Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
	)	
U S WEST's Comparably Efficient Interconnection Plan for Payphone Services	)	DA 97-31

U S WEST, INC. REPLY

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SUMMARY

Independent payphone providers ("IPP") and other BOC competitors have hurled a seeming blizzard of objections at U S WEST's CEI Plan in the hope of stalling the effective date of important rights that are contingent on plan approval (e.g. eligibility for interim compensation and right to participate in the interLATA PIC selection process). The IPP storm, however, is only a late-season squall, and for the most part their objections are just as fluffy and ephemeral as spring snowflakes. Many of them are simply not relevant to this proceeding. U S WEST urges the Commission to press on towards its ultimate goal, which is to place all payphone providers on an equal footing in the payphone marketplace.

U S WEST is fully aware of the burdens that it must bear, and the requirements that it must meet, before it can avail itself of important benefits granted in the Commission's Payphone Orders. Compliance with the Commission's statements regarding BOC CEI plans is just one of those requirements. To the extent that commenters have raised objections, questions or concerns that relate to other requirements (e.g., additional unbundling under the ONA rules, dialing parity), they are outside the scope of this proceeding.

U S WEST's CEI Plan satisfies all relevant criteria and should be approved. Consistent with the Commission's directive, U S WEST described how it intends to comply with the CEI equal access parameters and nonstructural safeguards in the provision of payphone services. The information provided was more than adequate to enable the Commission to ensure that U S WEST will provide payphone services in a nondiscriminatory manner.

In this Reply, U S WEST clarifies certain aspects of its CEI Plan in response to questions and concerns raised by various commenters. These clarifications are intended to further the commenters' and the Commission's understanding of what U S WEST has done and will do to satisfy the relevant requirements. These clarifications are offered as voluntary disclosures, not as supplements or amendments to the Plan.

U S WEST also responds to specific claims of inadequacy. For example, U S WEST explains (1) why its coin-line offering is fully consistent with the Commission's basic requirement that LECs provide coin service so competitive payphone providers can offer payphone services in a manner similar to the LECs, (2) why its state and Federal tariff filings comply with all CEI-related requirements (and why arguments as to the rates contained therein are misplaced), and (3) why its statements regarding compliance with the CPNI requirements are satisfactory. Specific objections regarding other aspects of U S WEST's CEI Plan (such as inmate calling services, number assignment and technical interface information) are addressed briefly.

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U S WEST, Inc. ("U S WEST"), on behalf of U S WEST Communications, Inc. ("USWC") and its affiliated companies, hereby submits this Reply to the comments filed on U S WEST's Comparably Efficient Interconnection (or "CEI") Plan for Payphone Service Providers.[1]

I. INTRODUCTION

In its Orders in this docket,[2] the Federal Communications Commission ("Commission") concluded that the provisions of Section 276 of the

[1] U S WEST, Inc.'s Comparably Efficient Interconnection Plan for Payphone Services, CC Docket No. 96-128, filed Jan. 6, 1997, amended Jan. 8, 1997 ("U S WEST CEI Plan"). See also Public Notice, Pleading Cycle Established for Comments on Comparably Efficient Interconnection Plans for Payphone Service, CC Docket No. 96-128, DA 97-31, rel. Jan. 8, 1997 ("Public Notice").

[2] In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-128, et al., Report and Order, FCC 96-388, rel. Sep. 20, 1996 ("Order"), and Order on Reconsideration, FCC 96-439, rel. Nov. 8, 1996 ("Recon. Order") (collectively "Orders").

Telecommunications Act of 1996 prohibiting Bell Operating Companies ("BOC") from subsidizing and discriminating in favor of their own pay telephone operations will be satisfied by requiring the BOCs to comply with the Commission's Computer III and Open Network Architecture ("ONA") non-structural safeguards in their provision of pay telephone services.[3] Specifically, the Commission has required that each BOC file a CEI plan demonstrating its compliance with CEI parameters.[4] In articulating the requirements, the Commission noted that the BOCs must offer, on a tariffed, nondiscriminatory basis, central office transmission services utilized by their own payphone operations. The Commission refused, however, to impose any further immediate unbundling requirements.[5]

In its CEI Plan, U S WEST demonstrates its intent to make the service available via tariffs in all of its states. There are two types of lines for use by payphone service providers ("PSP"):

- A Smart PAL coin line for use with "dumb" pay telephone sets, and
- A Basic PAL coin line for use with "smart" pay telephone sets.

