telephones: Public Telephones made available to Inmates, from which only collect calls can be made ("Inmate Public Telephones") and other Public Telephones located on the premises of certain facilities for use by staff and visitors but not inmates ("Staff Public Telephones"), from which both "1+" and "0+" telephone calls can be made. Unless otherwise stated in this Agreement, the term "Public Telephone" shall refer both to Inmate Public Telephones and Staff Public Telephones.

3. Provision of InterLATA and International Service by Contractor.

Contractor agrees to provide "0+" interLATA and international service to all Public Telephones located on the premises of Department Correctional Institutions and Work Release Facilities. The Department hereby selects Contractor as the "0+" primary interexchange carrier ("PIC") for operator assisted ("0+") interLATA and international calls placed from all such LEC Public Telephones. The Department appoints Contractor as its Agent for purposes of submitting the Department's selection of Contractor as its PIC for such LEC Public Telephones. Nothing in this Agreement requires the Department to route "1+" interLATA calls to AT&T from any telephones covered by this Agreement.

4. Subcontractors.

The Department hereby approves Contractor's use of GTE, PTI and USWC as Subcontractors under this Agreement. Set forth below is a list of the equipment and services for which each of the Subcontractors will be responsible to provide to the Department, in accordance with the specifications of the RFP and the GTE Proposal, PTI Proposal and USWC Proposal:

A. GTE. GTE shall install and maintain public telephone sets, all associated equipment, lines, Dictaphone recording/monitoring equipment and call timing and call blocking software at the following location:

i. Washington State Reformatory, Monroe

GTE shall install and maintain public telephone sets, all associated equipment, lines, call timing and blocking software at the following locations:

- ii. Twin Rivers Corrections Center
- iii. Indian Ridge Corrections Center, Arlington
- iv. Special Offender Center, Monroe

GTE shall also provide local and intraLATA telephone service and operator service to the GTE Public Telephones at the above four locations.

B. PTI. PTI shall install and maintain public telephone sets, all associated equipment, lines, Dictaphone recording/monitoring equipment and call timing and call blocking software at the following locations:

- i. Clallam Bay Corrections Center
- ii. Washington Correction Center for Women

PTI shall install and maintain public telephone sets, all associated equipment, lines, call timing and call blocking software at the following locations:

- iii. Olympic Corrections Center
- iv. Pine Lodge Pre-Release
- v. Coyote Ridge

PTI shall also provide local telephone service and operator service to PTI Public Telephones at the above five locations.

C. USWC. USWC shall install and maintain public telephone sets, all associated equipment, lines, Dictaphone recording/monitoring equipment and call timing and blocking software at the following locations:

- i. Washington Corrections Center, Shelton
- ii. McNeil Island Penitentiary
- iii. Washington State Penitentiary, Walla Walla
- iv. Airway Heights

USWC shall install and maintain public telephone sets, all associated equipment, lines, call timing and blocking software at the following locations:

- v. Tacoma Pre-Release
- vi. Cedar Creek Corrections Center
- vii. Larch Corrections Center

USWC shall also provide local and intraLATA telephone service and operator service to USWC Public Telephones at the above six locations.

5. Term.

The term of this Agreement shall be five (5) years, commencing as of March 16, 1992 ("Effective Date"). Upon at least sixty (60)

days' written notice prior to the end of the initial term or a renewal term, either party may request renewal of the Agreement, in which case the Agreement may be renewed for any length of time agreed upon by the parties. Upon expiration of the initial term or a renewal term without either notice of termination or signing of an agreement to renew, this Agreement shall automatically continue on a month-to-month basis.

6. Ownership of Equipment.

All equipment installed on Department premises pursuant to this Agreement shall be provided as a service to the Department in accordance with the RFP. No equipment shall be sold or leased to the Department under this Agreement. Title to all public telephone equipment, monitoring/recording equipment, software, wiring, hardware and enclosures installed pursuant to this Agreement shall remain in Contractor, or the applicable subcontractor or supplier, during the term of this Agreement.

7. Commissions Payable to the Department

A. In return for the right to provide Inmate and Public Telephone Service under this Agreement, Contractor, GTE, PTI and USWC shall each pay to the Department on a monthly basis the commissions set forth in Attachment 1 to this Agreement. Each carrier's monthly commission checks shall be sent to the Superintendent of each covered Correctional Institution or Work Release Program, made payable to the Inmate Welfare Fund, unless and until the Department shall specify a different payee for the carriers' commission checks.

