

NO. 57015-3-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

SANDY JUDD, et al.,

Appellants,

v.

**AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, et al.,**

Respondents.

**OPENING BRIEF OF APPELLANTS
(Filed Under Seal)**

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I. NATURE OF THE CASE

After the break-up of the Bell System in the 1980s, many telecommunications companies began to offer services for long-distance payphone calls. The charges were often exorbitant and provoked a consumer backlash. To address this growing problem, the state Legislature declared that the failure to identify "the services provided or the rate, charge or fee" for a long distance, collect telephone call is an unfair trade practice and a *per se* violation of the Consumer Protection Act. RCW 80.36.510 - .530. The Legislature directed the WUTC to enact regulations governing the disclosure requirements. The Commission did so in 1991. Failure to comply with the disclosure requirements gives rise to a claim under the Consumer Protection Act, with damages presumed to be \$200 per call plus the cost of the service. RCW 80.36.530.

Over the next nine or ten years, the defendants in this case—T-Netix and AT&T—failed to disclose the required rate information on collect calls originating from Washington state prisons. The recipient of an inmate call—oftentimes a spouse or dependent family member under financial stress—was given two choices: (1) accept the call without any disclosure of rate information; or (2) hang up.

As reported in the Wall Street Journal and elsewhere, companies that provide operator services looked to inmate collect calls as a lucrative profit center:

In 1992, the state of Washington opened the Airway Heights Corrections Center, a 2,000-man, medium security prison near Spokane. It furnished the prison with 142 pay phones—one for every 14 inmates—and allowed prisoners to use them virtually anytime they were not asleep or otherwise confined in their cells. During December 1997, inmates spent \$458,581 calling home for Christmas—an average bill, per inmate, of more than \$200.

Prison as Profit Center, WALL ST. JOURNAL, March 15, 2001, at B1-B4.

Rate disclosure is an essential consumer protection afforded by Washington law.

Plaintiff Sandy Judd is the former spouse of former inmate Paul Wright. Plaintiff Tara Herivel is a Seattle attorney who received telephone calls from inmates. Neither was provided rate disclosure on calls from Washington state inmates. Plaintiffs seek to certify a class of thousands of consumers who were called by inmates after June 20, 1996, but who were not provided the required disclosures.

The central question in this case is whether T-Netix and/or AT&T were operator service providers for inmate calls, and therefore subject to the rate disclosure requirements. The issue on appeal—whether plaintiffs have standing to sue T-Netix and AT&T for failure to disclose rates—is

inextricably bound up with the question of whether T-Netix and/or AT&T were operator service providers or contracted with such providers.

II. SUMMARY OF THE ARGUMENT

Although this case involves complicated telecommunications issues, this appeal turns on basic summary judgment principles. At bottom, the trial court's judgment must be reversed because the court failed to credit the observations and conclusions of plaintiffs' expert and because it ignored a clear factual dispute.

The trial court determined that plaintiffs lack standing to pursue their claims under the Consumer Protection Act (CPA). To sustain their CPA claim, plaintiffs must show that defendants violated regulations issued by the Washington Utilities & Transportation Commission (WUTC). Under those regulations, companies that provide operator services, or Operator Service Providers, are required to disclose rates to consumers. Plaintiffs have standing because T-Netix and/or AT&T were Operator Service Providers that failed to disclose rates on calls received by plaintiffs.

Before the trial court ever ruled on the standing question, an Administrative Law Judge considered the exact same arguments, from the exact same parties, and concluded that issues of fact precluded summary determination. The ALJ heard this issue because the trial court had

referred, under the primary jurisdiction doctrine, certain questions presented by this lawsuit to the WUTC for an initial adjudication. After the parties began doing discovery on these issues, T-Netix and AT&T moved for summary determination, arguing that plaintiffs lacked standing. ALJ Ann Rendahl denied defendants' motions, holding alternatively that (1) fact issues relating to the role of T-Netix and AT&T as Operator Service Providers precluded summary determination on the standing issue, and (2) even if this were not the case, the WUTC did not have jurisdiction to decide the issue on a primary jurisdiction referral from this Court. T-Netix appealed that ruling to the WUTC, which affirmed on the latter ground.

Judge Rendahl was correct. The following facts are either undisputed or are disputed and must be viewed in the light most favorable to plaintiffs: (1) plaintiffs received inmate-initiated telephone calls from four different Washington prisons; (2) no rate disclosure was provided on these calls; (3) T-Netix owned and operated a call control platform at each of these facilities that provided operator services; and (4) plaintiffs' expert has concluded that T-Netix was the Operator Services Provider for these institutions and should have provided automated rate disclosure to consumers. Accordingly, plaintiffs have been injured by T-Netix's failure

to disclose rates in its capacity as the Operator Services Provider on these calls.

Defendants' claim that plaintiffs lack standing relies on two arguments, one legal and one factual. The factual issue involves a classic factual dispute that should have precluded summary judgment. The dispute centers on whether plaintiff Tara Herivel received a particular phone call. In 1997 or 1998, Ms. Herivel interviewed inmate Don Miniken for an article she was publishing on First Amendment issues. To facilitate the interview, Mr. Miniken called Ms. Herivel from prison. Ms. Herivel's article contains quotes from her phone conversation with Mr. Miniken. These facts are established through sworn declarations provided by Ms. Herivel and Mr. Miniken, a copy of the article, and Ms. Herivel's interrogatory responses.

Defendants dispute whether this call actually occurred, but acknowledge that if the call *was* made, then a factual dispute exists concerning which defendant—T-Netix or AT&T—was the Operator Services Provider for the call. T-Netix maintains that AT&T was the Operator Services Provider for the type of call that Ms. Herivel received from Mr. Miniken. AT&T points the finger right back at T-Netix. One of these two defendants served as the Operator Services Provider for this call, yet the trial court dismissed both. Although the trial court's summary

judgment order contains no reasoning, it appears to have resolved the disputed factual issue of whether the call actually occurred in defendants' favor by improperly weighing the evidence.

Defendants also make a legal argument that cannot be reconciled with the statute and regulations. T-Netix and AT&T claim that they can rely on waivers or exemptions from rate disclosure requirements that were granted to certain companies by the WUTC. Neither T-Netix nor AT&T, however, were exempt from or had waivers from compliance with rate disclosure requirements. Instead, they argue that they can "piggyback" on the waivers or exemptions that were granted to *other* companies. The dispositive question is whether T-Netix or AT&T provided operator services in connection with the calls received by plaintiffs. The statute and regulations place the responsibility for rate disclosure on the shoulders of the Operator Services Provider—regardless of whether another company was involved in the transmission of the call. Plaintiffs have put forth substantial, detailed evidence that T-Netix and/or AT&T served as the Operator Services Provider for the calls that plaintiffs received.

