

In the Matter of

IN THE MATTER OF THE PETITION OF
MCI TELECOMMUNICATIONS
CORPORATION AND AT&T
COMMUNICATION OF THE MIDWEST,
INC. TO CERTIFY ALL LECS AS TO
COMPLIANCE WITH FCC PAYPHONE
ORDERS

Public Utilities Commission of the State of South Dakota

DATE _____

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[illegible]

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TC97-039

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RE: MCI AND AT&T PAYPHONE INVESTMENT PETITION
Our file: 0175.28

Dear Bill:

Enclosed are original and ten copies of a Petition of MCI and AT&T to Certify All LECs as to Compliance with FCC Payphone Orders, which please file. Also enclosed is an extra cover sheet which please date stamp and return to me in the enclosed self-addressed stamped envelope.

Thank you.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc: Michel Murray

0142.43.3

TC97-039

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APR 14 1997

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE: PETITION OF MCI TELECOMMUNICATIONS)
CORPORATION AND AT&T COMMUNICATIONS INC.)
TO CERTIFY LECs AS TO COMPLIANCE WITH)
FCC PAYPHONE ORDERS)

PETITION OF MCI AND AT&T TO CERTIFY ALL LECs
AS TO COMPLIANCE WITH FCC PAYPHONE ORDERS

MCI Telecommunications Corporation ("MCI") and AT&T Communications Inc. ("AT&T") hereby file this petition to investigate compliance of all certificated local exchange companies ("LECs") with Federal Communications Commission ("FCC") orders on payphone reclassification. Specifically, MCI and AT&T request that the South Dakota Public Utilities Service Commission ("Commission") determine and certify whether all certificated LECs have met all state-specific requirements identified in the FCC's orders. Those orders, which are discussed below, require LECs with payphones, *inter alia*, to remove from intrastate operations their deregulated payphone investment and associated expenses and to make concomitant reductions in their intrastate revenue requirements and rates as required by the Federal Telecommunications Act of 1996¹ by April 15, 1997.

As discussed herein, the FCC has delegated to the states the authority to determine the intrastate rates that must be reduced or removed to eliminate payphone costs and subsidies.² These revised rates must be effective no later than April 15, 1997. To the best

¹Telecommunications Act of 1996, Pub. L. No. 104-104, 10 Stat. 56, 47 U. S.C. §§151 *et. seq.* ("Telecom Act", "Act" or "FTA").

²The Commission must also determine whether the proposed rate reductions are sufficient to eliminate all payphone costs and subsidies between the deregulated payphones and all other services.

4. CIA. NAME
of MCI's and AT&T's knowledge and information, only a handful of LECs have filed the requisite intrastate rate reductions, and, as such, the vast majority of LECs are not entitled to receive payphone compensation. Commission staff has advised petitioners that U S WEST has removed the payphone component from its rate structure. Petitioners request that U S WEST verify that this has occurred and that such compensation has been removed from its rate structure.

MCI and AT&T respectfully request that the Commission certify to the FCC and the other parties affected by the FCC orders whether each LEC has complied with the FCC payphone orders. All intrastate rates, including access charges, which include payphone costs must be adjusted to reflect the elimination of payphone investment and expenses.

BACKGROUND

In an order released late in 1996,³ the FCC proposed to deregulate Regional Bell Operating Company ("RBOC") and LEC payphones.⁴ In essence, the FCC will allow the RBOCs and LECs to

³In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 and CC Docket No. 91-35; Report and Order, FCC 96-388; Adopted and Released September 20, 1996, appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed October 17, 1996) hereinafter referred to as the "Payphone Report and Order."

⁴The FCC also issued an Order on Reconsideration, FCC 96-439, on November 8, 1996, hereinafter referred to as the "Order on Reconsideration." On April 4, 1997, the FCC issued yet another order in this docket clarifying previous orders, hereinafter referred to as the "April Order."

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collect dial-around compensation on traffic originating on their payphones, so long as they remove the cost associated with payphones from their rates.

Acting under the mandate to establish a methodology to compensate payphone providers for all calls, the FCC established a compensation amount of \$45.85 per payphone per month to be paid by MCI, AT&T and other interexchange carriers ("IXCs") whose customers use payphones. This represents a significant cost increase from the present level of \$6.00 per payphone per month established previously by the FCC.

LEC payphones will become eligible for this compensation only after they remove the payphone costs from their regulated operations and meet the other requirements in the FCC Payphone Orders.¹ Since the present payphone costs will, in effect, be replaced by compensation from the IXC industry, it is imperative that the

¹Pursuant to the FCC Order on Reconsideration at paragraph 131, to receive compensation a LEC must be able to certify the following: 1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multi-line subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines. (See FCC ERRATUM in this proceeding, Released November 19, 1996 as to item three in this quote) Paragraph 30 of the April 4th FCC Payphone Order requires that the intrastate tariffs be cost-based, consistent with Section 276 of the Act and nondiscriminatory. MCI and AT&T request that the LEC tariffs for basic payphone services, whether suspended or approved, be investigated as to compliance with these requirements.

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intrastate costs be eliminated by reducing the LECs' intrastate rates, including switched access charges. The reduction in intrastate switched access charges will prevent "double dipping" -- collecting excessive access charges and receiving payphone compensation.

Payphone expense has been recovered from the common line rate element based on the FCC's Part 69 rules for interstate cost recovery, and separations rules have allocated 75 percent of the payphone expense to the intrastate jurisdiction. Based on preliminary calculations, the payphone expense to be removed from the intrastate rates of U S WEST Communications, Inc. (USWC or U S WEST) and the independent telephone companies in the 14 state USWC region, is approximately \$50 million.

The FCC Payphone Order stated, "we adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones." [Payphone Report and Order, Par.183]. The FCC dealt with intra-state payphone subsidies at Par. 186 of its Order as follows:

We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Parties did not submit state specific information regarding the intrastate rate elements that recover payphone costs. States must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame. (emphasis added)

The FCC issued another order in its payphone proceeding on April 4, 1997 and specifically reiterated the requirement that LECs must remove payphone costs from intrastate rates. Moreover, the

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April Order clearly identified the states' responsibility to ensure that the payphone costs are removed from intrastate rates. The April Order states as follows:

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXCs claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation. As discussed above, LECs that have not complied with these requirements will not be entitled to receive compensation.⁴

Finally, Section 276(c) of the Act explicitly provides that to the extent any state requirements are inconsistent with FCC regulations, the FCC regulations shall preempt the state requirements. While Section 276 of the Act vests authority with the FCC to remove intrastate payphone costs from intrastate carrier access charges, it is apparent that the FCC has deferred that authority to the state commissions.

⁴In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, FCC 97-678, Adopted and Released April 4, 1997; hereinafter referred to as the "April Order", at paragraph 30. See, also, paragraphs 2, 25 and 35. The April Order is attached to this petition.

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SUMMARY OF LEGAL BASIS FOR COMPLAINT

1. Section 276 of the FTA provides that a LEC "shall not subsidize its payphone service directly or indirectly from its exchange service operations or its exchange access operations." § 276(a)(1).
2. The FTA directs that the FCC "shall take all actions necessary to prescribe regulations that . . . discontinue the intrastate and interstate carrier access charge payphone service elements and payments . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." § 276(b)(1)(B).
3. In its Report and Order in CC Dockets 96-128 and 91-35 (hereinafter, "Payphone Report and Order"), the FCC directed that LECs file interstate tariffs on January 15, 1997 to "reduce their interstate CCL charges by an amount equal to the allocation of payphone costs currently recovered through those charges." Payphone Report and Order, ¶ 181.
4. The Payphone Report and Order further stated, "we adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones." Payphone Report and Order, ¶ 183
5. The FCC dealt with intrastate payphone subsidies at ¶ 186 of its Order as follows:

We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Parties did not submit state specific information regarding the

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intrastate rate elements that recover payphone costs. States must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame.

6. The April Order clearly identified the states' responsibility to ensure that the payphone costs are removed from intrastate rates. The April Order states as follows:

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXCs claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation. As discussed above, LECs that have not complied with these requirements will not be entitled to receive compensation.⁷

7. Finally, Section 276(c) of the FTA explicitly provides that to the extent any state requirements are inconsistent with FCC regulations, the FCC regulations shall preempt the state requirements.

⁷In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, FCC 97-678, Adopted and Released April 4, 1997; hereinafter referred to as the "April Order," at paragraph 30. See, also, paragraphs 2, 25 and 35.

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FACTUAL ALLEGATIONS IN SUPPORT OF THE COMPLAINT

8. The FCC concluded that the best way "to effectuate the [FTA's] mandate that access charge payphone service elements and payphone subsidies be discontinued . . . [is to treat] incumbent LEC payphones as detariffed and deregulated CPE . . . we conclude that LEC payphones must be treated as unregulated, detariffed CPE in order to insure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements as required by the [FTA]." Payphone Report and Order, ¶ 142.
9. The FCC identified the specific assets to be deregulated and removed from the regulated books to include all facilities related to payphone service, including associated accumulated depreciation and deferred income tax liabilities. Payphone Report and Order ¶ 159. Specifically, the FCC concluded that the payphone investment in Account 32.2351, Public telephone terminal equipment, and any other assets used in the provision of payphone service, along with the accumulated depreciation and income tax liabilities should be directly assigned or allocated. Payphone Report and Order, ¶ 163.
10. As a result, the FCC directed U S WEST and other incumbent LECs to file tariffs by January 15, 1997 to reduce the Carrier Common Line (CCL) rate element of interstate switched access charges to reflect the revenue requirement reduction effect of the removal of the interstate portion (i.e. 25 percent) of payphone assets and payphone operations expenses.

11. U S WEST made its filing with the FCC on January 15, 1997 (Transmittal 823), reflecting the removal of deregulated payphone investment and payphone operations expenses from its regulated accounts. The "payphone revenue requirements" removed from U S WEST's regulated interstate accounts reflected a revenue requirements reduction of \$12.4 million and a revised CCL rate of \$0.005272.
12. To the best of MCI's and AT&T's knowledge, State ILECs have not filed to reduce intrastate rates to reflect the removal of any and all charges that recover the costs of payphones.
13. USWC and other LECs are not, or may not be, in compliance with the FCC payphone orders because they have failed to reduce intrastate rates to reflect the removal of any and all charges that recover the costs of payphones and therefore are not eligible to receive payphone compensation.

STATEMENT OF DISPUTED ISSUES AND REQUEST FOR RELIEF

14. MCI and AT&T's substantial interests are affected by the LECs' potential recovery of payphone costs through both the payphone compensation mechanism established under the FTA and through the existing costs contained in intrastate access charges.
15. MCI and AT&T are not aware of any disputed issues of material fact. The parties may disagree, however, on the intrastate revenue requirements calculation necessary to remove the deregulated payphone investment and associated expenses, and the identification of the rates that should be reduced in order to eliminate the subsidy.

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16. MCI and AT&T are entitled to relief under the FTA, the FCC's Report and Order, Order on Reconsideration and April Order in CC Dockets 96-128 and 91-35, and SDCL §§ 49-31-3, 4, 4.2, 11 and 18.

WHEREFORE, MCI and AT&T request that the Commission:

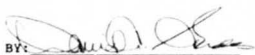
(1) direct LECs subject to the FCC's payphone orders to file with the Commission a rate reduction proposal, supported by verifiable cost support, to remove the deregulated payphone investment and associated expenses from their intrastate operations;

(2) certify to the FCC and the parties to this proceeding whether the individual LECs subject to the FCC payphone orders are in compliance with the FCC payphone requirements, including the removal of investment and expenses from all intrastate rates, including access charges; and

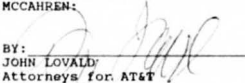
(3) inform the FCC, based on the Commission's review of the payphone requirements, which LECs are eligible to receive payphone compensation.

RESPECTFULLY SUBMITTED this 14th day of April, 1997.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 97-678

In the Matter of)
)
Implementation of the) CC Docket No. 96-128
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

ORDER

Adopted: April 4, 1997

Released: April 4, 1997

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau ("Bureau") clarifies and grants a limited waiver of the Commission's interstate tariffing requirements¹ for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding, CC Docket No. 96-128.² Local exchange carriers ("LECs") must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers ("IXCs") that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the Payphone Order and Order on Reconsideration, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of this Order, with a scheduled effective date no later than 15 days after the date of filing. In addition, each individual Bell Operating Company ("BOC") must file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features

¹ For purposes of this Order, the term "intrastate tariff" refers to a tariff filed in the state jurisdiction and the term "interstate tariff" refers to a tariff filed in the federal jurisdiction.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration"), appeal docketed sub nom Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (both orders together "Payphone Reclassification Proceeding").

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and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on their pending comparably efficient interconnection ("CEI") plans.¹ We also waive the requirement, for a period of 60 days from the release date of this Order, that these interstate tariffs for unbundled features and functions be effective before the LECs are eligible to receive payphone compensation. If, however, a LEC fails to file all of the requisite federal tariffs for unbundled features and functions within 45 days of the release date of the instant Order, it will not be in compliance with the Commission's requirements and, consequently, will not be eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.⁴

2. This Order also restates that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding before the LECs' payphone operations are eligible to receive payphone compensation. Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines.⁵ In addition, the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates.⁶ These intrastate tariffing requirements must be met and the tariffs effective by April 15, 1997, for the LEC's payphone operations to receive the payphone compensation provided by the Payphone Reclassification Proceeding.⁷

3. The Bureau takes this action, on its own motion, pursuant to the authority delegated to it by the Commission in the Order on Reconsideration to determine whether a LEC has met the requirements of the Payphone Reclassification Proceeding prior to receiving compensation.⁸ The instant Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.⁹

¹ In addition to filing the ex parte with the Secretary in CC Docket No. 96-128, each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding, also by April 10, 1997.

⁴ See Order on Reconsideration at paras. 131-132.

⁵ Id. at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at Id., n. 492.

⁶ See, e.g., Payphone Order at paras. 180-187.

⁷ Order on Reconsideration at paras. 131-132.

⁸ Id. at para. 132. See also id. at para. 163. These delegations of authority to the Bureau are consistent with Section .091 of the Commission's rules, 47 CFR § 0.91.

⁹ 47 U.S.C. § 276(b)(1).

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II. BACKGROUND

4. In the Payphone Reclassification Proceeding, the Commission noted that Telecommunications Act of 1996 fundamentally changed telecommunications regulation. It stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."¹⁰ To that end, the Commission advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public."¹¹ It sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, it concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.¹²

5. In the Payphone Order, the Commission concluded that, consistent with Section 276 of the Act, PSPs are to be compensated for "each and every completed intrastate and interstate call" originated by their payphones.¹³ For the first year of the compensation provided by the Payphone Order, the Commission required those IXC's with annual toll revenues in excess of \$100 million to pay PSPs proportionate shares, based on their respective market shares, of interim, flat-rated compensation in the amount of \$45.85 per payphone per month.¹⁴ This monthly amount is to compensate each payphone for an average of 131 access code calls and subscriber 800 calls. The Commission concluded that LEC PSPs would be eligible to receive this compensation by April 15, 1997, once the LEC, among other things, terminated certain subsidies flowing to its payphone operations.¹⁵

6. In the Order on Reconsideration, the Commission concluded that to be eligible to receive compensation, a LEC must be able to certify the following:

¹⁰ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

¹¹ 47 U.S.C. § 276(b)(1).

¹² Payphone Order at paras. 11-19.

¹³ Id. at paras. 48-76.

¹⁴ Id. at paras. 119-126.

¹⁵ Order on Reconsideration at para. 131.

1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.¹⁶

7. The Commission also noted that additional requirements apply to those LECs that are BOCs:

In addition to the requirements for all other LECs, BOCs must also have approved [comparably efficient interconnection ("CEI")] plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its [CEI] plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones.¹⁷

III. CLARIFICATION AND LIMITED WAIVER OF FEDERAL TARIFFING REQUIREMENTS FOR UNBUNDLED FEATURES AND FUNCTIONS

A. Background

8. In the Payphone Order, the Commission required that LECs tariff payphone services at the federal level.¹⁸ The Payphone Order also required that network services provided by a LEC to its payphone operations must be federally tariffed as well.¹⁹ In the Order on Reconsideration, the Commission required LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions. Basic payphone services for instrument-implemented "smart" payphones, "dumb" payphones, and inmate payphones, including any features and functions that the LEC has unbundled from the basic payphone line, which enable independent providers to offer payphone services, and unbundled features and functions provided by a LEC to its payphone operations, must be tariffed at the state

¹⁶ Id.

¹⁷ Id. at para. 132.

¹⁸ Payphone Order at para. 147.

¹⁹ Id. at para. 148.

level.²⁰ The Commission also required that the unbundled payphone features and functions provided by a LEC to others and the unbundled features and functions provided by a LEC to its payphone operations must be tariffed in the federal jurisdiction.²¹ The Commission also stated in the Payphone Order²² that while it did not require LECs to provide additional unbundling of features for payphone services by April 15, 1997, states could require that LECs provide further unbundling, and further unbundling could be requested by PSPs from BOCs subsequently through the 120-day Open Network Architecture ("ONA") service process.²³

9. In addition, the Payphone Order required that in its CEI plan a BOC must explain how it will provide basic payphone services and unbundled functionalities and options taken by the BOC.²⁴ The Payphone Order required the filing of CEI plans for payphone services to ensure that the BOCs provide payphone services in a nondiscriminatory manner and consistent with other Computer III²⁵ and ONA requirements.²⁶ Thus, a BOC must indicate how it plans to

²⁰ In the Order on Reconsideration, the Commission concluded that even though it retained authority over payphone tariffs, it delegated to the states certain responsibilities. The Commission indicated, however, that if a state was not able to respond to those requirements the state could require that LECs in its state file with the Commission instead of the state for those responsibilities delegated to the state. Id. at para. 163.

²¹ Id. at paras. 162-165.

²² Payphone Order at para. 148.

²³ Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order), 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order), 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order), 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

Under their ONA plans, BOCs must respond within 120 days to requests from competing enhanced service providers for new basic ONA services. BOCs must base their decisions on whether to provide these new services on the ONA selection criteria set forth in the Computer III Phase I Order: market area demand, utility as perceived by the requesting ESP, and costing and technical feasibility. See generally ONA Interim Waiver Order, 10 FCC Rcd at 1728-29.

²⁴ Payphone Order at para. 204.

²⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order), Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1988) (Phase II Further Reconsideration Order), Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990), Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), Computer III Remand Proceedings, Bell Operating Company Safeguards and Tier I Local Exchange Company

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unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service. In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.²⁷

10. Finally, in a "compliance list" paragraph in the Order on Reconsideration, the Commission listed the requirements with which a LEC must comply to receive payphone compensation under the Commission's rules.²⁸ This compliance list requires the federal tariffing of unbundled features associated with payphone lines.²⁹

11. The Order on Reconsideration required that LECs file federal tariffs by January 15, 1997, to be effective no later than April 15, 1997.³⁰ A review of the federal tariffs filed by LECs and those detailed by the BOCs in their CEI plans revealed that some of the BOCs and other LECs had not filed federal tariffs for all the unbundled features and functions required by the Payphone Reclassification Proceeding. In response to staff inquiries, several parties filed *ex parte* presentations concerning LEC compliance with the requirements of the two payphone orders.

B. Comments

12. In an *ex parte* filing, the RBOC Coalition³¹ states that it agrees that the Commission's payphone orders impose a federal tariffing requirement.³² It argues, however, that the federal tariffing applies only to network-based, payphone-specific features and functions.³³ The RBOC Coalition argues further that among these network-based, payphone-specific features

Safeguards, 6 FCC Red 7571 (1991) (RBOC Safeguards Order); BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III).

²⁸ Payphone Order at para. 202.

²⁷ Id. at para. 204.

²⁸ See para. 6, above.

²⁹ Order on Reconsideration at para. 131.

³⁰ Order on Reconsideration at para. 163.

³¹ The RBOC Coalition consists of all of the BOCs except Ameritech.

³² Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

³³ Id.

and functions, only those that a LEC provides to its own payphone operations must be tariffed.³⁴ The RBOC Coalition notes, however, that "[w]hatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements."³⁵ It states that it will support and comply with any reasonable resolution of the federal tariffing issue, "so long as it does not delay the rapid transformation of the payphone industry that Congress intended," or defer the legislative intent behind Section 276 to promote both competition among PSPs and the widespread deployment of payphone services.³⁶

13. In addition, both the RBOC Coalition and the American Public Communications Council ("APCC"), which represents independent PSPs, filed detailed ex parte presentations that set forth which payphone services they believe must be federally tariffed pursuant to the Payphone Reclassification Proceeding.³⁷ The RBOC Coalition argues that the Commission's payphone orders establish the principle that federal tariffs cannot be required for a feature unless that feature is unbundled.³⁸ Therefore, the RBOC Coalition maintains that its individual member BOCs will tariff all network-based, payphone-specific features and functions that they have unbundled, but should not be required to tariff at the federal level any features and functions that they have not unbundled.³⁹

14. On the other hand, APCC argues that the Commission intended for the basic payphone line to serve as a building block to which additional features and functions would be added as options, including such options as coin service features, answer supervision, and call blocking and screening.⁴⁰ Consequently, APCC contends, each of these services is an "unbundled feature or function" that must be federally tariffed, if the function is used by the LEC, in bundled or unbundled form, to provide payphone service.⁴¹ In addition, APCC argues

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997); Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997). As discussed below in paragraph 26, a number of other parties also filed ex parte letters, primarily on the state tariffing requirements of the Payphone Reclassification Proceeding, including AT&T, MCI, and GTE.

³⁸ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 4-5.

³⁹ Id.

⁴⁰ Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997) at 3.

⁴¹ Id. at 3.

that the BOCs have not proposed to federally tariff coin service features, such as coin supervision, coin counting, and coin rating.⁴² APCC argues further that because a basic payphone line can be purchased without coin service features, these features are not inherently a part of the basic payphone line, and, therefore, should be tariffed separately as "unbundled features and functions" at the federal level.⁴³

C Discussion

15. The RBOC Coalition and APCC have made *ex parte* presentations to the Commission staff that set forth varying interpretations of the Commission's federal tariffing requirements for payphone services. We conclude that the RBOC Coalition interpretation of the federal tariffing requirement established in the two payphone orders is too narrow and does not reflect the level of federal tariffing of unbundled features and functions required by those orders. More specifically, the RBOC Coalition's interpretation does not comply with the Commission's objective of safeguarding against discrimination through the federal tariffing of unbundled features, because the Coalition does not include the unbundled features and functions provided by LECs to others, apart from those taken by a LEC's own payphone operations. The Payphone Reclassification Proceeding concluded that state and federal tariffing of both the payphone unbundled features and functions provided to others and the unbundled features and functions provided by the LEC to its own payphone operations must be tariffed to avoid possible subsidies and discrimination.⁴⁴

16. On the other hand, we conclude that APCC's interpretation of the federal tariffing requirement established in the Payphone Reclassification Proceeding is too broad and would require a greater unbundling of payphone features than is required by that proceeding. The payphone orders, however, do not require that LECs unbundle more features and functions from the basic payphone line by April 15, 1997 than the LEC provides on an unbundled basis.⁴⁵ Thus, we clarify that, for example, if a LEC provides answer supervision bundled with the basic payphone line, the LEC is required neither to unbundle that service from its state tariff for payphone service, nor federally tariff that service by April 15, 1997.⁴⁶ If the LEC, however, provides answer supervision on an unbundled basis, it must tariff that service in both the state and federal jurisdictions.

17. We clarify here that the unbundled features and functions addressed in the

⁴² Id. at 5.

⁴³ Id. at 6.

⁴⁴ Payphone Order at para. 148, Order on Reconsideration at paras. 162-163.

⁴⁵ Payphone Order at para. 148, Order on Reconsideration at para. 165.

⁴⁶ As discussed below in para. 18, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.

Payphone Reclassification Proceeding are network services similar to basic service elements ("BSEs") under the ONA regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service.⁴⁷ In this case, the unbundled features are payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by PSPs or LECs. Some of the LECs use terms such as tariffed "options" and "elective features" for network services that other LECs call features and functions. Options and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs).⁴⁸

18. We also clarify that the requirement to file federal tariffs applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and call screening, with the following qualifications discussed below.⁴⁹ We agree with the RBOC Coalition that the federal tariffing requirement does not apply to non-network services, such as inside wire services.⁵⁰ Moreover, as suggested by the RBOC Coalition, we do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features.⁵¹ In addition, we clarify here that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others, because the payphone orders did not require additional unbundling of features and functions by April 15 beyond those that the LEC chooses to provide.⁵² As required by the Payphone Reclassification Proceeding,

⁴⁷ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, FCC 88-381, 4 FCC Rcd 1 (1988) ("BOC ONA Order").

⁴⁸ See, e.g., Application of Open Network and Nondiscrimination Safeguards to GTE Corporation, 11 FCC Rcd 5558 (1995) at para. 11.

⁴⁹ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988) ("BOC ONA Order"); Payphone Order at para. 146; Order on Reconsideration at paras. 162, 166. Examples of other unbundled features and functions that must be federally tariffed if they are offered on an unbundled basis to others or taken by a LEC payphone operation on an unbundled basis include: call blocking, coin supervision additive, coin signaling transmission additive, coin rating, original line number screening, and IDDD blocking.

⁵⁰ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2; Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997) at 2.

⁵¹ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2.

