Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Billed Party Preference For	)	CC Docket No. 92-77
InterLATA 0+ Calls	)	

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PETITION FOR CLARIFICATION OR WAIVER OR, IN THE ALTERNATIVE, FOR CLARIFICATION AND RECONSIDERATION OF U S WEST, INC.

Attorney for

U S WEST, INC.

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Of Counsel,
Dan L. Poole

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SUMMARY

U S WEST[1] supports the position recently articulated by Ameritech regarding the scope of the Commission's most recently issued Order in this proceeding. That Order should be held not to apply to LECs.

LECs currently do not file Section 226 informational tariffs regarding operator services. Under the logic of the Commission's Order, including the repeated correlations the Commission makes between what must be filed in informational tariffs and what must be disclosed *via* rate quotations, it seems clear that neither under a statutory construction nor a policy argument should LECs be held to the requirements outlined in the Commission's Order.

This is particularly the case since LECs provide the most limited of interstate operator services (confined to those "bubble LATAs" that cross state boundaries). Yet, U S WEST expects that other LECs -- like U S WEST -- do not have operator switch capabilities to jurisdictionally separate the interstate service in those LATAs from the intrastate service. Nor do those switches probably have the capability to separate 0+ coin/aggregator calls from other 0+/0- operator services-handled calls. The end result is that rate disclosures, required by a federal authority, will end up being made both intra- and interstate and on all 0+/0- calls.

While this might be a desirable policy result, the fact remains that cost recovery for this regulatory mandate is critical. The costs themselves would not be

[1] All abbreviations and acronyms used in this Summary are fully identified in the text.

incurred **but for** the Commission's mandates. But, unless the Commission is willing to allow for full cost recovery from the interstate regulatory authority, serious cost recovery issues arise (since the rate disclosures have not been mandated by state authorities).

For the above reasons, U S WEST supports Ameritech's request for a clarification of the Commission's Order. To the extent the Commission holds that the Order was intended to apply to LECs, U S WEST herein requests a waiver of the requirements contained in the Order. As we make clear in our filing, the costs associated with complying with the Commission's mandates -- if not modified on reconsideration, could range from around $10.7 M to over $18.M -- all to accomplish a federal mandate that applies to U S WEST only because of its *de minimis* carriage of interstate traffic. Even if the Commission were to accept some of U S WEST's reconsideration requests, the costs might still run as high as $9.8M (not considering the costs associated with system changes associated with penal institution calling platforms).

In the event that U S WEST's advocacy is unavailing, we request the Commission grant our requests for clarification and reconsideration. We ask that the Commission clarify that only in those circumstances where an OSP actually has a contractual agreement with an aggregator regarding a surcharge or a PIF and the charge is collected by the OSP is the OSP required to include the information in a tariff or include it in a rate quotation.

Additionally, we ask reconsideration of the Commission mandate that rate quotations always be provided orally. Given the significant technology costs associated with providing an oral rate quotation on store-and-forward "smart" payphones, U S WEST requests that the Commission allow for either an oral rate quotation or a visual rate quotation preceded by an oral alert tone.

U S WEST also asks that the Commission reconsider its requirement that rate quotations be provided with respect to inmate calling situations and the technological platforms that support such calling. In its most recent Order, the Commission -- for the first time -- treats inmate calling service providers as aggregators. There is no sound statutory or policy basis for this shift in position. Rather than encumber all calls from penal institutions with increased infrastructure costs associated with an obligation to provide real-time rate quotations, U S WEST proposes certain alternatives.

Ultimately, however, we remain unconvinced that the alternatives actually operate to achieve the Commission's goals in a manner that would be socially responsible. Thus, we urge the Commission to address the matter of "excessive rates" associated with inmate calling on a case-by-case basis. That is undoubtedly the best way to curb the matter of excessive charges, since the facts and circumstances associated with such allegations and defenses will always be critical.

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PETITION FOR CLARIFICATION OR WAIVER OR, IN THE ALTERNATIVE, CLARIFICATION AND RECONSIDERATION OF U S WEST, INC.

