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

In the Matter of	)	
Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges	)	RM 8723

REPLY OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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Dated: January 11, 1996

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The American Public Communications Council ("APCC") hereby replies to oppositions to its Petition for Rulemaking urging the Commission to end the disparity in access charge treatment of independent public payphones ("IPPs") and local exchange carrier public payphones ("LECPPs").

The primary -- and predictable -- opponents of APCC's petition are local exchange carriers ("LECs"), who benefit from the disparate access charge treatment of IPPs and LEC public payphones ("LECPPs"). The LECs' arguments for maintaining the disparity that favors their own payphones are at best unsubstantiated and in many cases demonstrably wrong.

I. LECS' "COMPETITIVE DISADVANTAGES" ARE ILLUSORY

The LECs claim that their payphone operations suffer under a number of "competitive disadvantages" that justify maintaining the disparity in access charge treatment. These alleged competitive disadvantages do not withstand scrutiny.

For example, NYNEX and US West claim that IPPs are not regulated. NYNEX at 2 ("IPP providers are also largely unregulated as to rate of return and rates, unlike the LECs"); U S West at 3 ("Payphone services provided by IPPs are not regulated 'public telephone' services"). In fact, according to a March 1995 survey of state regulation of independent public payphones, in 37 jurisdictions the local coin rates that IPP providers may charge are subject to a state commission-prescribed cap -- usually at the LEC's tariffed local coin rate. Rate caps are pending in another 4 states. Only 8 of the 49 jurisdictions that allow payphone competition do not impose local coin rate caps. See Technologies Management, Inc., Survey of Private Pay Telephone State Regulation, March 1995 at 557-58.

The survey also shows that 29 of the 49 jurisdictions cap intraLATA sent-paid rates, 23 cap interLATA sent-paid rates, 31 cap directory assistance rates (mostly at zero, even though the IPP providers often must pay the LECs for directory assistance calls originating from IPPs), 34 cap intraLATA

operator service rates, and 30 cap interLATA operator service rates. Id. As was demonstrated in the complaint proceeding that led to this rulemaking, IPP providers typically are subject to a variety of other regulations -- e.g., requirements on provision of telephone directories, information posting, handicapped accessibility, etc. -- that limit the manner in which they can offer payphone service.

In short, in most jurisdictions the bulk of payphone regulations are applicable to both LECPPs and IPPs. The main difference between the two groups is that IPP providers are dependent on local exchange services purchased from their main payphone competitor's local exchange service monopoly -- a fact that is responsible for innumerable competitive disadvantages suffered by IPP providers vis-a-vis LECPPs.

The LECs also claim that LEC payphones are subject to onerous public service obligations while IPP providers are not. GTE at 2-3, n.1; Sprint at 2, n.2. This claim is also without merit. As shown in the attached pages from the report of a California Public Utilities Commission workshop, claims regarding the number of "public service" payphones LECs are required to provide have turned out, on closer examination, to be grossly inflated. Attachment 1. Indeed, IPP providers frequently end up providing service to rural "public service" locations that LECs

have felt free to abandon as unprofitable. See, e.g., Attachment 2.

The Bell companies also contend that IPP providers have an advantage vis-a-vis LECs -- or, at least, vis-a-vis the Bell companies -- because only IPP providers can select, and receive commissions from, the interexchange carriers ("IXCs") serving the payphone. Ameritech at 4-5; BellSouth at 3; NYNEX at 2; U S West at 3. There are several difficulties with this argument. The Bell companies omit to mention that even though the AT&T consent decree may prevent Bell companies from receiving negotiated commissions from IXCs, the location owners for Bell company payphones can and do receive negotiated commissions, either directly or through agents, including the Bells -- who thus offer a "one stop" service to location providers.[1] These commission payments allow the Bell companies to reduce the commissions they otherwise would pay to location owners in order to meet or beat IPP competition.[2] APCC members generally cannot extract larger commission payments from IXCs than those the IXCs pay to Bell payphone location owners. Indeed, since IXCs presumably value calls from Bell payphones as much as calls from IPPs, it is illogical to assume that the commissions IPP providers receive

[1] Attachment 3 is an amendment to Ameritech's equal access plan in which it informed the Department of Justice that it would provide such one-stop shopping. Presumably the other Bell companies engage in similar practices.