B. For all facilities in USWC territory, commissions shall be payable as of the Effective Date of this Agreement. For all facilities in GTE and PTI territory, commissions shall be payable as of the cutover date established pursuant to the implementation schedule mutually agreed upon by the Department, Contractor and its Subcontractors.

C. The commission schedule set forth in Attachment 1 shall also apply to LEC public telephones at any new Department Correctional Institutions or Work Release Facilities which are added to this Agreement at the request of the Department.

D. If any of the Commissions set forth in Attachment 1 are not paid within 45 days after the end of any billing cycle, interest at an annual rate of 10% shall be paid commencing as of the 46th day. This interest charge shall not apply to the true-up commission payments made by Contractor and USWC with respect to the initial billing cycles of this Agreement.

8. Reports.

Contractor, GTE, PTI and USWC shall each provide the following reports with respect to the traffic carried by that entity:

A. A monthly call detail report for Inmate Public Telephones, by institution, and addressed to the superintendent of the institution showing the date, time, payphone number, called number and length of each call.

B. A monthly commission report for Inmate and Staff Public Telephones, by institution, showing total revenues generated by each Inmate and Staff Public Telephone for that monthly commission cycle. Each such report shall be sent to two locations: one copy to the institution and one copy to the Department of Corrections, Attention: Sharon Shue, Telecommunications Manager, P. O. Box 41110, MS: 61, Olympia, WA 98504-41110.

9. Maintenance

Contractor, its subcontractors and suppliers shall provide maintenance for the equipment, software and services supplied under this Agreement pursuant to the terms and conditions of the RFP and Proposals submitted in response to the RFP. The appropriate LEC (GTE, PTI or USWC) shall designate a single point of contact to receive trouble reports for each Correctional Institution or Work Release Program in that LEC's territory. The Department shall address trouble reports relating to any service or equipment provided under this Agreement to these designated points of contact, which are listed in Attachment 2 to this Agreement. Following the installation of equipment under this Agreement, Contractor, its subcontractors and suppliers shall leave the Department's premises in good condition and broom clean.

10. Responsibilities of the Department

The Department shall:

A. Take reasonable precautions to protect the public telephone stations and related equipment and monitoring and recording equipment and software from damage, vandalism, theft or hazardous conditions and promptly report any damage, service failure or hazardous condition to Contractor's points of contact as referred to in Section 9 and listed in Attachment 2 to this Agreement.

B. Subject to the Department's security requirements, provide access as needed to Contractor, its subcontractors, suppliers and agents to service the equipment provided herein.

C. Keep the public telephone stations clean and the station locations free from debris or obstructions.

11. InterLATA "0+ Service

A. Staff Public Telephones shall comply with the signage and unblocking requirement of the Telephone Operator Consumer Services Improvement Act of 1990.

B. If this Agreement is amended to add a Correctional Institution or Work Release Program located in an area where Contractor does not track billed "0+" interLATA revenues from LEC Public Telephones, a monthly average revenue (MAR) mutually agreed upon by the parties will be used in calculating Contractor's monthly "0+" interLATA revenues. The developed MAR will be based upon the monthly revenues generated from a like Washington State institution, with a similar inmate population and a similar ratio of inmates to public telephones.

12. Monitoring/Recording

Contractor shall provide live or mechanical operator announcements for all personal calls made from Inmate Public Telephones that the call is coming from a prison inmate and that it will be recorded and may be monitored and/or intercepted. The Department shall be responsible for instituting procedures at each location to ensure that attorney-client calls are not recorded or monitored.

13. Indemnification

A. The Contractor shall defend, protect and hold harmless the State of Washington, the Department, or any employees thereof, from and against all claims, suits, or actions arising from any negligent or deliberate act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement. The provisions of this paragraph shall not apply to any act or omission by the Contractor for which the Department, in the text of this Agreement, has agreed to defend and hold the Contractor harmless. The provisions of this section shall survive any termination or the expiration of this Agreement.

B. The Department shall defend, protect and hold harmless Contractor, its employees, agents or subcontractors, from and against all claims, suits, actions, loss or injury arising from any negligent or deliberate act or omission of the Department or any employee thereof, while performing under the terms of this Agreement, except to the extent that the claims result from the negligence or willful acts of Contractor's employees, agents or subcontractors. The Department shall defend, protect and hold harmless the Contractor, its employees, agents or subcontractors, from and against all claims, suits, actions, loss or injury arising out of or in any way connected with Contractor's provision of call

recording equipment and call monitoring equipment to the Department under this Agreement. The provisions of this section shall survive any termination or the expiration of this Agreement.

