

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
JUL 27 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matters of)
)
Petition for Relief from Unjust)
and Unreasonable Discrimination)
in the Deployment of Video)
Dialtone Facilities) RM-8491
)
Petition for Rulemaking to Adapt)
the Section 214 Process to the)
Construction of Video Dialtone)
Facilities)

REPLY COMMENTS

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Public Notice,¹ hereby files its Reply Comments in the above-captioned proceeding on the Petition for Relief and the Petition for Rulemaking filed jointly by the Center for Media Education, Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza ("Joint Petitioners").

No. of Copies rec'd 024
List ABCDE

¹Public Notice, Pleading Cycle Established for Comments on Petition for Rulemaking and Petition for Relief in Section 214 Video Dialtone Application Process, DA 94-621, rel. June 13, 1994; see also In the Matter of Petition for Rulemaking and Petition for Relief in Section 214 Video Dialtone Application Process, Order, DA 94-704, rel. June 24, 1994.

I. INTRODUCTION

Twenty-four parties filed comments on Joint Petitioners' Petitions.² The commenting parties largely represented four major groups: local exchange carriers ("LEC"); consumer advocates and public interest groups; public utility commissions; and the Joint Petitioners themselves. LECs unanimously opposed the Petitions. LECs argued that the Joint Petitions were based on the false premise that there was a universal service obligation to provide video dialtone service everywhere.³ LECs also argued that the Communications Act and existing Commission Rules give the Commission sufficient authority to address any discrimination

²Comments were filed by the following parties: Ameritech; Pacific Bell; Southwestern Bell Telephone Company ("Southwestern Bell"); U S WEST (U S WEST refiled with its Comments its earlier-filed Opposition to the Petition for Relief ("U S WEST Opposition to Petition for Relief") and Opposition to the Petition for Rulemaking ("U S WEST Opposition to Petition for Rulemaking")); BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"); The Bell Atlantic Telephone Companies ("Bell Atlantic"); GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"); Joint Petitioners; OMB Watch; United Homeowners Association; Institute for Agriculture and Trade Policy; Henry Geller and Barbara O'Connor; American Council on Consumer Awareness, Inc.; Alliance For Public Technology; The Alliance for Communications Democracy, The Alliance for Community Media, The City of Chillicothe, Ohio, The City of Detroit, Michigan, The City of Fort Worth, Texas, King County, Washington, The Office of the City Attorney of the City of Los Angeles, California, Montgomery County, Maryland, The City of Redondo Beach, California, and The City of Wadsworth, Ohio ("Alliance for Communications Democracy"); National Captioning Institute, Inc.; The National Capital Area Public Access Network, Inc.; Public Service Commission of the District of Columbia; The Pennsylvania Public Utility Commission; State of New York Department of Public Service; Michigan Public Service Commission Staff; Indiana Utility Regulatory Commission; Council of 100; Association of America's Public Television Stations.

³See, e.g., BellSouth at 6; Southwestern Bell at 4-7; Ameritech at 1.

that might arise.⁴ As a group, consumer advocates and public interest groups favored additional rules and used the Petitions as a "springboard" to raise numerous other issues, including local franchise regulation,⁵ availability of public access channels,⁶ and closed captioning requirements.⁷ Public utility commissions generally expressed concern over Joint Petitioners' allegations and supported a rulemaking on the issues.⁸ Joint Petitioners used the opening round of comments on their own Petitions as an opportunity to "reposition" themselves in response to earlier LEC rebuttals and to reply to U S WEST's timely filed Oppositions.⁹

In this reply, U S WEST focuses primarily on the Petitions and subsequent Comments of Joint Petitioners. U S WEST will not address the numerous unrelated issues raised by consumer advocates and public interest groups (e.g., availability of public access channels).

⁴See Pacific Bell at 8-12; GTE at 6-7; U S WEST Opposition to Petition for Rulemaking at 1-4; U S WEST Opposition to Petition for Relief at 3-4.

⁵See Alliance for Communications Democracy at 12-17.

⁶See Association of America's Public Television Stations at 2-3.

⁷See National Captioning Institute, Inc., at 3-4.

⁸See The Pennsylvania Public Utility Commission; Public Service Commission of the District of Columbia; Michigan Public Service Commission Staff; State of New York Department of Public Service.

⁹U S WEST filed its Oppositions in compliance with Sections 1.45(a) and 1.405(a) of the Commission's Rules prior to the issuance of the Commission's Public Notice.