The Administrative Law Judge applied her expertise and found that this evidence created factual issues that precluded summary determination on the standing issue. The trial court erred when it arrived at the opposite conclusion.

III. ASSIGNMENTS OF ERROR

Appellants assign error to the trial court's:

- (1) Order Granting Defendant T-Netix's Motion for Summary Judgment (CP 330-31);
- (2) Order Granting AT&T's Motion for Clarification of the September 7, 2005 Order Granting Defendant T-Netix's Motion for Summary Judgment (CP 346-47);
- (3) Order Granting Defendant T-Netix, Inc.'s Motion for Clarification of Order (CP 348-50).

IV. STATEMENT OF ISSUES

Standing against T-Netix. Under state statutes and regulations, an Operator Services Provider (OSP) is required to disclose rates to consumers when connecting phone calls from public telephones, including prison phones. Plaintiffs received inmate-initiated calls from four different Washington prisons for which no rate disclosure was provided, and on which T-Netix served as the OSP. Do plaintiffs have standing to bring a claim against T-Netix for violation of the regulations? (Assignments of Error 1-3)

Standing against AT&T. T-Netix and AT&T were both involved in connecting an inmate-initiated call received by plaintiff Tara Herivel. Defendants point the finger at each other, each contending that the other

was the OSP for this type of call. Does Ms. Herivel have standing because factual issues exist regarding (i) whether the call occurred; and (ii) which company served as the OSP or contracted with the OSP for the call? (Assignments of Error 1-3)

V. STATEMENT OF CASE: PROCEDURAL HISTORY

Plaintiffs filed this lawsuit in the summer of 2000 as a putative class action in King County Superior Court, asserting that five companies had violated the Washington Consumer Protection Act by failing to disclose rates on calls placed from Washington state prisons in violation of state law. CP 403-08. Three of those companies (Qwest, Verizon, and CenturyTel) were dismissed by the trial court. *See* CP 33. Plaintiffs appealed and eventually argued their case in the Washington Supreme Court, which affirmed the dismissals. *Judd v. American Tel. & Tel. Co.*, 152 Wn.2d 195, 95 P.3d 337 (Wash. 2004).

The two remaining defendants—T-Netix and AT&T—also moved to dismiss, but the trial court did not grant these motions. Instead, it referred certain questions to the WUTC. CP 5-6; 9-10. Specifically, the Court asked the WUTC to determine whether T-Netix and AT&T were operator service providers (OSPs) and whether they had violated WUTC regulations requiring OSPs to disclose rates to consumers. *Id.* The trial court stayed further proceedings until the agency adjudicated the questions

referred to it, and explicitly retained jurisdiction of matters not encompassed within its referral. *See id.* In November 2004, after plaintiffs had exhausted their appellate options with respect to the three other defendants, they activated the trial court's referral by filing a complaint with the WUTC. CP 33-38.

The parties hired experts and began discovery. T-Netix then filed a motion for summary determination in the WUTC, arguing that plaintiffs lacked standing. CP 12. After two months of extensive briefing by all parties and oral argument, Administrative Law Judge Ann Rendahl denied the motion and denied AT&T's separate motion to be dismissed on standing grounds. CP 206; *see* CP 150.

Judge Rendahl rejected defendants' standing argument on two different, alternative grounds. CP 214-17. First, she concluded that issues of fact precluded summary determination. CP 215, ¶ 34. Specifically, she found that plaintiffs had produced evidence, sufficient to raise fact questions with regard to plaintiffs' standing, that T-Netix and AT&T were functioning as operator service providers and were involved in connecting the telephone calls received by Ms. Judd and Ms. Herivel:

The issue in this proceeding is whether T-Netix and AT&T provided service as operator service companies on the calls at issue in this proceeding. While T-Netix asserts that only US West and GTE carried the calls in question, Complainant's affidavits and pleadings raise questions as to the role of T-Netix and AT&T in connecting the calls

between the correctional institutions and the Plaintiffs. The parties' dueling and numerous affidavits identify several issues of fact concerning AT&T and T-Netix's network and their involvement in the calls in question.

Id.

Judge Rendahl's alternative holding focused on the primary jurisdiction doctrine. CP 215-16. Noting that the question of plaintiffs' standing was not encompassed within the issues referred to the WUTC by King County Superior Court, Judge Rendahl concluded that the agency did not have jurisdiction to decide the issue of standing. CP 216, ¶ 37.

T-Netix attacked Judge Rendahl's conclusions on two fronts. In the WUTC, it filed an interlocutory appeal. *See* CP 491. In King County Superior Court, it asked the court to lift the stay on trial court proceedings and filed a motion for summary judgment on the standing issue, repeating the same arguments it had made in the agency. CP 242. The WUTC accepted T-Netix's appeal and affirmed Judge Rendahl's decision on the ground that the agency lacked jurisdiction to determine whether plaintiffs had standing. *See* CP 324. It said nothing about the merits of the standing issue. Plaintiffs did not oppose T-Netix's motion to lift the stay in the trial court. CP 264.

Although plaintiffs adduced similar (actually, more) evidence when responding to T-Netix's summary judgment motion than they had in the WUTC, the trial court granted T-Netix's motion. CP 330-31. The

order granting summary judgment discloses no reasoning. *Id.* The trial court later clarified that its ruling applied to AT&T as well and rescinded its primary jurisdiction referral to the WUTC, but declined to shed any light on the reasoning that led to its order. CP 346-47, 348-49. Plaintiffs appeal from the trial court's summary judgment. CP 341.

VI. STATEMENT OF CASE: FACTS

A. The parties.

Plaintiff Tara Herivel is a Seattle attorney who received telephone calls from former Washington state inmates at two different prisons. CP 267-69, 97-98, 487. Plaintiff Sandy Judd also received telephone calls from a former inmate while he was incarcerated in three different Washington prisons. CP 93-94, 34, 20 n.2; *see* CP 494 n.4.