⁵² Payphone Order at para. 148.

however, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.⁵⁵

19. The RBOC Coalition argues that Computer III prohibits mix and match of federal and state tariffs required by the Payphone Reclassification Proceeding.⁵⁶ In contrast, APCC argues that the reasons for prohibiting mix and match do not apply for tariffs filed pursuant to the payphone orders because the Commission has required that rates for both state and federal tariffs must be cost-based and subject to the new services test.⁵⁷ We conclude that the Payphone Reclassification Proceeding does not prohibit the mixing and matching of payphone services between federal and state tariffs by LEC and independent payphone operations. This conclusion applies only to payphone services and does not affect Computer III requirements.⁵⁸ In Computer III, the Commission did not allow such mixing and matching because: (1) mixing and matching could result in mismatch of basic service arrangements ("BSA") and BSEs costs and revenues; (2) it could undermine state policies; (3) states may impose terms and conditions on BSAs BSEs that differ from those of the FCC; and (4) other jurisdictional problems.⁵⁹ Unlike Computer III, however, Section 276 provides the Commission with jurisdiction over all tariffing of payphone services.⁶⁰ The Commission has delegated to each state the review, pursuant to federal guidelines, of payphone tariffs filed in the state.⁶¹ Given that the federal guidelines for tariffing discussed above⁶² are the same in the state and federal jurisdictions, there is no undermining of state policies or the creation of jurisdictional conflicts. Moreover, in this case, mixing and matching provides a safeguard to ensure that unbundled features are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding. We conclude that the separations issues, if any, raised by allowing mixing and matching are outweighed, in this case, by the importance of this safeguard to ensure that unbundled features

⁵⁵ Id.

⁵⁶ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 25, 1997).

⁵⁷ Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 27, 1997).

⁵⁸ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 6 FCC Rcd 4524, 4535, para. 65 (1991).

⁵⁹ Id. See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 4 FCC Rcd 3983, 3989 at para. 43 (1989).

⁶⁰ Payphone Order at paras. 146-147.

⁶¹ Order on Reconsideration at para. 163.

⁶² Payphone Order at para. 146; Order on Reconsideration at para. 163. See also para. 2, above.

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and functions are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding.⁸¹

D. Waiver

20. As discussed above,⁸² upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the Payphone Reclassification Proceeding, we conclude that the while the individual BOCs are not in full compliance with the requirements of the Payphone Reclassification Proceeding, they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders mandate the federal tariffing of some payphone services, namely those that the LEC provides to its own payphone operations.⁸³ In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date.⁸⁴ Therefore, because the RBOC Coalition has indicated its intent to comply with the Commission's requirements, as established by the Payphone Reclassification Proceeding, and because the Coalition's narrower reading of what payphone services need to be federally tariffed is based on its good faith efforts to comply with the Commission's rules, we adopt this Order, which contains a limited waiver of the federal tariffing requirements for unbundled features and functions a LEC must meet before it is eligible to receive payphone compensation. Because other LECs may also have failed to file all the federal tariffs for unbundled features and functions required by the Payphone Order and the Order on Reconsideration, we apply this limited waiver to all LECs, with the limitations set forth below.⁸⁵

21. In the Payphone Order and Order on Reconsideration, the Commission required that LECs file federal tariffs by January 15, 1997 with a 90-day review period for unbundled features and functions.⁸⁶ Consistent with our conclusions above and in the interests of bringing LECs into compliance with the requirements of the Payphone Reclassification Proceeding, we waive for 60 days the requirement that LECs have "in effect ... interstate tariffs

⁸¹ The Commission is undertaking a proceeding to reform the separation rules. Any problems, if they exist, will be considered in that proceeding. See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, FCC 96-488 (rel. Dec. 24, 1996) at para. 6.

⁸² See para. 15, above.

⁸³ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

⁸⁴ Id.

⁸⁵ See paras. 21-23, below.

⁸⁶ Order on Reconsideration at para. 131 (emphasis added).

for unbundled functionalities associated with [payphone] lines" by April 15, 1997.⁶⁷ We also waive both the January 15th filing deadline and the 90-day review period for interstate tariffs. LECs must file interstate tariffs for unbundled features and functions, as required by the Payphone Reclassification Proceeding, as clarified herein, within 45 days after the release date of this order under the streamlined tariff review process. These tariffs will be effective no later than 15 days after filing, unless suspended or rejected.⁶⁸ Any LEC that files federal tariffs for unbundled functionalities, as clarified herein, within 45 days of the release date of the instant Order will be eligible to collect the payphone compensation provided by the Payphone Reclassification Proceeding on April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the BOCs) of the Order on Reconsideration.⁶⁹ If a LEC fails to file all of the requisite federal tariffs within 45 days, or if the federal tariffs for a particular LEC are not in effect after 60 days from the date of release of this Order, the LEC will not be eligible to receive the payphone compensation provided by the Payphone Reclassification Proceeding.

22. In addition, each individual BOC must also file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on the BOCs' pending CEI plans.

23. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule⁷⁰ and such deviation serves the public interest.⁷¹ Because the Commission is required to review incoming tariffs for the unbundled features and functions associated with payphone service, which have not been previously filed at the interstate level, we find that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, our grant of a waiver in this limited circumstance, would not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, our review of the interstate tariffs that are the subject of this limited waiver will enable us to determine whether these tariffs have been filed in accordance with our rules. Accordingly, we grant a limited

⁶⁷ *Id.*

⁶⁸ 47 U.S.C. § 402, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, FCC 97-23 (rel. Jan. 31, 1997).

⁶⁹ Because the industry has elected to bill for and pay out compensation on a quarterly basis, the actual payment for compensation that begins to accrue on April 15, 1997 will not be made until after the requisite federal tariffs become effective within 60 days after the release date of the instant Order.

⁷⁰ Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷¹ WAJT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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waiver, as specified in this Order,⁷² subject to the filing of federal tariffs for unbundled features and functions within 45 days of the release date of this Order. This Order does not waive any of the other requirements set forth in paragraphs 131-132 of the Order on Reconsideration, including the requirement that a LEC have "in effect intrastate... tariffs for unbundled functionalities..."⁷³

IV. CLARIFICATION OF STATE TARIFFING REQUIREMENTS

A. Background

24. The Commission concluded in the Order on Reconsideration that LECs are required to tariff basic payphone lines (smart, dumb, and inmate⁷⁴) at the state level only.⁷⁵ Unbundled features and functions provided to others and taken by a LEC's payphone operations, however, must be tariffed in both the intrastate and interstate jurisdictions.⁷⁶

25. In addition, in the Payphone Order, the Commission required that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. The Payphone Order required that states determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies. These revised rates must be effective no later than April 15, 1997.⁷⁷

B. Comments

26. APCC filed a motion that the Commission rule that LECs are ineligible to receive payphone compensation because they have not tariffed their services to PSPs at cost-based rates, and have not tariffed the "basic payphone line" separately from "coin service" features and other unbundled functions, as required in paragraphs 162-163 of the Order on Reconsideration.⁷⁸ APCC states that it is filing its motion to request that the Commission declare, "if not within the

⁷² See paras. 20-23, above.

⁷³ *Id.* (emphasis added).

⁷⁴ The Commission noted in the Order on Reconsideration, at para. 131, that the LECs would also have to tariff basic services for inmate phone lines.

⁷⁵ *Id.* at paras. 162-165. The Commission provided guidelines pursuant to which the states are to review the state tariffs subject to the Payphone Reclassification Proceeding. *Id.* at para. 163.

⁷⁶ *Id.* at paras. 162-165.

⁷⁷ Payphone Order at para. 186.

⁷⁸ Motion of the American Public Communications Council for a Ruling on the Bell Operating Companies' Compliance with the Payphone Orders, CC Docket No. 96-128, filed March 26, 1997 at 1-2 ("APCC Motion").

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CEI proceeding then in a separate ruling," that the BOCs must satisfy these requirements.⁷⁹ APCC also argues that the BOCs have not complied with the Commission's requirements that all services offered to PSPs be offered at cost-based rates complying with the FCC's "new services" test.⁸⁰ APCC contends that "[a]lthough the FCC stated that it will rely on the states to determine whether state-tariffed services comply with the Payphone Orders and Section 276, the Commission made it clear that if a state is unable to review the tariffs, the Commission will do so."⁸¹

27. The RBOC Coalition argues in an ex parte filing that the new services test, as referenced in note 492 of the Order on Reconsideration, applies only to unbundled elements of the lines used for "dumb" payphones, which have not been provided to independent PSPs in the past.⁸² The RBOC Coalition argues further that a contrary reading would (1) require the states to apply a federal test to a purely intrastate service, and (2) require the states to apply the new services test in circumstances where the test does not apply in the federal arena, because the services at issue are not new.⁸³

28. In ex parte presentations, both AT&T and MCI argue that some LECs have not acted to eliminate intrastate payphone costs and subsidies from their intrastate payphone tariffs, as required by the Payphone Reclassification Proceeding.⁸⁴ AT&T requests that the Commission act promptly to enforce these requirements to prevent LECs from claiming entitlement to interim payphone compensation before they have complied with the Commission's requirements.⁸⁵ GTE recently made an ex parte presentation on the intrastate tariffs it filed in 29 jurisdictions, and it noted that the status of these tariffs varies from state to state.⁸⁶ APCC maintains that the LECs must file intrastate tariffs for payphone services that are cost-based,

⁷⁹ Id.

⁸⁰ Id. at 4.

⁸¹ Id. at 4-5.

⁸² Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 3, 1997).

⁸³ Id.

⁸⁴ Ex Parte Letter of E.E. Estey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997); Ex Parte Letter of Leonard Sawicki, FCC Affairs Director, MCI to William Caton, Acting Secretary, FCC (March 20, 1997).

⁸⁵ Ex Parte Letter of E.E. Estey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁸⁶ Ex Parte Letter of Charon J. Harris, Director - Policy Matters, GTE to William Caton, Acting Secretary, FCC (April 3, 1997).

consistent with the requirements that certain subsidies be terminated, and nondiscriminatory.⁸⁷

C. Discussion

29. We deny the APCC Motion that requests that the Commission conclude that the BOCs are disqualified from receiving interim compensation pursuant to the Payphone Reclassification Proceeding.⁸⁸ APCC argues that the BOCs have failed both to reclassify their basic payphone services at cost-based rates, and to tariff separately from basic payphone lines core service features and other unbundled features and functions.⁸⁹ We have clarified above that the Payphone Reclassification Proceeding did not require, by April 15, 1997, the level of unbundling sought by APCC.⁹⁰ LECs, including the BOCs, must comply with the state tariffing requirements of the Payphone Reclassification Proceeding. In response to APCC's contentions, we conclude that we do not have a record to determine here whether the BOCs have complied with the state tariffing requirement for cost-based rates. As required by the Order on Reconsideration, however, LECs, including the BOCs, must be prepared to certify that they have complied with all the requirements of the Payphone Reclassification Proceeding, including those involving intrastate tariffs, subject to the limited waiver provided herein.

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXC's claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory;⁹¹ and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates.⁹² LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation.⁹³ As discussed above,⁹⁴ LECs that have not complied with these

⁸⁷ Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁸⁸ APCC Motion at 1, 4-5.

⁸⁹ *Id.*

⁹⁰ See para. 15, above.

⁹¹ Order on Reconsideration at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at para. 163, n. 492.

⁹² Payphone Order at para. 148.

⁹³ Any party who believes that a particular LEC's intrastate tariffs fail to meet these requirements has the option of filing a complaint with the Commission. 47 U.S.C. § 208.

requirements will not be entitled to receive compensation

31. We disagree with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the Order on Reconsideration that it had jurisdiction over the tariffing of payphone services in order to implement Section 276.⁵¹ The plain language of the Order on Reconsideration provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable Computer III guidelines.⁵²

32. The guidelines for state review of intrastate tariffs are essentially the same as those included in the Payphone Order for federal tariffs. On reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The Order on Reconsideration required that state tariffs for payphone services meet the requirements outlined above.⁵³ The Order on Reconsideration provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.⁵⁴

33. We clarify that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements,⁵⁵ if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

⁵¹ See paras. 6, 21, 29, above.

⁵² Order on Reconsideration at para. 162.

⁵³ *Id.* at para. 163, n. 492.

⁵⁴ See para. 29, above.

⁵⁵ Order on Reconsideration at para. 163.

⁵⁶ See *id.* at paras. 131-132.

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V. CONCLUSION

34. This Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.⁹⁸ In this Order, we clarify the Commission's interstate tariffing requirements for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding. LECs must comply with these requirements before they are eligible to receive the compensation from IXC that is mandated in that proceeding. Because some LECs are not in compliance with the Commission's unbundled feature and functions federal tariffing requirements under the Payphone Reclassification Proceeding, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for certain unbundled features and functions, to the extent necessary, and grant a limited waiver of the requirement that these tariffs be effective before the LECs are eligible to receive payphone compensation. Pursuant to this waiver, LECs must file federal tariffs for unbundled features and functions within 45 days of the release date of this order. Each individual BOC must also file a written ex parte document by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order. Each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding by April 10, 1997. We also waive the requirement, for a period of 60 days from the release date of this Order, that these federal tariffs be effective before the LECs are eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.⁹⁹

35. We emphasize that LECs must have effective state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone services state tariffs must be cost-based, consistent with Section 276, nondiscriminatory;¹⁰⁰ and consistent with Computer III tariffing guidelines; and (2) that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 for the payphone operations of LECs to receive payphone compensation. As discussed above, for LECs that have not complied with these requirements, their payphone operations will not be entitled to compensation pursuant to the Payphone Reclassification Proceeding, in the states in which they do not comply.¹⁰¹

⁹⁸ 47 U.S.C. § 276(b)(1).

⁹⁹ *Id.*

¹⁰⁰ *Id.* at para. 163.

¹⁰¹ See paras. 6, 21, 29, above.

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VI. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), 201-205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 201-205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the Payphone Reclassification Proceeding, CC Docket No. 96-128, IS GRANTED to the extent stated herein.

37. IT IS FURTHER ORDERED that each individual BOC must file an ex parte document with the Secretary, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order.¹⁸

38. IT IS FURTHER ORDERED that this limited waiver SHALL BE EFFECTIVE upon release.

39. IT IS FURTHER ORDERED that the Motion of APCC requesting that the Commission conclude that the BOCs are disqualified from receiving interim compensation under the Payphone Reclassification Proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau

¹⁸ Each BOC should provide a copy of its ex parte document directly to the Chief, Common Carrier Bureau.

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William P. Heaston
Senior Attorney

USWEST

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RES CCA 26

April 7, 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: FCC Implementation of the Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Bullard:

With the FCC final orders (96-388 and 96-439) in the subject docket, the South Dakota switched access rules in sections 20.10.27 and 20.10.28 need to be reviewed and appropriately adjusted. Currently, the South Dakota rules direct that pay telephone cost are included in determining the cost of switched access. The FCC's implementing order (DA 97-678), released April 4, 1997, is attached.

In particular, the following sections of the rules should be revised:

- Rule 20.10.28.45, reference to public telephone terminal equipment should be removed.
- Rule 20.10.28.47, the last sentence which applies to coinless terminal equipment should be removed.
- Rule 20.10.28.115, refers to coin collection expense and should be removed in its entirety.

U S WEST Communications would like to participate along with other industry players as the Commission reviews these rules.

Yours truly,



William P. Heaston

Enclosure
WPH:mob

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

DA 97-678

In the Matter of)
)
 Implementation of the) CC Docket No. 96-128
 Pay Telephone Reclassification)
 and Compensation Provisions of the)
 Telecommunications Act of 1996)

ORDER

Adopted: April 4, 1997

Released: April 4, 1997

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau ("Bureau") clarifies and grants a limited waiver of the Commission's interstate tariffing requirements¹ for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding, CC Docket No. 96-128.² Local exchange carriers ("LECs") must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers ("IXCs") that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the Payphone Order and Order on Reconsideration, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of this Order, with a scheduled effective date no later than 15 days after the date of filing. In addition, each individual Bell Operating Company ("BOC") must file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features

¹ For purposes of this Order, the term "intrastate tariff" refers to a tariff filed in the state jurisdiction and the term "interstate tariff" refers to a tariff filed in the federal jurisdiction.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration"); appeal docketed sub nom. Illinois Public Telecommunications Ass'n v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (both orders together "Payphone Reclassification Proceeding").

and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on their pending comparably efficient interconnection ("CEI") plans.² We also waive the requirement, for a period of 60 days from the release date of this Order, that these interstate tariffs for unbundled features and functions be effective before the LECs are eligible to receive payphone compensation. If, however, a LEC fails to file all of the requisite federal tariffs for unbundled features and functions within 45 days of the release date of the instant Order, it will not be in compliance with the Commission's requirements and, consequently, will not be eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.

2. This Order also states that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding before the LEC's payphone operations are eligible to receive payphone compensation. Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer II tariffing guidelines.⁴ In addition, the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates.⁵ These intrastate tariffing requirements must be met and the tariffs effective by April 15, 1997, for the LEC's payphone operations to receive the payphone compensation provided by the Payphone Reclassification Proceeding.

3. The Bureau takes this action, on its own motion, pursuant to the authority delegated to it by the Commission in the Order on Reconsideration to determine whether a LEC has met the requirements of the Payphone Reclassification Proceeding prior to receiving compensation.⁴ The instant Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.⁵

³ In addition to filing the *ex parte* with the Secretary in CC Docket No. 96-128, each of the BOCs must also file a copy of its *ex parte* in its CEI plan proceeding, also by April 10, 1997.

* See Order on Reconsideration at paras. 131-132.

⁹ *Id.* at para. 163. 'As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at *Id.*, p. 492.

* See, e.g., Prothonotary Order at paras. 180-187.

Order on Reconsideration at paras. 131-132

⁹ *Id.* at para. 132. See also *id.* at para. 163. These delegations of authority to the Bureau are consistent with Section .091 of the Commission's rules, 47 CFR § 0.91.

* 47 U.S.C. § 276(b)(1).

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II. BACKGROUND

4. In the Payphone Reclassification Proceeding, the Commission noted that Telecommunications Act of 1996 fundamentally changed telecommunications regulation. It stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."¹⁰ To that end, the Commission advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public."¹¹ It sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, it concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.¹²

5. In the Payphone Order, the Commission concluded that, consistent with Section 276 of the Act, PSPs are to be compensated for "each and every completed intrastate and interstate call" originated by their payphones.¹³ For the first year of the compensation provided by the Payphone Order, the Commission required those DXCs with annual toll revenues in excess of \$100 million to pay PSPs proportionate shares, based on their respective market shares, of interim, flat-rated compensation in the amount of \$45.85 per payphone per month.¹⁴ This monthly amount is to compensate each payphone for an average of 131 access code calls and subscriber 800 calls. The Commission concluded that LEC PSPs would be eligible to receive this compensation by April 15, 1997, once the LEC, among other things, terminated certain subsidies flowing to its payphone operations.¹⁵

6. In the Order on Reconsideration, the Commission concluded that to be eligible to receive compensation, a LEC must be able to certify the following:

¹⁰ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. I (1996).

¹¹ 47 U.S.C. § 276(b)(1).

¹² Payphone Order at paras. 11-19.

¹³ Id. at paras. 48-76.

¹⁴ Id. at paras. 119-126.

¹⁵ Order on Reconsideration at para. 131.

level.²⁰ The Commission also required that the unbundled payphone features and functions provided by a LEC to others and the unbundled features and functions provided by a LEC to its payphone operations must be tariffed in the federal jurisdiction.²¹ The Commission also stated in the Payphone Order²² that while it did not require LECs to provide additional unbundling of features for payphone services by April 15, 1997, states could require that LECs provide further unbundling, and further unbundling could be requested by PSPs from BOCs subsequently through the 120-day Open Network Architecture ("ONA") service process.²³

9. In addition, the Payphone Order required that in its CEI plan a BOC must explain how it will provide basic payphone services and unbundled functionalities and options taken by the BOC.²⁴ The Payphone Order required the filing of CEI plans for payphone services to ensure that the BOCs provide payphone services in a nondiscriminatory manner and consistent with other Computer III²⁵ and ONA requirements.²⁶ Thus, a BOC must indicate how it plans to

²⁰ In the Order on Recommendation, the Commission concluded that even though it retained authority over payphone tariffs, it delegated to the states certain responsibilities. The Commission indicated, however, that if a state was not able to respond to those requirements the state could require that LECs in its state file with the Commission instead of the state for those responsibilities delegated to the state. Id. at para. 163.

²¹ Id. at paras. 162-165.

²² Payphone Order at para. 148.

²³ Filing and Review of Open Network Architecture Plans, 4 FCC Rod. 1 (1988) (BOC ONA Order), recons., 5 FCC Rod 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rod 3103 (1990) (BOC ONA Amendment Order); recons., 5 FCC Rod 4045, pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); recons., 8 FCC Rod 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rod 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rod 2606 (1993) (BOC ONA Second Further Amendment Order); pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

Under their ONA plans, BOCs must respond within 120 days to requests from competing enhanced service providers for new basic ONA services. BOCs must base their decisions on whether to provide these new services on the ONA selection criteria set forth in the Computer III Phase I Order: market area demand, utility as perceived by the requesting ESP, and costing and technical feasibility. See generally ONA Interim Waiver Order, 10 FCC Rod at 1728-29.

²⁴ Payphone Order at para. 204.

²⁵ Amendments of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recons., 2 FCC Rod 3035 (1987) (Phase I Reconsideration Order), further recons., 3 FCC Rod 1135 (1988) (Phase I Further Reconsideration Order), second further recons., 4 FCC Rod 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rod 3072 (1987) (Phase II Order), recons., 3 FCC Rod 1150 (1988) (Phase II Reconsideration Order), further recons., 4 FCC Rod 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceedings, 5 FCC Rod 7719 (1990) (ONA Remand Order), recons., 7 FCC Rod 909 (1992), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company

unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service. In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.²⁷

10. Finally, in a "compliance list" paragraph in the Order on Reconsideration, the Commission listed the requirements with which a LEC must comply to receive payphone compensation under the Commission's rules.²⁸ This compliance list requires the federal tariffing of unbundled features associated with payphone lines.²⁹

11. The Order on Reconsideration required that LECs file federal tariffs by January 15, 1997, to be effective no later than April 15, 1997.³⁰ A review of the federal tariffs filed by LECs and those detailed by the BOCs in their CEI plans revealed that some of the BOCs and other LECs had not filed federal tariffs for all the unbundled features and functions required by the Payphone Reclassification Proceeding. In response to staff inquiries, several parties filed ex parte presentations concerning LEC compliance with the requirements of the two payphone orders.

B. Comments

12. In an ex parte filing, the RBOC Coalition³¹ states that it agrees that the Commission's payphone orders impose a federal tariffing requirement.³² It argues, however, that the federal tariffing applies only to network-based, payphone-specific features and functions.³³ The RBOC Coalition argues further that among these network-based, payphone-specific features

Safeguards, 6 FCC Rod 7571 (1991) (BOC Safeguards Order); BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III).

²⁷ Payphone Order at para. 202.

²⁸ Id. at para. 204.

²⁹ See para. 6, above.

³⁰ Order on Reconsideration at para. 131.

³¹ Order on Reconsideration at para. 163.

³² The RBOC Coalition consists of all of the BOCs except Ameritech.

³³ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

³⁴ Id.

and functions, only those that a LEC provides to its own payphone operations must be tariffed.³⁶ The RBOC Coalition notes, however, that "[w]hatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements."³⁷ It states that it will support and comply with any reasonable resolution of the federal tariffing issue, "so long as it does not delay the rapid transformation of the payphone industry that Congress intended," or defer the legislative intent behind Section 276 to promote both competition among PSPs and the widespread deployment of payphone services.³⁸

13. In addition, both the RBOC Coalition and the American Public Communications Council ("APCC"), which represents independent PSPs, filed detailed ex parte presentations that set forth which payphone services they believe must be federally tariffed pursuant to the Payphone Reclassification Proceedings.³⁹ The RBOC Coalition argues that the Commission's payphone orders establish the principle that federal tariffs cannot be required for a feature unless that feature is unbundled.⁴⁰ Therefore, the RBOC Coalition maintains that its individual member BOCs will tariff all network-based, payphone-specific features and functions that they have unbundled, but should not be required to tariff at the federal level any features and functions that they have not unbundled.⁴¹

14. On the other hand, APCC argues that the Commission intended for the basic payphone line to serve as a building block to which additional features and functions would be added as options, including such options as coin service features, answer supervision, and call blocking and screening.⁴² Consequently, APCC contends, each of these services is an "unbundled feature or function" that must be federally tariffed, if the function is used by the LEC, in bundled or unbundled form, to provide payphone service.⁴³ In addition, APCC argues

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997); Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Cason, Acting Secretary, FCC (March 27, 1997). As discussed below in paragraph 16, a number of other parties also filed ex parte letters, primarily on the state tariffing requirements of the Payphone Reclassification Proceedings, including AT&T, MCI, and GTE.

⁴⁰ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 4-5.

⁴¹ Id.

⁴² Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Cason, Acting Secretary, FCC (March 27, 1997) at 3.

⁴³ Id. at 3.

that the BOCs have not proposed to federally tariff coin service features, such as coin supervision, coin counting, and coin rating.⁴² APCC argues further that because a basic payphone line can be purchased without coin service features, these features are not inherently a part of the basic payphone line, and, therefore, should be tariffed separately as "unbundled features and functions" at the federal level.⁴³

C. Discussion

15. The RBOC Coalition and APCC have made *ex parte* presentations to the Commission staff that set forth varying interpretations of the Commission's federal tariffing requirements for payphone services. We conclude that the RBOC Coalition interpretation of the federal tariffing requirement established in the two payphone orders is too narrow and does not reflect the level of federal tariffing of unbundled features and functions required by those orders. More specifically, the RBOC Coalition's interpretation does not comply with the Commission's objective of safeguarding against discrimination through the federal tariffing of unbundled features, because the Coalition does not include the unbundled features and functions provided by LECs to others, apart from those taken by a LEC's own payphone operations. The Payphone Reclassification Proceeding concluded that state and federal tariffing of both the payphone unbundled features and functions provided to others and the unbundled features and functions provided by the LEC to its own payphone operations must be tariffed to avoid possible subsidies and discrimination.⁴⁴

16. On the other hand, we conclude that APCC's interpretation of the federal tariffing requirement established in the Payphone Reclassification Proceeding is too broad and would require a greater unbundling of payphone features than is required by that proceeding. The payphone orders, however, do not require that LECs unbundle more features and functions from the basic payphone line by April 15, 1997 than the LEC provides on an unbundled basis.⁴⁵ Thus, we clarify that, for example, if a LEC provides answer supervision bundled with the basic payphone line, the LEC is required neither to unbundle that service from its state tariff for payphone service, nor federally tariff that service by April 15, 1997.⁴⁶ If the LEC, however, provides answer supervision on an unbundled basis, it must tariff that service in both the state and federal jurisdictions.