U S WEST's payphone operations (U S WEST Public Services, or "USWPS") will use both access arrangements, and both will be offered to independent payphone providers ("IPP") on the same terms and conditions.

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[3] Order ¶ 199.

[4] Id. ¶ 202.

[5] The Commission noted that BOCs must unbundle additional network elements when requested, based on specific criteria established in the Computer III and ONA proceedings, and may be subject to additional unbundling requirements at the state level. Id. ¶¶ 146, 148, 200; Recon. Order ¶ 165.

Seven parties filed comments on U S WEST's CEI Plan.[6] None of these commenters has shown that U S WEST's CEI Plan fails to provide comparably efficient interconnection to IPPs. Many of them complain about lack of "detail" and claim that this, alone, is grounds for disapproving the Plan. On the contrary, U S WEST supplied adequate information on all the parameters and other relevant issues. Cognizant of the fact that no amount of detail is ever likely to satisfy the IPPs, U S WEST modeled its Payphone CEI Plan on other CEI plans that have been approved by the Commission. There is no reason for the Commission to impose a different, higher standard in reviewing payphone CEI plans than it has applied in the past, especially in light of the Commission's own expectation that "payphone service CEI plans will raise fewer issues than CEI plans for enhanced services . . ."[7]

Nor should the Commission subject U S WEST to a higher standard than the other BOCs, as argued by the Associations.[8] Their selective discussion of pending cases involving U S WEST's payphone practices is clearly intended to bias and inflame the Commission, and should be disregarded.[9] The standard for review is

[6] The commenters were the American Public Communications Council ("APCC"), a coalition of the Arizona Payphone Association, Colorado Payphone Association, Minnesota Independent Payphone Association and Northwest Payphone Association ("Associations"), AT&T Corp. ("AT&T"), the Inmate Calling Service Providers Coalition ("Inmate Coalition"), MCI Telecommunications Corporation ("MCI"), Oncor Communications, Inc. ("Oncor") and Telco Communications Group, Inc. ("Telco").

[7] Recon. Order ¶ 220.

[8] Associations at 2-4.

[9] The Washington Utilities and Transportation Commission ("WUTC") case quoted by the Associations has been appealed to Federal court, and the findings in that case flowed mainly from the failure of USWC to provide coin-line service to IPPs.

clear: U S WEST (like all the other RBOCs) must provide comparably efficient interconnection opportunities to all PSPs to ensure that the services which U S WEST uses in its own payphone operations are available to IPPs on the same terms and conditions. U S WEST has filed a plan to do just that.

In this Reply, U S WEST clarifies certain points made in its CEI Plan, and responds to specific concerns raised by some of the commenters. There is clearly no need for U S WEST to refile or otherwise amend its Plan. The Plan should be approved as filed. Such approval is necessary so that USWPS can enjoy the same rights that its payphone competitors enjoy (e.g., eligibility for interim compensation and the ability to engage in the interLATA primary interexchange carrier ("PIC") selection process).[10] In fulfillment of its promise to allow the RBOCs to compete on a level playing field in the payphone marketplace, the Commission should approve U S WEST's CEI Plan by April 15, 1997, and not allow IPPs and other BOC competitors to bog down this proceeding with irrelevant issues, improper questions and manufactured "concerns."

Once USWC makes such a coin line available to IPPs through the Smart PAL tariff offering, the WUTC objection becomes moot. In addition, U S WEST is vigorously defending the pending antitrust action in Washington. Finally, last year the Arizona Payphone Association filed a Commission complaint against U S WEST containing similar allegations of discriminatory policies and practices. See Arizona Payphone Association v. USWC, File No. E-96-40, Notice of Formal Complaint, dated Aug. 29, 1996. That complaint was recently dismissed *with prejudice*. See Arizona Payphone Association v. USWC, File No. E-96-40, Order, DA 97-154, rel. Jan. 24, 1997.