[2] Attachment 4 is a letter to an inmate facility from Southern Bell explaining this point to an inmate facility. See Attachment 4 at 4.

are any greater than those that location owners for LEC payphones are able to obtain from IXCs.[3] In sum, the Bell companies fail to demonstrate that they are economically harmed or that IPP providers gain any significant competitive advantage from being able to obtain commissions directly from IXCs.

Some LECs also point out that IPP providers currently receive FCC-prescribed compensation for access code calls, while LECs do not. Sprint at 2. While this is correct, the amount of IPP compensation, on a per phone basis, is less than half of the total non-traffic-sensitive ("NTS") carrier common line revenue requirement attributed by the LECs to their payphones in 1992. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, 7 FCC Rcd 3251 (1992). Since the end user common line ("EUCL") charge is also considerably less than half of that number, relieving IPP providers of the EUCL requirement would not put LECs at a disadvantage. Indeed, it would not even establish parity with the LECs' self-attributed NTS carrier common line ("CCL") payphone compensation -- putting aside the question of the LECs' recovery of traffic sensitive network costs associated with

[3] To the extent that traffic volumes are a relevant factor, many of the businesses and government entities that have Bell payphones on their premises are themselves very large entities -- much larger than the largest IPP provider. With respect to smaller businesses that rent space on their premises for payphones, the current practice in many areas is for "independent" agents to aggregate numerous Bell payphone locations for purposes of negotiating a package commission agreement with an IXC.

payphones (which are not subject to CCL recovery) or other payphone costs that may not be fully captured by the payphone classification prescribed by the Commission's access charge rules.

Finally, U S West contends that the disparity in access charge treatment doesn't matter because U S West imputes the EUCL charge to its own payphones to establish a "price floor" in state commission proceedings. APCC does not dispute that U S West purports to impute the EUCL charge and other payphone-related costs in some state proceedings. However, that does not mean that U S West actually utilizes imputation analysis in a meaningful way. The Washington Utilities and Transportation Commission had this to say about U S West's treatment of imputation in response to a complaint brought by IPP providers:

> As evidenced by the testimony and exhibits in the record, there is considerable debate as to the proper imputation test for payphone service. It is especially unclear what position U S WEST advocates. Initially, the company claimed the $0.25 per local call didn't meet an imputation test. After the company made certain adjustments in its imputation analysis, the $0.25 per local call only barely covered imputed costs. Finally, on brief, the company argued that a completely different imputation test should be used -- an imputation test that accounts for toll and operator service revenues. This inconsistency illustrates well U S WEST's ability to control cost information and, as a result, to frustrate efforts to penetrate the relationship between its costs, by whatever definition, and its prices.

Order Granting Complaint in Part of the Washington Utilities and Transportation Commission in Docket No. UT-920174, Northwest Payphone Association et al. v. U S West Communications, Inc., March 17, 1995.

Obviously, the Commission cannot rely on LEC assurances that they will impute EUCL charges in state proceedings to ensure parity in the FCC's own regulatory treatment of LEC payphones and IPPs. And significantly, other LECs do not even claim to engage in any imputation analysis, much less a meaningful imputation analysis.

II. OTHER ISSUES

U S West argues that EUCL charges should continue to be assessed against IPPs (but not LECPPs) because the Commission, in its 1983 decision formulating its access charge rules, made an express policy determination that "independently provided payphone loop costs [should] be recovered in the same manner as ordinary business subscriber lines." U S West at 3. Of course, no such policy determination was made: IPPs were not authorized at the time of the access charge decision, and there is no evidence that the Commission anticipated such authorization when it issued the decision.