14. Regulatory

The local, intraLATA and interLATA service provided under this Agreement is subject to applicable tariffs or price lists, as filed pursuant to the requirements of the Federal Communications Commission and the Washington Public Service Commission.

15. Force Majeure

Neither party shall be held liable for any delay or failure in performance of any part of this Agreement caused by circumstances beyond the reasonable control of the party affected or its subcontractors or suppliers, including, but not limited to, fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages.

16. Limitation of Liability

Except in cases involving willful or wanton conduct, Contractor's liability to the Department with respect to the provision of local, intraLATA or interLATA service shall be limited to its obligation to pay commissions as set forth above. Contractor's liability with respect to the provision of public telephone stations and related equipment and the provision of monitoring and recording equipment is limited to direct damages which are proven. CONTRACTOR SHALL NOT BE LIABLE TO THE DEPARTMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT CONTRACTOR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE), BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT.

17. Conflict Resolution

A. Should a dispute arise between the parties hereto, with respect to the terms of this Agreement or the performance hereof, the parties shall attempt to resolve the dispute informally, by investigating and discussing the issues. In working toward a resolution of the dispute, the parties may seek the assistance of upper management within the respective organizations of the Department and the Contractor.

B. In the event that informal efforts to resolve a dispute are unsuccessful, the parties shall, prior to filing suit, submit their dispute to a mutually agreed upon third party mediation service for non-binding mediation (for example, Judicial Mediation

Service, 1420 Fifth Avenue, Suite 400, Seattle, WA 98101). Each party shall share the cost of such mediation.

18. Termination and Termination Procedure

A. In the event that a correctional facility covered by this Agreement is closed for lack of funding, consolidation with other facilities or as a result of other judicial or governmental action, the Department may terminate this Agreement as to that facility.

B. In the event of a failure by Contractor to perform any of the provisions hereof with respect to any one or more correctional facilities covered by this Agreement, or with respect to any one or more of the three LEC territories covered by this Agreement (GTE, PTI or USWC), the Department may give Contractor thirty (30) days' written notice of intent to terminate for default, specifying the nature of the alleged failure of performance and identifying the location(s) and/or LEC territory affected. Contractor shall not be deemed to be in default if Contractor cures the failure of performance within the thirty (30) day notice period, or if the nature of Contractor's default is such that more than thirty (30) days are reasonably required for its cure, then Contractor shall not be deemed to be in default if Contractor shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

C. Unless there is a default consisting of a failure of performance as to the entire Agreement, a termination of this Agreement under the terms of this Section 18 a and b as to any single correctional facility or as to any single LEC territory shall not operate as a termination as to any other correctional facility or other LEC territory, and this Agreement shall remain in full force and effect for all other correctional facilities and LEC territories.

D. During the first three years of this Agreement, the Department may terminate this Agreement in whole or in part only upon one or more of the following events:

1. Termination for the reasons provided for in section 18 a., b. and c. herein, or
2. Any action by the legislature, the Governor's office, the Federal Communication Commission, the Washington Utilities and Transportation Commission or a court of competent jurisdiction which results in or necessitates termination of this Agreement in whole or in part.

Any termination under paragraph 18 D(2) above requires at least 90 calendar days written notice of such action be

provided to Contractor by Department as provided in Section 19 "Notices."

After the first three years of this Agreement, either party may terminate this Agreement without cause by giving written notice to the other party, as provided for herein, at least 180 calendar days prior to the effective date of said termination.

19. Notices

A. Any notices or other communications to be given under this Agreement shall be provided to the following parties by personal delivery, first class U.S. mail or facsimile:

State of Washington	AT&T
Department of Corrections	4460 Rosewood Drive, Room 6330
P.O. Box 9699, MS: FN-61	Pleasanton, CA 94588
Olympia, WA 98504	Attention: Patricia Maitland
Attention: Gary L. Banning	Facsimile no.: (510) 224-5498
Administrator, Contracts	Tel. no. (510) 224-4926
and Regulations	
Facsimile no. (206) 586-8723	
Tel. no. (206) 753-5770	

The name, address or facsimile number for notice may be changed by giving notice in accordance with this Section. If mailed in accordance with this Section, notice shall be deemed given when actually received by the individual addressee or designated agent or three (3) business days after mailing, whichever is earlier. If transmitted by facsimile in accordance with this Section, notice shall be deemed given when actually received by the individual addressee or designated agent or one (1) business day after transmission, whichever is earlier.