During the relevant time period, defendant AT&T held a contract with the Washington Department of Corrections to provide telephone service to state prisons. CP 46. AT&T subcontracted with other companies, including defendant T-Netix, to provide certain services in connection with these calls. CP 47, 40, 90-91, 447, 453-59.

B. How an inmate telephone call is routed.

To understand the issues on appeal, it is essential to understand how the inmate calls that plaintiffs received were routed through the

telecommunications system. Plaintiff's expert, Ken Wilson, described the process as follows:

C. T-Netix operates operator services platforms at Washington prisons and is an Operator Services Provider.

It does so in many Department of Corrections locations in Washington. CP 462, 358. T-Netix has produced documents in this case, and filed others before regulatory bodies, admitting that it (or T-Netix's predecessors-in-interest) has provided and is providing automated operator services. CP 462, 360-401.

Plaintiffs' expert provided sworn testimony that the T-Netix platform provides a "connection" as that term is used in WAC 480-120-021 (1999)¹:

¹ The regulation defines an Operator Service Provider, or OSP, as follows:

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 (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code used by the consumer with

(footnote continuation)

**billing to an account previously established by the consumer
with the carrier.**

WAC 480-120-021 (1999) (emphasis added).

While
in Seattle, Ms. Herivel received calls from the Washington State Reformatory and Airway Heights correctional facilities. CP 267-69, 97-98, 487. Ms. Judd received calls from the Washington State Reformatory, McNeil Island, and Clallam Bay facilities. CP 93-94, 34, 20 n.2; see CP 494 n.4.

E. T-Netix did not provide rate disclosure during the relevant time period.

During the relevant time period², plaintiffs allege that the T-Netix platform did not provide rate disclosures required by statute and regulation. CP 403-08; 268. T-Netix admits it did not provide rate disclosure. CP 411.

VII. STANDARD OF REVIEW

This Court reviews a summary judgment de novo by undertaking the same inquiry as the trial court. *Suquamish Indian Tribe v. Kitsap*

² This lawsuit seeks damages dating back to calls made in 1996. See CP 403 (lawsuit filed in 2000); RCW 19.86.120 (four-year statute of limitations). Although recipients of inmate-initiated calls are now receiving rate disclosure, the question of when rate disclosure began is a fact question that has not yet been determined.

County, 92 Wn. App. 816, 827, 965 P.2d 636 (1998). All facts and reasonable inferences therefrom are viewed in the light most favorable to the nonmoving parties. *Id.*

When standing is the issue on review, the inquiry is no different—the moving party bears the same burden any other party bears under CR 56. Accordingly, the trial court's decision cannot be upheld if there are any issues of material fact with respect to plaintiffs' standing. *Id.* at 832 (reversing summary judgment because plaintiffs demonstrated that issue of fact existed with regard to whether they would be injured by proposed planned unit development).

The question here is whether plaintiffs have standing to bring a CPA claim. The only element at issue is whether plaintiffs suffered the requisite injury under the statute. Because the Legislature has determined that violation of WUTC regulations is sufficient to establish a *per se* claim under the CPA, *see* RCW 80.36.530, plaintiffs can establish the requisite injury by demonstrating that defendants violated the regulations in connection with calls that plaintiffs received. For purposes of summary judgment, plaintiffs need only establish that issues of fact exist with respect to this issue.

VIII. ARGUMENT

Plaintiffs' standing to bring this action depends primarily on whether: (1) T-Netix and/or AT&T were Operator Service Providers on calls received by Ms. Judd or Ms. Herivel; and (2) T-Netix and/or AT&T failed to disclose rates on those calls, thus violating agency regulations.

Viewing the evidence in the light most favorable to plaintiffs, we show below that:

- T-Netix violated the regulations by failing to provide rate disclosure;
- Plaintiff Tara Herivel received one call on which either T-Netix or AT&T was the Operator Services Provider—the defendants point the finger at each other on this issue; and
- The fact that certain companies obtained exemptions or waivers from rate disclosure requirements does not mean that defendants can “piggyback” on the exemptions of these other companies—T-Netix and AT&T are still responsible for disclosing rates if they were the Operator Services Provider or contracted with the Operator Services Provider for a given call.

Before addressing these points, we provide an overview of the statutory and regulatory history and framework governing the questions on appeal.

A. The Legislature provided a remedy under the Consumer Protection Act whenever an Operator Services Provider fails to disclose rates.

In 1988, the state Legislature acted to require companies providing long-distance operator services at public telephones to disclose rates. *See* RCW 80.36.510, .520, and .530.

The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice.

RCW 80.36.510 (Appendix, A-1).

These disclosure requirements were specifically imposed on "alternate operator service companies":

The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

RCW 80.36.520 (Appendix, A-1). Importantly, the Legislature identified who was required to disclose rates to consumers. The phrase "alternate operator services company" was defined in the statute:

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones.

RCW 80.36.520. There has never been any doubt that prisons are among the places covered by the statute. See WAC 480-120-141(2)(b) (Appendix, B-1). Collect calls from prisons require the "connection" described in the statute.

The Legislature sought to give the statute some teeth by making a violation of these provisions a *per se* violation of the Consumer Protection Act ("CPA"):

In addition to the penalties provided in this title, a violation of RCW 80.36.510, RCW 80.36.520, or RCW 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, RCW 80.36.520, or RCW 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

RCW 80.36.530 (Appendix, A-3).

To effectuate this public policy, the Legislature directed the WUTC to issue rules requiring rate disclosure by “any telecommunications company, operating as or contracting with an alternate operator services company.” RCW 80.36.520 (Appendix, A-1). It is the violation of WUTC rules that gives rise to an actionable claim under the CPA. *See Judd v. American Tel. & Tel. Co.*, 152 Wn.2d 195, 204, 95 P.3d 337 (Wash. 2004). Thus, plaintiffs have standing if they can demonstrate that issues of fact exist with respect to whether T-Netix or AT&T violated the WUTC regulations in connection with telephone calls they received.

B. The WUTC required OSPs to disclose rates, in real time, to consumers paying for telephone calls from public telephones.