I. INTRODUCTION

In January, 1998, the Federal Communications Commission ("FCC" or "Commission") released its Second Report and Order and Order on Reconsideration in the above-referenced proceeding.[1] U S WEST, Inc. ("U S WEST") was particularly pleased to see that the matter of Billed Party Preference ("BPP") deployment is finally off the table.[2] The Commission's resolution of that matter is clearly in the public interest, saving carriers and customers alike enormously burdensome deployment costs.[3]

However, as Ameritech has recently pointed out, the precise scope of the Commission's Order is unclear.[4] Like Ameritech, we believe a strong case can be

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[1] In the Matter of Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9, rel. Jan. 29, 1998 ("Order").

[2] Id. ¶¶ 2, 36.

[3] Id. ¶¶ 20, 35.

[4] See Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, from Gary L. Phillips, Director of Legal Affairs, dated Mar. 27, 1998 ("Ameritech Letter").

made that the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") was not intended, and does not apply, to local exchange carriers ("LEC"), even in those occasional instances where interstate service is provided.[5] Given that the problem TOCSIA sought to address, i.e., curbing the increasing incidence of customer complaints about excessive interstate operator service provider ("OSP") charges, was not one generated by LECs, U S WEST agrees with Ameritech that the Commission should clarify its Order to exclude such carriers from its reach.

Alternatively, U S WEST seeks a waiver of the requirements imposed by the Order. As discussed more fully below, because of our current inability to differentiate traffic either jurisdictionally or by "0+ coin/aggregator only" in our operator services switches, U S WEST would be unable to implement the Commission's directives with respect to "interstate" traffic alone. We would implement the requirements with regard to both interstate and intrastate traffic and with respect to all 0+/0- traffic. The implementation, driven by a federal mandate involving but *di minimis* geography and traffic, will be very expensive. Cost recovery is a critical issue, given that the benefits of the rate disclosure will extend to intrastate services while the costs are compelled by a federal mandate. Viewed in this context, it is clear that the "federal" costs far outweigh the "federal" benefits associated with the Commission's mandates.

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[5] This would be in those cases where "bubble LATAs" exist, i.e., where a single LATA crosses an interstate boundary.

We urge the Commission to issue a clarification on the scope of its Order expeditiously. Because compliance with the Commission's Order involves major capital and expense outlays, a LEC would not be expected to start funding the rate disclosure initiative or deploying the necessary infrastructure upgrades until it knew for certain whether it had an obligation to do so.

Assuming that the Commission either holds that its Order does apply to LECs, or declines to grant a waiver, more "start up" time will be required for LECs, such as U S WEST, to implement the Order than is currently contemplated by the Commission's July 1, 1998 date. If the Order is applicable to U S WEST and our waiver request is not granted, U S WEST will need a minimum of six months after the Commission makes that clear before we would be able to provide the type of rate disclosures required by the Order.

To the extent the Commission determines not to exclude LECs from the reach of its Order, U S WEST seeks clarification on one additional item addressed by the Order and reconsideration of two other matters. We seek clarification of the exact scope of a carrier's rate announcement. We believe there is an inconsistency between the text of the Commission's Order (which states that OSPs need only include in their informational tariffs,[6] and disclose in rate quotations, those

[6] This is a matter that itself requires some clarification since, as Ameritech points out in its letter, LECs currently do not file informational tariffs under Section 226, but rather file general tariffs under Section 203. Ameritech Letter at 2-3. However, on the assumption that the Commission could impose a similar requirement to tariffs filed under the latter Section as it does regarding those filed under the former Section, U S WEST believes that the fundamental clarification we seek remains relevant.

aggregator rates which are a part of the contractual relationship between the aggregator and the OSP and are collected by the OSP) and the appended rules (specifically Sections 64.703(a)(4) and 64.709(a), which suggest that a surcharge imposed by any entity and collected by any entity needs to be included in informational tariffs and possibly in the rate quotation). We believe the discussion of the matter in the Order is the more accurate, and ask for revision of the rules to accommodate that discussion.

Because the Commission might ultimately rule that its current Order is and will remain applicable to LECs providing interstate operator services, out of caution we also now seek reconsideration of two matters dealing with implementation of the Commission's Order. First, we ask the Commission to reconsider its mandate that a carrier "audibly" disclose certain rate information (see Section 64.703(a)(4)). We do not seek to have the requirement eliminated entirely. Rather, we ask that the Commission modify the obligation so that it can be accomplished either "audibly" or "visually." The store-and-forward payphones in place in U S WEST's territory can support the provision of an oral "tone" to signify a visual display of the rate information, but are not capable of providing the rate information in an oral format without the expenditure of significant costs and equipment modifications that could involve a total change out of the equipment.[7]

[7] Under the Commission's prior TOCSIA OSP rules, OSPs were required to provide an "audible" branding of the carrier (which U S WEST's store-and-forward payphones can do) but were permitted to direct the calling party to a separate number to reach the OSP for rate information. See Order ¶¶ 1, 26.