[10] U S WEST must obtain approval of its CEI Plan before USWPS is permitted to receive compensation for its services, or to negotiate with site providers with respect to the selection of the carriers that will carry interLATA calls from U S WEST's payphones. Recon. Order ¶ 132.

II. U S WEST'S COIN LINE OFFERING MEETS CEI REQUIREMENTS

The APCC argues that, in order to meet CEI requirements, local exchange carriers ("LEC") must provide a "functionally equivalent" coin line, i.e., one that is as useful to IPPs as it is to the LEC.[11] The APCC cites no authority in support of this extraordinary claim. In fact, there is no such CEI requirement, and the APCC's complaints about lack of "utility" are irrelevant. Rather, the CEI requirement is for the LEC to make the coin line available to IPPs on the same terms and conditions that it makes the coin line available to its own payphone affiliate. U S WEST has done that. Whether an IPP connects a dumb set to a Smart PAL (coin line), or connects a smart set to a Basic PAL, is the IPP's choice.[12] USWPS has the same choice, and will receive service on the same terms and conditions.[13]

Against this backdrop, the APCC's demands for subscriber-based call rating and Operator Service Provider ("OSP") selection are out-of-bounds.[14] The

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[11] APCC at 2-3.

[12] In regard to Telco's request for information on how "end users" will access the services described in U S WEST's CEI Plan (Telco at 3), IPPs can order them through the U S WEST Interconnect Services Center, which can be reached at (612) 288-3707, Monday to Friday, 8 a.m. to 5 p.m. Central Standard Time.

[13] Where Smart PAL service is not available, USWC will provide Basic PAL service to all PSPs, including USWPS. See APCC at 9-10; AT&T at 2. It is silly to argue that U S WEST is required to make the Smart PAL and the Basic PAL offerings "functionally equivalent." Associations at 6-8. They do not "appear" to be the same because they are not meant to be the same. They are fundamentally different services, with different electrical and other technical characteristics.

[14] APCC at 10-14.

Commission has already considered these and similar demands,[15] and decided not to require the LECs to unbundle these services. The APCC, therefore, is either relitigating issues that the Commission has already considered and decided, or making veiled requests for additional unbundling. Either way, the APCC's demands are not appropriate in this context.

In any event, the IPPs already select rates for local calls because the local sent-paid rate is programmed into the telephone set itself, even in the case of "dumb" sets. Therefore, IPPs that choose to use U S WEST's Smart PAL can establish their own local call rates, just as they do today with their smart sets. The timing and over-time rating functions provided to IPPs will be the same as those provided to USWPS.

The APCC's claim regarding discrimination in the rating of intraLATA toll calls is not well-founded. USWPS is not responsible for rating these calls. The USWC intraLATA toll group sets these rates using Automated Coin Toll Service ("ACTS") technology, which allows for only one rate. Since the ACTS rates apply equally to USWPS and IPPs, there is no discrimination and no CEI issue.

U S WEST should not be required to deploy "Profitmaster," which allows IPPs to set payphone specific send-paid rates, simply because another RBOC has chosen to offer this service on a limited basis.[16] As long as USWPS is not using it, there is no

[15] Order ¶¶ 135-39, 148.

[16] Ameritech offers Profitmaster in certain areas to IPPs who subscribe to Ameritech's IPP coin line, but even Ameritech argues that "[t]he Commission should not mandate its deployment . . . because Ameritech is responding to requests for the service on a demand basis. . . . [C]urrent limited demand makes its

discrimination. If and when USWPS decides to use this service, it will be offered on the same terms and conditions to IPPs.