In 1991, the WUTC required alternate operator services companies to disclose rates for a particular call “immediately, upon request, and at no charge to the consumer.” WAC 480-120-141(5)(a)(iv) (1991) (Appendix, D-8). The operator was required to provide “a quote of the rates or charges for the call, including any surcharge.” *Id.* An alternate operator services company, or AOSC, was defined to include any company, other than a local exchange company, providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators. WAC 480-120-021 (1991) (Appendix, D-4). Neither T-Netix nor AT&T is a local exchange company, so the regulation applies to

them if they provided the requisite "connection" described in the regulation. *Id.*

In 1999, the WUTC amended the regulation, substituting the term "operator services provider" (OSP) for "alternate operator services company" (AOSC). *See* WAC 480-120-021 (1999) (Appendix, C-3). Although the regulation now applied to local exchange companies, the definition of an OSP was identical in all other respects to the older definition of "alternate operator services company." Thus, the terms AOSC and OSP are synonymous and interchangeable for purposes of this appeal. We shall refer to both as OSP.

The 1999 regulation imposed stronger disclosure requirements. The rules required automatic rate disclosure that is activated by pressing keys on the telephone keypad:

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 rule applies to all calls from pay phones or other aggregator locations, including prison phones....

WAC 480-120-141(2)(b) (1999) (Appendix, B-1).

As stated by the WUTC in its Order adopting the new requirements: "The verbal rate disclosure option is necessary to better inform consumers, fosters a more competitive environment, and it serves

the public interest.” WUTC Order No. R-452, Docket No. UT-970301, p. 9 (Appendix, E-9).

Under both the 1991 and 1999 regulations, the responsibility to disclose rates is placed squarely on the shoulders of the company providing operator services. See WAC 480-120-141(2)(b) (1999) (“*the OSP must verbally advise the consumer how to receive a rate quote ...*”) (emphasis added); WAC 480-120-141(5)(a)(iv) (1991) (“*The alternate operator services company shall: ... immediately, upon request, and at no charge to the consumer, disclose to the consumer: a quote of the rate or charges for the call, including any surcharge*”) (emphasis added).

Plaintiffs’ standing to bring this action therefore hinges on whether: (1) T-Netix and/or AT&T were OSPs on calls received by Ms. Judd or Ms. Herivel; and (2) T-Netix and/or AT&T failed to disclose rates on those calls, thus violating the regulation. Alternatively, plaintiffs have standing if AT&T and/or T-Netix “contracted with” an OSP that failed to disclose rates on calls received by one of the plaintiffs. This is because the Legislature directed the WUTC to

require, at a minimum, that any telecommunications company, operating as *or contracting with* an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

RCW 80.36.520 (Appendix, A-1) (emphasis added).

C. T-Netix was an Operator Services Provider and failed to disclose rates on calls received by Ms. Judd and Ms. Herivel.

Plaintiffs' expert, Ken Wilson, is a 15-year veteran of Bell Labs and worked for a division of AT&T after that. CP 460-61. He reviewed defendants' responses to discovery, declarations and affidavits submitted by T-Netix and AT&T, and hundreds of documents produced by them. *See, e.g.*, CP 462-63, 465-66, 471. Among his many conclusions regarding T-Netix's role in the Washington state prison telecommunications system are the following:

- All calls made by inmates are collect calls and therefore require operator services for completion. CP 461-62.

- In 1999, T-Netix began upgrading its inmate operator services platforms in more than 1400 locations at correctional facilities across the country to accept remote programming and to provide precise rate quotes. CP 470. In February 2002, T-Netix asked the Federal Communications Commission (FCC) for additional time to complete upgrades that would

(footnote continuation)

Washington, and one that covers the southwestern corner of the state. See UTC News & Views (Winter 2002). Calls between two different LATAs are known as interLATA calls.

allow its platforms to give precise rate quotations when connecting calls from inmates. *Id.*

In addition to the evidence detailed in Mr. Wilson's declaration, T-Netix has filed documents with the WUTC indicating that it provides "alternate operator services," CP 365, and that its "automated operators will inform the Consumer and the called party that they are using T-Netix Telecommunications Services, Inc.'s automated Operator service at the start of each call." CP 371. As early as 1992, one of T-Netix's predecessors-in-interest filed documents with the WUTC indicating that it was providing "alternate operator services." CP 379, 382-83, 394; *see* CP 398-401 (noting name change from Gateway Technologies to T-Netix in 2001). T-Netix also obtained a waiver from the FCC's parallel federal requirement that an OSP provide rate disclosure on interstate calls. CP 360-61.

As previously noted, plaintiff Tara Herivel received inmate calls from the Washington State Reformatory and Airway Heights correctional facilities. Plaintiff Sandy Judd received calls from the Washington State Reformatory, McNeil Island, and Clallam Bay facilities.

T-Netix admits it did not provide rate disclosure at any of the prisons from which plaintiffs received calls. CP 411. Consequently, T-Netix violated WUTC regulations in connection with calls received by plaintiffs.

Plaintiffs have standing.

D. Issues of fact exist regarding whether AT&T acted as an OSP in connection with interLATA calls, including a call received by Ms. Herivel.

One of the central disputes on appeal is whether plaintiff Tara Herivel received an interLATA call from the Airway Heights prison. This issue is significant because T-Netix's motion for summary judgment assumed that all inmate-initiated calls received by the plaintiffs were intraLATA calls. See CP 254-55. Under T-Netix's theory, all local and

intraLATA calls (but not interLATA calls) were exempt from disclosure requirements. The theory proceeds as follows: (1) all calls received by plaintiffs were intraLATA calls; (2) all such calls were carried by local exchange carriers (US West, GTE, or PTI); (3) all of these carriers were exempt or received waivers from the rate disclosure requirements; therefore (4) no rate disclosure was required on such calls. See CP 254, 324.

We show later in this brief why T-Netix's theory is wrong as a matter of law. But it also contains a fatal factual assumption; namely, that Ms. Herivel did not receive an interLATA call. If she did, then T-Netix's theory falls apart because (a) AT&T was responsible for carrying interLATA calls, VRP at 31-32, 39; CP 46, 247, and (b) AT&T was not a local exchange carrier. VRP 39 (admission by AT&T's counsel: "AT&T ... is not a local exchange carrier or LEC.") As such, AT&T did not have an exemption or waiver from rate disclosure requirements and one of the two defendants in this case—either AT&T or T-Netix—was responsible for rate disclosures on interLATA calls. T-Netix and AT&T point the finger at each other with respect to who bore that responsibility.

In the next two sections, we show (1) that Ms. Herivel did indeed receive an interLATA phone call, thus puncturing T-Netix's theory; and

(2) that either T-Netix or AT&T was legally responsible for disclosing rates on that call.