II. JOINT PETITIONERS' ATTEMPT AT "REPOSITIONING" DEMONSTRATES THE FEEBLENESS OF THEIR ORIGINAL ARGUMENTS AND ANALYSIS

Joint Petitioners now claim that:

- "the primary issues they have presented are legal, and not factual."¹⁰
- "[t]o the extent that Petitioners' analyses of the data can be characterized as incomplete, it is because the RBOC's filings were inadequate."¹¹
- "this case is not about intentional discrimination, it is about discriminatory effect."¹²

Are Joint Petitioners referring to the same Petitions they filed on May 23, 1994? If U S WEST did not know otherwise, it would never make the connection between the above assertions and Joint Petitioners' May 23, 1994, Petitions. The Commission should not be fooled by Joint Petitioners' attempted "sleight of hand" in their Comments. The predicate for the Joint Petitioners' Petition for Relief was Petitioners' assertion that U S WEST and other LECs were engaged in unlawful discrimination by "redlining" low income and minority neighborhoods in Section 214 applications for video dialtone service. Clearly, this is a factual issue. Any doubt as to the lack of veracity of this allegation with respect to U S WEST's Section 214 Applications has been removed by U S WEST's Opposition to the Petition for Relief and demographic data submission.¹³

¹⁰Joint Petitioners at 2.

¹¹Id.

¹²Id.

¹³See U S WEST Opposition to Petition for Relief, Affidavit of Susan A. Portwood.

Joint Petitioners' claim that deficiencies in their (i.e., Dr. Mark N. Cooper's) analysis are due to inadequate LEC Section 214 filings would be laughable but for the seriousness of the redlining allegation. Joint Petitioners and Dr. Cooper appear to believe that they have no burden of proof associated with their Petitions. This is not true. Regardless of whether Joint Petitioners' Petition for Relief is classified as a Petition to Deny LEC Section 214 Applications or as a complaint, Joint Petitioners must plead their facts with specificity and make a prima facie showing that a grant of a Section 214 application is inconsistent with the public interest.¹⁴ Joint Petitioners have failed to meet this minimal burden of proof with respect to U S WEST's Section 214 Applications for Denver, Minneapolis-St. Paul, and Portland. If the Commission declines to dismiss Joint Petitioners' Petition for Relief with respect to U S WEST, it should require Dr. Cooper to provide his complete study, with all associated work papers, for Commission examination. This should allow the Commission to conclude that Joint Petitioners' allegations are totally lacking in merit.

Joint Petitioners' last claim that "this case is not about intentional discrimination, it is about discriminatory effect"¹⁵ is simply an attempt to cast themselves in the most favorable light now that they have filed their Petitions and held their press conferences. The term "redlining" by its nature is not neutral; it implies intentional discrimination. Regardless of

¹⁴47 CFR § 63.52(c); also see National Ass'n For Better Broadcasting v. FCC, 591 F.2d 812, 814-15 (D.C. Cir. 1978).

¹⁵Joint Petitioners at 2.

how Joint Petitioners wish to describe "this case" at present, the facts do not support a claim of either intentional or unintentional discrimination with respect to U S WEST's Section 214 Applications.

III. JOINT PETITIONERS' REBUTTAL OF U S WEST'S OPPOSITION TO PETITION FOR RELIEF ONLY HIGHLIGHTS THE SHORTCOMINGS OF THEIR OWN ANALYSIS

Joint Petitioners and their expert, Dr. Cooper, claim that "US West's Opposition only reinforces the need for the relief requested."¹⁶ This is nonsense. Petitioners also claim that U S WEST's refusal to provide census tract data and other incompleteness in U S WEST's Section 214 filings are the cause of any defects in Dr. Cooper's study.¹⁷ This assertion strains credibility. As Ms. Susan A. Portwood, Director - Product Development, Broadband and Multimedia Services, points out in her attached Affidavit, U S WEST has no need to directly collect or use census tract data. Commercially available geographic information systems allow U S WEST to obtain whatever economic or demographic data it needs by wire center. U S WEST's basic geographic unit of measure is the wire center, and U S WEST has no need to gather data by census tract. Ms. Portwood indicates that U S WEST is willing to provide wire center boundaries for Denver, Minneapolis-St. Paul, and Portland in order to relieve any hardship that public interest organizations may encounter in verifying U S WEST's data.

¹⁶Id. at 7.

¹⁷Id. at 8.