Other LECs claim that, even if unintended, the disparate treatment of LEC payphones and IPPs is justified and non-discriminatory because IPP lines have a "readily identifiable end user" while LEC payphone lines do not. BellSouth at 2-3;

NYNEX at 2. But, while the IPP provider is of necessity a subscriber to its payphone lines, it is not the end user of those payphone lines. The callers are the end users, just as they are in the case of LEC payphones. As explained in APCC's petition (at 7, n.7), in this regard IPPs and LEC payphones are alike, and are different from semi-public payphones, hotels, and hospitals. In the case of semi-public payphones, hotels, and hospitals, there is a genuine "business end user" -- the hotel, hospital, or the owner of a store that has a semi-public payphone -- that actually makes use of the telephone line for private purposes. In the case of both LEC and independent public payphones, the only true end users are the payphone callers (or those billed for the calls).

Further, IPP providers are not any better situated than are the LECs themselves to recover payphone line costs from the real end users of their payphone lines. Like the LECs in 1983, IPP providers can apply per-call charges to only a fraction of the end users using the payphone for interstate calling.

GTE claims that exemption of IPP lines from EUCL charges "could potentially result in an increase in the EUCL charge to all other end user subscribers." GTE at 4. APCC's proposal would not have this result. As a result of redefining "public telephone" to include IPPs, the portion of a LEC's revenue requirement associated with lines serving IPPs would be required

to be assigned to the CCL element, not the EUCL charge. 47 CFR § 69.501(d). Thus, the "base factor portion" of the CCL revenue requirement would "change": it would be reduced by the amount of revenue requirement associated with IPP lines. Unless the interstate NTS costs associated with IPP lines are substantially less per line than the costs associated with other lines (and the record does not indicate that this is so), there should be no net increase in EUCL charges.

Ameritech suggests that APCC's proposal is inconsistent with the pending petitions by Ameritech and Southwestern Bell for waivers to recover their payphone costs from direct charges on IXCs handling calls from those payphones. There is no inconsistency. Nothing in APCC's proposal requires that "public telephone" costs be recovered from CCL; if the Commission wants to amend or waive its rules to allow a different cost recovery mechanism for both LEC and IPP "public telephone" lines, it may do so. For example, the FCC could grant Ameritech and Southwestern Bell waivers that allowed them to recover the costs of all "public telephone" lines (whether serving LEC payphones or IPPs) with a per-call charge. Such a charge is clearly feasible, since Ameritech has elsewhere acknowledged that it has the capability to track calls from IPPs as well as from Ameritech payphones. The only difference would be that the new access charge collected by Ameritech on calls from IPP payphones would

only include a charge for the use of the line, not a charge for the use of the payphone itself (unless this charge was collected as a pass-through to the IPP provider).

APCC agrees with Ameritech, Southwestern Bell, MCI and Sprint that using CCL to recover IPP line costs is not "cost-causative" recovery, any more than using the same charge to recover LEC payphone line costs. But that should not prevent the Commission from acting now to equalize the access charge treatment, whatever it ultimately may be, for both LEC payphones and IPPs.

CONCLUSION

For the foregoing reasons and the other reasons advanced by APCC, the Commission should grant APCC's petition for rulemaking.

January 11, 1996

Respectfully submitted,

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ATTACHMENT 1

THE WORKSHOP REPORT

ON

CUSTOMER OWNED PAY TELEPHONE SERVICE

IN RESPONSE TO

COMMISSION DECISION 90-06-018

SUBMITTED BY:

CUSTOMER OWNED PAY TELEPHONE WORKSHOP PARTICIPANTS

DECEMBER 21, 1993

II. PUBLIC POLICY PAY TELEPHONES

Background

In Order Instituting Investigation (I.) 88-04-029, the Commission asked COPT workshop participants to define public policy pay telephones, to count them and to determine a mechanism for funding them.

Public policy pay telephones are maintained by the LECs on an uneconomic basis, but are required for the health, safety and welfare of the public. Examples of potential public policy pay telephones are telephones in parks or recreation areas, highway rest stops, etc.

Workshop participants held several meetings in the summer of 1988 to define the telephones which would be included in this category and to outline the criteria by which to count them. The progress of the workshop was summarized in CACD's August 1988 report to the Commission (D. 90-16-018, Appendix A, pp. 74-78). The revenue criteria the LECs used to determine what constituted an "uneconomic" pay telephone were the coin in the box, plus the $0.20 Message Toll Service surcharge. The "break-even" amount alleged by the LECs was $4.00 per phone per day. The three LECs (Pacific, GTEC, Contel) produced lists of their pay telephones which did not " break even." The combined list of potential public policy pay telephones exceeded 67,000.