17. We clarify here that the unbundled features and functions addressed in the

⁴² Id. at 5.

⁴³ Id. at 6.

⁴⁴ Payphone Order at para. 148; Order on Reclassification at paras. 162-163.

⁴⁵ Payphone Order at para. 148; Order on Reclassification at para. 165.

⁴⁶ As discussed below in para. 18, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.

Payphone Reclassification Proceeding are network services similar to basic service elements ("BSEs") under the ONA regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service.¹¹ In this case, the unbundled features are payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by PSPs or LECs. Some of the LECs use terms such as tariffed "options" and "elective features" for network services that other LECs call features and functions. Options and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs).¹²

18. We also clarify that the requirement to file federal tariffs applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and call screening, with the following qualifications discussed below.¹³ We agree with the RBOC Coalition that the federal tariffing requirement does not apply to non-network services, such as inside wire services.¹⁴ Moreover, as suggested by the RBOC Coalition, we do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features.¹⁵ In addition, we clarify here that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others, because the payphone orders did not require additional unbundling of features and functions by April 15 beyond those that the LEC chooses to provide.¹⁶ As required by the Payphone Reclassification Proceeding,

¹¹ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, FCC 88-381, 4 FCC Rod 1 (1988) ("BOC ONA Order").

¹² See, e.g., Application of Open Network and Nondiscrimination Safeguards to GTE Corporation, 11 FCC Rod 5558 (1995) at para. 11.

¹³ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, 4 FCC Rod 1 (1988) ("BOC ONA Order"), Memorandum Opinion and Order at para. 146; Order on Reconsideration at paras. 162, 166. Examples of other unbundled features and functions that must be federally tariffed if they are offered on an unbundled basis to others or taken by a LEC payphone operation on an unbundled basis include: call blocking, coin supervision additive, coin signaling transmission additive, coin rating, original line number screening, and IDDD blocking.

¹⁴ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2; Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Cason, Acting Secretary, FCC (March 27, 1997) at 2.

¹⁵ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2.

¹⁶ Payphone Order at para. 148.

however, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.³³

19. The RBOC Coalition argues that Computer III prohibits mix and match of federal and state tariffs required by the Payphone Reclassification Proceeding.³⁴ In contrast, APCC argues that the reasons for prohibiting mix and match do not apply for tariffs filed pursuant to the payphone orders because the Commission has required that rates for both state and federal tariffs must be cost-based and subject to the new services test.³⁵ We conclude that the Payphone Reclassification Proceeding does not prohibit the mixing and matching of payphone services between federal and state tariffs by LEC and independent payphone operations. This conclusion applies only to payphone services and does not affect Computer III requirements.³⁶ In Computer III, the Commission did not allow such mixing and matching because: (1) mixing and matching could result in mismatch of basic service arrangements ("BSA") and BSEs costs and revenues; (2) it could undermine state policies; (3) states may impose terms and conditions on BSAs/BSEs that differ from those of the FCC; and (4) other jurisdictional problems.³⁷ Unlike Computer III, however, Section 276 provides the Commission with jurisdiction over all tariffing of payphone services.³⁸ The Commission has delegated to each state the review, pursuant to federal guidelines, of payphone tariffs filed in the state.³⁹ Given that the federal guidelines for tariffing discussed above⁴⁰ are the same in the state and federal jurisdictions, there is no undermining of state policies or the creation of jurisdictional conflicts. Moreover, in this case, mixing and matching provides a safeguard to ensure that unbundled features are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding. We conclude that the separations issues, if any, raised by allowing mixing and matching are outweighed, in this case, by the importance of this safeguard to ensure that unbundled features

³³ *Id.*

³⁴ Ex Parte Letter of Michael Kallong, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 25, 1997).

³⁵ Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 27, 1997).

³⁶ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 6 FCC Rcd 4524, 4535, para. 65 (1991).

³⁷ *Id.* See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 4 FCC Rcd 1983, 1989 at para. 43 (1989).

³⁸ Payphone Order at paras. 146-147.

³⁹ Order on Reconsideration at para. 163.

⁴⁰ Payphone Order at para. 146; Order on Reconsideration at para. 163. See also para. 2, above.

and functions are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding.⁴¹

D. Waiver

20. As discussed above,⁴² upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the Payphone Reclassification Proceeding, we conclude that the while the individual BOCs are not in full compliance with the requirements of the Payphone Reclassification Proceeding, they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders mandate the federal tariffing of some payphone services, namely those that the LEC provides to its own payphone operations.⁴³ In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date.⁴⁴ Therefore, because the RBOC Coalition has indicated its intent to comply with the Commission's requirements, as established by the Payphone Reclassification Proceeding, and because the Coalition's narrower reading of what payphone services need to be federally tariffed is based on its good faith efforts to comply with the Commission's rules, we adopt this Order, which contains a limited waiver of the federal tariffing requirements for unbundled features and functions a LEC must meet before it is eligible to receive payphone compensation. Because other LECs may also have failed to file all the federal tariffs for unbundled features and functions required by the Payphone Order and the Order on Reconsideration, we apply this limited waiver to all LECs, with the limitations set forth below.⁴⁵

21. In the Payphone Order and Order on Reconsideration, the Commission required that LECs file federal tariffs by January 15, 1997 with a 90-day review period for unbundled features and functions.⁴⁶ Consistent with our conclusions above and in the interests of bringing LECs into compliance with the requirements of the Payphone Reclassification Proceeding, we waive for 60 days the requirement that LECs have "in effect ... interstate tariffs

⁴¹ The Commission is undertaking a proceeding to reform the separation rules. Any problems, if they exist, will be considered in that proceeding. See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, FCC 96-488 (rel. Dec. 24, 1996) at para. 6.

⁴² See para. 15, above.

⁴³ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

⁴⁴ Id.

⁴⁵ See paras. 21-23, below.

⁴⁶ Order on Reconsideration at para. 131 (emphasis added).

for unbundled functionalities associated with [payphone] lines" by April 15, 1997.⁴⁷ We also waive both the January 15th filing deadline and the 90-day review period for interstate tariffs. LECs must file interstate tariffs for unbundled features and functions, as required by the Payphone Reclassification Proceeding, as clarified herein, within 45 days after the release date of this order under the streamlined tariff review process. These tariffs will be effective no later than 15 days after filing, unless suspended or rejected.⁴⁸ Any LEC that files federal tariffs for unbundled functionalities, as clarified herein, within 45 days of the release date of the instant Order will be eligible to collect the payphone compensation provided by the Payphone Reclassification Proceeding on April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the BOCs) of the Order on Reconsideration.⁴⁹ If a LEC fails to file all of the requisite federal tariffs within 45 days, or if the federal tariffs for a particular LEC are not in effect after 60 days from the date of release of this Order, the LEC will not be eligible to receive the payphone compensation provided by the Payphone Reclassification Proceeding.

22. In addition, each individual BOC must also file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on the BOCs' pending CEI plans.

23. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule⁵⁰ and such deviation serves the public interest.⁵¹ Because the Commission is required to review incoming tariffs for the unbundled features and functions associated with payphone service, which have not been previously filed at the interstate level, we find that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, our grant of a waiver in this limited circumstance, would not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, our review of the interstate tariffs that are the subject of this limited waiver will enable us to determine whether these tariffs have been filed in accordance with our rules. Accordingly, we grant a limited

⁴⁷ *Id.*

⁴⁸ 47 U.S.C. § 402; Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, FCC 97-23 (rel. Jan. 31, 1997).

⁴⁹ Because the industry has elected to bill for and pay out compensation on a quarterly basis, the actual payment for compensation that begins to accrue on April 15, 1997 will not be made until after the requisite federal tariffs become effective within 60 days after the release date of the instant Order.

⁵⁰ Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵¹ WAT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

waiver, as specified in this Order,⁷⁵ subject to the filing of federal tariffs for unbundled features and functions within 45 days of the release date of this Order. This Order does not waive any of the other requirements set forth in paragraphs 131-132 of the Order on Reconsideration, including the requirement that a LEC have "in effect intrastate... tariffs for unbundled functionalities..."⁷⁶

IV. CLARIFICATION OF STATE TARIFFING REQUIREMENTS

A. Background

24. The Commission concluded in the Order on Reconsideration that LECs are required to tariff basic payphone lines (smart, dumb, and inmate⁷⁷) at the state level only.⁷⁸ Unbundled features and functions provided to others and taken by a LEC's payphone operations, however, must be tariffed in both the intrastate and interstate jurisdictions.⁷⁹

25. In addition, in the Payphone Order, the Commission required that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. The Payphone Order required that states determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies. These revised rates must be effective no later than April 15, 1997.⁸⁰

B. Comments

26. APCC filed a motion that the Commission rule that LECs are ineligible to receive payphone compensation because they have not tariffed their services to PSPs at cost-based rates, and have not tariffed the "basic payphone line" separately from "coin service" features and other unbundled functions, as required in paragraphs 162-163 of the Order on Reconsideration.⁸¹ APCC states that it is filing its motion to request that the Commission declare, "if not within the

⁷⁵ See paras. 22-23, above.

⁷⁶ *Id.* (emphasis added).

⁷⁷ The Commission noted in the Order on Reconsideration, at para. 131, that the LECs would also have to tariff basic services for inmate phone lines.

⁷⁸ *Id.* at paras. 162-163. The Commission provided guidelines pursuant to which the states are to review the state tariffs subject to the Payphone Reclassification Proceedings. *Id.* at para. 163.

⁷⁹ *Id.* at paras. 162-163.

⁸⁰ Payphone Order at para. 186.

⁸¹ Motion of the American Public Communications Council for a Ruling on the Bell Operating Companies' Compliance with the Payphone Orders, CC Docket No. 96-128, filed March 26, 1997 at 1-2 ("APCC Motion").

CEI proceeding then in a separate ruling," that the BOCs must satisfy these requirements.⁷⁹ APCC also argues that the BOCs have not complied with the Commission's requirements that all services offered to PSPs be offered at cost-based rates complying with the FCC's "new services" test.⁸⁰ APCC contends that "[a]lthough the FCC stated that it will rely on the states to determine... whether state-tariffed services comply with the Payphone Orders and Section 276, the Commission made it clear that if a state is unable to review the tariffs, the Commission will do so."⁸¹

27. The RBOC Coalition argues in an ex parte filing that the new services test, as referenced in note 492 of the Order on Reconsideration, applies only to unbundled elements of the lines used for "dumb" payphones, which have not been provided to independent PSPs in the past.⁸² The RBOC Coalition argues further that a contrary reading would (1) require the states to apply a federal test to a purely intrastate service, and (2) require the states to apply the new services test in circumstances where the test does not apply in the federal arena, because the services at issue are not new.⁸³

28. In ex parte presentations, both AT&T and MCI argue that some LECs have not acted to eliminate intrastate payphone costs and subsidies from their intrastate payphone tariffs, as required by the Payphone Reclassification Proceeding.⁸⁴ AT&T requests that the Commission act promptly to enforce these requirements to prevent LECs from claiming entitlement to interim payphone compensation before they have complied with the Commission's requirements.⁸⁵ GTE recently made an ex parte presentation on the intrastate tariffs it filed in 29 jurisdictions, and it noted that the status of these tariffs varies from state to state.⁸⁶ APCC maintains that the LECs must file intrastate tariffs for payphone services that are cost-based,

⁷⁹ Id.

⁸⁰ Id. at 4.

⁸¹ Id. at 4-5.

⁸² Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 3, 1997).

⁸³ Id.

⁸⁴ Ex Parte Letter of E.E. Esrey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997); Ex Parte Letter of Leonard Sawicki, FCC Affairs Director, MCI to William Canon, Acting Secretary, FCC (March 20, 1997).

⁸⁵ Ex Parte Letter of E.E. Esrey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁸⁶ Ex Parte Letter of Sharon J. Harris, Director - Policy Matters, GTE to William Canon, Acting Secretary, FCC (April 3, 1997).

consistent with the requirements that certain subsidies be terminated, and nondiscriminatory.⁴⁷

C. Discussion

29. We deny the APCC Motion that requests that the Commission conclude that the BOCs are disqualified from receiving interim compensation pursuant to the Payphone Reclassification Proceeding.⁴⁸ APCC argues that the BOCs have failed both to retariff their basic payphone services at cost-based rates, and to tariff separately from basic payphone lines coin service features and other unbundled features and functions.⁴⁹ We have clarified above that the Payphone Reclassification Proceeding did not require, by April 15, 1997, the level of unbundling sought by APCC.⁵⁰ LECs, including the BOCs, must comply with the state tariffing requirements of the Payphone Reclassification Proceeding. In response to APCC's contentions, we conclude that we do not have a record to determine here whether the BOCs have complied with the state tariffing requirement for cost-based rates. As required by the Order on Reconsideration, however, LECs, including the BOCs, must be prepared to certify that they have complied with all the requirements of the Payphone Reclassification Proceeding, including those involving intrastate tariffs, subject to the limited waiver provided herein.

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXCs claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory,⁵¹ and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates.⁵² LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation.⁵³ As discussed above,⁵⁴ LECs that have not complied with these

⁴⁷ Ex Parte Letter of Albert Kramer, Commr., APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁴⁸ APCC Motion at 1, 4-5.

⁴⁹ Id.

⁵⁰ See para. 15, above.

⁵¹ Order on Reconsideration at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at para. 163, n. 492.

⁵² Payphone Order at para. 148.

⁵³ Any party who believes that a particular LEC's intrastate tariffs fail to meet these requirements has the option of filing a complaint with the Commission. 47 U.S.C. § 208.

requirements will not be entitled to receive compensation.

31. We disagree with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the Order on Reconsideration that it had jurisdiction over the tariffing of payphone services in order to implement Section 276.³¹ The plain language of the Order on Reconsideration provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable Computer III guidelines.³²

32. The guidelines for state review of intrastate tariffs are essentially the same as those included in the Payphone Order for federal tariffs. On reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The Order on Reconsideration required that state tariffs for payphone services meet the requirements outlined above.³³ The Order on Reconsideration provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.³⁴

33. We clarify that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements,³⁵ if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

³¹ See paras. 6, 21, 29, above.

³² Order on Reconsideration at para. 162.

³³ *Id.* at para. 163, n. 492.

³⁴ See para. 29, above.

³⁵ Order on Reconsideration at para. 163.

³⁶ See *id.* at paras. 131-132.

0142-43-48

V. CONCLUSION

34. This Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.⁴⁷ In this Order, we clarify the Commission's interstate tariffing requirements for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding. LECs must comply with these requirements before they are eligible to receive the compensation from IXCs that is mandated in that proceeding. Because some LECs are not in compliance with the Commission's unbundled feature and functions federal tariffing requirements under the Payphone Reclassification Proceeding, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for certain unbundled features and functions, to the extent necessary, and grant a limited waiver of the requirement that these tariffs be effective before the LECs are eligible to receive payphone compensation. Pursuant to this waiver, LECs must file federal tariffs for unbundled features and functions within 45 days of the release date of this order. Each individual BOC must also file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order. Each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding by April 10, 1997. We also waive the requirement, for a period of 60 days from the release date of this Order, that these federal tariffs be effective before the LECs are eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.⁴⁸

35. We emphasize that LECs must have effective state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone services state tariffs must be cost-based, consistent with Section 276, nondiscriminatory,⁴⁹ and consistent with Computer II tariffing guidelines, and (2) that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 for the payphone operations of LECs to receive payphone compensation. As discussed above, for LECs that have not complied with these requirements, their payphone operations will not be entitled to compensation pursuant to the Payphone Reclassification Proceeding, in the states in which they do not comply.⁵⁰

⁴⁷ 47 U.S.C. § 276(b)(1).

⁴⁸ *Id.*

⁴⁹ *Id.* at para. 163.

⁵⁰ See paras. 6, 21, 29, above.

VI. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), 201-205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 201-205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the Payphone Reclassification Proceeding, CC Docket No. 96-128, IS GRANTED to the extent stated herein.

37. IT IS FURTHER ORDERED that each individual BOC must file an ex parte document with the Secretary, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order.¹⁰⁴

38. IT IS FURTHER ORDERED that this limited waiver SHALL BE EFFECTIVE upon release.

39. IT IS FURTHER ORDERED that the Motion of APCC requesting that the Commission conclude that the BOCs are disqualified from receiving interim compensation under the Payphone Reclassification Proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Kearney
Regina M. Kearney
Chief, Common Carrier Bureau

¹⁰⁴ Each BOC should provide a copy of its ex parte document directly to the Chief, Common Carrier Bureau.

U S WEST Communications, Inc.
1714 Douglas On The Mall
Omaha, Nebraska 68102

April 11, 1997

RECEIVED

USWEST
COMMUNICATIONS

APR 14 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: FCC Implementation of the Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Bullard:

This is a follow-up to Bill Heaston's letter to you on the subject docket dated April 7, 1997.

As discussed in the earlier letter, the South Dakota switched access rules direct that pay telephone costs are included in determining the cost of switched access service. Because of the Telecommunications Act of 1996 and the FCC orders, the cost of pay telephones should not be included in determining intrastate switched access rates.

Therefore, U S WEST has identified the inputs related to pay telephone service that are contained in the latest version of the switched access cost study presented in Docket TC96-107. The effects of removing pay telephone service are shown in the attached listing. The effect of these changes to the Staff's position will be as follows:

	Common Line	Local Switching	Common Transport	Total
Staff Position	17,314,407	3,993,832	6,039,412	27,347,651
Adjusted for FCC Coin Deregulation	17,033,794	4,019,093	6,084,816	27,137,703
Difference				(209,948)

The overall cost per minute will go from \$0.061459 in the Staff position, to \$0.06086 when adjusted to remove the pay telephone costs. The current tariffed switched access rates are half the costs shown in the TC96-107 study, and also the cost study approved in TC93-108. Currently, there is no intrastate subsidy due to the rate and cost relationship and it is not necessary to adjust the switched access rates for the effect of the pay telephone deregulation.

Attached for your convenience are the Sheet A print out of the two versions of the switched access model and a sheet describing the model inputs for coin.

Yours truly,

Wayne G. Culp
Director - State Finance

Enclosure

cc: Harlan Best
Greg Rislov

South Dakota - 1995

Summary of Coin Input

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

	A		C=D%		E=F%		G=A+C+E	
	Total Part 36		Exchange		Other		Input to	
	Pay		Sales	Exchange	Adjust		Sheet V	H=B+D+E
	Telephone	Total Part 36	Telephone	Sales	Telephone	Adjust	Column B	Input to
	Revision	Original	Revision	Original	Revision	Original	Total	Sheet V
							Pay	Column B
							Telephone	Total
							Revision	Original
Line 52								
Cat 1 Other IOT	3,193,219	6,269,298	(258,316)	(509,763)	(8,976)	(17,713)	2,925,527	5,741,822
Line 53								
Cat 1 Connss	0	32,239	0	0	0	0	0	32,239
Line 133								
Accum Depr. IOT	1,572,413	4,156,224	(158,065)	(417,798)	23,803	62,917	1,438,152	3,801,342
Line 154								
Gust Prem	2,757	2,757	(587)	(587)	118	118	2,288	2,288
Line 155								
Connss	0	4,047	0	(862)	0	174	0	3,359
Line 156								
IOT	706,267	1,180,843	(149,940)	(251,551)	30,225	50708	586,552	980,000
Line 185								
Depr. IOT Equipment	367,400	429,600	(22,236)	(26,000)	22,236	26,000	367,400	429,600
Line 204								
Con. Collection	0	328,582	0	(39,797)	0	13,212	0	301,997

Adjusted to remove FCC Com Deregulated Costs

AUGUST 1997 KILB AND NORTON 333

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South Dakota
Public Utilities Commission
State Capitol 500 E. Capitol
Pierre, SD 57501-5070
Phone: (800) 332-1782
Fax: (605) 773-3809

TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of

04/11/97 through 04/17/97

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
REQUEST FOR CERTIFICATE OF AUTHORITY			
TC97-036	Application by IDT Corporation for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "Applicant is a switchless reseller which intends to offer 1+ direct dialing, 800 toll free, travel card, and prepaid calling card service through the resale of telephone services provided by facilities-based interexchange carriers."	04/11/97	05/02/97
TC97-037	Application by America's Tele-Network Corp. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) "Intrastate interLATA and, where permitted, intraLATA telecommunication services will be offered to the public on a resale basis. The Company provides service to commercial enterprises and residential customers. This application does not seek authority at this time to provide any form of operator services nor any service to pay phones."	04/11/97	05/02/97
TC97-038	Application by LDM Systems Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: DJ/CH) "Applicant respectfully seeks to amend its Certificate of Authority to permit it to provide resold local exchange services in the state of South Dakota. The specific manner in which Applicant will provide local exchange service depends upon the result of negotiations with the incumbent local exchange carriers currently operating within the State. Applicant seeks authority to resell local exchange service in the existing service areas of U.S. WEST and any other relevant carriers. Applicant is unable to file a proposed tariff. As soon as such rates are available, and prior to the commencement of service, Applicant shall file a proposed tariff (containing its rates, terms and conditions of service) with the Commission for its review."	04/14/97	05/02/97
TC97-040	Application by Tel-Save, Inc. d/b/a The Phone Company for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: DJ/CH) "Applicant is a reseller which intends to offer all local services provided by the incumbent LECs. Tel-Save seeks authority to resell local exchange services throughout the state of South Dakota in the areas served by any LECs in South Dakota that are not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Tel-Save does not seek to provide resold services to customers in those small or rural territories at this time. Applicant will file a copy of its proposed tariff upon completion of negotiations for interconnection."	04/15/97	05/02/97

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U S WEST, Inc.
1801 California Street, Suite 1100
Denver, Colorado 80202
303 672-2810
Facsimile 303 295-7069

William P. Heaston
Senior Attorney

USWEST

RECEIVED

APR 30 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA OVERNIGHT DELIVERY

April 29, 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: **Petition of MCI Communications Corporation and AT&T
Communications, Inc. to Certify LECs as to
Compliance with FCC Payphone Orders
Docket No. TC97-039**

Dear Mr. Bullard:

Enclosed for filing in the above-referenced docket is an original and ten (10) copies of U S WEST's Petition for Leave to Intervene.

Please file stamp the extra copy enclosed and return to me in the enclosed self-addressed stamped envelope. Thank you.

Yours truly,

William P. Heaston
William P. Heaston *WPH*

WPH:mb
Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

APR 30 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN RE: PETITION OF MCI COMMUNICATIONS)
CORPORATION AND AT&T COMMUNICATIONS,) DOCKET NO. TC97-039
INC. TO CERTIFY LECS AS TO COMPLIANCE)
WITH FCC PAYPHONE ORDERS)

PETITION FOR LEAVE TO INTERVENE

Pursuant to SDCL 1-26-17.1 and ARSD 20.10.01.15.02, U S WEST

Communications, Inc. ("USWC"), by and through its attorney, hereby petitions for an
Order allowing it to intervene in this docket, and as grounds therefor states:

1 On or about April 14, 1997, MCI and AT&T filed a petition to investigate
compliance of all certificated local exchange companies (LECs) with the Federal
Communications Commission (FCC) orders on payphone reclassification. Specifically,
MCI and AT&T request that the Commission determine and certify whether all
certificated LECs have met all state-specific requirements identified in the FCC's orders.

2 USWC believes its intervention should be granted because USWC is one
of the local exchange companies which has a requirement to comply with FCC orders
on payphone reclassification.

Accordingly, USWC respectfully requests that this petition be granted.

DATED this 24th day of April, 1997.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By


William P. Heaston
1801 California Street, Suite 5100
Denver, Colorado 80202
Telephone: (303) 672-2810

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 29 day of April, 1997, an original and ten (10) copies of the foregoing PETITION FOR LEAVE TO INTERVENE of U S WEST Communications, Inc. was sent via overnight mail to the following

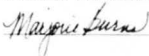
Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following

David A. Gerdes and
Robert K. Sahr
May, Adam, Gerdes & Thompson
Attorneys for MCI
P O. Box 160
Pierre, SD 57501-0160

John Lovald
Olinger, Lovald, Robbenolt & McCahren
Attorneys for AT&T
P O. Box 66
Pierre, SD 57501

U S WEST Communications, Inc.



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SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dotier
Administrative Assistant

May 2, 1997

RECEIVED

MAY 02 1997

Mr. Bill Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
Pierre, SD 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: TC97-039

Dear Bill:

Enclosed for filing you will find the original and ten copies of SDITC's Petition to Intervene in the above referenced docket. As indicated by the Certificate of Service, also provided, all other parties of record have received a copy by US Postal Service.

Thank you for your assistance in this matter.

Sincerely,



Richard D. Coit
Executive Director and General Counsel

cc: David A. Gerdes
Robert K. Sahr
John Lovald



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAY 12 1997

IN THE MATTER OF THE PETITION OF)
MCI TELECOMMUNICATIONS CORP.)
AND AT&T COMMUNICATIONS, INC. TO)
CERTIFY LECs AS TO COMPLIANCE WITH)
FCC PAYPHONE ORDERS)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
DOCKET TC97-039

SDITC Petition to Intervene

The South Dakota Independent Telephone Coalition ("SDITC") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20.10.01.15.02, 20.10.01.15.03 and 20.10.01.15.05. In support hereof, SDITC states as follows:

1 SDITC is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2 As expressly noted in the Bylaws of SDITC, duly adopted by the Coalition, "one of the primary purposes for the formation and existence of the South Dakota Independent Telephone Coalition is representation by the Coalition before the South Dakota Public Utilities Commission." The member companies of SDITC have delegated to the SDITC Board of Directors and its President the authority to intervene on their behalf in PUC proceedings which will or might potentially impact their common interests.