Second, we ask for reconsideration of the rate quotation obligation which the Commission has extended to inmate telephone systems. Contrary to past Commission precedent, where the Commission held that inmate systems did not involve "aggregator" calls, the Commission for the first time now seeks to require that inmate-calling service providers fashion their systems and conform their conduct to those obligations generally pertaining to aggregators. U S WEST asks the Commission to reconsider this decision, since those systems will not cheaply accommodate the type of rate quotation requirement the Commission requires. While we propose alternatives to the Commission's newly-imposed requirements in an inmate-calling situation, we do not believe that the alternatives are feasible. Thus, we ask that the requirement itself be eliminated.

II. THE COMMISSION'S ORDER SHOULD NOT BE EXTENDED TO APPLY TO LECS WHO CURRENTLY FILE NO "INFORMATIONAL TARIFFS" UNDER SECTION 226 OF TOCSIA AND WHO HAVE NEVER BEEN SEEN AS THE SOURCE OF THE KINDS OF PROBLEMS TOCSIA WAS TRYING TO ADDRESS. IF SUCH REQUIREMENTS ARE IMPOSED ON LECS, ADDITIONAL TIME SHOULD BE GRANTED IN ORDER TO IMPLEMENT THEM.

A. LECs Should Be Exempted From The Mandates Established In The Commission's Order

Ameritech presents a convincing case that the Commission's Order should not be read to include LECs in its mandates. While the Commission's Order is not literally in the mold of a "TOCSIA-implementation Order," imposing as it does an obligation not currently found in that statute, it is clear that the Commission sees a

close connection and correlation between TOCSIA requirements and its current mandates.[8]

Like Ameritech,[9] U S WEST does not currently file OSP informational tariffs in our interstate tariffs. Rather we file general Section 203 tariffs,[10] under price cap regulation, where the rates are subject to Commission and public scrutiny before they become effective.

Furthermore, U S WEST provides "interstate" operator services only in those occasional situations where a "bubble LATA" is involved and the call crosses state lines. This amounts to only 3.4% of our toll traffic, with an even less amount being generated by 0+ coin or aggregator calling.

Because U S WEST's operator services switches are currently not capable of jurisdictionally separating traffic, nor of differentiating between 0+/0- calls involving coin or aggregator locations as opposed to calls from other locations, the switches serving any "bubble LATA" would -- of necessity -- provide the rate disclosure information on both interstate and intrastate calls. And, because some customers in those states would be receiving rate information on intrastate calls (e.g., calls within a state and LATA that did not cross state boundaries), as a matter of customer comity, U S WEST would provide the information to all customers of

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[8] Indeed, the entire discussion immediately below addresses the Commission's correlation between what interstate OSPs must file in their TOCSIA Section 226 informational tariffs (a requirement now being codified in the Commission's rule Section 64.709) and what they must disclose.

[9] Ameritech Letter at 2-3.

[10] See Tariff F.C.C. No. 4, 3rd Revised Page 2-17 through 6th Revised Page 3-81.

that state. Now providing some intrastate rate quotations, again -- as a matter of customer comity -- similar quotations would be made available to customers in other states, as well.

Below, U S WEST outlines some of the costs associated with the Commission's federal mandate. Should that mandate be held to apply to U S WEST, cost recovery will become critical. While some of the benefits of the Commission's Order will clearly be extended to state jurisdictions, the absence of any state regulatory mandate renders the entire body of costs associated with the federal regulation. If the federally-mandated costs are compared to the federally-realized benefits, there is no doubt but that the costs exceed the benefits. For this reason, as well as those articulated by Ameritech, the Commission should hold that its rate disclosure mandates do not apply to LECs.

In order for U S WEST to implement the Commission's Order, with respect to the operator services requirements on toll calling alone,[11] we would need to undertake certain infrastructure changes (involving both hardware and software) for mechanized call handling and expanded announcement capability (a capital charge). We also anticipate increased operator labor charges (at least initially), over and above those currently incurred, for the increased customer serving time

[11] Here we confine ourselves to a discussion of the mechanized and live operator services provided to members of the public through U S WEST's Operator Information Services organization. Below we address the costs associated with "smart" payphone store-and-forward technology and the Commission's mandates. We also address the extension of rate disclosure obligations to providers serving penal institutions.

associated with the manual delivery of rate quote information.