The APCC contends that the coin line is not "useful" to IPPs unless it enables them to send operator-assisted (0+) calls to the OSP of their choice, but this contention is neither true nor relevant. In the first place, IPPs typically re-route 0+ calls to the OSP of their choice by installing an autodialer in the payphone set.[17] Second, the Commission did not require the LECs to unbundle operator services from the coin line. The APCC essentially is making a request for additional unbundling without going through the ONA 120-day process. Such a request is clearly improper within the context of this proceeding.

The APCC even tries to make a CEI issue out of the routing of 0- non-emergency calls, arguing that they should be sent to the IPP's chosen OSP.[18] But the LEC switch cannot determine whether a 0- call is an emergency or a non-emergency. Only a live operator can determine that. And LEC operators should not be required to instruct end users to hang-up and redial the IPP's chosen OSP. End users would be confused and annoyed by such a practice.

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deployment extremely expensive. Ubiquitous deployment would drive its price well beyond customers' willingness to pay." Ameritech Reply Comments, filed herein Jan. 17, 1997 at 10-11 ("Ameritech Reply").

[17] Many IPPs routinely install autodialers and, when asked to "PIC," they choose "none," even where intraLATA presubscription does exist. The effect of this practice is that every local, intraLATA and interLATA 0+ call is autodialed to an interexchange carrier ("IXC") dial-around code, and the end user pays toll charges on calls that would have been local calls if handled through the LEC operator service.

[18] APCC at 13-14.

The APCC's plaintive cry that IPPs choosing the coin line (Smart PAL) will be deprived of a popular calling plan (25 cents per minute), and therefore the coin line will have no "utility" for them, is just another ploy.[19] This is simply not a CEI plan issue because it does not relate to the provision of basic services that the LEC uses in its payphone operations. For the Commission's information, USWC has implemented an innovative 1+ (cash/sent paid) rate plan in Arizona, Colorado, Oregon, Utah and Washington. This program and all other pricing programs associated with cash calling will be available to IPPs and USWPS in the same states on the same terms and conditions.

III. U S WEST'S FEDERAL AND STATE TARIFFS <u>COMPLY WITH THE COMMISSION'S REQUIREMENTS</u>

In the face of resounding replies from BellSouth Corporation ("BellSouth") and Ameritech on the same issue, the APCC repeats its argument that failure to file a Federal tariff for coin-line features is a basis for disapproving the plan. But, as BellSouth and Ameritech so aptly point out, the Federal tariffing obligation extends only to the basic network services or unbundled features *used by a LEC's operations to provide payphone services*.[20] U S WEST is in full compliance with that obligation. U S WEST's pending Federal tariff covers certain unbundled elements (such as CustomNet and Split Blocking) that USWC provides to payphone providers in conjunction with Basic PAL service. In contrast, USWPS will use the coin line as a

[19] APCC at 12.

[20] <u>Recon. Order</u> ¶ 162 ("any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to

unitary whole. There are no "unbundled features" of the coin line that will be used by U S WEST Public Services, so there was nothing associated with Smart PAL that needed to be tariffed at the Federal level. Repetitive arguments to the contrary are misguided.[21]

Several parties take issue with the tariffs filed in U S WEST's 14 states. The APCC complains that U S WEST failed to file with its CEI Plan copies of all coin line tariffs filed with state public utilities commissions ("PUC").[22] Consistent with its past practice, U S WEST submitted representative samples of the four types of payphone service offerings, and illustrative state and Federal tariffs. U S WEST did not file its state and federal tariffs until January 15, 1997, nine days after it filed its CEI Plan. U S WEST has complied with all Commission requirements; it appears that some parties simply do not understand what they are.

Complaints about the alleged inadequacy of U S WEST's pending state tariffs, and the rates contained in them, are completely misplaced.[23] When the Commission stated that it would "rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276,"[24] it clearly delegated to the states the responsibility for reviewing and

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independent payphone providers on a nondiscriminatory, tariffed basis"). See Ameritech Reply at 11; BellSouth Reply, filed herein Jan. 15, 1997 at 5.