Dr. Cooper claims that U S WEST presented misleading data in its Opposition to Petition for Relief by providing duplicate data for minority groups.¹⁸ Ms. Portwood refutes this allegation and points out that Dr. Cooper has committed the very error he accuses U S WEST of committing.¹⁹ The fact that Dr. Cooper may not like the way demographic data is collected for U.S. Census purposes is not grounds for asserting that U S WEST's demographic data submission is misleading.

Ms. Portwood also refutes Dr. Cooper's baseless claim that U S WEST has used an area (i.e., for its demographic data submission) which is larger than its local calling area.²⁰ Ms. Portwood has included with her Affidavit wire center maps for the Denver, Minneapolis-St. Paul, and Portland calling areas which show all the wire centers listed in U S WEST's earlier data submission. If anything, Dr. Cooper's statements indicate his lack of familiarity with U S WEST's Denver telephone service area.

IV. THERE IS NO UNIVERSAL SERVICE OBLIGATION TO PROVIDE VIDEO DIALTONE SERVICE

Joint Petitioners persist in their attempt to read a universal service requirement into the Commission's Video Dialtone Order.²¹ There is no such requirement. As the Commission stated in its Order:

¹⁸Id., Cooper Affidavit at 1-2.

¹⁹See attached Portwood Affidavit at 1-2.

²⁰Id. at 2.

²¹Joint Petitioners at 4-6.

In furtherance of these public interest goals, we here amend our rules to permit, but not require, local telephone companies to offer video dialtone.²²

BellSouth points out that Joint Petitioners confuse common carrier obligations with a universal service obligation.²³ Common carriage does not necessarily entail a carrier's providing each and every service ubiquitously throughout its service territory.²⁴ Contrary to Joint Petitioners' assertion, "the existence of a common carrier non-discrimination obligation does not carry with it an obligation to serve all geographical locations."²⁵ If the Commission wishes to consider the question of whether video dialtone should be offered on an ubiquitous basis -- which U S WEST believes would be both unwise²⁶ and contrary to the existing video dialtone rules -- it should do so in the context of a broader universal proceeding²⁷ rather than in

²²In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781, 5787 ¶ 10 (1992).

²³BellSouth at 4.

²⁴Id. at 5.

²⁵Id. at 6.

²⁶Requiring a company to provide new services to all locations in its service area would greatly impede new service introduction and raises the question of who will cover the costs of deploying new services where it is uneconomic to do so. See id. at 3-4.

²⁷See, e.g., In the Matter of Inquiry into Policies and Programs to Assure Universal Telephone Service in a Competitive Market Environment, RM-8388, Petition of MFS Communications Company, Inc. for a Notice of Inquiry and En Banc Hearing filed Nov. 1, 1993; USTA AND UNIVERSAL SERVICE: Meeting Customer Requirements into the 21st Century, April 1994.

either a Section 214 proceeding or a separate video dialtone proceeding.²⁸

V. CONCLUSION

As the foregoing and U S WEST's Comments demonstrate, there is no basis for Joint Petitioners' "redlining" claims with respect to U S WEST's Section 214 Applications. The Commission should find U S WEST's Applications are consistent with the public interest and dismiss Joint Petitioners' Petition for Relief.

Similarly, no evidence has been presented by Joint Petitioners or any other party that any additional rules are necessary to protect the public from discriminatory acts of common carriers. The Commission has sufficient authority under the Communications Act and its Rules to address any unlawful discrimination should it arise.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: James T. Hannon
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Its Attorney

Of Counsel,
Laurie J. Bennett

July 27, 1994

²⁸See Bell Atlantic at 5-7; Ameritech at 7; Southwestern Bell at 2; U S WEST Opposition to Petition for Relief at 5.

5. Dr. Cooper asserts that U S WEST has presented misleading data by providing "a duplicated count of minority groups in exchanges and then summary statistics based on inappropriate definitions of the geographic area of reference." (Cooper Affidavit at 1.) I disagree. In providing wire center data, U S WEST used exactly the same racial categories as the U.S. Census: 1) White, 2) Black, 3) Asian and Pacific Islander, and 4) American Indian and Other. As U S WEST noted in its demographic data submission, Hispanic is not a race and persons of Hispanic origin may be of any race. As a result, it is inappropriate to add persons of Hispanic origin to any other racial categories -- that would double-count Hispanics. Dr. Cooper commits this error in his Attachment 1 when he adds Blacks and Hispanics. Dr. Cooper also draws conclusions with respect to American Indians which cannot be substantiated. The correct census category is "American Indian and Other." In all likelihood, a significant portion of persons identifying themselves as being in this category in Denver are of Hispanic origin rather than American Indians.