Workshop participants realized additional criteria were needed to determine which "uneconomic" telephones were public policy pay telephones, so additional meetings were held in the fall of 1988. The DRA wrote a memorandum (APPENDIX D.) which summarized those meetings and listed additional criteria the workshop developed to qualify public policy pay telephones. Criteria included such factors as individual access to the telephone network, the location of other pay telephones, weather conditions, and the geography and demographics of the surrounding area.

Workshop participants then asked the three LECs to conduct field surveys of their pay telephones (utilizing the criteria which the workshop had developed) to compile a list of potential public policy pay telephones. The surveys were completed by February 1989. Using the additional criteria, the list of public policy pay telephones decreased to 22,000. This number further decreased when guidelines were refined. The list has continued to decrease each year. As of January 1993 the total number of public policy pay telephones statewide was 1,975.

The workshop believes the dramatic decrease in the number of public policy pay telephones is due to several factors: (1) The increase in the number of COPT telephones (from 29,000 in December of 1988 to over 58,000 today); and (2) the increase in the number of pay telephones under contract to either a LEC or a COPT company. Pay telephones are not eligible for public policy status if the property owner or station agent has a contract from either a LEC or a COPT company which pays the station agent or property owner a commission.

Funding

In I. 88-04-029, the Commission asked workshop participants to determine a means for funding public policy pay telephones. After many lengthy discussions, parties agreed that:

> "Public policy pay phones shall be funded through a monthly rate charged to subscribers of the access line connecting the COPT instrument to the network, to the line serving an instrument provided by other non-LEC operators of pay telephones, and by appropriation by the utility for its lines serving the utility's semi-public and competitive sector pay telephones..."
>
> "The parties agree to work out details of the incremental rates and how to administer the program in workshops to be headed by CACD of the Commission staff." (D.90-06-018, Appendix A, p.28)

To calculate costs and revenues used to determine the amount of the monthly surcharge, Pacific, Contel and GTEC utilized a worksheet which contained the Commission staff's cross-subsidy formula found in D. 90-06-018 (Appendix A, pp. 98-99). Only the cost and revenues which were considered competitive were used in the calculation of the surcharge. Pacific's monthly surcharge for pay phones was $0.13 per pay phone line per month and GTEC's surcharge was $0.53 per line per month.

Because of the demographics of Contel's serving area (mainly rural), and the small number of utility and privately owned pay telephones in its serving area, Contel has a disproportionate number of public policy pay telephones. Workshop participants decided to subsidize Contel's public policy pay telephones from Contel's rate base, which is what Contel currently does. Pacific and GTEC subsidize public policy pay telephones in their respective serving areas with a monthly surcharge paid by all pay telephone providers.

If Contel's regulatory structure changes due to Contel's proposed merger with GTEC, or if there are significant changes made to pay telephone rate structures and LEC regulatory frameworks as a result of the New Regulatory Framework Phase III Implementation Rate Design (IRD), the manner in which Contel subsidizes public policy pay telephones should be further reviewed.