[21] Similarly, APCC's arguments regarding the pricing of Answer Supervision-Line Side and CustomNet (APCC at 3-4) should be raised in the context of the relevant tariff proceeding.

[22] APCC at 6.

[23] See, e.g., APCC at 6-13; Associations at 14-15.

[24] Recon. Order ¶ 163.

approving U S WEST's Smart PAL and Basic PAL tariffs. Arguments regarding cost support, methodology, rates, mark-ups, terminology, and definition of "company error" should be directed to the state commissions that are responsible for reviewing these tariffs.

The Associations argue that U S WEST should be required to remove paragraph 5.5.7 B.2. of its tariff (which states that PAL is the only service offered for use with Customer Owned Pay Telephones), and separately price the access line.[25] This is a compound argument. To the first point regarding the availability of payphone service only through PAL lines, the fact is that Smart PAL and Basic PAL are the only services tariffed by U S WEST for use with payphones. That Minnesota and Iowa allow IPPs to use IFBs in lieu of PAL does not change this fact. To the second point regarding separate pricing of the access line, in the case of Smart PAL, there is only one thing to tariff, and that is the line and accompanying integral network features that USWPS will use in the provision of payphone services.

IV. U S WEST'S PROCEDURES FOR INSTALLATION, MAINTENANCE AND REPAIR MEET CEI REQUIREMENTS

Various parties have requested clarification regarding the procedures that U S WEST intends to follow to ensure nondiscriminatory provisioning of installation, maintenance and repair ("IM&R") services. For example, the APCC and the Associations have raised questions about the service order entry process.[26]

[25] Associations at 14-15.

[26] APCC at 15-16; Associations at 13-14.

Although there are some differences in terms of the personnel involved, there is no discrimination in the way IPP and USWPS service orders will be processed. USWPS service orders will be placed into the U S WEST Service Order System either by a USWPS Sales and Service Consultant ("SSC") (when the order comes directly from a site provider) or by an order writer (when the order is electronically transmitted by an Account Manager in the field). IPP service orders are placed into the Service Order System by a U S WEST Interconnect Services Center ("ICS") Service Delivery Coordinator ("SDC") (when the IPP calls or faxes a request for service to the ICS or requests service through electronic mediated access, via a web-based interface). Once the IPP completes the appropriate forms and checklist to initiate a service request,[27] an SDC will convert this electronic information into a service order that flows through various downstream systems which coordinate all installation activity.[28] Regardless of who initiates a payphone service order (an SSC, an order writer, an SDC or an IPP through electronic mediated access), the IPP access to provisioning and installation services will be comparable to USWPS access.

The same is true for maintenance and repair procedures, which the Associations have questioned.[29] U S WEST's procedures regarding trouble reports

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[27] In addition to requesting service, IPPs will use the interface to verify an address, obtain customer account and line level information, obtain a directory listing and, as of July 1997, check facility availability. To accomplish these tasks, IPPs will use four forms that have been approved by the Ordering and Billing Forum and a checklist.

[28] For a description of these downstream systems, see U S WEST's CEI Plan at 9-10.

[29] Associations at 17.

will assure that there is no discrimination between IPPs and USWPS. USWPS trouble reports will be input by an SSC in the USWPS Center based on a call from an end-user customer or a site provider. IPP trouble reports will be input by a Repair Service Attendant ("RSA") in the Customer Repair Service Answering Bureau ("CRSAB") based on a call from an IPP. In addition, IPPs will have mediated access to USWC'S Loop Maintenance Operating System through a web-based user interface which will allow them, through a template, to report trouble on their service. Again, regardless of who originates a trouble report (an SSC, RSA or an IPP through electronic mediated access), the process flow of an IPP trouble report will be comparable to a USWPS trouble report. Once a trouble report is in the system, all originators can access the system to modify, cancel or close the trouble report or request status information.