1. Issues of fact exist regarding whether Tara Herivel received an interLATA call from the Airway Heights prison.

In the latter half of 1997 or 1998, plaintiff Tara Herivel received a phone call, at her Seattle apartment, from Don Miniken, an inmate at the Airway Heights Corrections Center near Spokane. CP 267-68. They discussed a lawsuit brought by Mr. Miniken. CP 268. In particular, they discussed the published opinion in that case, *Miniken v. Walter*, 978 F. Supp. 1356 (E.D. Wash. 1997). *Id.* Ms. Herivel subsequently published an article, based in part on her conversation with Mr. Miniken, in the January-February 1999 issue of the Washington Free Press. *Id.*; see CP 271-76 (copy of article). She quoted Mr. Miniken in the article; those quotes were taken from her telephone conversation with him. CP 268, 274. No rate disclosure was provided for this call. CP 268.

Mr. Miniken corroborated Ms. Herivel. CP 277-78. He remembered making a call, from the Airway Heights facility, to Ms. Herivel in Seattle. *Id.* He remembered speaking to her about his lawsuit and, in particular, the summary judgment order that was published in the Federal Supplement. *Id.* He also recalled that Ms. Herivel's

purpose in speaking with him was to interview him about the case for an article she was writing on First Amendment issues. *Id.*

According to T-Netix, the conversation between Ms. Herivel and Mr. Miniken never happened. VRP 31-33; CP 255-56, 324-25. Why? Because Ms. Herivel's declaration is "conclusory." VRP at 32. T-Netix never even acknowledged Mr. Miniken's corroborating declaration. Instead, it offered two short affidavits from one of its vice-presidents stating that she requested her subordinates to research whether Ms. Herivel received a call from Airway Heights and could find no such calls. CP 280-81; CP __. ⁴ Notably, T-Netix's research was restricted to the June 1, 1998 to December 31, 1998 time period. CP __. T-Netix didn't bother to research calls placed earlier—despite Ms. Herivel's statement that the call may have been placed sometime after August 26, 1997. *Compare id.* with CP 267.

To support its contention that the call never took place, T-Netix emphasized that Ms. Herivel did not produce any bills listing a call from Airway Heights. CP 255. But Ms. Herivel diligently searched for and was unable to find copies of her bills from the 1997-98 time period (which was

years before she filed suit). CP 268, ¶ 3. Moreover, when she requested copies of her bills, Qwest told her that it does not provide copies that far in the past. *Id.* Reinforcing her sworn declaration, Ms. Herivel identified Airway Heights in an interrogatory asking her to list prisons from which she had received inmate-initiated calls—before T-Netix ever raised the standing question. CP 97-99.

Recognizing the fact issue raised by Ms. Herivel and Mr. Miniken, T-Netix resorted to jury arguments. Thus, T-Netix argued that the trial court should ignore Ms. Herivel's allegations because "their *weight* pales in comparison" to the affidavits of its own vice-president. CP 325 (emphasis added). T-Netix further claimed that, "even granting Ms. Herivel all inferences," the "*preponderance*" of the evidence showed that she never made the call. *Id.* (emphasis added).

"[I]t is axiomatic that on a motion for summary judgment the trial court has no authority to weigh evidence or testimonial credibility, nor may we do so on appeal." *No Ka Oi Corp. v. National 60 Minute Tune, Inc.*, 71 Wn. App. 844, 854 n. 11, 863 P.2d 79 (1993). Ms. Herivel's

(footnote continuation)

⁴ Counsel will file a supplemental designation of clerk's papers containing the second affidavit of T-Netix's vice-president. When that has been accomplished, counsel will fill in the appropriate citation and file an appropriate substitution page.

declaration is hardly conclusory—certainly less so than the competing affidavits of Ms. Lee. And it is corroborated by Mr. Miniken and her responses to interrogatories from months before. Viewing the evidence and inferences in a light most favorable to plaintiffs, there is but one conclusion: the trial court erred in necessarily weighing and discrediting the evidence from Ms. Herivel and Mr. Miniken.⁵

2. Issues of fact exist regarding whether T-Netix or AT&T was the OSP for the interLATA call received by Tara Herivel.

Ms. Herivel's receipt of the interLATA call raises fact questions with regard to whether AT&T or T-Netix provided operator services for that call. Before T-Netix ever moved for summary judgment, AT&T filed a motion for summary determination in the WUTC. CP 436. That motion, which was still pending when the trial court granted summary judgment, argues that T-Netix provided automated operator services at six prisons, including Clallam Bay, from which Ms. Judd received a call. CP 437 & n.1. AT&T further contends that it is

⁵ The trial court recognized the dispositive nature of this issue, noting that neither T-Netix nor AT&T appeared to dispute that summary judgment would be improper if the court determined there was an issue of fact. VRP at 60-61. Even counsel for AT&T acknowledged that if there were disputed factual issues relating to whether an interLATA call was made and whether AT&T or T-Netix was an OSP with respect to that call, then those issues would have to be decided by the WUTC. VRP at 39-40.

T-Netix equipment, programmed by T-Netix, that makes the rate disclosures at those facilities. If there were mistakes made in regard to those rate disclosures, as the plaintiffs allege, they would be the responsibility of T-Netix because T-Netix serves as the OSP at those facilities.

CP 439. AT&T also submitted an affidavit from its Market Manager for the corrections industry, who alleged that

AT&T does not own or provide the operator interface between the called party and the collect call announcement or the access to rate quotes. These services were provided by T-Netix....

CP 442, ¶ 9.

T-Netix, on the other hand, points the finger right back at AT&T. With respect to interLATA calls, T-Netix contends that AT&T is the OSP. CP 444. If T-Netix is correct, then AT&T is liable for failing to make rate disclosure on the interLATA call received by Ms. Herivel, as it was not exempt from the regulations, nor did it obtain any waiver from the WUTC.

T-Netix's counsel openly acknowledged that the two defendants in this case were pointing the finger at each other with respect to who functioned as the OSP on interLATA calls. VRP at 31. The only argument offered by T-Netix in response to this point was this: "[T]he one thing we know, Judge, is that there are no interLATA calls in dispute in this case." VRP at 31-32.

Regardless of which defendant is right on the OSP issue⁶, the existence of the interLATA call, and the question of who was responsible for rate disclosure, are questions that must be answered by the WUTC. One of these two defendants violated WUTC regulations by failing to disclose rates on a call personally received by Ms. Herivel. That violation gives rise to a *per se* claim under the CPA. Ms. Herivel's injuries are redressable through this lawsuit and she has standing to pursue it.