B. Courtesy copies of any notices provided by one party to the other under this Agreement shall be provided, using any of the methods specified in Section 19A, to:

U.S. West Communications, Inc.	GTE Northwest Incorporated
14808 SE 16th, Basement	2312D West Casino Road
Bellevue, WA 98007	Everett, WA 98204
Attention: Susan Haynes	Attention: Joanna Sissons
Facsimile no. (206) 451-6011	Facsimile no.: (206) 353-6558
Tel. no. (206) 451-5328	Tel. no. (206) 356-4175

PTI Communications
Post Office Box 90
Forks, WA 98331
Attention: John Fryling
Facsimile no.: (206) 374-9636
Tel. no.: (206) 374-2300

20. Rights in Data

The data covered by General Term "Rights in Data" contained in Attachment B to the RFP does not include information relating to interLATA, intraLATA or local calls, which shall remain the property of the applicable carrier (AT&T, USWC, PTI or GTE), and shall be kept confidential subject to the requirements of Washington public records law. In the event of a third party request for such data, the Department shall notify Contractor in advance of responding to the request in sufficient time to allow Contractor to negotiate any appropriate protective arrangements, consistent with any applicable time limits for the Department to respond to the third party, but in any event prior to disclosing the data.

21. Bond

Contractor shall post a performance bond or a performance/payment bond in the amount of \$500,000 on a form acceptable to the Department. Such bond shall be for the purpose of guaranteeing satisfactory performance by Contractor of the services required hereunder and the payment of commissions due or owing to the Department.

22. Incorporation of General Terms and Conditions

The Department of Corrections General Terms and Conditions, as set forth in Attachment B to the RFP, are incorporated herein by reference, except as modified are amended herein, and with the exception of the following, which are deleted as inapplicable to this project:

A. General Term "Indemnification" on page 5 of Appendix B is superseded by Section 13 above ("Indemnification").

B. General Term "Disputes" on page 10 of Appendix B is superseded by Section 17 above ("Conflict Resolution"), and Section 18 ("Termination and Termination Procedure").

C. General Terms "Termination by Contractor" and "Termination for Convenience" on page 11 of Appendix B are superseded by Section 5 above ("Term") and Section 18 ("Termination and Termination Procedure").

23. Contract Modifications

The parties may supplement or amend this Agreement by mutual consent, provided such supplement or amendment is in writing and signed by authorized representatives of both parties.

24. Entire Agreement

This Agreement and the documents incorporated herein by reference, i.e., the Combined Proposal, the RFP and the Department of Corrections General Terms and Conditions (Attachment B), constitute the entire understanding between the parties and supersede all prior understandings, oral or written representations, statements, negotiations, proposals and undertakings with respect to the subject matter hereof. In the event that any provisions of this Agreement and the incorporated documents are inconsistent, the order of precedence shall be as follows: (1) this Agreement; (2) the Combined Proposal (except for USWC's response to Attachment B to the RFP; (3) the RFP and (4) the Department of Corrections General Terms and Conditions (Attachment B).

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

By: [Signature]
(Signature)

Chase Riveland
(Typed or Printed Name)

Secretary
(Title)

3/31/92
(Date)

AMERICAN TELEPHONE & TELEGRAPH
COMPANY

By: [Signature]
(Signature)

John Powell
(Typed or Printed Name)

Sales V-P
(Title)

8/12/92
(Date)

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON

By: [Signature]
(Signature)

Thomas J. Young
(Typed or Printed Name)

Assistant Attorney General
(Title)

3/30/92
(Date)

COMMISSION SCHEDULE

1. AT&T: commission rate of 24% on billed revenues from operator-assisted intraLATA, interLATA and international calls carried by AT&T.
2. GTE: commission rate of 27% on billed revenues from operator-assisted local and intraLATA calls carried by GTE.
3. PTI: commission rate of 27% on billed revenues from operator-assisted local calls carried by PTI.
4. USWC: the following commission rates shall apply to billed revenues from operator-assisted local and intraLATA calls carried by USWC:

USWC agrees to pay the Department a commission rate of 35%. At the end of each calendar year of this Agreement, USWC shall review billed USWC revenues against the schedule shown below and increase the compensation, if appropriate, as follows:

<u>Annual USWC Revenue</u>	<u>Adjustment Level & New Commission Rate</u>
\$2.0 Million	35%
\$3.0 Million	36%
\$4.0 Million	37%

The USWC commission rate will not fall below 35%. Once a level of commission has been achieved, it will remain in place throughout the remaining years of this Agreement unless the next appropriate level is attained.