Based on codes input to the trouble report by the SSC or RSA and screening done within LMOS, trouble reports for USWPS and IPPs will be directed to a USWC technician or screener.[30] During the screening process, IPPs may request joint testing to isolate trouble to either the IPP's equipment or to the USWC line. If testing indicates line trouble, a USWC LNO technician will be dispatched. In regard to the cost that USWPS and IPPs will pay for repair and maintenance

[30] USWC technicians will be dedicated either to USWPS or to USWC Local Network Operations ("LNO"). USWC technicians dedicated to USWPS will perform both line (regulated) and set (deregulated) work. An appropriate allocation of costs will be made under a Part 64 accounting plan.

service, the cost of line maintenance is included in the monthly recurring charge associated with that line, whether it is Smart PAL or Basic PAL.[31]

The Associations incorrectly claim that U S WEST treats its own payphone operations and IPPs differently in the scheduling of repairs.[32] USWC's maintenance/repair intervals are based upon standard guidelines which are applied to all customers without regard to affiliation. For all payphone services, the customer restoration interval commitment is based upon predetermined standard maintenance intervals which are updated periodically to reflect force availability and workload volume. In regard to the treatment of weekend repair calls, the Associations claim that USWC does line work for itself on weekends, but not for others.[33] That is not true. USWC's policy is to hold line work until Monday. This policy applies to both IPPs and USWPS.

APCC raises concerns about personnel sharing,[34] but this is just another attempt to impose separate subsidiary-type requirements on the LECs. The Commission has expressly permitted the LECs to operate their payphone businesses on an integrated basis.[35] The very concept of integration implies a

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[31] U S WEST cannot make sense of, and therefore cannot respond to, the further request that U S WEST standardize "criteria for the different technologies employed by U S WEST and 'smart' payphones, and authority and access to hardware owned by IPPs." Associations at 17.

[32] Id.

[33] See id.

[34] Id.

[35] Order ¶ 145 (declining to require BOCs to provide payphone CPE through a structurally separate affiliate, and preempting states from imposing structural separation requirements on BOC payphone operations).

certain degree of personnel sharing so that economies of scale and other efficiencies (such as cost savings) can be realized. Although USWPS will have its own dedicated technicians (as distinct from USWC LNO), those technicians may be asked to support other USWC operations from time to time, as the needs of the business demand. Such occasional reassignment of workforce resources is in no way inconsistent with U S WEST's CEI obligations.

The APCC claims that a demarcation point can and should be identified to determine at what point wire maintenance should be charged separately to USWPS as "inside wire" maintenance, and at what point wire maintenance may be included as part of the tariffed access service.[36] U S WEST classifies all work on the network side of the protector[37] as regulated, and USWPS will impute USWC's maintenance of service charge. All work on the set side of the protector is deregulated, inside wire service, so no CEI obligation attaches.

In regard to the Associations' specific request for clarification regarding allocation of facilities, USWC follows a "first-come-first-served" policy for all the types of services that it provides to its customers. U S WEST does not intend, nor is it required, to give PSPs (including USWPS) priority over other types of customers, such as those seeking 1FB or ISDN service. Demand for telecommunications services in U S WEST's region is at an all-time high, and U S WEST will meet that demand fairly and equitably through its first-come-first-served policy.

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[36] APCC at 16.

There is no basis for the Associations' concern about line quality.[38] As stated in U S WEST's CEI Plan "the technical characteristics of all circuits associated with U S WEST's basic services that are used with payphone services are the same."[39] The Associations accusingly point to a U S WEST advertisement for the Millennium (smart set) showing a data port, but there is nothing improper about this at all. It is true, as the Associations point out, that U S WEST's Washington PAL tariff states that "PAL line is not represented as adapted for data service."[40] The presence of a data port on a PAL line does not change that, any more than the presence of a modem on a 1FR or a 1FB makes either of those voice grade lines a data service. Even though PAL lines are not represented (i.e., conditioned or designed) for data service, IPPs also can use payphone sets with data ports on them, and the line quality for their end users will be no better or worse than it is for USWPS's customers.[41]

[37] A protector is a piece of equipment used to take stray voltage to the ground. It usually is placed where the standard network interface would be located, consistent with the flexible MPOE plan.