Other fact questions exist with regard to AT&T's role as an OSP or as an entity that contracted with an OSP.

In addition, AT&T received intraLATA authority as an interexchange carrier in Washington in the 1995 timeframe and as such could have been carrying both interLATA and intraLATA calls from DOC locations. CP 465. Finally, AT&T contracted with T-Netix, thus exposing itself to liability under the "contracting with" prong of the statute. *See* RCW 80.36.520 (regulations

⁶ Although plaintiffs' expert identifies T-Netix as the OSP when T-Netix's platform is used in conjunction with a particular prison, T-Netix's position that AT&T is the OSP on all interLATA calls creates a fact issue, separate and apart from the conclusions of plaintiffs' expert, with respect to whether AT&T was the OSP on the call received by Ms. Herivel. The WUTC is the appropriate agency to resolve this fact question in the first instance.

shall require “that any telecommunications company, operating as *or contracting with* an alternate operator services company, assure appropriate disclosure to consumers”) (emphasis added).

E. Defendants’ summary judgment argument is wrong as a matter of law because it focuses on the company that “carried” a call rather than on the company that was the OSP for a call.

The factual dispute concerning the interLATA call received by plaintiff Tara Herivel is sufficient, by itself, to reverse the trial court’s judgment. The judgment should also be reversed on a legal point. The central assumption made by defendants—and apparently accepted by the trial court—is that a telephone call is not subject to rate disclosure requirements as long as an entity that was involved in the transmission of the call was exempt from or had obtained a waiver from rate disclosure requirements. For example, T-Netix relies on the fact that the 1991 regulation exempted local exchange carriers (LECs) from rate disclosure. It further relies on the fact that Qwest and Verizon obtained waivers from the 1999 disclosure requirements. Using these exemptions and waivers as essential building blocks in its argument, T-Netix then claims that because all calls received by plaintiffs were transmitted, in part, by an LEC like Qwest or Verizon, the calls themselves were exempt from disclosure requirements. *See* CP 254 (“[E]ach of these carriers was exempt from ... the rate disclosure requirements.... These *calls* were not required to

include rate disclosures.”) (emphasis added); *see* CP 256 (arguing that rate disclosure did not apply to calls “carried by” LECs that were exempt).

As we have just seen, this argument fails because not every call was carried by an LEC—Tara Herivel received an interLATA call that was carried by AT&T.

But defendants’ argument suffers from a more fundamental flaw. The dispositive question is not who “carried” or transmitted a call or whether a “call” is exempt, but rather who provided operator services. The regulatory exemption, and any waivers obtained from the Commission, applied only to specific companies. T-Netix cannot “piggyback” on the waivers or exemptions of other companies by claiming that simply because an exempt company carried a particular call, then all entities involved in the call are exempt.

This conclusion flows directly from the terms of the statute and regulations. Under RCW 86.30.520, it is a “telecommunications company, *operating as or contracting with an alternate operator services company,*” that must “assure appropriate disclosure to consumers.” The 1991 regulation requires an “*alternate operator services company*” to disclose rates “immediately, upon request, and at no charge to the consumer.” WAC 480-120-141(5)(a)(iv) (1991) (emphasis added). And the 1999 regulation requires “*the OSP*” to “verbally advise the consumer

how to receive a rate quote.” WAC 480-120-141(2)(b) (1999) (emphasis added). From a functional point of view, this makes perfect sense.

An LEC is not responsible for rate disclosure unless the LEC is also operating as an OSP. But if the OSP at a particular prison is *not* an LEC, then the LEC’s exemption or waiver cannot insulate the OSP from its disclosure obligations.

This is where defendants’ argument breaks down. Ken Wilson, plaintiffs’ expert, was careful to distinguish between the functions performed by an LEC and the functions performed by T-Netix at those prisons where T-Netix owned and operated its platform:

Defendants cannot argue, therefore, that the LECs were in fact operating as OSPs on calls received by plaintiffs. More precisely, the trial court was required to accept Mr. Wilson's observations and leave factual disputes concerning the roles performed by the parties to adjudication by the WUTC. If AT&T and T-Netix dispute the conclusions reached in Mr. Wilson's investigation, they are free to do so before the agency that was tapped by the trial court to answer these questions. For purposes of this appeal, those conclusions must be accepted as true. The Administrative Law Judge properly recognized that factual issues precluded summary judgment on standing. CP 215, 224.

During oral argument, the trial court appeared to be troubled by the fact that Qwest and Verizon had obtained waivers from the 1999 regulation. VRP 47-49; 52-56. The orders granting the waivers do not identify specific prisons where either Qwest or Verizon were providing operator services. See CP 426-34. The order pertaining to GTE (Verizon) does not even mention prisons. CP 426-29. Reasoning that these waivers would not have been sought or granted if these LECs did not have some rate disclosure obligations, the trial court wondered why T-Netix would still be on the hook for failing to disclose rates. See VRP 47-49; 52-56.

The answer is that, while Qwest and Verizon may well have been the OSP with regard to certain prisons, there is no evidence that they were

the OSP for *all* prisons. Indeed, the evidence before the Court is that neither of these companies served as the OSP at *any* of the prisons from which plaintiffs received calls. The waivers obtained by Qwest and Verizon undoubtedly had value for these companies—they served as an OSP at many non-prison facilities and Qwest apparently served as an OSP at some prisons from which plaintiffs did not receive calls. But the relevant question is whether the waivers obtained by Verizon and Qwest somehow eliminated rate disclosure obligations on calls made from prisons where either T-Netix or AT&T served as OSP. Because the regulations require OSPs to disclose rates, that obligation remained intact with respect to calls from any institution served by an OSP that did not obtain its own waiver.

IX. CONCLUSION

The trial court's judgment should be reversed with directions to the trial court to reactivate its primary jurisdiction referral to the WUTC.

DATED: February 17, 2006.