EXHIBIT A-2
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

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 ¹	((R=8)) R-7	R-10
Glazing		
Type	Double	Double
Maximum Total Area (Percent of Gross Exterior Wall)	32%	22%

¹Insulation shall be water-resistant material manufactured for this use.

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

[Order R-293, Docket No. U-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. U-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 reconection 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 k 242, 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 8/23/85)

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 Stymie 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.

EXHIBIT A-3
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

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 ((heretby)) 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 makes 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 Order No. 91-01, 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.

~~((Customer))~~ 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 34.05.395 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 480-120-141 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

((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 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 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.

~~((3))~~ (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.

~~((4))~~ (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 extend 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

EXHIBIT A-4
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

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 handheld 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-970301—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 or 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 (NWP), William Paine of Maple Valley, the Public Counsel section of the Washington Attorney General (public counsel), the City of Seattle, Sentury 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 NWP; 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)(g) 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 pre-subscribed 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 has 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 NWP. 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 memoranda, 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 (ALI/DMS) - ALI/DMS 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, ALI, 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 for use of a 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.

Presubscribed 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 intrate.)~~ **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 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) 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 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 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 480-120-081 shall not apply to such disconnections. The local exchange company shall ensure that any costs associated with the field visits for public access lines 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-WUTC (9882); 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 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 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 480-09-420 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, "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.

(4) 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 **Styrene 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.

(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 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 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 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 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.)) (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 keystroke 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; or

(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.

PERMANENT

EXHIBIT A-5
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

24.1.10. AT&T Prison Collect with Controls Service Rates

A. Operator Station Collect

Rates and Charges for Operator Station Collect Domestic Calls

- Usage rate
Per minute or fraction thereof \$0.69
- Service Charge
Per call \$3.95

B. Person to Person Collect

Rates and Charges for Person-to-Person Collect Domestic Calls

- Usage rate
Per minute or fraction thereof \$0.69
- Service Charge
Per call, as specified in Sections
24.1.1.A., B. and C., preceding.

C

EXHIBIT A-6
RE: AT&T's Motion to Dismiss, to Remand to the
WUTC and to Stay Proceedings

CODE OF FEDERAL REGULATIONS
TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS
COMMISSION
SUBCHAPTER B--COMMON CARRIER
SERVICES
PART 64--MISCELLANEOUS RULES
RELATING TO COMMON CARRIERS
SUBPART G--FURNISHING OF ENHANCED
SERVICES AND CUSTOMER-PREMISES
EQUIPMENT
BY BELL OPERATING COMPANIES;
TELEPHONE OPERATOR SERVICES
Current through June 20, 2000; 65 FR 38332

§ 64.710 Operator services for prison inmate phones.

(a) Each provider of inmate operator services shall:

(1) Identify itself, audibly and distinctly, to the consumer before connecting any interstate, domestic, interexchange telephone call and disclose immediately thereafter how the consumer may obtain rate quotations, by dialing no more than two digits or remaining on the line, for the first minute of the call and for additional minutes, before providing further oral advice to the consumer how to proceed to make the call;

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected; and

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer--

(i) The methods by which its rates or charges for the call will be collected; and

(ii) The methods by which complaints concerning such rates, charges or collection practices will be resolved.

(b) As used in this subpart:

(1) Consumer means the party to be billed for any

interstate, domestic, interexchange call from an inmate telephone;

(2) Inmate telephone means a telephone instrument set aside by authorities of a prison or other correctional institution for use by inmates.

(3) Inmate operator services means any interstate telecommunications service initiated from an inmate telephone that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(i) Automatic completion with billing to the telephone from which the call originated; or

(ii) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(4) Provider of inmate operator services means any common carrier that provides outbound interstate, domestic, interexchange operator services from inmate telephones.

[63 FR 11617, March 10, 1998]

< < SUBPART G--FURNISHING OF
ENHANCED SERVICES AND CUSTOMER-
PREMISES EQUIPMENT
BY BELL OPERATING COMPANIES;
TELEPHONE OPERATOR SERVICES > >

< Information collection requirements for subpart
are not yet effective; OMB
approval pending. >

< General Materials (GM) - References,
Annotations, or Tables >

47 C. F. R. § 64.710

47 CFR § 64.710

END OF DOCUMENT