3 MCI Telecommunications Corporation ("MCI") and AT&T Communications, Inc. ("AT&T") have jointly filed with the Commission a petition dated April 14, 1997, requesting that the Commission initiate an investigation of all certified local exchange carriers for purposes of determining whether such carriers have complied with state-specific requirements established by the FCC in its orders on payphone reclassification and deregulation (issued in CC Docket No. 96-128). MCI and AT&T are further requesting that this Commission certify the compliance of each individual LEC and send notice to the FCC indicating which LECs should be deemed eligible to receive payphone compensation per the FCC orders.

4 As LECs currently providing payphone services within their exchange areas, SDITC member companies stand to be impacted by and have a pecuniary interest in this docket. Based

on the interest of its member companies SDITC in its representative capacity is also an interested party to this docket and has a right to intervene herein

5 With respect to the MCI and AT&T petition and the specific relief requested, SDITC opposes the commencement of a proceeding as MCI and AT&T suggest to investigate compliance with the FCC payphone orders and officially certify the eligibility of LECs to receive payphone compensation. All SDITC member companies are at this time in the process of preparing filings that will be presented to the Commission on or before May 19th for the purpose of meeting the state-specific payphone compensation requirements. Filings will be made shortly by all SDITC member LECs addressing each of the state requirements set forth in the FCC orders. Filings will be made reflecting the removal of payphone costs as identified in the FCC orders from exchange access services and also each LEC will file with the Commission information regarding its basic payphone service rates and rates to be charged for related unbundled functions.

6 The MCI and AT&T petition is clearly unwarranted and fails to take into account an additional payphone order released by the FCC on April 15, 1997, DA 97-805 which provided all LECs additional time to meet the state-specific filing requirements and establish their eligibility to receive payphone compensation. MCI and AT&T suggest without any basis that LECs are out of compliance with the FCC orders and thus not eligible to receive payphone compensation. Because the FCC has granted a waiver of its previous April 15th deadline, LECs now have until May 19th to make filings at the state level and establish compliance with the prescribed state requirements.

7 There is also no support in the FCC's payphone orders for the process of PUC certification being requested by MCI and AT&T. The FCC specifically rejected claims by interexchange carriers ("IXCs") in its rulemaking proceedings that an actual certification document should be submitted to the FCC. The FCC orders state only that "LECs must be able to certify" that they've satisfied each of the individual prerequisites to receiving the compensation mandated by the payphone reclassification proceeding. The orders do not call for an actual certification filing with the FCC by LECs or state utility commissions. As stated in the FCC's April 15th Order, DA97-805, page 7, par. 22:

The Commission [FCC] did not require that the LECs file such a certification with it. Nothing in the Commission's orders, however, prohibits the IXCs obligated to pay compensation from requiring that their LEC payees provide such

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a certification for each prerequisite. Such an approach is consistent with the Commission's statement that 'we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.'

The relief requested by MCI and AT&T is at this time unnecessary and is also inconsistent with the FCC rules which contemplate that IXCs questioning the compliance of individual LECs should seek a statement of certification directly from the LECs.

8 Based on the forgoing, SDITC respectfully requests permission to intervene in this matter and would urge the Commission to take prompt action dismissing the MCI and AT&T Petition.

Dated this 2nd day of May, 1997

Respectfully submitted

THE SOUTH DAKOTA INDEPENDENT
TELEPHONE COALITION

By 
Richard D. Coit
Executive Director and General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of SDITC's Initial Brief was hand delivered on the 2nd day of May, 1997, to the following person:

William Bullard Jr
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, SD 57501

And true and correct copies were delivered via the US Postal Service addressed to the following persons:

David A. Gerdes
May, Adam, Gerdes & Thompson
503 S. Pierre Street
Pierre, SD 57501

Robert K. Sahr
May, Adam, Gerdes & Thompson
503 S. Pierre Street
Pierre, SD 57501

John Lovald
Olinger, Lovald, Robbenolt & McCahren
117 East Capitol
Pierre, SD 57501



Richard D. Coit
Executive Director
SDITC
207 East Capitol, Suite 206
Pierre, SD 57501

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF MCI)	
TELECOMMUNICATIONS CORPORATION)	ORDER GRANTING
AND AT&T COMMUNICATIONS OF THE)	INTERVENTIONS
MIDWEST, INC. TO CERTIFY ALL LECs AS TO)	
COMPLIANCE WITH FCC PAYPHONE)	TC97-039
ORDERS)	

On April 14, 1997, MCI and AT&T filed a petition with the Public Utilities Commission (Commission) requesting the Commission to certify all LECs as to compliance with FCC Payphone Orders. MCI and AT&T filed this petition to investigate compliance of all certificated local exchange companies (LECs) with the Federal Communications Commission (FCC) orders on payphone reclassification. Specifically, MCI and AT&T request that the Commission determine and certify whether all certificated LECs have met all state-specific requirements identified in the FCC's orders.

On April 17, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of May 2, 1997, to interested individuals and entities. On April 30, 1997, U S WEST Communications, Inc. (U S WEST) filed a Petition for Leave to Intervene with the Commission. On May 2, 1997, South Dakota Independent Telephone Coalition (SDITC) filed a Petition to Intervene.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 1-26 and 49-31.

At a regularly scheduled meeting of May 13, 1997, the Commission found that the Petitions to Intervene were timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED that U S WEST's and SDITC's requests for intervention are hereby granted. It is further

ORDERED that the Executive Director shall set a procedural schedule in this matter.

Dated at Pierre, South Dakota, this 21st day of May, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Aldan Kato

Date 5/23/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
303.672.2810
Facsimile 303.295-7069

William P. Heaston
Senior Attorney

USWEST

RECEIVED

JUN 03 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA OVER-NIGHT DELIVERY

June 2, 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

**Re: In the Matter of MCI Communications Corporation and AT&T
Communications, Inc. to Certify LECs as to Compliance with
Payphone Orders
Docket No. TC97-039**

Dear Mr. Bullard:

Enclosed for filing in the above-referenced docket is an original and nine (9) copies of U S WEST Communications, Inc.'s MOTION TO DISMISS.

Please file stamp an extra copy, enclosed, and return to me in the enclosed self-addressed stamped envelope. Thank you.

Yours truly,



William P. Heaston

Enclosures
WPH:mob

100-243369

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUN 11 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF MCI COMMUNICATIONS)
CORPORATION AND AT&T)
COMMUNICATIONS, INC. TO CERTIFY LECS)
AS TO COMPLIANCE WITH FCC PAYPHONE)
ORDERS.)

TC97-039

MOTION TO DISMISS

U S WEST Communications, Inc. (U S WEST) moves to dismiss the petition in this proceeding. The proceeding was initiated by a filing with the Commission by AT&T Communications of the Mountain States, Inc. (AT&T) and MCI Telecommunications Corporation (MCI). For the reasons set forth below, U S WEST believes that the Commission is without authority to respond to the petition, and that if such authority does exist the burden to establish any failure by U S WEST to meet applicable legal requirements is upon AT&T and MCI.

Background

The Federal Telecommunications Act of 1996 (Act) contains provisions that are intended to promote competition among payphone service providers and to promote the widespread deployment of payphone services to the benefit of the general public. The Federal Communications Commission (FCC) was directed by Congress to take all necessary actions to implement the requirements of 47 USC Section 276 within nine months of February 8, 1996, the

date of the Federal Act. To that end, the FCC has issued its Payphone Report and Order,¹ which prescribes a number of requirements for meeting and implementing the requirements of 47 USC Section 276.

Among the provisions of 47 USC Section 276 is a requirement that the FCC establish a per call compensation plan to ensure fair compensation for each and every completed intrastate and interstate call using a payphone and provide for compensation to providers of payphone service. The FCC established a six point checklist which must be satisfied before a LEC is eligible to receive this per call compensation.² It is eligibility for compensation under the FCC plan (which AT&T and MCI must pay to U S WEST) and compliance with the FCC checklist requirements which have led to these proceedings.

That checklist requires the LEC to be able to certify that, 1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that cover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.

¹ In the Matter of the Implementation of the Pay Phone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket Nos. 96-128 and 91-34 (FCC 96-388 rel. Sep. 20, 1996) ("Payphone Order"). The FCC also issued an Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996) and a clarifying order (FCC97-678, rel. Apr. 4, 1997), in the same dockets. It is ¶131 of the Order on Reconsideration that establishes the six criteria.

² It is ¶131 of the FCC's Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996) that establishes the six criteria.

U S WEST has complied with all six items on the checklist. U S WEST's cost accounting manual (CAM) filing was approved by the FCC on April 15, 1997. U S WEST's reduced interstate CCL tariff also became effective on April 15, 1997. U S WEST is in compliance with Item three but did not file a price schedule to reduce intrastate prices to remove "any and all" charges that recover payphone costs because U S WEST's review of its prices did not reveal any subsidy for payphones in any of its prices.³ Item four is a requirement that U S WEST treat the assets used for providing payphone service as deregulated or transfer them as required by the FCC's Order. U S WEST has deregulated and reclassified its payphone equipment and costs using the FCC Part 64 process, effective April 15, 1997. Item five requires that U S WEST have in effect an intrastate price schedule for basic payphone services (*i.e.*, the "smart" PAL and the regular or "dumb" PAL). U S WEST has an effective price schedule for both services. The smart PAL filing became effective on April 15, 1997. Finally, item six requires effective intrastate and interstate price schedules for unbundled functionalities associated with those lines. U S WEST has such price schedules in place.

Among these six checklist items, it is the third item that gives rise to the petition initiated this proceeding.⁴ U S WEST has not made a filing for purposes of compliance with that checklist item for the simple reason that it is in compliance and no filing is necessary to

³ Attached is an affidavit from Wayne Culp verifying the lack of subsidy. Included as a part of the affidavit are the communications with the Commission about concerns with the current rules which build in a subsidy in access charges. In any future proceedings under those rules, U S WEST will not include the subsidy in the calculations.

⁴ U S WEST is not sure just what this filing is. The front page of the filing indicates that it is a petition for certification of compliance by the Commission. Pages 6-10 of the petition use the word "complaint" to describe the filing.

achieve compliance. U S WEST is fully able to certify that, with respect to its South Dakota operations, it is in compliance with all of the requirements of the FCC's checklist.

Having reviewed this background, U S WEST believes that the threshold issue for the Commission in this proceeding is whether it has jurisdiction to certify compliance of the federal order cited by AT&T and MCI.

**The Commission Lacks Jurisdiction
to Certify Matters at Issue in this Proceeding**

The Federal Telecommunications Act of 1996 provides at, 47 U.S.C. Section 276, for Federal Communications Commission oversight and rule making to promote competition among payphone service providers. Nothing in the Federal Act or any order or rule of the FCC creates any role for this Commission with respect to compliance by U S WEST with the provisions of 47 U.S.C. Section 276.

AT&T and MCI ask in their Petition that this Commission determine and certify whether South Dakota local exchange carriers have met all requirements identified in FCC Orders promulgated pursuant to 47 U.S.C. Section 276. AT&T and MCI do not however cite any provision of the FCC's orders or the Federal Act that creates a role for this or any other state Commission in making such a certification. In their petition, AT&T and MCI correctly observe that "a LEC must be able to certify" that conditions required by the FCC have been met in order to receive payphone compensation.¹ The duty to provide certification is upon the local exchange carrier not the state commission.

¹ Petition, p. 3, n. 5, citing ¶131 of the Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996).

To support their contention that there is a basis for Commission action in this case, AT&T and MCI also cite the Payphone Order.⁴ 186, which includes the statement that "states must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame." This plainly is not a requirement that the state commissions make any certification of compliance with FCC requirements. It is no more than a requirement that the state commission determine what rate elements must be removed to eliminate any intrastate subsidies. There is no such subsidy in U S WEST's current South Dakota rates. Therefore, there is no determination to be made of rate elements to be removed.

Because the Commission has no requirement in federal law to make any sort of determination or certification regarding "LTC" compliance with the Federal Communications Commission's payphone order," this Commission should not waste its valuable time and effort in a completely unnecessary exercise.

Finally, both AT&T and MCI know full well that if they have a legitimate complaint with the prices of U S WEST, they need to comply with the provisions of SDCL chapter 49-13. The petition is a thinly veiled attempt to put the burden on the Commission to prove something, rather than on AT&T and MCI where it would appropriately belong. In any event, there is nothing in the petition which alleges what U S WEST has done in violation of state law or regulation that the Commission is in a position to remedy. Perhaps more to the point is the direction of the FCC in its April 4, 1997 order (attached to the petition), which states clearly that the remedy for a LTC's failure to provide the correct tariff rates is a complaint to the FCC.⁵

⁴ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. Order. CC Docket No. 96-128 (rel. Apr. 4, 1997), ¶30, n. 93.

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CONCLUSION

For all of the foregoing reasons, this proceeding should be dismissed.

Respectfully submitted on this 20 day of June, 1997.

U S WEST COMMUNICATIONS, INC.

By: 

William P. Heaston
1801 California Street, Suite 5100
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CERTIFICATE OF SERVICE

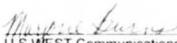
The undersigned certifies that on this 30th day of June, 1997, an original and ten (10) copies of the foregoing MOTION TO DISMISS of U S WEST Communications, Inc. was sent via overnight mail to the following

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

In addition, true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following

David A. Gerdes
Robert K. Sahr
May, Adam, Gerdes & Thompson
Attorneys for MCI
P O Box 160
Pierre, SD 57501-0160

John Lovald
Olinger, Lovald, Robbenolt & McCahren
Attorneys for AT&T
P O Box 66
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U S WEST Communications, Inc.

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U S WEST, Inc.
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William P. Heaston
Senior Attorney

USWEST

VIA FACSIMILE AND OVER-NIGHT DELIVERY

June 18, 1997

RECEIVED

JUN 20 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In The Matter of MCI Communications Corporation and AT&T
Communications, Inc. to Certify LECS as to Compliance with FCC
Payphone Orders
Docket No. TC97-039

Dear Mr. Bullard:

Enclosed for filing in the above-referenced docket is an original and nine (9)
copies of U S WEST Communications, Inc.'s AMENDED MOTION TO DISMISS.

Please file stamp an extra copy of this letter, enclosed, and return to me in the
enclosed self-addressed stamped envelope. Thank you.

Yours truly,


William P. Heaston

Enclosures
WPH:mob

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUN 10 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF MCI COMMUNICATIONS)
CORPORATION AND AT&T)
COMMUNICATIONS, INC. TO CERTIFY LECS)
AS TO COMPLIANCE WITH FCC PAYPHONE)
ORDERS.)

TC97-039

AMENDED MOTION TO DISMISS

U S WEST Communications, Inc. (U S WEST) moves to dismiss the petition in this proceeding. The proceeding was initiated by a filing with the Commission by AT&T Communications of the Mountain States, Inc. (AT&T) and MCI Telecommunications Corporation (MCI). For the reasons set forth below, U S WEST believes that the Commission is without authority to respond to the petition, and that if such authority does, exist the burden to establish any failure by U S WEST to meet applicable legal requirements is upon AT&T and MCI.

Background

The Federal Telecommunications Act of 1996 (Act) contains provisions that are intended to promote competition among payphone service providers and to promote the widespread deployment of payphone services to the benefit of the general public. The Federal Communications Commission (FCC) was directed by Congress to take all necessary actions to implement the requirements of 47 USC Section 276 within nine months of February 8, 1996, the

date of the Federal Act. To that end, the FCC has issued its Payphone Report and Order,¹ which prescribes a number of requirements for meeting and implementing the requirements of 47 USC Section 276.

Among the provisions of 47 USC Section 276 is a requirement that the FCC establish a per call compensation plan to ensure fair compensation for each and every completed intrastate and interstate call using a payphone and provide for compensation to providers of payphone service. The FCC established a six point checklist which must be satisfied before a LEC is eligible to receive this per call compensation.² It is eligibility for compensation under the FCC plan (which AT&T and MCI must pay to U S WEST) and compliance with the FCC checklist requirements which have led to these proceedings.

That checklist requires the LEC to be able to certify that, 1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that cover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.

¹ In the Matter of the Implementation of the Pay Phone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket Nos. 96-128 and 91-34 (FCC 96-388, rel. Sep. 20, 1996) ("Payphone Order"). The FCC also issued an Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996), and a clarifying order (FCC97-678, rel. Apr. 4, 1997), in the same dockets. It is ¶131 of the Order on Reconsideration that establishes the six criteria.

² It is ¶131 of the FCC's Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996) that established the six criteria.

U S WEST has complied with all six items on the checklist. U S WEST's cost accounting manual (CAM) filing was approved by the FCC on April 15, 1997. U S WEST's reduced interstate CCL tariff also became effective on April 15, 1997. U S WEST is in compliance with Item three but did not file a price schedule to reduce intrastate prices to remove "any and all" charges that recover payphone costs because U S WEST's review of its prices did not reveal any subsidy for payphones in any of its prices.³ Item four is a requirement that U S WEST treat the assets used for providing payphone service as deregulated or transfer them as required by the FCC's Order. U S WEST has deregulated and reclassified its payphone equipment and costs using the FCC Part 64 process, effective April 15, 1997. Item five requires that U S WEST have in effect an intrastate price schedule for basic payphone services (*i.e.*, the "smart" PAL and the regular or "dumb" PAL). U S WEST has an effective price schedule for both services. The smart PAL filing became effective on April 15, 1997. Finally, item six requires effective intrastate and interstate price schedules for unbundled functionalities associated with those lines. U S WEST has such price schedules in place.

Among these six checklist items, it is the third item that gives rise to the petition initiated this proceeding.⁴ U S WEST had not made a filing for purposes of compliance with that checklist item for the simple reason that, because its switched access prices were so significantly below the prices authorized by Commission rule, it was in compliance and no

³ Attached is an affidavit from Dr. Barbara Wilcox verifying the lack of subsidy. U S WEST has already communicated with the Commission concerning the current rules which build in a subsidy in access charges. The Commission's notice on the 1* rulemaking, dated June 11, 1997, address those concerns. U S WEST will not include any payphone subsidy in its calculations.

⁴ U S WEST is not sure just what this filing is. The front page of the filing indicates that it is a petition for certification of compliance by the Commission. Pages 6-10 of the petition use the word "complaint" to describe the filing.

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filing is necessary to achieve compliance. Subsequent events such as the reversal and remand of the Commission order disallowing a switched access price increase to cover costs, allowed U S WEST to refile its access tariffs on June 16, 1997, effective June 13, 1997, which put into effect cost based switched access prices. The prices set by that filing clearly remove any subsidy impact which the rules would have required. U S WEST is fully able to certify that, with respect to its South Dakota operations, it is in compliance with all of the requirements of the FCC's checklist.

Having reviewed this background, U S WEST believes that the threshold issue for the Commission in this proceeding is whether it has jurisdiction to certify compliance of the federal order cited by AT&T and MCI.

**The Commission Lacks Jurisdiction
to Certify Matters at Issue in this Proceeding**

The Federal Telecommunications Act of 1996 provides at, 47 U.S.C. Section 276, for Federal Communications Commission oversight and rule making to promote competition among payphone service providers. Nothing in the Federal Act or any order or rule of the FCC creates any role for this Commission with respect to compliance by U S WEST with the provisions of 47 U.S.C. Section 276.

AT&T and MCI ask in their Petition that this Commission determine and certify whether South Dakota local exchange carriers have met all requirements identified in FCC Orders promulgated pursuant to 47 U.S.C. Section 276. AT&T and MCI do not however cite any provision of the FCC's orders or the Federal Act that creates a role for this or any other state Commission in making such a certification. In their petition, AT&T and MCI correctly observe

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that "a LEC must be able to certify" that conditions required by the FCC have been met in order to receive payphone compensation.¹ The duty to provide certification is upon the local exchange carrier not the state commission.

To support their contention that there is a basis for Commission action in this case, AT&T and MCI also cite the Payphone Order, ¶186, which includes the statement that "states must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame." This plainly is not a requirement that the state commissions make any certification of compliance with FCC requirements. It is no more than a requirement that the state commission determine what rate elements must be removed to eliminate any intrastate subsidies. There is no such subsidy in U S WEST's current South Dakota rates. Therefore, there is no determination to be made of rate elements to be removed.

Because the Commission has no requirement in federal law to make any sort of determination or certification regarding "LEC compliance with the Federal Communications Commission's payphone order," this Commission should not waste its valuable time and effort in a completely unnecessary exercise.

Finally, both AT&T and MCI know full well that if they have a legitimate complaint with the prices of U S WEST, they need to comply with the provisions of SDCL chapter 49-13. The petition is a thinly veiled attempt to put the burden on the Commission to prove something, rather than on AT&T and MCI where it would appropriately belong. In any event, there is nothing in the petition which alleges what U S WEST has done in violation of state law or regulation that the Commission is in a position to remedy. Perhaps more to the point is the

¹ Petition, p. 3, n. 5, citing ¶131 of the Order on Reconsideration (FCC 96-439, rel. Nov. 8, 1996).

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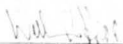
direction of the FCC in its April 4, 1997 order (attached to the petition), which states clearly that the remedy for a LEC's failure to provide the correct tariff rates is a complaint to the FCC.⁵

CONCLUSION

For all of the foregoing reasons, this proceeding should be dismissed.

Respectfully submitted on this 18th day of June, 1997.

U S WEST COMMUNICATIONS, INC.

By 

William P. Heaston
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⁵ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order CC Docket No. 96-128 (rel. Apr. 4, 1997), ¶30, n. 93.

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CERTIFICATE OF SERVICE

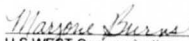
The undersigned certifies that on this 18th day of June, 1997, an original and ten (10) copies of the foregoing AMENDED MOTION TO DISMISS of U S WEST Communications, Inc. was sent via overnight mail to the following:

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

In addition, true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following:

David A. Gerdes
Robert K. Sahr
May, Adam, Gerdes & Thompson
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Olinger, Lovald, Robbenolt & McCahren
Attorneys for AT&T
P.O. Box 66
Pierre, SD 57501



U S WEST Communications, Inc.

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF MCI)
TELECOMMUNICATIONS CORPORATION)
AND AT&T COMMUNICATIONS OF THE) TC97-039
MIDWEST, INC. TO CERTIFY ALL LECS AS TO)
COMPLIANCE WITH FCC PAYPHONE ORDERS)

Affidavit of Barbara M. Wilcox, Ph.D.

BARBARA M. WILCOX, being first duly sworn and of lawful age,
deposes and says:

1. Prior to June 13, 1997, U S WEST Communications, Inc.'s (U S WEST) tariffed switched access rates were half the costs shown in the cost studies filed in docket number TC96-107 and the cost study approved in docket number TC93-108. Due to the cost and rate relationship, there was not an intrastate payphone subsidy.

2. On June 13, 1997, following the reversal and remand of the Commission's Order in docket number TC96-107, U S WEST's switched access rates were increased to cover costs as defined by South Dakota's switched access rules which are contained in chapters 20:10:27 through 20:10:29 of the Commission's Rules of Practice and Procedure.

3. On June 16, 1997, U S WEST amended its switched access tariffs on file with the Commission to reduce the Carrier Common Line (CCL) element from \$.040575 per minute of use to \$.04102 per minute of use. The amended filing was effective June 13, 1997.

4. The reduction in the CCL price eliminated any subsidy which may have been included for payphones from the operation of the South Dakota switched access rules.

5. U S WEST had earlier expressed its concerns about the impact of certain switched access rules which required a payphone subsidy. The Commission in its recent notice for rulemaking

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regarding 1* intralATA equal access requested rule changes which
would eliminate the payphone subsidies.

THE AFFIANT HAS NOTHING FURTHER TO STATE.

DATED this 19th day of June, 1997.

Barbara M. Wilcox

STATE OF COLORADO |
 | ss.
COUNTY OF DENVER |

Before me personally appeared Barbara M. Wilcox this 19th
day of June, 1997.

WITNESS MY HAND AND OFFICIAL SEAL.

Rebecca J. Albritton
Notary Public

My Commission Expires: 6-17-98



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LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

June 20, 1997

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WARREN W. MAY
THOMAS C. ADAM
DAVID A. GERDES
CHARLES W. THOMPSON
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HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RECEIVED

JUN 21 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: In the Matter of MCI Telecommunications Corporation and AT&T
Communications Inc.'s Complaint to Certify South Dakota Local
Exchange Carriers as to Compliance with FCC Payphone Orders
Docket TC97-039

Dear Bill:

Enclosed are original and ten copies of the Response to MCI
Telecommunications Corporation and AT&T Communications of the
Midwest, Inc. to the Motion to Dismiss Submitted by US West
Communications, Inc. in this matter. Also enclosed is an extra
face page of the Petition, which please date stamp and return to
me in the enclosed self-addressed stamped envelope. Please file
the enclosures.

With a copy of this letter, I am sending copies of the petition
to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON

BY: 

DAG:rw

cc/enc: Rebecca J. Bennett
Service List

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

Jim Burg
Pam Nelson
Laska Scheoenfelder

Chairman
Vice-Chairman
Commissioner

In the Matter of MCI Telecommunications Corporation and AT&T Communications Inc.'s Complaint to Certify South Dakota Local Exchange Carriers as to Compliance With FCC Payphone Orders	)	TC97-039
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**RESPONSE OF MCI TELECOMMUNICATIONS CORPORATION AND
AT&T COMMUNICATIONS OF THE MIDWEST, INC.
TO THE MOTION TO DISMISS SUBMITTED BY US WEST
COMMUNICATIONS, INC.**

INTRODUCTION

MCI Telecommunications Corporation ("MCI") and AT&T Communications of the Midwest, Inc. ("AT&T") respectfully submit this response to the Motion to Dismiss submitted by US WEST Communications, Inc. ("USWC"). By their joint Complaint, MCI and AT&T have requested, among other things, that the South Dakota Public Utilities Commission ("the Commission") commence an investigation to determine whether South Dakota Local Exchange Carriers ("LECs") have reduced rates to remove deregulated payphone investment and associated expenses and subsidies from their intrastate operations, as required by orders of the Federal Communications Commission ("FCC"). The Complaint is based upon the Telecommunications Act of 1996 ("the Act") and FCC orders implementing the Act.