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Certificate of Service

I certify, under penalty of perjury pursuant to the laws of the United States and the State of Washington, that on February 17, 2006, a true copy of the foregoing OPENING BRIEF OF APPELLANTS was served upon counsel of record as indicated below:

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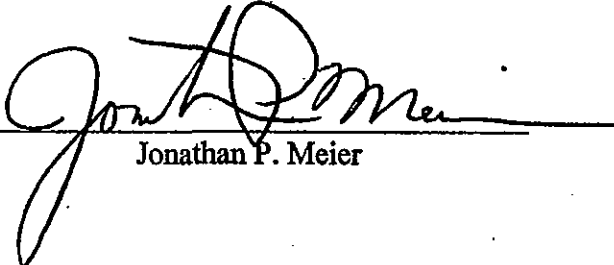
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APPENDIX

TELECOMMUNICATIONS

80.36.520

having their phones blocked from access to information delivery services.

(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [1988 c 123 § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the

committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [1988 c 123 § 3.]

Severability—1988 c 123: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 123 § 4.]

Cross References

Information delivery services, see § 19.162.010 et seq.

Library References

Telecommunications ¶321, 321.1, 322. C.J.S. Telegraphs, Telephones, Radio, and Television § 78.
WESTLAW Topic No. 372.

80.36.510. Legislative finding

The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice.

[1988 c 91 § 1.]

80.36.520. Disclosure of alternate operator services

The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not

limited to, hotels, motels, hospitals, and customer-owned pay telephones.

[1988 c 91 § 2.]

Library References

Telecommunications ¶311.
WESTLAW Topic No. 372.

C.J.S. Telegraphs, Telephones, Radio,
and Television §§ 79, 85.

80.36.522. Alternate operator service companies—Registration—Penalties

All alternate operator service companies providing services within the state shall register with the commission as a telecommunications company before providing alternate operator services. The commission may deny an application for registration of an alternate operator services company if, after a hearing, it finds that the services and charges to be offered by the company are not for the public convenience and advantage. The commission may suspend the registration of an alternate operator services company if, after a hearing, it finds that the company does not meet the service or disclosure requirements of the commission. Any alternate operator services company that provides service without being properly registered with the commission shall be subject to a penalty of not less than five hundred dollars and not more than one thousand dollars for each and every offense. In case of a continuing offense, every day's continuance shall be a separate offense. The penalty shall be recovered in an action as provided in RCW 80.04.400.
[1990 c 247 § 2.]

Library References

Telecommunications ¶311.
WESTLAW Topic No. 372.

C.J.S. Telegraphs, Telephones, Radio,
and Television §§ 79, 85.

80.36.524. Alternate operator service companies—Rules

The commission may adopt rules that provide for minimum service levels for telecommunications companies providing alternate operator services. The rules may provide a means for suspending the registration of a company providing alternate operator services if the company fails to meet minimum service levels or if the company fails to provide appropriate disclosure to consumers of the protection afforded under this chapter.

[1990 c 247 § 3.]

TELECOMMUNICATIONS**80.36.540****80.36.530. Violation of consumer protection act—Damages**

In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

[1990 c 247 § 4; 1988 c 91 § 3.]

Library References

Consumer Protection 6-6.
WESTLAW Topic No. 92H.

C.J.S. Trade to Marks, Trade to
Names, and Unfair Competition
§§ 237 to 238.

80.36.540. Telefacsimile messages—Unsolicited transmission—Penalties

(1) As used in this section, "telefacsimile message" means the transmittal of electronic signals over telephone lines for conversion into written text.

(2) No person, corporation, partnership, or association shall initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient.

(3)(a) Except as provided in (b) of this subsection, this section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship.

(b) A person shall not initiate an unsolicited telefacsimile message under the provisions of (a) of this subsection if the person knew or reasonably should have known that the recipient is a governmental entity.

(4) Notwithstanding subsection (3) of this section, it is unlawful to initiate any telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive telefacsimile messages from the initiator.

(5) The unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient is a matter

WASHINGTON ADMINISTRATIVE CODE
TITLE 480. UTILITIES AND TRANSPORTATION COMMISSION
CHAPTER 480-120. TELEPHONE COMPANIES
Current with amendments adopted through 5-23-01.

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

(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., 10XXXXk0, 10XXXXk01, 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.

Statutory Authority: RCW 80.04.160, 80.36.520 and 80.01.040, 99-02-020 (Order R-452, Docket No. UT-970301), S 480-120-141, filed 12/29/98, effective 1/29/99. Statutory Authority: RCW 80.01.040, 95-10-039 (Order R-430, Docket No. UT-950134), S 480-120-141, filed 4/28/95, effective 5/29/95; 94-20-010 (Order R-422, Docket No. UT-940049), S 480-120-141, filed 9/22/94, effective 10/23/94. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW, 91-20-162 (Order R-348, Docket No. UT-910828), S 480-120-141, filed 10/2/91, effective 11/2/91; 91-13-078 (Order R-345, Docket No. UT-900726), S 480-120-141, filed 6/18/91, effective 7/19/91. Statutory Authority: RCW 80.01.040 and 1988 c 91, 89-04-044 (Order R-293, Docket No. U-88-1882-R), S 480-120-141, filed 1/31/89.

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

WA ADC 480-120-141
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WASHINGTON ADMINISTRATIVE CODE
TITLE 480. UTILITIES AND TRANSPORTATION COMMISSION
CHAPTER 480-120. TELEPHONE COMPANIES
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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 - 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 - any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available 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 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 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 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/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.

Statutory Authority: RCW 80.04.160, 80.36.520 and 80.01.040. 99-02-020 (Order R-452, Docket No. UT-970301), S 480-120-021, filed 12/29/98, effective 1/29/99. Statutory Authority: RCW 80.01.040. 93-06-055 (Order R-384, Docket No. UT-921192), S 480-120-021, filed 2/26/93, effective 3/29/93. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 91-13-078 (Order R-345, Docket No. UT-900726), S 480-120-021, filed 6/18/91, effective 7/19/91. Statutory Authority: RCW 80.01.040 and 1988 c 91. 89-04-044 (Order R-293, Docket No. U-88-1882-R), S 480-120-021, filed 1/31/89. Statutory Authority: RCW 80.01.040. 86-11-009 (Order R-250, Cause No. U-85-58), S 480-120-021, filed 5/12/86, effective 7/31/86. Statutory Authority: RCW 80.01.040 and 1985 c 450. 85-23-001 (Order R-242, Cause No. U-85-56), S 480-120-021, filed 11/7/85. Statutory Authority: RCW 80.04.060. 79-10-060 (Order R-131, Cause No. U-79-42), S 480-120-021, filed 9/18/79. Statutory Authority: RCW 80.36.140. 79-03-031 (Order R-123, Cause No. U-79-01), S 480-120-021, filed 2/28/79; Order R-25, S 480-120-021, filed 5/5/71. Formerly WAC 480-120-030.