From a switch perspective, U S WEST will need to modify 22 switches involving two different equipment vendors. While both switches handle traffic in the same or similar manner, there is a significant difference in the technology used by each switch vendor and the deployment of that technology within U S WEST's operator services network. At least one of the switch types currently lacks altogether certain functionalities critical to the implementation of the Commission's requirements (such as an Automated Alternate Billing System ("AABS") functionality and a Voice Service Node ("VSN") functionality). U S WEST estimates that it will cost approximately $3M in capital to implement these switch upgrades.

From a labor perspective, U S WEST anticipates an increased demand, over that which is currently realized, due to the announcement that a rate quotation can be secured through either an abbreviated dialing mechanism or staying on the line. At this time, it is impossible to know whether this increased demand will taper off over time or will be sustained. It is our expectation that it will take between 10 and 15 seconds of live operator time to deliver the rate quotation, thus increasing the customer serving time currently associated with operator-assisted calls. Based on the assumption of immediate increased demand, U S WEST calculates that we will incur an incremental expense that could reach $5M annually (if there is no decrease in the immediate demand).

Obviously, implementing the Commission's requirements is expensive. If one takes the costs associated with the federal mandate and compares those costs against the low volume of operator-assisted interstate calls, the costs can be

reported out as and increase of "$1.60 per interstate operator-assisted call." This is a very large cost allocation for those calls traversing state lines in isolated "bubble LATAs."[12]

Based on all of the above, in the event that the Commission holds that the rate disclosure obligations outlined in its Order were meant to apply to LECs, U S WEST requests a waiver of those obligations. The cost/benefit analysis associated with implementing the Commission's mandates cannot be justified with respect to the carriage and processing of interstate traffic.

B. In The Absence Of An Exemption Or A Waiver, LECs Should Be Granted An Additional Six Months After A Commission Ruling To Implement The Commission's Mandates

Should the Commission refuse to grant a waiver, U S WEST requests that it grant LECs at least six months after the Commission issues its decision to implement the rate disclosure requirements. Based on representations we have received from our vendors, once a firm order has been placed, vendors will require at least 120 days from the placement of the firm order before the hardware and software necessary to allow for compliance with the Commission's requirements will be in place. The additional 60 days will provide LECs an opportunity to secure the necessary funding to implement the Commission's mandates (30 days before the firm order is placed with the vendors), to hire any necessary additional personnel

[12] While it is correct that rate disclosures would be provided across all of our states and with respect to all 0+/0- calls (whether inter- or intrastate, whether coin/aggregator or not), the fact still remains that **but for** the Commission's mandates, the expenses would not have been incurred at all.

and to test the systems (30 days after the infrastructure upgrades are in place).

III. SURCHARGES INDEPENDENTLY ASSESSED BY AGGREGATORS SHOULD NOT BE REQUIRED IN TARIFFS OR AS PART OF AN OSP RATE QUOTATION

Should the Commission refuse to confine the scope of its Order to non-LECs, U S WEST asks that the Commission clarify one of the more confusing aspects of its rate disclosure mandate. In a number of places in the Commission's Order, the Commission addresses an OSP's obligation to tariff aggregator surcharges and its obligation to disclose such surcharges to a customer who requests rate information.[13] However, in two paragraphs of the Commission's Order, it makes clear that -- under TOCSIA -- what an OSP's informational tariff must include is not any surcharge that might be imposed by an aggregator on its own behalf (and collected directly by the aggregator from the end user, such as a hotel surcharge) but only those surcharges (sometimes called Premises-Imposed Fees ("PIF")) that occur as part of an agreement between the OSP and the premises owner and that are collected from the consumer by the OSP.[14] The Commission states that its "information disclosure rules similarly require a nondominant OSP to disclose **only** such aggregator surcharges and PIFs, if any, that it has permitted in the applicable PIC agreement

[13] Order ¶¶ 1, 3, 14, 19, 24, 26, 28 and nn. 3, 9, 22, 62.