COMPLAINT BACKGROUND

As providers of toll services in South Dakota, MCI and AT&T pay access charges to

LEC's that originate or terminate toll calls. The Act and subsequent FCC orders pertaining to the provision of payphone services contain requirements that affect intrastate rates, including access charges. The FCC has ordered that interexchange carriers ("IXCs"), such as MCI and AT&T, on an interim basis pay a flat rate of \$45.85 per month per payphone to payphone service providers ("PSI's").¹ In order to obtain this compensation, the PSP must take a number of steps, including removing all payphone costs from regulated operations and reducing intrastate rates to reflect the discontinuance of any subsidy of payphone operations. As payors of access charges to LEC's and as payors of compensation to PSP's (including LEC's), MCI and AT&T continue to be concerned about the potential for its overpayment of payphone access costs.

47 U.S.C. § 276 concerns the provision of payphone service. MCI and AT&T are specifically concerned with those portions of Section 276 pertaining to subsidization,² the promotion of competition and deployment of payphone services,³ and the discontinuance of intrastate and interstate carrier access charge payphone service elements.⁴ Regarding the use of the term subsidy, the Telecommunications Act provides that:

[A]ny Bell operating company that provides payphone service -- (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations[.]⁵

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, paragraph 125. Under this provision, an IXC will pay a share of the \$45.85 based upon its relative annual toll revenues.

² 47 U.S.C. § 276(a)(1).

³ 47 U.S.C. § 276(b)(1)(A).

⁴ 47 U.S.C. § 276(b)(1)(B).

⁵ 47 U.S.C. § 276(a)(1).

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Moreover, the payphone orders not only contemplate elimination of subsidies for large LECs, but also for the small independent LECs as well. In the Order on Reconsideration, the FCC stated the following:

We declined to limit the deregulation of payphones to those owned by larger LECs, because Section 276 is not limited in application to larger LECs, the benefits the Commission observed in CPE deregulation apply to payphones, and those benefits apply regardless of the size of the LEC.⁴

The use of the term subsidy in this instance is intended to address areas where local exchange carrier payphone operations generate less in revenue than they do in associated costs. In other words, the Act prohibits the use of the revenues of other services (i.e. telephone exchange service or access services) to offset the difference between payphone revenues and payphone costs. Any investigation into whether a subsidy does or does not exist must include a proper identification of all associated revenues and all associated expenses. In other states, USWC has presented an abbreviated methodology purporting to show that no payphone subsidies exist. The USWC methodology is flawed because not all appropriate revenues and expenses were considered. The following list presents the general revenue and expense categories that the Commission should consider in making a determination as to the existence of a subsidy:

1. Investment
 - a) General support - USOA # 2110
 - b) COE - USOA # 2210
 - c) IOT - USOA # 2310
 - d) Cable & wire facilities - USOA # 2410
 - e) Accumulated depreciation and amortization
 - f) Deferred taxes
2. Revenues (excluding operator service revenue)

⁴ FCC Order on Reconsideration 96-439, paragraph 144

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- a) Coin revenue for payphones phones - USOA # 5010
 - b) Revenue to be received from affiliated payphones for access line, message, usage charges - USOA # 5001
- 3 Plant Specific Operations Expenses (based on payphone investment)
- a) Network support expenses - USOA # 6110
 - b) General support expenses - USOA # 6120
 - c) Central office equipment expenses - USOA # 6210
 - d) Information origination/termination expenses - USOA # 6310
 - e) Cable and wire facilities expenses - USOA # 6410
- 4 Plant Nonspecific Operations Expenses (based on payphone investment)
- a) Network operations expense - USOA # 6530
 - b) Depreciation and amortization expense - USOA # 6560
- (should include allocation of depreciation for each plant specific category)
- 5 Customer Operations Expenses (based on payphone investment)
- a) Marketing expenses - USOA # 6610
 - b) Customer service expenses - USOA # 6620
- (should include coin collection & administration, inward movement, service order and payphone commissions)
- 6 Corporate Operations Expenses (based on payphone investment)
- a) Executive and planning - USOA # 6710
 - b) General and Administrative - USOA # 6720

It is important to note that the aforementioned account numbers should be inclusive of any sub-account information

MCI and AT&T have developed a spreadsheet model which considers the revenues and expenses associated with the provision of payphone service in order to determine if any subsidy exists. This model is applicable to USWC as well as the independent LECs in South Dakota. Upon request, MCI and AT&T will provide this model to the Commission. MCI and AT&T would urge the Commission to compare this methodology to that utilized by USWC. In order to utilize the model, the Commission would only need to request specific data from each LEC to be reviewed, and then insert this data into the spreadsheet.

In its *Report and Order*, FCC 96-388, the FCC required (1) reclassification or transfer of payphone equipment to non-regulated status and (2) termination of access charge compensation and other subsidies. The FCC specifically referenced intrastate rates in the *Report and Order*, stating, "We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997." In the same paragraph, the FCC stated that, "States must determine the intrastate rates elements that must be removed to eliminate any intrastate subsidies within this time frame." *Report and Order*, ¶ 186. Although in the Motion to Dismiss submitted by USWC it is argued that there is no requirement for state commissions to certify compliance with the FCC's orders, states are responsible for determining which intrastate rate elements must be removed, and there is nothing that would preclude the Commission from participating in such a certification process. Moreover, the identification of intrastate subsidies and the corresponding rate elements which must be altered to remove such subsidies is essential to meeting the requirements of the FCC Orders. Additionally, based on the contention of USWC that no such subsidy exists in USWC's current South Dakota rates, USWC would have the South Dakota Public Utilities Commission dismiss the complaint of MCI and AT&T without regard to subsidies which may exist with other LECs in South Dakota.

Upon termination of access charge compensation for recovery of payphone investment and expense, and after all other criteria are met, PSPs would be eligible for the monthly flat-rate compensation referenced in the *Report and Order* at paragraph 125. Without a proper showing of pertinent data, MCI and AT&T are presently unable to ascertain if any South

Dakota LECs are in compliance with the FCC requirements to remove subsidies from intrastate rates. Without this financial information, the parties are unable to perform any quantitative calculations for the purpose of evaluating those rates to determine whether the LECs have, in fact, removed any improper subsidies from those rates. Accordingly, MCI and AT&T cannot determine whether the LECs have satisfied their obligations under the Act at this time. Additionally, MCI and AT&T have yet to determine that these LECs meet all the criteria to make them eligible for compensation. Without a focused examination of the intrastate rate structures and the underlying cost study information, as well as the information supporting the criteria for eligibility for compensation, MCI and AT&T cannot positively come to any degree of certainty as to whether certain costs have been removed or if other requirements (such as the removal of any cross-subsidy) have been met in order to comply with the FCC Order. For these reasons, MCI and AT&T filed the Complaint in this proceeding requesting that the Commission review certain items relating to the LEC payphone costs.

USWC has suggested that the Commission is not required to certify compliance with the FCC's payphone orders. (See, e.g., Comments of USWC at 5). However, the Commission is not precluded from undertaking the investigation requested in the Complaint. The rates affected by the removal of payphone investment, expenses and subsidies are intrastate rates. Unquestionably, the Commission has jurisdiction over intrastate rates.⁷

⁷ In section 20.10.29.20 of Chapter 20 (Telecommunications Switched Access Charges) of the South Dakota Telecommunications Rules, the following is found:

Investment in public telephones and appurtenances is assigned to the common line element if the public telephones are capable of use with the services of more than one interexchange carrier.

USWC alleges that the Complaint of MCI and AT&T is a thinly veiled attempt to put the burden on the Commission rather than placing any burden on MCI and AT&T. MCI and AT&T strongly disagree with this contention. Prior to filing this complaint, MCI and AT&T, in hopes of entirely avoiding complaint proceedings, held meetings with USWC. In those meetings a solution to the payphone compensation matters was sought. MCI and AT&T came away from such meetings with a concern that little or no progress would ever be achieved by the parties working together. Hence, MCI and AT&T filed the Complaint before the South Dakota Public Utilities Commission. As noted above, MCI and AT&T have asked the Commission to direct the South Dakota LECS to file rate reduction proposals with the Commission and also to certify to the FCC that individual South Dakota LECs are in compliance with the payphone orders. The Commission has the jurisdictional authority to facilitate such a review and is uniquely situated to impartially perform this review.

The Complaint, which alleges noncompliance by South Dakota LECs with the Telecommunications Act and orders of the FCC, particularly as those provisions of federal

Additionally, section 29-10-29.43 (8) states:

Coin collection and administration expenses attributable to public telephones which can access the services of more than one interexchange carrier are assigned to the common line element.

As payphones are generally capable of use with the services of more than one interexchange carrier through the usage of dual around mechanisms, it is logical to presume that on an intrastate basis, investment in public telephones and related expenses in South Dakota are assigned to the common line element and potentially to other intrastate rates.

There is presently a proceeding before the South Dakota Public Utilities Commission respecting revisions to its intrastate switched access rules to remove any charges that recover payphones. The rules cited above are those presently in place. Any changes in these rules would be prospective in nature and apply only to access charges.

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law relate to intrastate telephone rates and subsidization of payphone operations by those rates, falls squarely within the Commission's investigative authority. If subsidies are not identified and removed, not only will LECs be able to "double recover" their payphone costs, South Dakota's consumers will continue to bear the burden of unreasonably high (and not cost-based) access charges.

In their Motion to Dismiss, USWC asserts its compliance with the FCC's payphone orders. However, such claims, unsupported by evidence, are not an adequate substitute for a Commission investigation. Until MCI, AT&T and this Commission have had an opportunity to evaluate the evidence, the claims of the LECs respecting compliance with the FCC payphone orders simply cannot be taken at face value.

CONCLUSION

The resulting impact to the regulated operations of a LEC after deregulating payphones is a change in their revenue requirement and revenue inflow. The revenue requirement decreases when payphone equipment investment and related expenses are reclassified to nonregulated status, revenue inflow increases from recovery of access line costs previously recovered from other intrastate ratepayers due to public access line payments made by the LEC's affiliated PSP. This revenue will offset and may surpass the coin revenue that will also be reclassified as nonregulated. MCI and AT&T respectfully requests that the Commission proceed with the actions requested in the Complaint, to ensure that LECs are not overcompensated for their payphone investment and also to assure that access charges are not inflated by the inclusion of payphone costs.

The FCC has ordered that states must determine the intrastate rate elements that must

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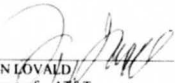
be removed to eliminate any intrastate subsidies. Accordingly, MCI and AT&T request that the Commission determine with all deliberate speed whether LECs have reduced rates to remove deregulated investment, expenses and subsidies so that payment of the interim compensation may begin.

RESPECTFULLY SUBMITTED this 20th day of June, 1997

MAY, ADAM, GERDES & THOMPSON

OLINGER, LOVALD,
ROBBENNOLT & MCCAHREN

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BY 
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0142-43-92

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson hereby certifies that on the 20 day of July, 1997, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing Response To MCI Telecommunications Corporation and AT&T Communications of the Midwest, Inc. to the Motion to Dismiss Submitted by US West Communications, Inc., in the above-captioned action to the following at their last known addresses, to-wit:

William P. Heaston
Senior Attorney
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, CO 80202

Richard Coit
SDITC
P.O. Box 57
Pierre, SD 57501

Thomas J. Welk
Attorney at Law
Boyce Murphy McDowell & Greenfield
PO Box 5015
Sioux Falls, SD 57117-5015

John S. Lovald
Attorney at Law
Olinger Lovald Robbenolt McCahren
PO Box 66
Pierre, SD 57501-0066


David A. Gerdes

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U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
303 672-2810
Facsimile 303 295-7069

William P. Heaston
Senior Attorney

VIA OVER-NIGHT DELIVERY

June 20, 1997

U S WEST

RECEIVED

JUN 24 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In Re: Petition of Independent Telephone Companies Regarding a
Waiver of Switched Access Rules
Docket No. TC97-042

In Re: Petition of MCI Communications Corporation and AT&T
Communications, Inc. to Certify LECS as to Compliance with FCC
Payphone Orders
Docket No. **TC97-039**

Dear Mr. Bullard:

Enclosed for filing in the above-referenced dockets is an original and one copy of an Order Admitting Non-Resident Attorney allowing Mr. William P. Heaston to represent U S WEST Communications, Inc. in these matters.

Please file stamp an extra copy of each order, enclosed, and return to me in the enclosed self-addressed stamped envelope. Thank you.

Yours truly,

Marjorie Burns
Marjorie Burns
Legal Secretary

Enclosures

RECEIVED

JUN 23 1997

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

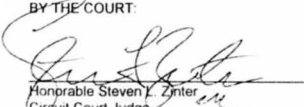
IN RE: PETITION OF MCI COMMUNICATIONS) DOCKET NO. 97-039
CORPORATION AND AT&T COMMUNICATIONS,) ORDER ADMITTING
INC. TO CERTIFY LECS AS TO COMPLIANCE) NON-RESIDENT ATTORNEY
WITH FCC PAYPHONE ORDERS)

It is hereby

ORDERED that the Motion for Admission for William P. Heaston, a non-resident attorney, to appear on behalf of U S WEST Communications, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

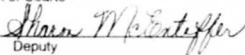
Dated: June 18, 1997.

BY THE COURT:


Honorable Steven L. Zinter
Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

Mary L. Erickson
Clerk of Courts

BY 
Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

JUN 18 1997

 CLERK
By _____ Deputy

0142-43-95

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF MCI)	
TELECOMMUNICATIONS CORPORATION)	ORDER DENYING MOTION
AND AT&T COMMUNICATIONS OF THE)	TO DISMISS
MIDWEST, INC. TO CERTIFY ALL LECs AS TO)	
COMPLIANCE WITH FCC PAYPHONE)	TC97-039
ORDERS)	

On April 14, 1997, MCI and AT&T filed a petition with the Public Utilities Commission (Commission) requesting the Commission to certify all Local Exchange Companies (LECs) as to compliance with Federal Communications Commission's (FCC) FCC Payphone Orders. Specifically, MCI and AT&T request that the Commission determine and certify whether all certificated LECs have met all state-specific requirements identified in the FCC's orders.

On April 17, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of May 2, 1997, to interested individuals and entities. On April 30, 1997, U S WEST Communications, Inc. (U S WEST) filed a Petition for Leave to Intervene with the Commission. On May 2, 1997, South Dakota Independent Telephone Coalition (SDITC) filed a Petition to Intervene. The Commission granted both petitions to intervene on May 13, 1997. On June 3, 1997, the Commission received a motion to dismiss from U S WEST.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31.

At a regularly scheduled meeting of June 24, 1997, the Commission discussed the matter. The Commission unanimously decided to deny the motion to dismiss. It is therefore

ORDERED that U S WEST's motion to dismiss is denied.

Dated at Pierre, South Dakota, this 3rd day of July, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

Nellene Kaebo

Date

7/3/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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RECEIVED

OCT 11 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

PUBLIC UTILITIES
COMMISSION

IN THE MATTER OF MCI TELECOMMUNICATIONS) DOCKET TC97-039
CORPORATION AND AT&T COMMUNICATIONS)
OF THE MIDWEST, INC., TO CERTIFY ALL)
LECS AS TO COMPLIANCE WITH FCC)
PAYPHONE ORDERS)

CERTIFICATE OF SERVICE OF COMMENTS OF MCI AND AT&T
PRESENTING ADDITIONAL INFORMATION REGARDING THE
JOINT COMPLAINT TO CERTIFY SOUTH DAKOTA LOCAL
EXCHANGE CARRIERS AS TO COMPLIANCE WITH
FCC PAYPHONE ORDERS

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 1st day of October, 1997, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the above-captioned in the this action to the following at their last known addresses, to-wit:

William P. Heaston
Senior Attorney
US WEST Communications, Inc.
1801 California, Room 5100
Denver, CO 80202

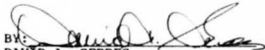
Richard D. Coit
Executive Director
SDITC
P.O. Box 57
Pierre, SD 57501

Tamara Wilka
Boyce, Murphy
P.O. Box 5015
Sioux Falls, SD 57117-5015

John S. Lovald
Olinger, Lovald
P.O. Box 66
Pierre, SD 57501-0066

Dated this 1st day of October, 1997.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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TIMOTHY W. ENDE
MICHAEL P. SHAW
ROBERT H. SAUER

October 1, 1997

OF COUNSEL
WARREN W. MAY

TELEPHONE
605.224.6603
TELEFAX
605.224.6289

E-MAIL
dag@magt.com

HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RECEIVED
OCT 1 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: MCI AND AT&T PAYPHONE PETITION
Docket: TC97-039
Our file: 0175.28

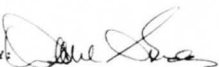
Dear Bill:

Enclosed are original and ten copies of a supplemental filing in this docket. Also enclosed is an additional face page which please date stamp and return to me in the enclosed self-addressed stamped envelope.

With a copy of this letter, I am sending copies of the enclosure to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List
Michel Murray
Mary Tribby

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

Jim Burg
Pam Nelson
Laska Schoenfelder

Chairman
Vice-Chairman
Commissioner

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DEC 17 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of MCI Telecommunications Corporation and AT&T Communications of the Midwest, Inc. to Certify All LECs as to Compliance With FCC Payphone Orders) TC97-039

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION AND
AT&T COMMUNICATIONS OF THE MIDWEST, INC.
PRESENTING ADDITIONAL INFORMATION REGARDING THE JOINT
COMPLAINT TO CERTIFY SOUTH DAKOTA LOCAL EXCHANGE CARRIERS AS
TO COMPLIANCE WITH FCC PAYPHONE ORDERS**

COMPLAINT BACKGROUND

MCI Telecommunications Corporation ("MCI") and AT&T Communications of the Midwest, Inc. ("AT&T") hereby file these comments presenting additional information with respect to the joint complaint filed by MCI and AT&T. As providers of toll services in South Dakota, MCI and AT&T pay access charges to Local Exchange Carriers (LECs) that originate or terminate toll calls. The Telecommunications Act of 1996 (FTA96) and subsequent FCC orders pertaining to the provision of payphone services contain requirements that affect intrastate rates, including access charges. As payors of access charges to local exchange providers and as payors of compensation to Payphone Service Providers ("PSPs") (including LECs), MCI and AT&T continue to be concerned about the potential for overpayment of payphone access costs.

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47 U.S.C. § 276 in its entirety pertains to the provision of payphone service. MCI and AT&T are specifically concerned with those portions of Section 276 pertaining to subsidization¹, the promotion of competition and deployment of payphone services², and the discontinuance of intrastate and interstate carrier access charge payphone service elements³. Regarding the use of the term subsidy, the FTA96 specifically states that:

"any Bell operating company that provides payphone service -- (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations"

Moreover, the payphone orders not only contemplate elimination of subsidies for large LECs, but also for the small independent LECs as well. In the Order on Reconsideration, the FCC stated:

"We declined to limit the deregulation of payphones to those owned by larger LECs, because Section 276 is not limited in application to larger LECs, the benefits the Commission observed in CPE deregulation apply to payphones, and those benefits apply regardless of the size of the LEC."

The use of the term subsidy in this instance is intended to address areas where local exchange carrier payphone operations generate less in revenue than they do in associated costs. Hence, the revenues of other services (i.e. telephone exchange service or access services) are needed to offset the difference between payphone revenues and payphone costs. It is MCI's and AT&T's position that any investigation into whether a subsidy does or does not exist must include a proper identification of all associated revenues and all associated expenses. Attached to these

1 47 U.S.C. 276 (a)(1)

2 47 U.S.C. 276 (b)(1)(A)

3 47 U.S.C. 276 (b)(1)(B)

4 47 U.S.C. 276 (a)(1)

5 FCC Order on Reconsideration (96-439), paragraph 144

comments is a sample data request that specifically outlines the information that is required to perform a proper investigation. Such an investigation will be discussed later in these comments.

In its Report and Order,⁶ (FCC 96-388) the FCC requires (1) reclassification or transfer of payphone equipment to non-regulated status and (2) termination of access charge compensation and other subsidies. The FCC specifically references intrastate rates in the Report and Order.⁷ Upon termination of access charge compensation for recovery of payphone investment and expense, and after all other criteria are met, PSPs would be eligible for the monthly flat-rate compensation referenced in the Report and Order at paragraph 125.

Without a proper showing of pertinent data, MCI and AT&T are unable to ascertain if South Dakota LECs are in compliance with the FCC requirements to remove subsidies from intrastate rates.⁸ Although MCI and AT&T are aware that a number of LECs in South Dakota have made filings to revise their intrastate tariffs, no cost study information to support the LECs' present intrastate rates has been seen. With only revised tariff pages and without financial information from cost studies, the ability to perform quantitative calculations is limited. Hence, a determination of compliance cannot effectively be made at this time. Additionally, MCI and AT&T have yet to determine that these LECs meet all the criteria to make them eligible for

6 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, (FCC 96-388) paragraph 186.

7 "We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997." In the same paragraph, the FCC stated that "States must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame."

8 Prior to filing the joint complaint, MCI and AT&T held meetings with U.S. WEST, seeking a solution to the payphone compensation matters. AT&T and MCI came away from such meetings with a concern that little or no progress would ever be achieved by the parties working together. Hence, MCI and AT&T filed the joint complaint before the South Dakota Commission.

compensation. Without a focused examination of the intrastate rate structures, the underlying cost study information, and the information supporting the criteria for eligibility for compensation, MCI and AT&T cannot determine whether certain costs have been removed or if other requirements (such as the removal of any cross-subsidy) have been met in order to comply with the FCC Order.

The complaint jointly filed by MCI and AT&T requested that the Commission direct the South Dakota LECs to file rate reduction proposals with the Commission and requested that the Commission certify to the FCC that individual South Dakota LECs are in compliance with the payphone orders. MCI and AT&T are cognizant that certain LECs view MCI and AT&T as potential competitors in the provision of local exchange services. Therefore, these LECs may have concerns about providing information that could be considered as providing a competitive advantage to MCI and AT&T. With these concerns in mind, MCI and AT&T requested that the Commission investigate and certify LEC compliance with the payphone orders.

As previously noted, MCI and AT&T have reviewed the tariff filings made by independent LECs to bring intrastate services and rates into compliance with the FCC's payphone orders. The filings of the independent LECs which were reviewed by MCI and AT&T consisted of transmittal letters and revised tariff pages. Very little cost study information was presented to support these filings. MCI and AT&T understand that a number of independent LECs in South Dakota mirror the interstate access rates calculated by the National Exchange Carrier Association ("NECA"). While this approach is widely accepted, it is also understood that the access rates calculated by NECA are developed using separated interstate data. For this reason, MCI and AT&T propose that they submit MCI's and AT&T's jointly developed payphone subsidy determination model to the South Dakota independent LECs, that each LEC

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insert the appropriate intrastate information and return it to the Commission, as well as a copy to MCI and AT&T for their review. A detailed description of the payphone subsidy determination model is contained in these comments under the section titled Subsidy Determination.

The joint complaint, which alleges noncompliance by South Dakota LECs with the FTA96 and payphone orders of the FCC with respect to intrastate telephone rates and subsidization of intrastate payphone operations by those rates, falls squarely within the Commission's investigative authority. If subsidies are not identified and removed, not only will LECs be able to double recover their payphone costs, South Dakota's consumers will also continue to bear the burden of unreasonably high access charges that are not cost based.

SUBSIDY CALCULATION

A model has been developed by MCI and AT&T that is useful in identifying the existence of subsidized payphone operations for a local exchange telephone company. Along with these comments, MCI and AT&T have included a copy of the model populated with publicly available data (1996 ARMIS Reports 43-03, 43-04, and 43-08) for U S WEST, a copy of the model which contains no data, and the documentation for operation of the model. As previously mentioned, a sample data request that may be used to gather the necessary information from a local exchange company has also been included with these comments.⁹

The payphone subsidy determination model computes the revenues derived from the provision of payphone service (less certain revenues such as operator service revenues) and also computes the costs (an intrastate revenue requirement) to provide the pay phone service. One

⁹ The model was developed using Microsoft Excel version 5.0 for Windows 95. The documentation for operation of the model and the sample data request are contained in Microsoft Word for Windows 95 files.

cost that the model develops and includes is an imputed public access line ("PAL") cost. This cost should appropriately be included in a subsidy calculation. The independent LECs of South Dakota seem to agree. In their transmittal letters for the revised tariff pages all the independent LECs stated the following in the same or similar fashion: "Payphone service providers, including our company within its payphone operations, will pay a monthly public access line rate." In comments submitted in a similar complaint case in Minnesota, the Minnesota Department of Public Service agreed that the cost of the PAL should be included in subsidy determination calculations.¹⁰ The model then determines if a subsidy exists by determining whether or not revenues exceed costs. For the most accurate and thorough analysis to determine if a subsidy exists, specific data from a LEC must be obtained at a very granular level. For example, Uniform System of Account number 5010, "Public Telephone Revenue" must be presented at the subaccount level so that all the components that make up this account may be identified and any components that are not specifically related to payphone revenue may be removed from other calculations. Again, the sample data request included in this transmittal lists all necessary information needed from a LEC to run the model.

¹⁰ Specifically, the Minnesota Department of Public Service stated: "The Department notes that the access lines used to connect pay phones to LEC central offices will not be deregulated as part of the Order (Report and Order at Paragraph 159). However, since the sole purpose of the access lines used to connect LEC pay phone customer premise equipment to the central office is to support a deregulated operation, the costs of the lines should be assigned to that operation. When this is done, the net contribution from many LEC pay phone operations becomes negative." Comments of the Minnesota Department of Public Service in Docket No. P999-C-97-564 at 2.