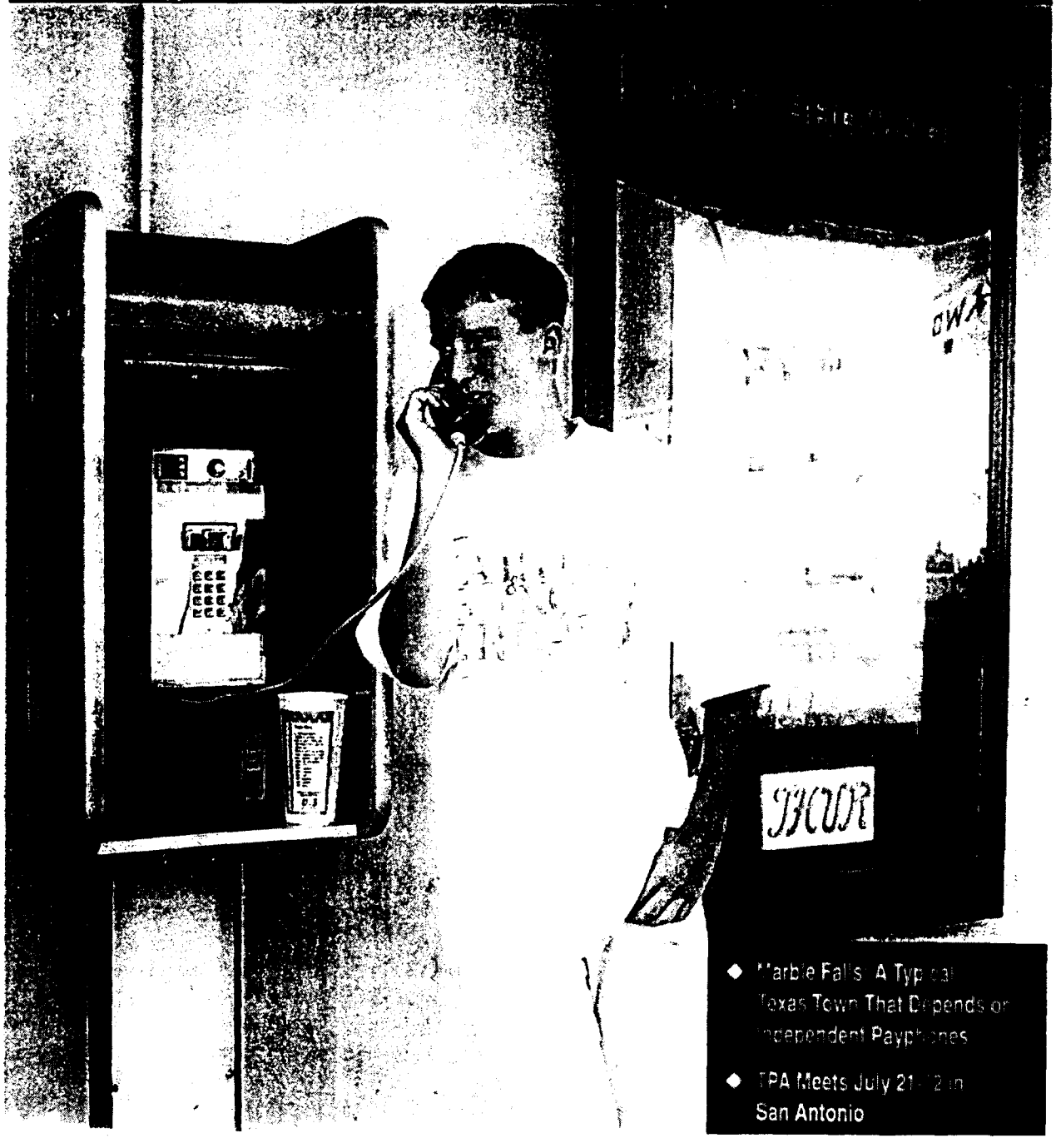
Administration

Commission D.90-06-018 (Appendix A, p. 93), established a Public Policy Pay Telephone Committee (Committee) to review applications for public policy pay telephones. The Committee has not met because there have been very few applications for public policy pay telephones. Those requests that have been received by the LECs have been reviewed by the LECs and DRA's Committee representative.

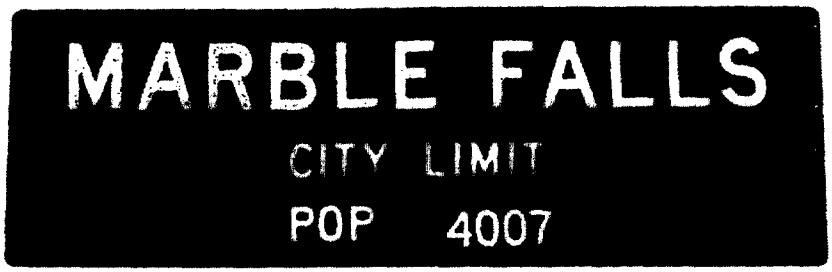
ATTACHMENT 2

TEXAS CALLING

Texas Payphone Association July 1994



- Marble Falls: A Typical Texas Town That Depends on Independent Payphones
- TPA Meets July 21-22 in San Antonio