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

WA ADC 480-120-021
END OF DOCUMENT

Date of Intended Adoption: y 26, 1991.

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

Wednesday, June 13, 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 ((480-09)) 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

AMENDATORY SECTION (Amending Order R 33-4, filed 3/23/88)

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 281-91-037, provides a sound basis for the fair, reasonable and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. It is ((hereby)) approved: PROVIDED HOWEVER, That if the plan of operation of the pool or any policy issued by the pool contains any condition or provision that does not conform to the requirements of chapter 48.41 RCW or this chapter, the plan of operation or any policy issued by the pool shall be construed and applied in accordance with such conditions and provisions as would have applied had the plan of operation or policy issued by the pool been in full compliance with chapter 48.41 RCW and this chapter.

NEW SECTION

WAC 284-91-030 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.,

WAC 480-120-143 relating 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 19.15 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 Gue Services, Semi-ab-moo, Comfort Inn at Sea-Tac, Rovia 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 Ruhlén, and Robert P. Dick.

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

The rule change affects no economic values.

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

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

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

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

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

Person is defined for clarity. *Id.*

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

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

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

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

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

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

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

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

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

applies. This act judges 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(e). 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 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 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. 1),
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 clients))~~ locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code use by the consumer with billing to an account previously established by the consumer with the carrier.

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

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

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

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

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

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

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

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

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

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

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

Consumer - user not classified as a subscriber.

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

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

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

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

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

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

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

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

Person - male - in 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 when 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 room telephones provided by hotels, motels, hospitals, ampuses 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) Violative ~~X~~ 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)(a) 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 Stylized Bold type, the information provided in the following notice:

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

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

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

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

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

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

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

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

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

((2)) (3) The alternate operator services company shall:

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

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

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

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

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

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

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

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

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

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

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

(e) Maintain adequate facilities at 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.

((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 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. 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 34.03.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

NEW SECTION

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

WSR 91-13-079

PERMANENT RULES

DEPARTMENT OF ECOLOGY

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

Date of Adoption: June 18, 1991.

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

Statutory Authority for Adoption: RCW 70.94.331.

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

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

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

WAC 173-460-020 Definition.

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

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

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

Subsection (1) 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



Online Document

▼ **General Info**

Document Name: 970301 - Order Amending, Repealing, and Adopting Rules Permanently

Description: Order Amending WAC 480-120-021, -138 & -141; and Repealing WAC 480-120-137, -142 & -143 Relating to Pay Phone and Operator Service Providers

▼ **Body**



**FILED WITH THE CODE REVISER ON
DECEMBER 29, 1998 at 3:42 p.m., WSR #99-02-020
BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

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.

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GENERAL ORDER NO. R-452

DOCKET NO. UT-970301

**ORDER AMENDING, REPEALING, AND ADOPTING RULES PERMANENTLY
STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission or WUTC) takes this action under
Notice WSR #98-17-068, filed with the Code Reviser on August 17, 1998. This
Commission brings this proceeding pursuant to RCW 80.04.160, RCW 80.36.520
and RCW 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

EXHIBIT E-1

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.

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, WAC 480-120-138 Pay telephones - Local and intrastate, and WAC 480-120-141 Alternate operator services; and,

Repeals WAC 480-120-137 Customer-owned pay telephones - Interstate, WAC 480-120-142 Alternate operator services - Enforcement, and WAC 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 rulemaking 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.

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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 rulemaking. 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 questionnaire. This information and their participation in the discussion led to the results summarized in the Small Business Economic Impact Statement.

NOTICE OF PROPOSED RULEMAKING: The Commission filed a notice of Proposed Rulemaking (CR-102) on August 17, 1998, at WSR #98-17-068. The Commission scheduled this matter for oral comment and adoption under Notice 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 S. Evergreen Park Drive S.W., Olympia, Washington. 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), U S WEST Communications, Inc. (U S 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.

RULEMAKING 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 U S WEST. Oral commenters repeated concerns that were stated in their previous written comments.

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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 15 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 15 minutes, but offers a balance between customer

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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)

Subsection 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, 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.

Subsection 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 30-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.

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.

138(4)(g) and (k), Posting requirements. Subsection (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 30 days after a change. GTE argues that the 30-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 138(4)(k), requiring updated placarding within 60 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

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information. The Commission recognizes that an "immediate change" requirement would impose hardships on PSPs and sizeable expense. The time periods set in the rule appropriately balance the affected interests. PSP information shows that the time periods will allow changes to be made during "routine" site visits in the vast majority of instances. Thirty days is appropriate to change out placards when there has been a change in a presubscribed operator service provider, and sixty days is a reasonable time period to change out placards as a result of this or comparable rule changes.

138 (4)(j), 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 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.

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.

138(5)(d) and (e), Extension, cordless or tabletop telephones. U S 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.

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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.

138(5)(g) Coin and Credit Operation. Pay phones may provide credit-only service, or coin and credit service. U S WEST again states that it is inconsistent with market place 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.

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

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.

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138(8) Correcting malfunctions and rule violations. The rule imposes a 5-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 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)

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, U S WEST expressed the same concerns discussed above in the 138 (4) section 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.

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 implementation. 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 U S WEST, and will take about 15 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

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not face today. Public Counsel argues that provisions of existing rules, 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 intra-state 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 (10/31/98, and 12/31/98 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 60 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 rulemaking at that time to consider changes needed for consistency. Waivers will be considered during the interim period, consistent with the FCC approach.

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.

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.

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 OSP's 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

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required service is appropriate and should continue to be required.

141 (9) Enforcement. Public Counsel asks the WUTC to retain language from WAC 480-120-142, which includes specific RCW's and WAC's 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 non-substantive 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 NWPA. We adopt it for the reasons advocated in its support.

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

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.

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

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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.

138(6) is revised to remove repetitive and unnecessary language, to correctly identify the appropriate subsection for requesting a waiver, and to shorten the 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 sections 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 sections 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.

ORDER

THE COMMISSION ORDERS:

1. WAC sections 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 sections 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 rulemaking, 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

EXHIBIT E-11

ANNE LEVINSON, Chair

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

► **Creation Info**

Cathie Anderson was the last to edit this document, on 06/30/99.

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EXHIBIT E-12