This is precisely the instance in South Dakota for U S WEST. The model developed by MCI and AT&T includes the cost of public access lines for 2,785 U S WEST owned payphones (this number was gathered from the ARMIS 43-08 report) with other costs of providing pay phone service. As the comments of the Minnesota Department of Public Service indicate, the contribution from the LEC pay phone operations indeed becomes negative. MCI and AT&T's calculation based on the model submitted with these comments indicates that by including the cost of the public access lines, a subsidy in the amount of \$1,666,000 is present for U S WEST.

After the Staff of the Commission has an opportunity to examine the model, MCI and AT&T representatives can be available for discussion on the application and usefulness of this model on a going forward basis in relation to the joint complaint of MCI and AT&T

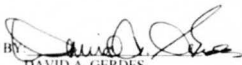
CONCLUSION

As a LEC's CPE is reclassified to nonregulated status and as revenue inflows are subsequently affected, revenue requirements will be impacted. MCI and AT&T respectfully request that the South Dakota Commission press forward with the joint complaint.

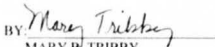
RESPECTFULLY SUBMITTED this 1st day of October, 1997.

MAY, ADAM, GERDES & THOMPSON

AT&T COMMUNICATIONS OF THE
MIDWEST, INC.

BY: 

DAVID A. GERDES
Attorney for MCI
P.O. Box 160
Pierre, SD 57501-0160
Phone: (605) 224-8803
Fax: (605) 224-6289

BY: 

MARY B. TRIBBY
MARIA ARIAS-CHAPLEAU
1875 Lawrence St. Room 1575
Denver, CO 80202
Phone: (303) 298-6508
Fax: (303) 298-6301

Payphone Subsidy Determination Model

Version 1.2

Documentation and Instructions

INTRODUCTION

The purpose of the payphone subsidy determination model is to ascertain whether a local exchange company presently subsidizes its payphone operations. The Federal Telecommunications Act of 1996 specifically stated the following: "...any Bell operating company that provides payphone service -- (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations." The use of the term subsidy in this instance is interpreted to address areas where the payphone operations of the local exchange carrier generate less in revenue than they do in associated costs. Hence, the revenues of other services (i.e. telephone exchange service or access services) are needed to offset the difference between payphone revenues and payphone costs.

The following documentation corresponds to the payphone subsidy determination model and is divided into the following sections:

- (1) Initial Model Inputs
- (2) Revenues Calculation and Other Computational Inputs
- (3) Intrastate Revenue Requirement and Other Cost Calculations
- (4) Subsidy Determination
- (5) Model Roll-Up
- (6) Model Outputs

This model has been developed in Microsoft Excel for Windows 95.

INITIAL MODEL INPUTS

Important Note: Any location in the payphone subsidy determination model that requires user input is highlighted in blue text.

The initial worksheet in the payphone subsidy determination model is the Smart PAL Rates and Costs sheet. On this sheet the user must enter the name of each LEC study area to be reviewed. For example, to designate USWest – Colorado, the user would type this company name over the label Company 1. The model provides for up to 15 study areas to be reviewed simultaneously. The names of the study areas entered on this sheet are automatically carried over to each individual subsidy calculation worksheet as well as the roll up worksheet.

If the user has data specific to the LECs being reviewed, the information for the number of company owned phones, the tariffed Smart PAL rate, and the actual cost of the Smart PAL should be entered on this sheet. If this information is not available, estimates may be utilized. Estimates may be entered on the individual study area worksheets which appear immediately behind the initial worksheet. If information for the number of LEC owned payphones is not available, an approximation of this number may be obtained for tier one LECs from the ARMIS 43-08 report. For independent LECs, this information will need to be requested.

If the actual Smart PAL rates and the actual Smart PAL costs are entered on this worksheet, the model will calculate the net intrastate Smart PAL cost as well as a margin over intrastate cost. Note: In some instances, the tariffed rate for the Smart PAL may be less than the cost of the Smart PAL. In such instances, the user must make adjustments to this model to account for this situation. Occasionally a measured or message rate option may be tariffed instead of a flat rated PAL. In such instances, an average monthly dollar amount per PAL should be included with any other monthly charges for the PAL.

The initial sheet also contains three group boxes. The first group box allows the user to select between the use of actual or estimated Smart PAL rates. The second group box allows the user to select between the use of actual or

estimated Smart Pal costs. The third group box allows the user to select between two imputation options.

The initial sheet additionally contains a macro button to switch to the roll up worksheet. The roll up worksheet contains a macro button to switch back to the initial worksheet. These buttons are useful in viewing the difference between various options selected via use of the group boxes.

Once the user has entered the desired information on the initial worksheet, the user may use the mouse to click on the appropriate worksheet tab to begin entering data on each individual study area worksheet. The user may also move to the next worksheet by holding down the control key and pressing the page down key. The user may rename each study area worksheet by double clicking on the worksheet tab and typing a new name. A state or company name is recommended if the sheet tabs are to be renamed.

REVENUES CALCULATION

The revenues calculation is made on each individual study area worksheet. The revenues calculation considers the revenues from the payphone coin boxes less a percentage of those revenues derived from operator services. The percentage of operator services to exclude is a user defined variable. One source for the coin revenue data may be USOA Account 5010. This information can be gathered from the ARMAIS 43-03 report. If this is done, the user should request this information at the subaccount level of detail to include revenues from operator services. The difference between the coin box revenues less the operator services revenues is the base amount of revenue utilized in the revenues calculation.

In recognition that the interim per line compensation represents a new inflow of revenues to the local exchange company, these revenues were added to the base amount of coin revenues. This calculation was done by multiplying the total number of company owned paystations by the interim compensation amount of \$45.85. The result was multiplied by 12 to develop an annualized number. This amount was added to the base amount of coin revenue in order

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to provide an estimate of the effect that the interim compensation structure may have. Presently, this analysis is for informational purposes only and is not carried over to the roll-up worksheet.

In October 1997 the interim per line compensation plan may change to a per call plan (pending FCC action due to a remanding by the Court of Appeals of payphone orders back to the FCC). This calculation was also considered by taking the total number of company owned paystations and multiplying by an average number of calls per paystation and then multiplying by the per call compensation rate of \$0.35 per call. The result was multiplied by 12 to develop an annualized number. The base coin revenues were added to this result. Again, this analysis was performed in order to provide an estimate of the effect that the per call compensation structure may have. Presently, this analysis is for informational purposes only and is not carried over to the roll-up worksheet.

OTHER COMPUTATIONAL INPUTS

A number of computational inputs are required on each individual study area worksheet. These inputs are highlighted in blue text and are especially important if the user wishes to use estimated inputs. The computational formulas for development of the intrastate revenue requirement are presented on each individual study area worksheet.

Average monthly call volume per payphone: this computational input is used in reviewing the effects of the per call compensation plan.

Rate of Return: this computational input is used in the determination of the intrastate revenue requirement for payphones service.

Estimated Tariffed Rate – Smart PAL: this input is required if you do not have the actual tariffed rate for the Smart PAL. If the actual tariffed rate for the Smart PAL contains a usage component, make certain to factor this into the estimate. As noted previously, usage charges are only relevant if measured or message rate options are chosen for the PAL.

Percent of Smart PAL tariffed rate that is cost: this computational input is utilized in the calculation of a margin over intrastate cost. This percentage is multiplied by the estimated tariffed rate to determine the estimated cost of the Smart PAL.

On the bottom of the revenues page of the model, the inputs and assumptions that were selected in the group boxes on the initial worksheet of the model are presented. These assumptions and inputs are also presented on the roll up worksheet of the model.

INTRASTATE REVENUE REQUIREMENT CALCULATION

An intrastate revenue requirement for payphones is developed by the model for each individual study area. Each individual study area worksheet contains a form where the data necessary to develop the revenue requirement is to be entered. In calculating the intrastate revenue requirement, the model factors in total investment, depreciation reserves, amortization reserves, non-current deferred taxes, operating expenses, depreciation, amortization, customer operations, and federal, state and local taxes. The majority of this information may either be requested from the LECs or may in part be derived from the ARMIS 43-04 report. As the ARMIS amounts related to payphone services are presented as interstate numbers, the model multiplies those amounts by three to arrive at an intrastate amount. This procedure factors in the 25% to 75% allocations to interstate and state. The formulas for each step in the calculation of the intrastate revenue requirement appear alongside the account descriptions.

OTHER COSTS

The payphone subsidy determination model includes the intrastate coin collection expenses and any commissions paid on payphones. Additionally, the model includes imputed access line charges. This amount is calculated by multiplying the number of company owned payphones by either the monthly Smart PAL rate or by the margin over cost of the monthly Smart PAL rate. The formulas for each step in these calculations appear alongside the descriptions.

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The intrastate revenue requirement and the cost of the paystation access lines are not combined in the cost calculation; however, the two costs do appear as separate line items in the subsidy determination section of this model.

SUBSIDY DETERMINATION

No user inputs are required in the subsidy determination section of this model. The subsidy determination section considers three scenarios. The first scenario is what should be considered in determining if a subsidy exists. The second and third scenarios are presented in order to show the effects of the interim per line compensation and the per call compensation.

The first scenario subtracts all costs for payphone service (the intrastate revenue requirement, the coin collection expenses and commissions, and the imputed access line charges) from the revenues that are calculated within the model. If this calculation shows that revenues exceed costs, then no subsidy is present. If the calculation shows that the costs are greater than the revenues, then a subsidy is present and intrastate access rates should correspondingly be reduced.

The second scenario compares the revenues and the interim per line compensation to the intrastate revenue requirement and the cost of coin collection, commissions and the paystation access lines. This calculation is included in order to provide an estimate of the effect that the interim compensation structure may have. Presently, this analysis is for informational purposes only and is not carried over to the roll-up worksheet.

The third scenario compares the base coin box revenues and the per call compensation revenues to the intrastate revenue requirement and the cost of coin collection, commissions and the paystation access lines. This calculation is included in order to provide an estimate of the effect that the per call compensation structure may have. Presently, this analysis is for informational purposes only and is not carried over to the roll-up worksheet.

MODEL ROLL-UP

The model carries the results for each study area over to a subsidy determination roll up worksheet. The results for each study area are summed together and a net amount of subsidy for an entire group of study areas is calculated. The model inputs and assumptions that were selected on the initial worksheet of the model appear on the roll up sheet. A macro button is

also included on the roll up sheet that allows the user to return to the initial sheet of the model to change input assumptions.

MODEL OUTPUTS

Page breaks have been inserted into the model in order to create paper copies that display the various sections on separate pages. These page breaks may be adjusted if necessary.

TECHNICAL SUPPORT

To obtain support for the Payphone Subsidy Determination Model, please call 303-840-0708.

Payphone Data Request

The information items presented below are requested by MCI in order that a determination may be made as to compliance with the requirements of the Federal Communication Commission payphone orders. This analysis requires the following information:

1. Total number of company-owned pay telephones for each state.
2. Total number of independent payphone service provider lines provided by the LEC.
3. Average number of local calls per pay telephone for each state (monthly or annual basis).
4. Average number of dial-around calls per pay telephone for each state (monthly or annual basis).
5. Tariffed rate and cost of the Smart PAL, coin transmission, usage, etc.
6. Commissions paid on payphone service to any and all service providers.
7. Most recent intrastate rate of return allowed (if applicable).
8. Information from the accounts in the table below are necessary to develop the intrastate revenue requirement for payphone service. Please provide the intrastate amounts in each account to the subaccount level that are attributable to payphone service.

Account Description	USOA Account Number	ARMIS Row # 43-04 Report
Coin Revenues	5010	N/A
Directory Assistance Revenues		
Toll Revenues		
Operator Service Revenues		
Total General Support Facilities	2110	1004
Total Category 4.1		1300
Total COE	2210	
Total Cable & Wire Facilities	2410	1530
Total Telephone Plant		1540
Capital Leases	2681	2020
Leasehold Improvements	2682	2140
Intangible Assets	2690	2160
Total Other Plant		2203
All Other Inventory		2221
Cash Working Capital		2230
FCC Inv. Adj.		2250
Total Investment		2260
Depreciation Reserve - General Support		3010
Depreciation Reserve - Transmission		3040
Depreciation Reserve - IOT		3050
Depreciation Reserve - Cable & Wire Facilities		3060
Depreciation Reserve - Property HFTU		3070
Amortization Reserve - Capital Leases		3150

Amortization Reserve - Leasehold Improvements	3220
Amortization Reserve - Intangible & Other	3260
Net Non-current Deferred Tax - General Support Facilities	3350
Net Non-current Deferred Tax - Transmission	3380
Net Non-current Deferred Tax - IOT	3390
Net Non-current Deferred Tax - Cable & Wire Facilities	3400
Net Non-current Deferred Tax - FCC Reserve Adjustment	3421
Net Non-current Deferred Tax - Customer Deposits	3422
Total Reserves and Deferrals	3430
Operating Expenses - Network Support	5000
Operating Expenses - General Support	5010
Operating Expenses - Central Office Expense	5026
Operating Expenses - IOT	5042
Operating Expenses - Total Cable and Wire	5076
Operating Expenses - Other Property, Plant & Equipment	6000
Operating Expenses - Network Operations	6010
Depreciation - General Support Facilities	6020
Depreciation - Transmission	6050
Depreciation - IOT	6060
Depreciation - Cable & Wire Facilities	6070
Amortization - Capital Leases	6160
Amortization - Other	6254
Total Depreciation and Amortization	6260
Total Plant Non-Specific	6270
Customer Operations - Marketing	7000
Customer Operations - Coin Collection & Administration	7200

Customer Operations - Category 1		7220
Customer Operations - Category 2		7290
Customer Operations - Other Customer Services		7300
Customer Operations - Total		7320
Corporate Expense		7334
FCC Expense		7350
Total Operating Expenses		7351
State and Local Taxes		8007
Federal Taxes		8020

9/25/97

Payphone Subsidy Determination Model - version 1.2

For use in calculating the minimum amount to be removed from LEC access rates

page 1 of 4

Local Exchange Company / State Reviewed:

Company 1

REVENUES (\$000)

Print All Pages
For Company Above

Lines & Formulas

Coin Revenues			
Line 1	Coin revenues (Acct 5010)	\$	-
Line 2	% of coin revenues from operator services		0%
Line 3	Coin revenues less operator revenues	\$	-
Line 4			
Line 5			
Line 6			
Coin Revenues + Per Line Compensation			
Line 7	Coin revenues less operator revenues	\$	-
Line 8	Interim Per Line Compensation	\$	-
Line 9			
Line 10	Total	\$	-
Line 11			
Coin Revenues + Per Call Compensation			
Line 12	Coin revenues less operator revenues	\$	-
Line 13	Per Call Compensation	\$	-
Line 14			
Line 15	Total	\$	-
Line 16			
Line 17			
Computational Inputs			
Line 18	LEC owned payphone line count		ARMIS 43-08
Line 19	Independent payphone service provider lines		-
Line 20	Average monthly call volume per payphone		-
Line 21	Intrastate allocation percentage		75%
Line 22	Interim per line compensation	\$	45.85
Line 23	Per call compensation	\$	0.35
Line 24	Rate of Return		10%
Line 25	Estimated Tariffed Rate - Smart PAL	\$	-
Line 26	Percent of Smart PAL tariffed rate that is cost		0%
Line 27	Estimated cost of Smart PAL	\$	-
Line 28			
Line 29			
Line 30			

Model Inputs / Assumptions:

Actual Smart PAL Rates Were Used
Actual Smart PAL Costs Were Used
Smart PAL Margin Over Cost Was Used For Imputation

Payphone Subsidy Determination Model - version 1.2

page 2 of 4

For use in calculating the minimum amount to be removed from LEC access rates

Local Exchange Company Reviewed:

Company 1

COSTS - Intrastate Revenue Requirement Calculation (\$000)

	DESCRIPTION	(1) INTERSTATE PAYPHONE INVESTMENT & EXPENSES (column E)	(2) INTRASTATE PAYPHONE INVESTMENT & EXPENSES Column 1 + 3	ARMIS Row
	INVESTMENT			
Line 50	Total General Support Facilities	-	-	1004
Line 51	Total Category 4 1	-	-	1300
Line 52	Total Category 1 IOT	-	-	1428
Line 53	Total Cable & Wire Facilities	-	-	1530
Line 54	Total Telephone Plant	-	-	1540
Line 55	Sum(L50 - L53)			
Line 56	Capital Leases	-	-	2020
Line 57	Leasehold Improvements	-	-	2140
Line 58	Intangible Assets	-	-	2160
Line 59	Total Other Plant	-	-	2203
Line 60	All Other Inventory	-	-	2221
Line 61	Cash Working Capital	-	-	2230
Line 62	FCC Inv. Adj.	-	-	2250
Line 63	Total Investment	-	-	2260
Line 64	1.54 * SUM(L56 - L62)			
Line 65	DEPRECIATION RESERVE			
Line 66	General Support	-	-	3010
Line 67	Transmission	-	-	3040
Line 68	IOT	-	-	3050
Line 69	Cable & Wire Facility	-	-	3060
Line 70	Property H/TU	-	-	3070
Line 71				
Line 72	AMORTIZATION RESERVE			
Line 73	Capital Leases	-	-	3150
Line 74	Lease Hold Improvement	-	-	3220
Line 75	Intangible and Other	-	-	3260
Line 76				
Line 77	NET NON CURRENT DEFERRED TAX			
Line 78	General Support Facilities	-	-	3350
Line 79	Transmission	-	-	3380
Line 80	IOT	-	-	3390
Line 81	Cable & Wire Facilities	-	-	3400
Line 82	FCC Reserve Adjustment	-	-	3421
Line 83	Customer Deposits	-	-	3422
Line 84	Sum (L66 - L83)			3430
	Total Reserves & Deferrals			

Payphone Subsidy Determination Model - version 1.2

page 3 of 4

For use in calculating the minimum amount to be removed from LEC access rates

Local Exchange Company Reviewed:

Company 1

COSTS - Intrastate Revenue Requirement Calculation - Continued (\$000)

		(1) INTERSTATE PAYPHONE INVESTMENT & EXPENSES (column E)	(2) INTRASTATE PAYPHONE INVESTMENT & EXPENSES Column F-3	ARMIS Row
	DESCRIPTION			
	OPERATING EXPENSES			
Line 100	Network Support	-	-	5000
Line 101	General Support	-	-	5010
Line 102	Central Office Expense	-	-	5026
Line 103	ICOT	-	-	5042
Line 104	Total Cable and Wire	-	-	5076
Line 105	Other PP & E	-	-	6000
Line 106	Network Operations	-	-	6010
Line 107				
Line 108				
Line 109	DEPRECIATION			
Line 110	General Support Facilities	-	-	6020
Line 111	Transmission	-	-	6050
Line 112	ICOT	-	-	6060
Line 113	Cable & Wire Facilities	-	-	6070
Line 114				
Line 115	AMORTIZATION			
Line 116	Capital Leases	-	-	6160
Line 117	Other	-	-	6254
Line 118	SUM (L116, L117)	-	-	6260
Line 119	Total Depreciation and Amortization	-	-	
Line 120	Total Plant Non-Specific	-	-	6270
Line 121				
Line 122	CUSTOMER OPERATIONS			
Line 123	Marketing	-	-	7000
Line 124	Category 1	-	-	7220
Line 125	Total Category 2	-	-	7290
Line 126	Other Customer Services	-	-	7300
Line 127	SUM(L123, L126)	-	-	7320
Line 128	Customer Operations	-	-	
Line 129				
Line 130	Corporate	-	-	7334
Line 131	ICC Expense	-	-	7350
Line 132	SUM(L101, L105) + L120 +	-	-	7351
Line 133	L127 + L130 + L131	-	-	
Line 134	Total Operating Expenses	-	-	
Line 135	TAX			
Line 136	State and Local Taxes	-	-	8007
Line 137	Federal Taxes	-	-	8020
Line 138	Total Operating Expenses & Taxes	-	-	
Line 139	Return on Investment	-	-	
Line 140	N/A - Long Term Support	-	-	
Line 141	Intrastate Revenue Requirement	-	\$	

Payphone Subsidy Determination Model - version 1.2

For use in calculating the minimum amount to be removed from LEC access rates

page 4 of 4

Local Exchange Company Reviewed:

Company 1

COSTS - Coin Collection Expense and Commissions (\$000)

Line 160	Intrastate Coin Collection Expense	\$	-
Line 161	Payphone Commissions	\$	-
Line 162	L160 + L161	<u>\$</u>	-
	Total Coin Collection Expense and Commissions	<u>\$</u>	-

ARMS 43-04
Row 7200

COSTS - Imputed Access Line Charges (\$000)

Line 170	L19	LEC owned payphone line count	\$	-
Line 171		Monthly Smart PAL Rate - Margin Over Cost	\$	-
Line 172	(L170*L171*12)/1000	Total annual PAL charges	<u>\$</u>	-

SUBSIDY DETERMINATION (\$000)

Comparison: Revenues to Costs				
Line 180	L3	Revenues	\$	-
Line 181	L141	Costs: Intrastate Revenue Requirement	\$	-
Line 182	L162	Costs: Coin Collection Expense & Commissions	\$	-
Line 183	L172	Costs: Imputed Access Line Charges	\$	-
Line 184		Revenues > Costs? No Subsidy	\$	-
Line 185		Revenues < Costs? (Subsidy)	\$	-
Line 186				
Line 187				
Line 188				
Comparison: Revenues to Costs				
Phase 1 (Per Line Compensation)				
Line 190	L9	Revenues	\$	-
Line 191	L141	Costs: Intrastate Revenue Requirement	\$	-
Line 192	L162	Costs: Coin Collection Expense & Commissions	\$	-
Line 193	L172	Costs: Imputed Access Line Charges	\$	-
Line 194		Revenues > Costs? No Subsidy	\$	-
Line 195		Revenues < Costs? (Subsidy)	\$	-
Line 196				
Line 197				
Comparison: Revenues to Costs				
Phase 2 (Per Call Compensation)				
Line 198				
Line 199				
Line 200	L15	Revenues	\$	-
Line 201	L141	Costs: Intrastate Revenue Requirement	\$	-
Line 202	L162	Costs: Coin Collection Expense & Commissions	\$	-
Line 203	L172	Costs: Imputed Access Line Charges	\$	-
Line 204		Revenues > Costs? No Subsidy	\$	-
Line 205		Revenues < Costs? (Subsidy)	\$	-
Line 206				
Line 207				
Line 208				
Line 209				
Line 210				

U S WEST SMART PAL RATES / COST BY STATE

Smart PAL Rates

- ☒ Use Actual Smart PAL Rates
☐ Use Estimated Smart PAL Rates

Estimates on each individual state worksheet

Smart PAL Costs

- ☐ Use Actual Smart PAL Costs
☒ Use Estimated Smart PAL Costs

Estimates on each individual state worksheet

Imputation Options

- ☒ Use Smart PAL Tariffed Rates
☐ Use Smart PAL Margin over Cost

[Click Here To Go To
Roll Up Worksheet](#)

USW proprietary
data required for
actual cost review

Company / State
USW / South Dakota

COMPANY- OWNED PHONES PER USW	SMART PAL - FLAT RATED	COST OF FLAT RATE SMART PAL	NET INTRASTATE SMART PAL COST (75%)	MARGIN OVER INTRASTATE COST
	\$ 40 13	\$ -	\$ -	\$40 13

0142.43.122

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Sd (PAL RATES)

Page 2 of 2

9/29/07

U S WEST, Inc.
7801 California Street, Suite 5100
Denver, Colorado 80202
303.452.2700
Facsimile 303.291.7000
email: lmaez@uswest.com

Luke Maez
Legal Secretary

USWEST

RECEIVED

OCT 23 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA OVER-NIGHT DELIVERY

October 11, 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

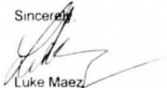
Re: In the Matter of MCI Communications Corporation and AT&T
Communications Inc. to Certify LECS as to Compliance with FCC
Payphone Orders
TC97-039

Dear Mr. Bullard:

Enclosed for filing is an original and ten (10) copies of U S WEST
Communications, Inc.'s **Response of U S WEST To Use AT&T/MCI Model** in the
above referenced docket.

Please file stamp an extra copy of this letter, enclosed, and return to me in the
enclosed self-addressed stamped envelope. Thank you.

Sincerely,



Luke Maez
Legal Secretary to
Bill Heaston

enci

014243:1224

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF MCI COMMUNICATIONS)
CORPORATION AND AT&T)
COMMUNICATIONS, INC. TO CERTIFY LECS) TC97-039
AS TO COMPLIANCE WITH FCC PAYPHONE)
ORDERS.)

RESPONSE OF U S WEST TO USE OF AT&T/MCI MODEL

On October 1, 1996, AT&T and MCI jointly filed additional unsolicited comments in this docket regarding a purported subsidy model to be used at the Commission's direction for determining whether incumbent local exchange companies (ILEC) in South Dakota complied with federal law concerning payphone subsidies.

U S WEST Communications, Inc. (U S WEST) has the following comments:

1. U S WEST filed a motion to dismiss this proceeding wherein it discussed the appropriate legal recourses available to AT&T and MCI to seek review of the appropriate ILEC switched access prices.¹ U S WEST would ask that the Commission review the legal analysis therein, and that filing is incorporated by reference in

¹ This Commission is under no obligation to investigate whether subsidies existed prior to the deregulation of payphone services. The only obligation the Commission has is to "determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies." In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128 (rel. Sep. 20, 1996), ¶ 156 ("Report and Order"). Also reported at 11 FCC Rcd 20,541.

3. Paragraph 8 in the AT&T/MCI filing would indicate that AT&T and MCI attempted to enter into some meaningful dialog with N E NWT regarding the existence of subsidies. Other than inquiring as to the existence and timing of price decreases for switched access services, there has been no meaningful attempt by

U S WEST is aware that the Commission rejected U S WEST's motion to dismiss on July 2, 1997.