A Typical Texas Town Served by the Independent Payphone Industry

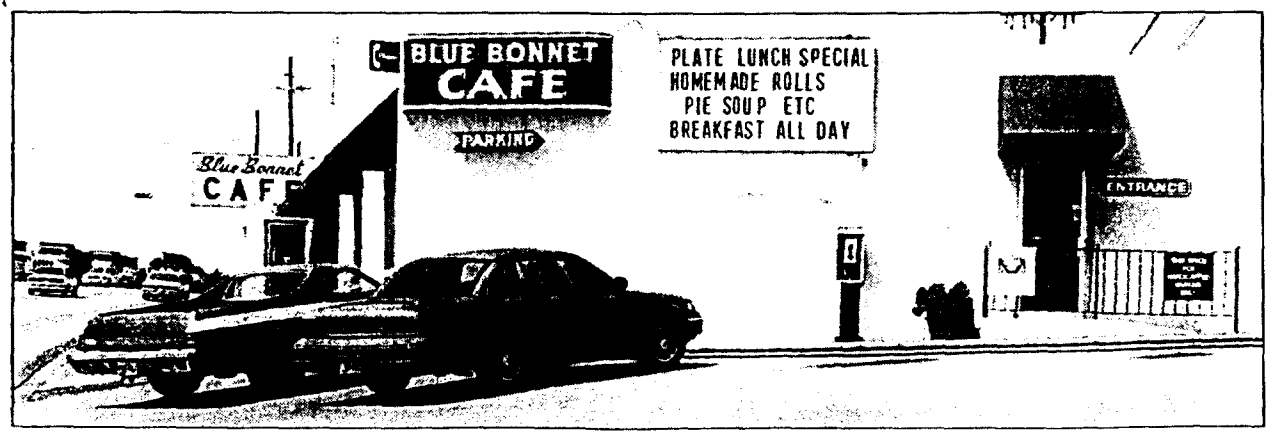
Every year approximately 300,000 people visit the Bluebonnet Cafe in Marble Falls, Texas to enjoy their home-style cooking: chicken fried steak, fried catfish, fried okra, homemade rolls and pies, and more. While the Bluebonnet is the most popular place to eat in the small town, GTE said it had to remove the cafe's payphone because it wasn't generating enough revenue for the telephone company.

That's when Bluebonnet owner John Kemper turned to an independent payphone company to install a payphone outside the front door of the 65-year-old cafe. "I felt like my customers needed the service, and I didn't want to have to pay for a payphone. This was a good alternative," he said.

Kemper is President of the Marble Falls/Lake LBJ Chamber of Commerce, and he supports entrepreneurship and business development. He said having an independent payphone "is a better deal for me—they pay for the phone and pay me a commission" for having the phone on the premises.

Marble Falls is a typical Texas town where the local telephone company is removing its payphones and refusing to install pay telephones at no charge in new locations. About 75 percent of the payphones in Marble Falls are owned by independent payphone companies. TPA conducted a general survey along the city's main streets to count payphones and determine ownership, and then reported the results to the local chamber of commerce. "I'm surprised that the majority of the payphones are independently owned. I would have guessed that GTE had them all or the highest percentage," said Donna Klaeger, Executive Director of the Chamber of Commerce. "I do appreciate the contribution that these independent payphone companies are making to the local economy and providing this service to the community." She hopes independent companies will install even more payphones in the area—and especially in the popular park areas along Lake Marble Falls where GTE would not install pay telephones.

Payphone Sales and Service owns the only payphone on Main Street in Marble Falls, which is outside the Marble Theatre. Owner Harry Crawford said there never had been a payphone at the community's only local theatre until he installed one. "The closest payphone used to be two or three blocks away, and it was a real safety hazard for kids to cross several streets to use a phone," Crawford said. GTE had refused to install a payphone at the Marble Theatre, and the owner did not like to let children



use her business phone. Now the owner and the movie-goers appreciate having a payphone available. "That phone handles a lot of local collect calls, because the kids spend all their money on popcorn and candy and they don't have any money left to call home," Crawford said.