In submitting racial and ethnic data by wire center, U S WEST did nothing to the demographic data. U S WEST does not collect demographic data nor maintain databases in which this data resides. U S WEST derived wire center data by inputting the coordinates of its wire center boundaries into a commercially available geographic information system. This allowed U S WEST to provide the demographic data by wire center which was attached to my earlier Affidavit.

6. Dr. Cooper also takes issue with the geographic area for which U S WEST has submitted data and claims "[t]he area used by US West is much larger than a local calling area in telecommunications." (Cooper Affidavit at 4.) Dr. Cooper is wrong. The wire center data submitted by U S WEST covered only the local calling areas for Denver, Minneapolis-St. Paul and Portland. The telephone service area, local exchange, or local calling area is the area in which telephone subscribers can make "toll free" calls. Attachment A contains maps showing the local calling areas or telephone service areas for Denver, Minneapolis-St. Paul and Portland. These maps were filed with U S WEST's Section 214 Applications and contain all of the wire centers which were listed in U S WEST's demographic data submission.

7. Dr. Cooper also asserts that U S WEST could easily produce census tract data and that its refusal to do so places a hardship on local citizens groups. I disagree. With the availability of geographic information systems and databases, U S WEST has no need to directly collect or use census tract data. U S WEST's basic geographic unit of measure is the wire center. With the aid of modern geographic information systems U S WEST can obtain whatever economic or demographic data it needs by inputting the appropriate wire center boundaries. Furthermore, U S WEST's Section 214 Applications were filed on a wire-center basis. As such, there is no need, and it would make no sense, to gather data on a census-tract basis. In order to relieve any hardship that public interest organizations may encounter in verifying U S WEST's data, U S WEST will provide wire center boundaries for Denver, Minneapolis-St. Paul and Portland to these organizations upon request. This will allow public interest organizations to choose from a variety of commercially available geographic information systems if they question the validity of U S WEST's demographic submission.

Susan A. Portwood
Susan A. Portwood

Subscribed and sworn to before me this 26th day of July, 1994, by Susan A. Portwood.

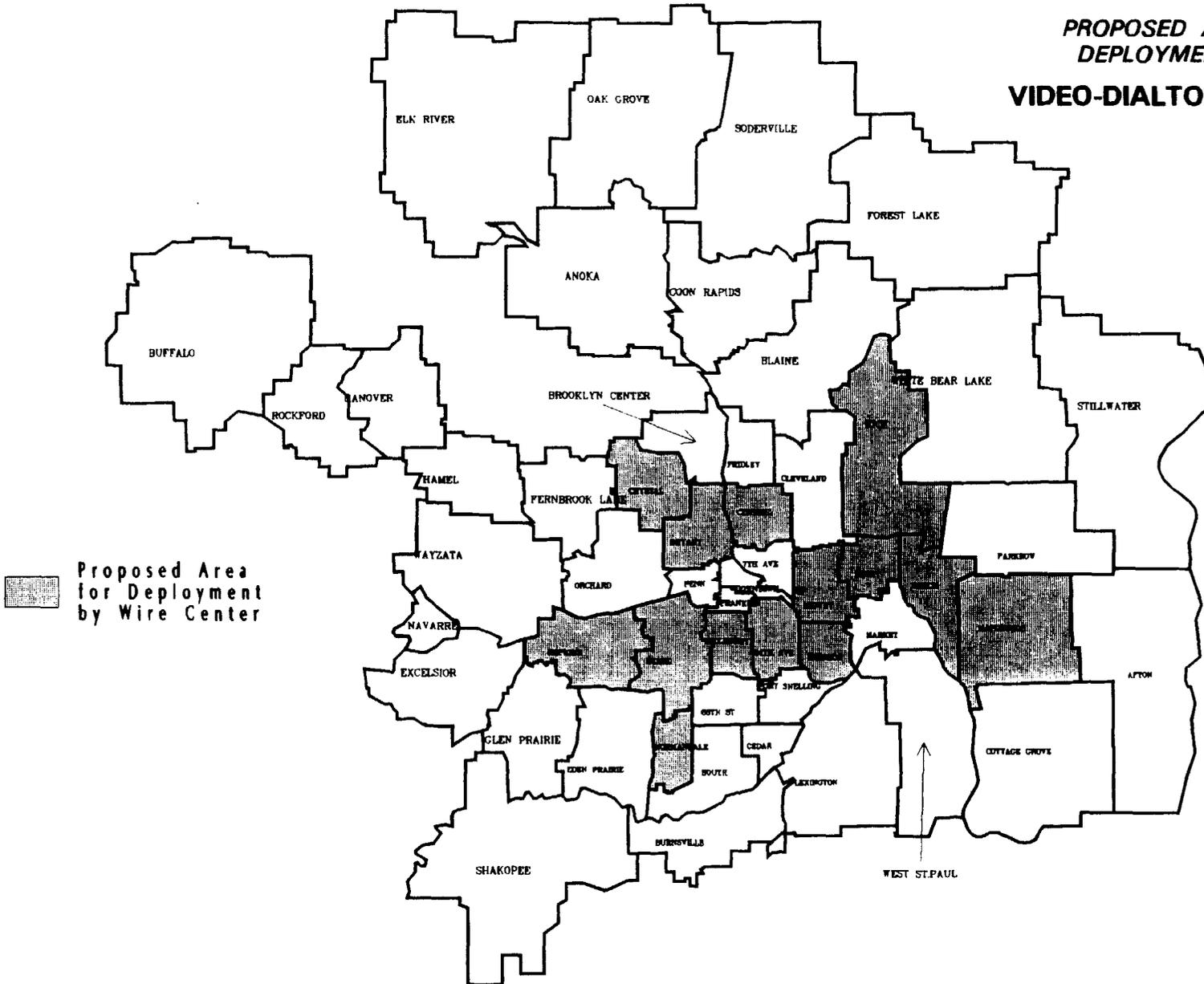
WITNESS my hand and official seal.