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128 (rel. Apr. 4, 1997), ¶ 10, n. 91.

This task is greatly simplified in the state of South Dakota by the existence of the South Dakota switched access rules. These rules contain the same provisions contained in the FCC's Part 36.6 rules for allocation of a portion of payphone costs to the common line revenue requirement. This means that, if a South Dakota ILEC's access charges are priced at the revenue requirement, then a payphone subsidy would be included in the intrastate carrier common line charge (CCLC). This is the same situation that existed in the interstate jurisdiction, and the FCC gave explicit instructions in its payphone orders for removal of the payphone costs from the interstate CCLC. Because of the similarity between FCC and South Dakota rules, the FCC's instructions can and should also be used to remove payphone costs from South Dakota intrastate CCL charges. U.S. WEST has done this, as explained in the January 1987 affidavit of Barbara M. Johnson and in U.S. WEST's Answer to Motion to Dismiss. U.S. WEST's Wayne Calk pointed out in his April 1987 letter to Mr. Bullard that the South Dakota switched access rules need to be revised to remove payphone costs from access charges to be consistent with the FCC payphone orders.

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either AT&T or MCI to seek resolution of issues outside of the complaint process.

4. Paragraph 1 of the AT&T/MCI filing relates a comment of the Department of Public Service (DPS) on the PAL imputation issue. While the DPS is entitled to its opinion, the Minnesota Commission did not rule on that opinion and at an October 14, 1992 meeting voted to dismiss the AT&T/MCI complaint, as this Commission should likewise do.

5. In any event the imputation requested is not necessary. U S WEST's deregulated coin service currently includes in its "rate the cost of the PAL." While this results in negative earnings for the coin service, current law protects the local service and switched access customer from subsidizing the coin service by covering those losses. Section 49-31-4 prohibits the revenues of noncompetitive services from subsidizing fully competitive services or the attribution of fully competitive service expenses to noncompetitive services. Pursuant to this section U S WEST currently provides the Commission, on an annual basis, its fully separated, assigned and distributed revenues, investments and expenses to ensure that the prohibited subsidies do not occur.

Order Reclassifying Various Telecommunications Services, Docket No. TC92-026 Nov. 7, 1992, paras. 38-51. The PAL is classified as noncompetitive. Id. para. 48.

CA8 Report 14 ii, column 6, line 6.

As discussed later, the FCC did not eliminate the contribution to the local loop resident in interstate switched access prices. If the PAL cost is still recovered in part by the contribution to the loop in access prices, then the main phone operation is above cost. Another view or option is to raise the

In their October 4, 1981, additional comments, at page 1, AT&T and MCI say they "continue to be concerned about the potential for overpayment of payphone access costs." They do not explain what they mean by "payphone access costs." What they do seem to be concerned about is paying the new compensation for dial-around and subscriber 800 calls ordered by the FCC. U S WEST reduced its interstate access charges effective April 15, 1981, by \$124.4 million. AT&T and MCI announced increases to their charges for 800 service to cover their increased costs for the new dial-around compensation, which costs were at the time estimated to be \$491 million annually for AT&T and \$159 million annually for MCI. AT&T also instituted surcharges on non-coin calls placed from payphones. Yet, AT&T and MCI withheld all dial-around compensation payment, first on the grounds that U S WEST had not met the FCC's checklist entitling it to the compensation and later because the DC Circuit Court had vacated the FCC's order setting the amount of the compensation. To date, U S WEST has billed \$27.3 million in interim compensation and has received payment of less than 1% of that amount.

price of a local payphone call. Of course, the AT&T and MCI customers continue to use the payphone for no charge, a circumstance which hardly seems fair.

Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 955 (D.C. Cir., 1997). Also the court clarified its order on September 16, 1997, and that version is found at 1997 U.S. App. LEXIS 24440. The DC Circuit Court vacated and remanded the FCC's order with regard to the amount of the compensation. The FCC issued a new order October 7 setting the per-call compensation amount at 28.4 cents, which is effective October 7. This is lower than the original compensation ordered of 50 cents per call. The FCC did not address the issue of the relationship between the per-call compensation and the lump sum, but indicated it will in a future order. U.S. WEST assumes that the lump sum compensation will bear a relationship to the per-call compensation amount, just as it did in the FCC's original order setting the compensation amount.

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Therefore, since April 13, the carriers have enjoyed a reduction in their interstate access charges and increased revenues from 800 service rate increases designed to cover their increased costs of paying dial-around compensation. While the carriers have made a token payment, the delays in paying the compensation are clearly a financial boon for the carriers, and a financial loss to INRCA's such as U S WEST.

The carriers want make it sound as if the new dial-around compensation is designed to replace a payphone subsidy that used to be contained in access charges. This is not the case. There is no "double recovery." The new payphone compensation authorized by the Act and the FCC is specifically to compensate payphone owners for a use of the phone they received no compensation for in the past. Previously, carriers paid nothing to payphone owners when customers placed long distance calls from payphones by dialing an 800 number or an access code. In other words, this use of a payphone was free to both the long distance carriers and their customers. The new compensation should not be considered to be double recovery of anything, because it is payment for a use of the phone that was not compensated at all prior to the FCC's orders.

Consider the payphones at a location like an airport. U S WEST may provide payphones there under contract with the airport. Those phones receive heavy use from travelers making long distance calls, and many travelers use calling cards that provide access to the long distance carrier via an 800 number. In fact, this is the preferred type of calling card being used by long distance carriers today. The vast majority of the long distance calls made from U S WEST payphones are placed via an 800 number or access code. Before the FCC's action, U S WEST and other payphone owners had no way of collecting any compensation for that very significant use of those phones.

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7. The Carriers complain on page 3 of their filing that "without a proper showing of pertinent data, MCI and AT&T are unable to ascertain if South Dakota LECs are in compliance with the FCC requirement's to remove subsidies from intrastate rates." They also indicate that they cannot obtain the relevant data from the tariff filings of the LECs and give this as an additional reason why the Commission should conduct an investigation. However, they fail to mention the mechanism which the FCC did set up by which they can receive pertinent data. In its April 15 order, the FCC stated:

[W]e note the Commission concluded that "[t]o receive compensation a LEC must be able to certify" that it has satisfied each of the individual prerequisites to receiving the compensation mandated by the Payphone Reclassification Proceeding. The Commission did not require that the LECs file such a certification with it. "We leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement."¹⁰

U.S.WEST has certified to the carriers that it has met all of the requirements set by the FCC. Both AT&T and MCI have asked for backup data regarding the removal of intrastate payphone subsidies. The carriers state that the "LECs may have concerns about providing information that could be considered as providing a competitive advantage to MCI and AT&T." These data will be made available to them once they have signed a non-disclosure agreement. Currently, the details of the non-disclosure

¹⁰ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1994, Order, CC Docket No. 94-124, rel. Apr. 15, 1997, ¶ 12.

A copy of this certification letter is attached.

8443. CA. NA. 18

agreement are being worked out between the attorneys for U S WEST and AT&T. The appropriate process is taking place. There is no need for the Commission to get involved in this process by responding to this filing other than to dismiss it.

b. The carriers have presented a Payphone Subsidy Determination Model which they propose the Commission should use in its investigation of the ILECs. The model presented by the carriers is seriously flawed and should not be used for any purpose, much less to determine if an ILEC's payphone services were being subsidized.⁵

a. The model includes the costs of the access line serving the payphone, which is clearly contrary to the FCC's orders regarding subsidy removal.

The FCC has stated:

Accordingly, we adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (i.e., the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). Therefore, we conclude that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997 (Report and Order, ¶ 183)

⁵ On page 4 of their Additional Comments, AT&T and MCI talk about independent LECs misusing NECA interstate access rates, which is totally off base. While this is an issue more for the independents than for U S WEST, it's worth pointing out how little the carriers seem to know about South Dakota and the situation in this state.

⁶ The carriers say they have included a copy of the model "populated with publicly available data (1996, ARMIS Reports 43-03, 43-04 and 43-08) for U S WEST." However, only a copy of the model containing no data was attached to the Additional Comments. MCI did file a model populated with U S WEST ARMIS numbers in U S WEST's Utah rate case, and so U S WEST has had an opportunity to study not only the model itself but also the use of ARMIS data in the model.

This decision was reconsidered in the Order on Reconsideration:

The procedure above will result in the removal from the CCL charge of deregulated set cost. Regulated line cost will also be removed and recovered through SLC charges except any portion that might exceed the \$6.00 cap on the multiline SLC charge. Those SLC deficit costs will be recovered through the CCL charge, in the same manner as the deficit costs associated with non-payphone lines.¹⁴

In short words, the FCC made it clear that the costs of payphone lines were to continue to be recovered in the same manner as non-payphone line costs, in the subscriber line charges and CCL charges. Since South Dakota does not have a subscriber line charge, all of the line costs should be recovered in the CCL charges. The critical point here is that the FCC did not change the recovery of payphone line costs, and they continue to be "subsidized" just as do all other line costs by interstate access charges.

By The model includes the access line costs, not once but twice, thus doubling the effects of this basic flaw in the model.

First, the access line costs are included in the development of the "Intrastate Revenue Requirement" appearing on lines 141 and 181 of the model. The inputs to the model include Total

Category 4.1 (ARMIS row 1300) and Total Cable & Wire Facilities (ARMIS row 1300) investments. These appear on lines 51 and 53 of the model. Category 4.1 is Central Office Equipment (COE), Exchange Line Circuit Equipment Excluding Wideband. The Total

¹⁴ In the Matter of Implementation of the Pay Telephone Reclassification and Reorganization Provisions of the Telecommunications Act of 1994, Order on Reconsideration, CC Docket No. 94-128 (rel. Nov. 8, 1996), ¶ 206.

Category 4.1 includes ARMS Row 1275, "Basic Category 4.13 CDE that is associated with subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services and which investment is allocated pursuant to Sections 36.126(c)(3) and 36.154(c)-(f)." The Total Cable & Wire Facilities (C&WF) includes ARMS Row 1400, "Category 1.3 C&WF that is associated with subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services and are allocated pursuant to Sections 36.154(c)-(f)." (FCC Report 41-84 - Rep. Def. Row Instructions, February 1997 revision). What this means is the central office and loop investments associated with the access lines are inputs into the model.

The model then goes on to include depreciation (Lines 111 & 113) and return (Line 139) on these access line investments. Expenses associated with these investments are also included (Lines 103 and 105). These access line costs all flow through to the revenue requirement calculated on Line 141.

Then the model adds to this revenue requirement the imputed access line charges for the Smart PAL rate (developed on lines 170-172) to arrive at the total costs (Lines 181-183). However, the Smart PAL rate has already been set to fully recover the costs of the access line, plus contribution. By adding the imputed Smart PAL rate to the revenue requirement that already

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deliberate access line costs, the model counts access line costs twice.

c. The model purports to be a subsidy analysis, but inappropriately includes imputation of the Smart FAL price. By including it, mixed post-deregulation and pre-deregulation factors into a single analysis, making the analysis meaningless.

As noted above, it is inappropriate to include either the cost of the access line or the imputed price of the access line in the subsidy analysis. Nonetheless, the problem is compounded by the inclusion of the imputed price. The analysis clearly establishes that the LEC's payphone service prior to deregulation, which took place in the interstate jurisdiction on April 15, 1997. The FCC said:

[W]e require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997.¹³

Clearly, since the FCC ordered subsidy to be removed by the date of deregulation, the FCC is talking about subsidy which may have existed prior to deregulation. A post-deregulation analysis is not relevant or needed. The FCC did not create a payphone subsidy by deregulating payphone service. Any post deregulation subsidy of payphone operations by regulated products is prevented by the accounting safeguards provided by the reclassification or removal of payphone costs and revenues from the regulated books.

Imputation of FAL prices to the LEC's payphone operations is a post-deregulation occurrence performed in order to assure

¹³ Report and Order, ¶ 186.

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competitive neutrality between a LSC's payphone operation and an independent payphone provider. Imputation has no role to play in a cursory analysis.

On page 5 of their June 20 response to U S WEST's Motion to Dismiss, MCI and AT&T requested that the Commission take action "to ensure that LSCs are not overcompensated for their payphone investment and also to assure that access charges are not inflated by the inclusion of payphone costs." Such action is not required of the Commission. Since payphone operations have been deregulated, compensation for U S WEST's payphone investment is entirely a matter of the compensation it can earn in the competitive marketplace. South Dakota's switched access rules do contain a provision for allocating a portion of payphone costs to access charges, however, this allocation is easily identified and removed and U S WEST has done so. There is no need for Commission action.

Accordingly, U S WEST requests that the Commission decline to "press forward" with the complaint. U S WEST renews its motion to dismiss this petition or complaint and close the matter.

[THIS SECTION INTENTIONALLY LEFT BLANK]

8 JUL 11 04 24 11 8
Respectfully submitted this 22nd day of October 1997.

U S WEST COMMUNICATIONS, INC.

By: 

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Denver, Colorado 80202
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ATTACHMENT

U S WEST Communications, Inc.
1801 California Street, Suite 4750
Denver, Colorado 80202
303 856-4811
Facsimile 303 856-6378

Frank H. Hattenbuehler
Vice President

May 20, 1997

Name
Title
Company
Street Address
City, State, Zip

Dear Mr./Ms., Name: (Carriers with Interim Compensation Obligations - see attached list)

In response to the FCC's implementation requirements for Section 276 of the Telecommunications Act of 1976 regarding the new rules and policies governing the payphone industry, U S WEST Communications ("U S WEST") hereby certifies that it has met all the requirements of the FCC to receive payphone compensation from carriers in all of its states except one.⁴¹ The seven requirements for eligibility were initially set forth by the Commission in paragraphs 131 and 132 of the Reconsideration Order in the Payphone Reclassification Proceeding, and have been clarified and modified by subsequent Orders. Specifically⁴² U S WEST certifies that:

1. It has an effective cost accounting manual (CAM) filing. (Attachment A)
2. It has an effective CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (SLC) revenue. (Attachment A)
3. It has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies. (Attachment B)
4. It has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order. (Attachment A)
5. It has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones), (except for New Mexico where the tariff for dumb payphones (Smart PAL) is still pending approval). (Attachment C)

⁴¹ The eligible states are Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Approval of the tariff for "dumb" payphone service (Smart PAL) is still pending in New Mexico.

⁴² Attachments A through D contain specific information associated with U S WEST's compliance with the FCC's requirements for compensation.

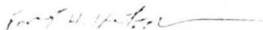
6. It has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines. (Attachments A & D)
7. It has an approved comparably efficient interconnection (CEI) plan for basic payphone services and unbundled functionalities. (Attachment A)

In addition, U S WEST certifies that it has effective intrastate payphone services tariffs which are cost-based, consistent with the requirements of Section 276, nondiscriminatory and consistent with Computer III guidelines. Pursuant to the Commission's limited waiver of the "new services" test granted in its Order of April 15, 1997 (DA 97-805), U S WEST has filed any rate changes required in the existing intrastate tariffs for unbundled functionalities to achieve compliance with the "new services" test.

Accordingly, U S WEST is in full compliance with the applicable requirements as set forth in the Payphone Orders. It is, therefore, eligible to receive flat rate interim compensation and per call compensation from carriers as of April 15, 1997, in 13 of its 14 States and on the first day following certification eligibility in New Mexico.

In order to effectuate the FCC's interim compensation provisions, U S WEST will bill carriers per payphone, per month, the amounts specified in Appendix F of the Payphone Order.

Sincerely,



Frank H. Hatzenbuehler
Vice President Markets Pricing & Regulatory Support
U S WEST Communications

Attachments

cc: Tom Bystrzycki, U S WEST
David Anastasi, U S WEST
Regina Kenney, FCC
Mary Beth Richards, FCC
John B. Muleta, FCC
Michael Carowitz, FCC
Arizona Corporation Commission
Colorado Public Utilities Commission
Idaho Public Utilities Commission
Iowa Utilities Board
Washington Utilities and Transportation Commission

Minnesota Public Utilities Commission
Montana Public Service Commission
Nebraska Public Service Commission
New Mexico Public Utility Commission
North Dakota Public Service Commission
Oregon Public Utility Commission
South Dakota Public Utilities Commission
Utah Public Service Commission
Wyoming Public Service Commission

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INTERIM COMPENSATION OBLIGATIONS
U S WEST Certification Letter Distribution

AT&T Communications, Inc.
ALASCOM, Inc.
MCI Telecommunications Corp.
Sprint Communications Co.
LDDS WORLDCOM
Frontier Communications Services
Frontier Communications International, Inc.
Frontier Communications of the North Central Region
Frontier Communications of the West, Inc.
Cable & Wireless Communications, Inc.
LCI International Telecom Corp.
Excel Telecommunications, Inc.
Telco Communications Group, Inc.
Midcom Communications, Inc.
Tel-Save, Inc.
U.S. Long Distance, Inc.
VarTec Telecom, Inc.
GE Capital Communications Services Corp.
General Communication, Inc.
MFS Intelenet, Inc.
Business Telecom, Inc.
Communication Telesystem International
Oncor Communications, Inc.
The Furst Group, Inc.
American Network Exchange, Inc.

U S WEST Communications

FEDERAL FILING REQUIREMENTS			
<i>FCC Requirement</i>	<i>Filed</i>	<i>Approved/ Implemented</i>	<i>Tariff Transmittal</i>
1) Cost Allocation Manual (CAM)	9/1/96	9/1/96	Adjustment made with RM8181 filing
2) Interstate CCL Tariff	1/15/97	Public Notice released 4/15/97	Transmittal No. 823 Tariff FCC No. 5
4) Deregulation/Reclassification of Payphone CPE	N/A	4/15/97	N/A
6) Interstate Tariffs for Unbundled Features	1/15/97 Revised 4/14/97	Public Notice released 4/15/97	Transmittal Nos. 301, 823 and 826 Tariff FCC No. 5
7) CEI Plans	1/6/97	Order released 4/15/97	(DA 97-796)

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**U S WEST Communications
State Filing Requirements**

3.) Intrastate Subsidy Removal			
<i>State</i>	<i>Explicit Payphone Cost Recovery Elements</i>	<i>Elimination of Subsidy/ Adjustment to Rates (Effective Date)</i>	<i>Other Activities</i>
Arizona	None	N/A No Subsidy	Not Applicable
Colorado	None	N/A No Subsidy	Not Applicable
Idaho - North	None	N/A No Subsidy	Not Applicable
Idaho - South	None	N/A No Subsidy	Not Applicable
Iowa	None	N/A No Subsidy	Not Applicable
Maine	Intrastate application of Part 69	N/A No Subsidy	No adjustment to rates, revenue requirement adjusted in pending access charge filing
Minnesota	None	N/A No Subsidy	Not Applicable
Montana	None	N/A No Subsidy	Not Applicable
Nebraska	None	N/A No Subsidy	Not Applicable
New Mexico	None	N/A No Subsidy	Not Applicable
North Dakota	None	N/A No Subsidy	Not Applicable
Oregon	Intrastate application of Part 69 used in past	N/A No Subsidy	No adjustment to rates, revenue requirement adjusted 4/15/97*
South Dakota	SD rules allocate pay phone costs to CCL	N/A No Subsidy	No adjustment to rates, revenue requirement adjusted 4/11/97*
Utah	None	N/A No Subsidy	Not Applicable
Washington	Intrastate application of Part 69 used in past	N/A No Subsidy	No adjustment to rates, revenue requirement adjusted 4/15/97*
Wyoming	None	N/A No Subsidy	Not Applicable

* A specific analysis of payphone revenue to costs shows there is no payphone subsidy. No adjustment to current rates required because current intrastate CCL charge is below the current adjusted revenue requirement.

**U S WEST Communications
State Filing Requirements**

5 Payphone Services Intrastate Tariff Filings			
Jurisdiction	Tariffs for "Dumb" Payphone Smart Lines Filed On	Date Approved Date Effective	Tariff Order No.
Arizona	1/15/97	Approved 4/17/97 Effective 4/15/97	Decision No. 60135
Colorado	1/15/97	Approved 2/12/97 Effective 4/15/97	Advice No. 2649
Idaho - North	1/15/97	Approved 4/23/97 Effective 4/15/97	Advice No. 97-02-N
Idaho - South	1/15/97	Approved 4/23/97 Effective 4/15/97	Advice No. 97-01-S
Iowa	1/15/97	Approved 2/6/97 Effective 4/15/97	Advice No. 1444
Maine	1/15/97	Effective 4/15/97	Advice No. 97-04-C
Minnesota	1/15/97	Effective 4/15/97	Docket P421 EM-97-93
Montana	1/13/97	Effective 4/15/97	Advice No. 97-02-N
Nebraska	1/15/97	Effective 4/15/97	NE 96-080
New Mexico	1/15/97	Pending	Pending
North Dakota	1/15/97	Effective 4/15/97	ND 96-036
Oregon	1/15/97	Approved 4/1/97 Effective 4/15/97	Advice No. 1668
South Dakota	1/15/97	Effective 4/15/97	Docket TC 97-006
Utah	1/15/97	Approved 4/22/97 Effective 4/15/97	A.L. 97-03
Washington	1/15/97	Approved 3/12/97 Effective 4/15/97	Advice No. 2825T
Wyoming	1/13/97	Effective 4/15/97	WY 96-064

U S WEST Communications Filing Requirements

6 - Unbundled Features and Functions		
Feature/Function	Availability	Tariff
Answer Supervision (Line Side)	Arizona, Colorado, Iowa, Idaho, South Minnesota, North Dakota, Nebraska, New Mexico, Oregon, Utah, Washington	Tariff FCC No. 5 Applicable State Tariffs
Blocking for 10XXX1, 10XXX011	Arizona, Colorado, Iowa, Idaho, North Idaho, South, Maine, Minnesota, Montana, North Dakota, Nebraska, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming	Tariff FCC No. 5 Applicable State Tariffs
International Blocking	Minnesota	Tariff FCC No. 5 Applicable State Tariffs
Billed Number Screening	Arizona, Colorado, Idaho, South, Iowa, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Tariff FCC No. 5 Applicable State Tariffs

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 22nd day of October 1997, an original and ten (10) copies of the foregoing **RESPONSE OF U S WEST TO USE OF AT&T/MCI MODEL** of U S WEST Communications, Inc. was sent via overnight mail to the following:

Mr. William Bollard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

In addition, true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following:

David A. Gerdes and
Robert K. Sahr
May, Adam, Gerdes & Thompson
Attorneys for MCI
P.O. Box 160
Pierre, SD 57501-0160

John Lovald
Olinger, Lovald, Robbennolt & McCahren
Attorneys for AT&T
P.O. Box 66
Pierre, SD 57501

Richard Cott
SDITC
P.O. Box 57
Pierre, SD 57501



U S WEST Communications, Inc.

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THOMAS C. ADAM
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CHARLES W. THOMPSON
ROBERT W. ANDERSON
BRENT A. MILLER
TIMOTHY W. ENGE
MICHAEL P. STARR
ROBERT A. SAHN

October 24, 1997

OF COUNSEL
HARRISON W. WAT

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605.224.8803
TELEFAX
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dag@magt.com

HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RE: MCI AND AT&T PAYPHONE PETITION
Docket: TC97-039
Our file: 0175.28

Dear Bill:

Enclosed are original and ten copies of a supplemental filing in this docket. Also enclosed is an additional face page which please date stamp and return to me in the enclosed self-addressed stamped envelope.

With a copy of this letter, I am sending copies of the enclosure to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List
John Lovald
Michel Murray
Mary Tribby

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF MCI TELECOMMUNICATIONS) TC97-039
CORPORATION AND AT&T COMMUNICATIONS)
INC.'S COMPLAINT TO CERTIFY SOUTH DAKOTA)
LOCAL EXCHANGE CARRIERS AS TO COMPLIANCE)
WITH FCC PAYPHONE ORDERS)

**CORRECTION TO THE COMMENTS OF MCI TELECOMMUNICATIONS
CORPORATION AND AT&T COMMUNICATIONS OF THE MIDWEST, INC.,
PRESENTING ADDITIONAL INFORMATION RESPECTING THE JOINT
COMPLAINT TO CERTIFY SOUTH DAKOTA LOCAL EXCHANGE CARRIERS
TO COMPLIANCE WITH FCC PAYPHONE ORDERS**

CORRECTION TO COMMENTS

On October 1, 1997 MCI Telecommunications Corporation (MCI) and AT&T Communications of the Midwest, Inc. (AT&T) filed comments presenting additional information with respect to the joint complaint filed by MCI and AT&T. In those comments MCI and AT&T stated that a review of the tariff filings made by independent LECs of South Dakota to bring intrastate services and rates into compliance with the FCC's payphone orders had been performed. MCI and AT&T further stated that the filings of the independent LECs which were reviewed by MCI and AT&T consisted of transmittal letters and revised tariff pages and that very little cost study information was presented to support these filings.

MCI drafted the comments and at the time the comments were produced MCI was not aware that the South Dakota Independent Telephone Coalition (SDITC) had transmitted cost study information to AT&T. Mr. Warren Fischer of AT&T was indeed in receipt of the cost study information. When the comments were drafted Mr. Fischer was out of the country and did not have an opportunity to review

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the comments. Had Mr. Fischer been able to review the comments, the erroneous statements respecting a lack of cost study information would not have been made. While MCI and AT&T acknowledge receipt of this information, neither company has come to any conclusion as to the adequacy of the information with respect to meeting the requirements of the FCC Orders.

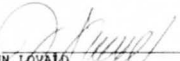
MCI and AT&T hereby state that cost study information was received of the SDITC and inasmuch retract the statements to the contrary contained in the comments of October 1, 1997. MCI and AT&T regret any confusion which may have ensued from the erroneous statements and are pleased to have this opportunity to provide a correction.

RESPECTFULLY SUBMITTED this 22nd day of October, 1997.