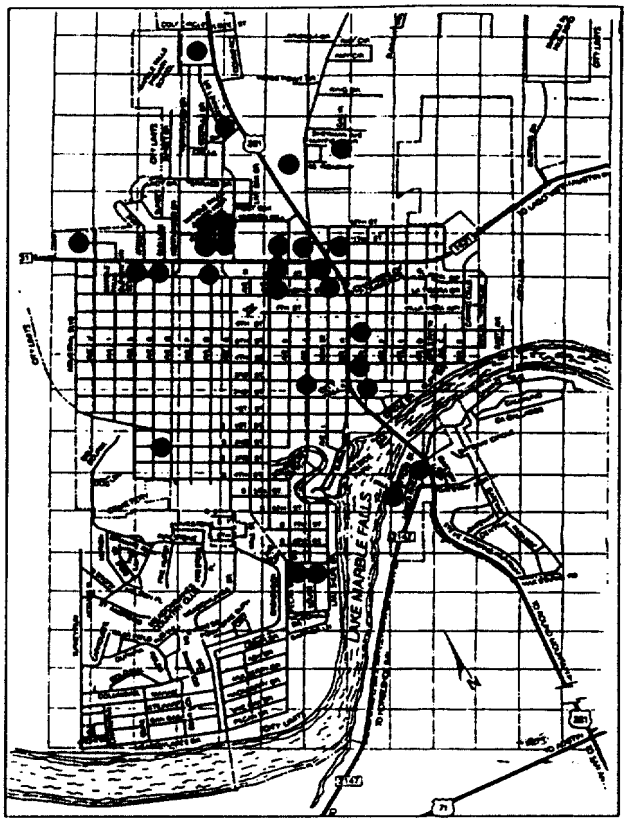
Crawford said he and his wife Lola travel to Austin regularly, where Lola's mom and their son live. That's how they happened to drive through Marble Falls, where they took the time to talk to people to see if they might need payphones. "We develop a lot of new markets, and a majority of our phones are placed in locations where there was not a payphone before," he said.

The Crawfords discovered that one unmet need in Marble Falls was for payphones at apartment complexes—and especially those where many people have limited incomes. Payphone Sales and Service owns payphones at five apartment complexes in Marble Falls, and most of the phones are in the laundry rooms at the complexes. They are proud to be providing phones so people can stay in touch with their family, friends, and workplaces. "We have to make money on what we are doing, but we also have to look at the community we are serving and what they need."

Crawford can describe off the top of his head the location of each of his 13 payphones in the Marble Falls city limits. "Payphones are kind of like your kids—you keep track of them," he said with a laugh.

The largest bank of payphones in Marble Falls is at the HEB food store, where three payphones owned by North American InTeleCom are located in the entry foyer. "The usage of those three phones is almost continual, and 75 percent of the calls made are local calls," said Carol Vance, NAI's Director of Operations. She said NAI also provides a payphone at HEB in the employees' break room. "HEB wants to have a payphone just for employees in every store as a special courtesy so their staff doesn't have to stand in line with the public to make calls," she added. Employees use the payphone before and after their shifts and on breaks.

Vance said NAI has been associated with HEB since 1985, "so everywhere they go we go." That association allows NAI to provide an important service to grocery shoppers and HEB employees throughout Central and South Texas.



The dots indicate locations of all the independent payphones within the city limits of Marble Falls.

Harold Taylor of T&T Communications was the first independent payphone owner to introduce 25 cent per minute coin long distance calling in Marble Falls. Taylor started offering it three months ago, and he said many people are finding it's convenient to pay with quarters and is the cheapest way to call long distance.

T&T has payphones in Marble Falls at several locations where GTE pulled their payphones, as well as at convenience stores and gasoline stations whose owners asked GTE to remove their pay telephones because they preferred to have T&T phones.

Marble Falls attracts people from throughout the U.S. who enjoy the Highland Lakes and recreational activities. At the River View RV Park on the banks of Lake Marble Falls, there are typically 30 vehicle spaces filled every day. The only phone the visitors have to use is an independent payphone located in the laundry room at the RV park. "About 80 percent of them are retired couples, and they depend on the payphone to call their kids and grandkids," said Manager John Wefler. The RV travelers regularly stand in line at the park's payphone which is both a lifeline and a "loveline" for them.