[38] Associations at 11.

[39] U S WEST CEI Plan at 8.

[40] Associations at 11.

[41] While it is not necessary for purposes of CEI compliance for U S WEST to explain how its Millennium (smart set) functions (Id. at 8-9), for the Commission's information we provide the following explanation to further the general understanding on this matter. The Network Control Center that provides the functionality for the Millennium is not network equipment, but rather is CPE. It is accessed through the packet switched network, and the packet tariffed rates are imputed by USWPS. IPPs have no more right to "equal access" of the Millennium platform than USWPS has to access IPPs' smart set platforms.

V. THERE IS NO BASIS FOR OBJECTING TO HOW U S WEST INTENDS TO TREAT CPNI AND OTHER "CUSTOMER INFORMATION"

In its CEI Plan, U S WEST stated "that CPNI will not be available to or accessible by any other payphone service provider absent affirmative direction otherwise."[42] Despite this straightforward representation, Telco claims U S WEST's position in this area is "vague," because U S WEST failed "to explain *how* it will comply with the CPNI requirements."[43]

U S WEST disagrees with Telco's position. In its CEI Plan, U S WEST provided the Commission with sufficient information about U S WEST's intended access and use of CPNI generally (with a focus on that CPNI associated specifically with IPPs) to overcome Telco's objection. From U S WEST's statement, the conclusion is inescapable that U S WEST -- in the jargon of the existing CPNI regime -- intends to treat the CPNI of non-affiliated IPPs as "presumptively restricted" from USWPS personnel.[44] Such a procedure not only affords IPPs with confidentiality protections similar to those required by the Commission's Customer Premises Equipment ("CPE") Computer II/ONA CPNI rules, but is totally consistent with the confidentiality obligations of Section 222(a) and (b) of the Telecommunications Act of 1996.

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[42] Telco at 3-4, citing to U S WEST's CEI Plan at 15.

[43] Telco at 3 (emphasis in original).

[44] This means that an IPP, a competitor of USWPS, need not affirmatively inform U S WEST that its CPNI should be restricted (whether that IPP has more or less than 20-lines associated with its service offerings). U S WEST will simply treat the CPNI as restricted *vis-à-vis* USWPS personnel.

U S WEST will implement its CPNI access/use position *via* methods and procedures (or "M&P"). Those methods and procedures prohibit USWPS personnel from accessing the accounts of unaffiliated IPPs, and will be supported by an internal audit to ensure compliance. Employees found in violation of the M&Ps will be subject to disciplinary action, up to and including dismissal.

The APCC attempts to challenge U S WEST's current use of the CPNI associated with semi-public service customers.[45] It argues that U S WEST's CEI Plan leaves "ambiguous the manner in which it will handle information relating to current customers of U S West's tariffed semi-public payphone service."[46] Furthermore, as a predicate to its objections, the APCC makes the totally unfounded claim that USWPS secured its semi-public customers "under anticompetitive, discriminatory conditions."[47]

The APCC is correct that U S WEST's CEI Plan did not address CPNI with respect to non-IPP end-user customers. Rather, it focused on the CPNI associated with the service providers (as discussed above with respect to the Telco objections). In large measure, U S WEST's approach was dictated by the fact that the focus of U S WEST's CEI Plan is to describe how it will conduct business <u>after</u> April 15, 1997. Thus, how U S WEST currently treats CPNI associated with semi-public service does not appear particularly relevant.

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[45] APCC at 23-24 (asserting that U S WEST's CEI Plan "leaves several unanswered questions" regarding how U S WEST intends to treat USWPS' semi-public customers).

[46] <u>Id.</u> at 24.

[47] <u>Id.</u> at 25.

The APCC, however, believes otherwise. First, it argues that _if_ USWPS personnel have used semi-public CPNI since the passage of Section 222 of the Telecommunications Act, USWPS has violated the law,[48] implying that its CEI Plan should be rejected for that reason. It also argues that USWPS should be prohibited from using information associated with semi-public service after April 15th[49] or its CEI Plan should be rejected.