Jo Ann Baltrame
Notary Public

My Commission Expires: December 18, 1996

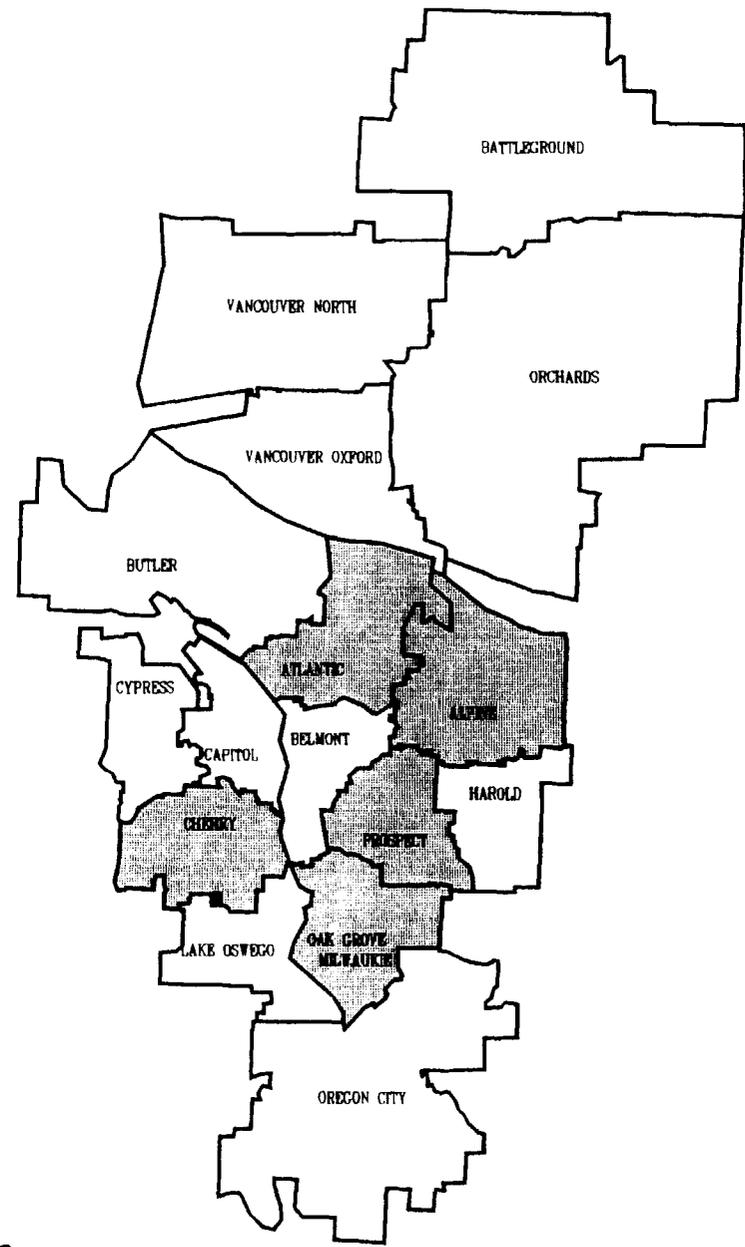
ATTACHMENT A

**PROPOSED AREA OF
DEPLOYMENT FOR
VIDEO-DIALTONE SERVICE**



**PROPOSED AREA OF
DEPLOYMENT FOR
VIDEO-DIALTONE SERVICE**

 Proposed Area
for Deployment
by Wire Center



CERTIFICATE OF SERVICE

I, Roanne Kuenzler, do hereby certify that on this 27th day of July, 1994, I have caused a copy of the foregoing **REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Roanne Kuenzler

***Hand-Delivered**

(RM8491.JH/lh)

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Andrew C. Barrett
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Peggy Reitzel
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Angela J. Campbell
Citizens Communications Center
Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001

Andrew Jay Schwartzman
Media Access Project
2000 M Street, N.W.
Washington, DC 20036

M. Robert Sutherland
Michael A. Tanner
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, GA 30367

James L. Wurtz
Alan F. Ciamporcero
Pacific/Nevada Bell
Suite 400
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Robert M. Silber
National Captioning Institute, Inc.
Suite 1500
5203 Leesburg Pike
Falls Church, VA 22041

Jordan Clark
United Homeowners Association
Third Floor
1511 K Street, N.W.
Washington, DC 20005

Maureen A. Scott
Veronica A. Smith
John F. Povilaitis
The Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17021

Michael S. Pabian
Ameritech Operating Companies
Room 4H76
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

James P. Tuthill
Lucille M. Mates
Pacific/Nevada Bell
Room 1526
140 New Montgomery Street
San Francisco, CA 94105

Michael E. Glover
Edward Shakin
Edward D. Young
Bell Atlantic Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

Christopher L. Rasmussen