MAY, ADAM, GERDES & THOMPSON LLP

OLINGER, LOVALD, ROBBENOLT
& MCCAHREN:

BY: 
DAVID A. GERDES
Attorneys for MCI
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Phone: (605) 224-8803
Fax: (605) 224-6289

BY: 
JOHN LOVALD
Attorneys for AT&T
P.O. Box 66
Pierre, SD 57501
Phone: (605) 224-8851
Fax: (605) 224-8269

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 22nd day of October, 1997, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the above-captioned in the this action to the following at their last known addresses, to-wit:

William P. Heaston
Senior Attorney
US WEST Communications, Inc.
1801 California, Room 5100
Denver, CO 80202

Richard D. Coit
Executive Director
SDITC
P.O. Box 57
Pierre, SD 57501

Tamara Wilka
Boyce, Murphy
P.O. Box 5015
Sioux Falls, SD 57117-5015


David A. Gerdes

9411342418

LAA OFFICES
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P.O. BOX 160
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FARM, GILSON TO, MBS, PER
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ROBERT W. ANDERSON
BRENNAN MURRAY
MICHAEL T. SHAW
MICHAEL T. SHAW

November 20, 1997

RECEIVED

NOV 20 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TOP COUNSEL
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HAND DELIVERED

Mr. William Bullard, Jr.
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

RE: MCI AND AT&T PAYPHONE PETITION
Docket: TC97-039
Our file: 0175.28

Dear Bill:

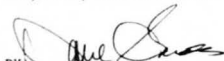
Enclosed are original and 10 copies of the joint comments of AT&T and MCI, rebutting the response of U S WEST in this docket.

I believe we are now at a point where the Commission needs to decide how best to proceed in this matter. We would be happy to meet with you and Rolayne Wiest to discuss this question informally before it is taken up by the Commission.

With a copy of this letter, I am sending copies of the enclosure to the service list. I am also enclosing an additional face page of the filing, which I would appreciate your date stamping and returning to me in the enclosed self-addressed stamped envelope. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



BY: 
DAG:mw
Enclosures
cc/enc: Service List
Michel Murray
John Lovald

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 20 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Petition of MCI) TC97-039
Telecommunications Corporation)
and AT&T Communications of the)
Midwest, Inc. to Certify All LECs as to)
Compliance With FCC Payphone)
Orders)

**REBUTTAL TO U S WEST'S RESPONSE
TO THE USE OF THE AT&T/MCI MODEL**

On October 22, 1997, U S West Communications, Inc. ("USWC") filed comments in the above captioned docket allegedly in response to the use of the payphone subsidy determination model ("PSDM") jointly developed by AT&T Communications of the Midwest, Inc. ("AT&T") and MCI Telecommunications Corporation ("MCI"). While USWC did provide certain criticisms of the PSDM that will be discussed later in this document, it used the filing as an opportunity to request that the Commission dismiss the petition filed jointly by AT&T and MCI on April 14, 1997, even though the Commission had previously rejected USWC's earlier motion to dismiss the petition. Indeed, USWC went so far as to point out its awareness of the dismissal yet continued to ask the Commission to reverse the previous decision.¹ The response of USWC is incomplete at best. AT&T and MCI hereby provide a rebuttal to the response of USWC, presenting additional information and clarification.

1. USWC has suggested that the Federal Communications Commission ("FCC") Order reclassifying payphones specifically provided a complaint remedy at the FCC and that AT&T and MCI should pursue concerns in that forum. The portion of the FCC Order cited by USWC to support this observation specifically states:

¹ Response of USWC to use of AT&T/MCI Model, p.1, n.2

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"Any party who believes that a particular LEC's intrastate tariffs fail to meet these requirements has **the option** of filing a complaint with the Commission. 47 U.S.C. § 208." (emphasis added).

As discussed later in this document, both AT&T and MCI initially exercised that option before filing the joint petition with the South Dakota Public Utilities Commission "Commission". However, this remedy provided by the FCC is not the only alternative available to concerned parties. State regulatory bodies such as the South Dakota Public Utilities Commission have the authority to set intrastate rates and should determine whether subsidies have been removed from USWC's rates.

Interestingly, USWC now argues that this joint petition should be heard by the FCC. However, in March 1997, prior to filing the joint petition, both AT&T and MCI submitted *ex parte* letters to the FCC expressing concern that the Regional Bell Operating Companies "RBOCs" had not filed rate revisions to eliminate intrastate payphone subsidies. In April of this year the RBOC Payphone Coalition also made an *ex parte* filing to the FCC (including attachments from USWC) specifically including the following statement:

"The payphone orders are clear: The removal of intrastate payphone cost recovery is a matter for the States in the first instance. Order on Reconsideration p. 131. The RBOCs are actively working with the States to identify and eliminate any intrastate payphone subsidies. To the extent AT&T and MCI wish the States to handle this matter differently than they are, they should so advise the state commissions before complaining to the FCC. If AT&T and MCI still believe there is a subsidy in a particular state after exhausting state remedies, then they should file a complaint with the Commission as indicated in the Bureau's April 4 Order (at 15 n.93)." (emphasis added)

Clearly USWC cannot have it both ways. As previously noted in past filings made in this proceeding, this Commission is uniquely situated to review this matter.

⁷ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128 (rel. April 4, 1997), p. 30, n. 93.

⁸ Ex Parte Filing of the RBOC Payphone Coalition: April 7, 1997 p. 1-2.

2. USWC claims that the price of switched access in South Dakota has been adjusted to remove intrastate subsidies.⁴ Indeed, on June 13, 1997, a USWC filing became effective that reduced the intrastate Carrier Common Line ("CCL") rate element of USWC from \$0.040575 to \$0.040102. Hypothetically, if the cost of one payphone station is \$500, then USWC has essentially eliminated from the regulated accounts an amount equal to fewer than 31 payphone stations. To the best of MCI's and AT&T's knowledge and information, USWC has more than 2,700 payphones in South Dakota.

The results of AT&T's and MCI's PSDM indicate the existence of a significant intrastate payphone subsidy. Hence, AT&T and MCI strongly disagree with USWC's contention that there is nothing further to do with regard to USWC's switched access pricing.

3. Paragraph 3 of the USWC Response states that except for an inquiry as to the existence and timing of price decreases for switched access services, no meaningful attempt has been made by AT&T and MCI to resolve the issues outside of the complaint process. AT&T and MCI find this statement to be patently false.⁵ In fact, if any party is at fault for delaying resolution of this matter it is USWC.⁶ In its Response, USWC has stated that the data requested by AT&T and MCI will be made available once a non-

⁴ Response of USWC to use of AT&T MCI Model, p. 2, n. 4.

⁵ On June 23, 1997 AT&T corresponded with USWC regarding a letter received from USWC on May 20, 1997 in which USWC indicated compliance with the FCC's Orders and requested payment of the interim payphone compensation. In AT&T's letter to USWC, a brief data request was presented. AT&T noted in its letter that provision of the requested information would facilitate a satisfactory resolution to this matter. To date this information has not been forthcoming.

⁶ USWC submitted correspondence to AT&T on August 6, 1997 indicating that USWC would provide as much of the information AT&T had previously requested (in its letter of June 23, 1997) that could be provided by USWC without initiating a major work effort. USWC went on to note that much of the requested information is readily available to AT&T in the public record. Although AT&T and MCI have sought ARMS data from USWC, this data must be presented at the subaccount level for any meaningful analysis to take place. The information sought at the subaccount level is not readily available in the public record, hence the ability of AT&T and MCI to conduct meaningful analysis remains severely impaired. In the same correspondence, USWC went on to note that the receipt of the promised information should in no way delay the payment of payphone compensation to USWC. It is precisely a similar statement from USWC regarding production of necessary information and the subsequent lack of production of that information that brought about the joint petition of MCI and AT&T in this case. As noted in an earlier filing before this Commission, prior to filing the joint petition, MCI and AT&T held meetings with USWC.

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disclosure agreement is signed. While this promise is encouraging, there is no guarantee that a non-disclosure agreement will soon be forthcoming. It is therefore preposterous for USWC to suggest that an appropriate process is taking place and that the Commission should not be involved.

4. USWC points out that while the Minnesota Department of Public Service is entitled to its opinion on public access line imputation, the Minnesota Commission dismissed the joint petition of AT&T and MCI. That dismissal was based on the presentation of new information by USWC. What USWC did not state was that the Minnesota Commission indicated its intention to seek guidance from the FCC with respect to including the cost of public access lines in a subsidy calculation. The Minnesota Commission further reserved the right to revisit the payphone subsidy issue after discussions with the FCC.

5. In paragraph 5 USWC notes that Section 49-31-4 prohibits the revenues of noncompetitive services from subsidizing fully competitive services. AT&T and MCI agree that such treatment is proper. In the same paragraph USWC makes two crucial declarations. First, USWC stated that the costs of its deregulated coin service include the cost of the public access line. Second, USWC stated that including the cost of the public access line results in negative earnings for the coin service. Through use of the PSDM, AT&T and MCI also determined that earnings for the USWC coin service is negative. A comparison of the CARS Report referenced by USWC to AT&T's and MCI's PSDM would be useful in resolution of this matter.

6. USWC in paragraph 6 noted that AT&T and MCI announced increases to their charges for 800 service to cover their increased costs for dial around compensation. USWC continues on to state that because AT&T and MCI have withheld dial-around compensation payment, it is a financial boon to the carriers. This argument totally

seeking a solution to the payphone compensation matters. AT&T and MCI came away from such meetings with a concern that little or no progress would ever be achieved by the parties working together. Hence, MCI and AT&T filed the joint petition before the South Dakota Public Service Commission.

Response of USWC to use of AT&T/MCI Model, p. 3, n. 6.

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ignores the fact that AT&T and MCI have made payments to USWC and numerous independents where those companies are in compliance. MCI and AT&T have tariffed the rates so as to be able to recover these costs. It is the intention of AT&T and MCI to pay compensation to South Dakota LECs once a sufficient demonstration of compliance with the payphone orders has been made. In order to pay that compensation, both MCI and AT&T have been accruing their compensation obligation since April 15, 1997. USWC argues that previously, carriers such as AT&T and MCI paid nothing to payphone owners when customers placed long distance calls from payphones using access codes or 800 numbers. This argument totally ignores any originating access charges paid by the interexchange carrier which include payphone costs. In fact, in exhibits it filed in the Utah rate case attempting to demonstrate that no subsidies exist in payphone operations, USWC has included access charge revenues in the calculations.

7. At paragraph 7 of USWC's Response, a section of the FCC's April 15, 1997 Order is selectively quoted and this quote notes that "[t]o receive compensation a LEC must be able to certify" that it has satisfied each of the prerequisites to receiving interim compensation. AT&T and MCI do not deny that correspondence has been received from USWC purporting to show that USWC is in compliance with the payphone Orders. However, as AT&T and MCI have previously indicated, such claims, unsupported by evidence, are not an adequate substitute for a Commission investigation. Until MCI, AT&T and this Commission have had an opportunity to evaluate the evidence, including underlying cost data, the claims of the LECs regarding compliance with the FCC payphone orders simply cannot be accepted at face value. What USWC neglected to note in its quotation of the April 15, 1997 Order was that the FCC went on to state that "[n]othing in the Commission's orders, however, prohibits the IXC's obligated to pay compensation from requiring that their LEC payees provide such a certification for

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each prerequisite.⁸⁸ It would be irresponsible for a prudent investor to accept an investment opportunity on the basis of a generic claim without having an opportunity to view a prospectus. The same holds true in this instance. For AT&T and MCI to accept USWC's assertion of compliance without an inspection of the underlying cost data would be equally irresponsible.

8. At paragraph 8(a) of the USWC Response, the AT&T/MCI PSDM is criticized for including the costs of the access line serving the payphone. Yet paragraph 5 of the Response states "U S WEST's deregulated coin service currently includes in its costs the cost of the Public Access Line." USWC further noted that for purposes of its Response, it studied the PSDM that was filed in USWC's Utah rate case.⁸⁹ In the Utah rate case, USWC filed a payphone subsidy analysis exhibit purporting to show that no subsidy existed. This analysis also included the total recurring and non-recurring costs of the access line.

At paragraph 8(b) of its response, USWC asserts that the model includes the access line costs twice. The following example illustrates AT&T's and MCI's position with respect to including the cost of the access line: At the Pierre Municipal Airport there may be USWC payphones and there may also be payphones of independent providers. As the local exchange carrier, USWC provides the public access lines to all the payphone service providers. Providing these lines requires cable and wire facilities, circuit equipment, general support facilities and other associated costs. These are costs that USWC has already incurred and which must be accounted for. In order to provide payphone service, the payphone service providers must supply the payphone equipment and they may also have to compensate the location provider. Yet after these two inputs are accounted for, neither the USWC payphone affiliate nor the independent payphone

⁸⁸ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128 (rel. April 15, 1997), p. 22.

⁸⁹ Response of USWC to use of AT&T/MCI Model, p. 7, n. 13.

provider can provide service. There is one missing component. The independent payphone provider must purchase a public access line from USWC. Likewise, the USWC payphone affiliate must purchase the public access line from the regulated telephone company at the tariffed rate held out to other parties according to the FCC Affiliate Transactions Rules.¹⁰ This is clearly a cost to the payphone affiliate which must be accounted for.

In paragraph 8(b) USWC cited several row numbers from the ARMIS 43-04¹¹ report and noted that central office and loop investments associated with the access lines are inputs into AT&T's and MCT's PSDM. In populating the PSDM with 1996 ARMIS data for USWC, data from Column E of the 43-04 report was used. Column E is captioned "Common Line Pay" and the amounts in Column E reflect the portion of each row that USWC reported as being applicable to Pay Telephone Common Line Access charges pursuant to Part 69 of the Commission's Rules. The Payphone Orders clearly call for the development of a common line revenue requirement using ARMIS data.

USWC in paragraph 8(c) contends that including the access line cost mixes pre-deregulation and post-deregulation factors. USWC's payphone subsidy analysis exhibit filed in the previously mentioned Utah rate case compared historical revenues to forward-looking TSLRIC estimates of what its costs might look like in the future. Certainly the historical revenues would be considered pre-deregulation and the forward-looking TSLRIC estimates would be post-deregulation. This is a classic example of the pot calling the kettle black.

Inasmuch, AT&T and MCI would request that the Commission take into account the explanations given in this document and weigh those explanations against the

¹⁰ "Except for the Commission's Part 64 cost allocation rules and Part 32 affiliate transaction rules, we decline to apply the Computer III nonstructural safeguards to other IECs." In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128 (rel. September 20, 1996), p. 201.

¹¹ The ARMIS 43-04 Report is filed by USWC annually with the FCC. The report contains regulated cost and operating data for all tier 1 study areas. The FCC uses this report to monitor revenue requirements, joint cost allocations, jurisdictional separations, and access charges.

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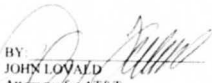
Response of USWC: As previously expressed in other filings, AT&T and MCI stand ready to provide any assistance and additional information that the Commission may require.

RESPECTFULLY SUBMITTED this 20th day of November, 1997.

MAY, ADAM, GERDES & THOMPSON

OLINGER, LOVALD,
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF MCI TELECOMMUNICATIONS) DOCKET TC97-039
CORPORATION AND AT&T COMMUNICATIONS)
OF THE MIDWEST, INC., TO CERTIFY ALL)
LECS AS TO COMPLIANCE WITH FCC)
PAYPHONE ORDERS)

**CERTIFICATE OF SERVICE OF REBUTTAL TO U S WEST'S
RESPONSE TO THE USE OF THE AT&T/MCI MODEL**

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 20th day of November, 1997, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the above-captioned in the this action to the following at their last known addresses, to-wit:

William P. Heaston
Senior Attorney
US WEST Communications, Inc.
1801 California, Room 5100
Denver, CO 80202

Richard D. Coit
Executive Director
SDITC
P.O. Box 57
Pierre, SD 57501

Tamara Wilka
Boyce, Murphy
P.O. Box 5015
Sioux Falls, SD 57117-5015

Dated this 20th day of November, 1997.

MAY, ADAM, GERDES & THOMPSON LLP

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Luke Maez
Legal Secretary

USWEST

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Via Overnight Delivery

January 2, 1998

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Re: In the Matter of MCI Communications corporation and AT&T
Communications Inc. to Certify LECS as to Compliance with FCC Payphone
Orders
Docket No. TC97-039

Dear Mr. Bullard:

Enclosed for filing is an original and ten (10) copies of U S WEST Communications,
Inc.'s Response of U S WEST to AT&T/MCI Rebuttal Comments.

Please file stamp an extra copy of this letter, enclosed, and return to me in the enclosed
self-addressed stamped envelope. Thank you.

Sincerely,



Luke Maez
Legal Secretary to
William Heaston

Encl

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF MCI)
COMMUNICATIONS CORPORATION AND)
AT&T COMMUNICATIONS, INC. TO)
CERTIFY LECS AS TO COMPLIANCE)
WITH FCC PAYPHONE ORDERS)
)

TC97-039

RESPONSE OF U S WEST TO AT&T/MCI REBUTTAL COMMENTS

On November 26, 1997, U S WEST received a rebuttal document from AT&T and MCI relative U S WEST's comments responding to the U S WEST filing of October 22, 1997. The following comments respond to the latest AT&T and MCI document.

1. AT&T and MCI take issue with U S WEST's suggestion that their complaint is more properly filed with the FCC than with the Commission. There is no conflict between U S WEST's position and the statement made by the RBOC payphone coalition to the FCC (quoted by the complainants). The RBOC coalition said, "The RBOCs are actively working with the States to identify and eliminate any intrastate payphone subsidies." U S WEST has done this in South Dakota. However, rather than get involved in the process U S WEST was pursuing, pursuant to South Dakota rules, the complainants choose to initiate an entirely separate proceeding by filing their complaint. As stated by the RBOC coalition, "If AT&T and MCI still believe there is a subsidy in a particular state after exhausting state remedies, then they should file a

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complaint with the Commission [FCC]." But, rather than exhausting state remedies readily available to them via involvement in switched access proceedings, AT&T and MCI chose to file a complaint, not with the FCC, but with the South Dakota PUC.

The complainants claim that they initially exercised the option of filing a complaint with the FCC before filing their joint petition with the South Dakota PUC, "As discussed later in this document. . . ." However, nowhere in their document do they explain what complaint or complaints they filed with the FCC, nor is U S WEST aware of any complaint filed against it with the FCC regarding removal of payphone subsidy. The complainants do discuss their ex parte letters filed with the FCC last March. The FCC has very specific formal and informal complain processes, and ex parte letters are in no way complaints. MCI's cover letter describes its March 26, 1993 ex parte as being for the purpose of "review[ing] issues related to the implementation of the FCC's Payphone Compensation Order and provide an update of state activities." AT&T's ex parte letter states the belief that "most local exchange companies ('LECs') have not acted to eliminate intrastate payphone costs and subsidies..." Neither of these letters was presented as a complaint and neither was treated by the FCC as a complaint.

2. The complainants claim that the access charge reduction U S WEST performed could not be large enough to remove the costs

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of payphones. The data they present to bolster this claim are completely irrelevant. The basis for U S WEST's reduction was the South Dakota switched access rules, which specifically allocate payphone costs to the CCL rate element. The allocation is based on the actual investments and costs incurred by the Company, as recorded on the books. As AT&T & MCI are fully aware, an investment is not the same thing as a cost or a revenue requirement. While investments drive costs and revenue requirements, the amount of the investment is not equal to the amount of the cost. They are wrong when they say our access charge reduction was only enough to remove "cost" of 31 payphones.

The Commission agrees that the switched access rules are the appropriate basis for removing payphone costs from access charges. They accepted Staff's cost study in the switched access docket, which removed the payphone costs. Further, the Commission ordered U S WEST to immediately reduce its access charges to a level well below the revenue requirement. Clearly, any payphone subsidy which potentially would have existed under the South Dakota switched access rules has been removed.

3. The facts surrounding the direct discussions between AT&T and U S WEST are different from what is portrayed by the complainants. U S WEST sent a non-disclosure agreement to AT&T on September 15, 1997. This agreement did not meet AT&T's approval, and there were subsequent negotiations between the two

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companies' attorneys. While the attorneys were working on the non-disclosure agreement, U S WEST supplied AT&T with the non-confidential portions of the requested data. A non-disclosure agreement was executed December 11, 1997. The confidential data is now being forwarded to AT&T.

In the meantime, MCI approached U S WEST about receiving the same information that had been requested by AT&T. U S WEST agreed to supply the material to MCI, and has forwarded a non-disclosure agreement to MCI for its consideration.

The complainants persist in seeking data from U S WEST that does not exist in the form they ask for, while ignoring the pertinent data and analyses U S WEST does provide. In footnote 6, the complainants state that they seek ARMIS data from USWC, which "must be presented at the sub-account level for any meaningful analysis to take place." U S WEST has explained that the accounting and ARMIS data was not kept in payphone-specific sub-accounts and therefore is not available in the form AT&T requests. The most relevant data for South Dakota is contained in the switched access cost studies performed by U S WEST and the Commission Staff, which data the complainants persist in ignoring. They were intervenors in the switched access docket, and these data are available to them.

4. The complainants infer by their comments that U S WEST is still subject to possible investigation by the Minnesota Commission regarding payphone subsidy. What they fail to mention

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is that, in its deliberations, the Minnesota Commission noted that U S WEST had demonstrated that it had no payphone subsidy. For U S WEST, it made no difference whether or not the cost of the access line was included in the Minnesota payphone subsidy analysis. Regardless of which way the analysis was performed, U S WEST's payphone service passed the test and was not subsidized.

5. The suggested comparison of U S WEST's CARS report with AT&T's and MCI's fundamentally flawed PSIM model will serve no useful purpose. As U S WEST explained in its previous comments, U S WEST currently provides the Commission, on an annual basis, its fully separated, assigned and distributed revenues, investments and expenses to ensure that the prohibited subsidies do not occur."

6. As noted previously, U S WEST has received less than 1% of the dial-around compensation it has billed. Even in the states in which AT&T and MCI agree that U S WEST has met all of the FCC requirements to receive compensation, their payments have been but a token amount.

The complainants state they intend "to pay compensation to South Dakota LECs once a sufficient demonstration of compliance with the payphone orders has been made." Yet, the criteria for a "sufficient demonstration" is far from clear, and is constantly changing. Originally, AT&T requested certain data from U S WEST, and we have complied with that data request to the extent

possible. Yet, in her latest letter to U S WEST, AT&T's Vice President Fields adds demands that "compliance must be confirmed by a party other than the asserting LEC," and that U S WEST must "provide the revenue requirement impact of payphone investment and expense reclassification." Furthermore, in their November 20 SD comments, the complainants state that originating access charges should also be considered as payphone revenues, a concept that is totally contrary to any previous discussion of what is properly included in a subsidy analysis. They are mistaken about the exhibits U S WEST filed in the Utah rate case. U S WEST did not include access charge revenues in its calculations.

7. U S WEST does not dispute the complainants' right to require "that their LEC payees provide such certification for each prerequisite," and we have provided such. Further, U S WEST is not asking AT&T and MCI to accept its certification without supporting evidence. Supporting evidence has been and is being supplied.

8. U S WEST does not dispute that it has included access line costs in some payphone analyses. U S WEST does dispute that the inclusion of access line costs is required to comply with FCC requirements for subsidy removal. As explained in U S WEST's previously filed comments, the FCC's orders are clear that it is subsidy of payphone sets, not lines, that is to be removed.

The additional comments filed by the complainants defending their PSIM model do nothing to correct the gross flaw of the

double counting of access line costs. This flaw is especially egregious since there is no requirement to include access line costs in the first place. U S WEST's stands by its earlier comments regarding the PSIM model.

Accordingly, U S WEST again requests that the Commission dismiss this petition or complaint and close the docket.

Respectfully submitted this 2nd day of January, 1998.

U S WEST COMMUNICATIONS, INC.

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of January, 1998, an original and ten (10) copies of the foregoing **Response Of U S West To At&T/Mci Rebuttal Comments** of U S WEST Communications, Inc. was sent via overnight mail to the following:

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

In addition, true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following:

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U.S. WEST Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF MCI)
TELECOMMUNICATIONS CORPORATION) ORDER CLOSING DOCKET
AND AT&T COMMUNICATIONS OF THE)
MIDWEST, INC. TO CERTIFY ALL LECS AS TO) TC97-039
COMPLIANCE WITH FCC PAYPHONE)
ORDERS)

On April 14, 1997, MCI and AT&T filed a petition with the Public Utilities Commission (Commission) requesting the Commission to certify all LECs as to compliance with FCC Payphone Orders. MCI and AT&T filed this petition to investigate compliance of all certificated local exchange companies (LECs) with the Federal Communications Commission (FCC) orders on payphone reclassification. Specifically, MCI and AT&T request that the Commission determine and certify whether all certificated LECs have met all state-specific requirements identified in the FCC's orders. On April 17, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of May 2, 1997, to interested individuals and entities. On May 13, 1997, the Commission granted intervention to U S WEST Communications, Inc. (U S WEST) and South Dakota Independent Telephone Coalition (SDITC).

The parties have filed numerous comments in this matter. On April 22, 1998, at its regularly scheduled meeting, the Commission considered this matter. AT&T and MCI requested that the Commission order that a procedural schedule be issued. U S WEST and SDITC requested that the matter be dismissed based upon the FCC order. In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, released March 9, 1998, which stated that there are no state or federal certification requirements once LECs have certified to the interexchange carrier that it is in compliance with the FCC Payphone Orders. Commission Staff also recommended that the matter be dismissed based upon the FCC order.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31 and the Telecommunications Act of 1996.

The Commission unanimously voted to dismiss the matter based upon the order by the FCC issued March 9, 1998. It is therefore

ORDERED that docket TC97-039 is hereby dismissed and the docket is closed.

Dated at Pierre, South Dakota, this 14th day of May, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Andrew Kallio

Date 5/14/98

OFFICIAL SEAL

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Richard Schoenfelder
LASKA SCHOENFELDER, Commissioner