ATTACHMENT 3

AMERITECH

AMERICAN INFORMATION TECHNOLOGIES

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June 20, 1988

Nancy C. Garrison, Esq.
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Re: Change in Equal Access Procedures for the Routing of Dial "0" Calls from Some Ameritech Public Telephones (U.S. v. Western Electric, No. 81-0192).

Dear Ms. Garrison:

In accordance with the requirements of the District Court's order of March 6, 1985, Ameritech hereby notifies the Department of a change in its procedures for the routing of calls dialed without access codes from some Ameritech public telephones.

Since divestiture, dial "0" calls without access codes have been sent to American Telephone and Telegraph Company ("AT&T") exclusively. On January 29, 1988, the Department moved the Court for an order that would, inter alia, require the Bell Operating Companies ("BOCs") to file within sixty days plans that would end this routing. The Court, however, has not yet ruled upon the Department's motion.

Since 1984, the Ameritech companies have advocated before the Department, the Court, and the Federal Communications Commission ("FCC") that routing to AT&T should be replaced by Ameritech's plan to route calls by database inquiry according to the carrier preference of the party who will pay for each credit card, collect, or third-number call. However, the technological capability of doing so is not yet available. Moreover, neither the Court nor the FCC has yet approved the billed party preference plan or, indeed, indicated any inclination to approve any other plan to change the present routing.

While these issues have remained undecided, the owners and proprietors of premises on which public telephones are located have become increasingly aware of alternatives to the public telephones provided by the BOCs and other local exchange carriers ("LECs"). AT&T telephones and other private (i.e., non-BOC or non-LEC) public telephones are being employed to replace BOC

public telephones. Such public telephones frequently employ automatic dialing to direct all calls (whether or not dialed with any carrier's access code) to a carrier selected by the provider of the telephone or the premises owner. Often this carrier is the type of reseller known as an Alternate Operator Service ("AOS") provider. Under these arrangements, the owners and proprietors of public telephone premises are, as a practical matter, controlling the routing of both intraLATA and interLATA calls from their premises by virtue of their ability to select the public telephone provider. These developments have already been described to the Department in NYNEX Corporation's letter dated November 2, 1987, and have since been discussed extensively in the filings before the Court in response to the Department's January 29 motion and in current inquiries by the FCC and state commissions into the practices of AOS carriers.

Another recent development is that Ameritech and other BOCs are making available the data to permit validation of collect, third-number, and BOC credit card calls by all carriers. On May 19, 1988, U S West Service Link announced that it had loaded the data of Ameritech, Southwestern Bell, and U S West and that it was offering validation service on calls to be billed in the twenty-four states served by those three BOC regions. This makes the routing of calls without access codes to non-AT&T carriers a more workable option than before.

In the wake of these developments, Ameritech, like NYNEX, proposes to respond to competitive challenges to its public telephones by routing dial "0" interLATA calls to a carrier selected by the owner of the premises. (This would apply only to interLATA calls dialed without access codes; there would be no change in the routing of 10XXX, 950-XXXX, and other access codes.) In ascertaining the premises owner's choice of interLATA carrier, the Ameritech companies will not be engaged in providing interLATA services or selecting the interLATA carrier. The Ameritech companies will present a bid or proposal relating to the installation and maintenance of the telephone sets and the carriage of local and intraLATA toll traffic and will invite complementary bids from interLATA carriers who are in general agreement with the usual participation assumptions discussed below.

Bids will be invited from interLATA carriers as directed by the premises owners and will be in accordance with the equal access and non-discrimination requirements of the decree. Whenever the premises owner has not indicated any particular interLATA carriers to be solicited, the Ameritech companies will solicit complementary bids from all interLATA carriers who concur in the basis for participation and who might reasonably be expected to have an interest in the BOC public telephones in question. On the other hand, the Ameritech companies do not believe they are required to reveal one carrier's sales leads to the other carriers or to expand the list of bidding carriers beyond the scope desired by the premises owner. Thus, where an