Pacific/Nevada Bell
Room 2W901
2600 Camino Ramon
San Ramon, CA 94583

Robert M. Lynch
Richard C. Hartgrove
Jonathan W. Royston
Southwestern Bell Telephone Company
Room 3520
One Bell Center
St. Louis, MO 63101

Daryl L. Avery
Peter G. Wolfe
Howard C. Davenport
Public Service Commission of the
District of Columbia
450 5th Street, N.W.
Washington, DC 20001

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Ronald G. Choura
Michigan Public Service Commission
Staff
6465 Mercantile Way
P.O. Box 30221
Lansing, MI 48909-7721

John F. Raposa
GTE Service Corporation
HQE03J36
P.O. Box 152092
Irving, TX 75015-2092

Milton Bins
Faye M. Anderson
Council of 100
Suite 400
1129 20th Street, N.W.
Washington, DC 20036

William J. Cowan
New York State Department of
Public Service
The Empire State Plaza
Albany, NY 12223

Susan G. Hadden
Alliance for Public Technology
Suite 230
901 15th Street, N.W.
Washington, DC 20005-2301

Gary D. Bass
OMB Watch
1731 Connecticut Avenue, N.W.
Washington, DC 20009-1146

Nicholas P. Miller
Joseph Van Eaton
Miller, Canfield, Paddock and Stone
Suite 400
1225 19th Street, N.W.
Washington, DC 20036

MULT

Paul E. Symczak
Pamela J. Brown
Edward Coltman
Andrew Russell
Corporation for Public Broadcasting
901 E Street, N.W.
Washington, DC 20004-2006

R. Taylor Walsh
CapAccess
B-1
2002 G Street, N.W.
Washington, DC 20052

David J. Brugger
Marilyn Mohrman-Gillis
The Association of America's
Public Television Stations
1350 Connecticut Avenue, N.W.
Washington, DC 20006

E. Niel Ritchie
IATP
Suite 303
1313 5th Street, S.E.
Minneapolis, MN 55414-1546

Henry M. Rivera
Larry S. Solomon
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Henry Geller
Suite 800
1750 K Street, N.W.
Washington, DC 20006

HG/BO

Kenneth J. Benner
American Council on Consumer
Awareness, Inc.
1254 North Kent Street
P.O. Box 47294
St. Paul, MN 55447