How the APCC reaches its conclusions is -- at best -- oblique. But, under the APCC's theory of CPNI/semi-public service, USWPS could not know about its customers receiving the service now; nor could it continue to intelligently provide the service after April 15th. The logic is Byzantine and is undermined by the law as it currently exists.

Prior to the passage of Section 276 of Telecommunications Act, semi-public service consisted of the tariffed provision of a regulated line and payphone equipment from USWPS to an end user. The service offering generated end-user CPNI, as the APCC correctly notes.[50] Based on its existing business relationship with the end user, USWPS was entitled to -- and did -- access this regulated CPNI in the provision of the service.

After the passage of Section 276 of the Telecommunications Act of 1996, which deregulated public and semi-public service, and during the pendency of the Commission proceedings implementing the statute, the "status" of CPNI became

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[48] Id. at 26.

[49] Id. at 25.

[50] Id. at 24.

somewhat amorphous. While the service remains regulated and under tariff, the information associated with the provisioning remains end-user CPNI. But, if viewed as information associated with a "deregulated" service, the information is proprietary commercial information associated with the service provider, USWPS. In either event, the APCC's arguments are off the mark both as to its right to the information and as to USWPS' rights to it.

If the service account information is deemed associated with the end-user purchaser of the tariffed offering, the information is end-user CPNI, as that term is described by the Commission's CPE/ONA rules and as it is defined by Section 222. The Commission's current CPE/ONA CPNI rules do not address USWPS access or use of the information in a payphone service context;[51] and Section 222 does not prohibit it.[52]

At the same time, it is U S WEST's long-standing practice that it does not provide end-user customer information to unaffiliated parties in the absence of a specific, affirmative customer request. No law, or rule or regulation of the

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[51] The Commission's CPNI rules do <u>not</u> affirmatively extend beyond the realm of CPE and enhanced services. However, if they did, they would not lead to a contrary result.

[52] With respect to the APCC allegation that such use puts U S WEST in violation of 47 U.S.C. § 222 (APCC at 25-26), APCC is patently incorrect. At least at this time, the information is clearly information associated with "the telecommunications service from which the information is derived" (in this case, regulated semi-public service). 47 U.S.C. § 222(c)(1). Furthermore, the payphone equipment (even if it were not tariffed) would be equipment "used in" and "necessary to" the provision of the service. Thus, § 222 would clearly permit its use by USWPS. Thus, USWPS is statutorily entitled to use such information even in the absence of customer "approval" and is not required to provide it to a third party absent a customer's "written" "designation." 47 U.S.C. § 222(c)(2).

Commission has ever required "equal access" to end user CPNI, and the Commission has repeatedly acknowledged (in its CPE and ONA dockets) that such access would compromise customers' privacy expectations.

If, on the other hand, the information associated with the provision of semi-public service is considered information associated with a "deregulated" offering, then all the information is proprietary to the deregulated service provider (such as USWPS) -- similar to information associated with CPE and enhanced services offerings. In such case, the APCC would have no lawful claim to the information for its own business purposes.

Certainly, the latter situation will be the case once the Commission's payphone proceedings are terminated and the state tariffs associated with semi-public service are withdrawn. The information will no longer be end-user CPNI at all. The information associated with the service will be that of the provider of the service offering[53] and, thus, unavailable to competitors.[54]

Unable to demonstrate any current unlawful conduct by U S WEST in its use of end-user CPNI, APCC -- as a kind of "back-up" argument -- inappropriately attempts to challenge the fundamental relationship that U S WEST has with its

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[53] The service provider (such as USWPS) will become the "customer of record" for the purchase of the line and the equipment. A separate and independent contract for access to and occupation of the "site" will be entered into.

[54] The APCC's suggestion that existing semi-public service customers be given "notice" of this change is clearly beyond the current proceeding associated with U S WEST's CEI Plan. Thus, it should not be given consideration in this proceeding. Furthermore, to the extent that any end-user CPNI currently in existence will be converted to USWPS proprietary information (if it has not already