[14] See id. ¶ 4 ("OSPs are required to file and maintain tariffs informing consumers of, not only their interstate charges, *but also any applicable premises-imposed fee (PIF) or aggregator surcharge* ***collected by the OSP or permitted in an OSP's contracts with aggregators.***") (italics and bold added), ¶ 24 ("Only PIFs that an OSP has specified or permitted in its PIC agreement with a particular aggregator must be reflected in such tariffs.").

with an aggregator."[15]

While U S WEST does not currently file informational tariffs as that term is understood and used in TOCSIA, conceivably it could be mandated to do so with respect to its interstate OSP traffic. Under the logic of the Commission's analysis, unless there were agreements in place between U S WEST and aggregators regarding the establishment or collection of surcharges, surcharges would not need to be incorporated into such tariffs or disclosed to consumers as part of the rate disclosure. Indeed, as MCI noted, in the absence of such an agreement, any surcharges assessed the end user would not be part of U S WEST's tariffed rate.[16] But, even more material from the perspective of a potential "disclosure" obligation, U S WEST would have no knowledge of a surcharge that an aggregator might independently impose, particularly given its position as the default OSP for many aggregators.[17]

While the Commission's Order reflects an appreciation of the above situation, its rule Section 64.709(a) (which we believe the Commission meant simply to track the language of 47 U.S.C. Section 226(h)(1)(A), which the rule references) states that carriers must include in their informational tariffs "applicable per call aggregator surcharges or other per call fees, if any, collected from consumers by the

[15] Id. ¶ 24 (bold added).

[16] Id., and n.75.

[17] See Ameritech Letter at 3.

carrier **or any other entity**."[18] This rule can be read to require that, even in those cases where a surcharge or PIF is imposed directly by the aggregator on the consumer and collected by the aggregator (such as a surcharge on a hotel bill), a carrier/OSP serving that aggregator as the PIC'd carrier [presubscribed interexchange carrier] must include the charges in its informational tariffs -- despite the fact that there was no agreement between the OSP/carrier and the aggregator regarding the surcharge.

Furthermore, because of the connection the Commission makes in the Order between what information is required to be tariffed and what was to be disclosed (i.e., the obligations being identical with regard to aggregator surcharges), Section 64.703(a)(4) (which requires that an OSP disclose "how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge") might be read to include independently-imposed aggregator surcharges collected directly by the aggregator from the consumer.

We believe this matter can be easily remedied. The Commission's rule Section 64.709 should be amended to delete the phrase "or any other entity." In that way, the rule will more directly track the language of the referenced statute and better reflect what the Commission makes clear in the text of its Order.

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[18] Order at Appendix A.

IV. VISUAL, AS WELL AS ORAL, RATE QUOTATIONS SHOULD BE PERMITTED

Out of caution and in order to promote efficiency, U S WEST here addresses a matter that we would want reconsidered, should the Commission hold that its Order applies to LECs and should it refuse our request for a waiver. Furthermore, the matter undoubtedly affects OSPs other than LECs. For that reason alone it warrants reconsideration.

The Commission grants to those OSPs who employ "smart" payphones (with embedded store-and-forward technology) 15 months after the effective date of the rules to modify or replace the equipment to come into compliance with the rules.[19] During the course of its discussion of store-and-forward technology, the Commission makes the statement that "[i]t is within an OSP's discretion what rate information it will disclose and how it will do so, not the decision of an equipment provider."[20] While the statement is correct, in so far as it goes, it fails to reflect that service providers are always constrained, to some extent, by the capabilities built into equipment by the manufacturers.

While 15 months is certainly a good amount of time to begin negotiations with vendors with a view towards modification (and possible replacement) of equipment, U S WEST herein requests the Commission modify its requirement that all rate disclosures be oral.[21] We request that the Commission permit visual rate

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[19] Id. ¶ 27.

[20] Id.

[21] Compare id. ¶¶ 17, 19, 28.

disclosures, preceded by an alerting "oral" tone.

The store-and-forward technology deployed in U S WEST's payphones bypasses altogether a "live" operator. Under the Commission's prior rules, where an OSP could send a caller to another number to get a rate quote, the requirement for an oral rate quotation would not necessarily pose a problem, since the "other number" could deliver the caller to a live operator or operator services platform that could provide the relevant information. However, an "oral" rate quote cannot be garnered from within the "guts" of store-and-forward technology, after either dialing certain abbreviated digits or staying on the line. A visual quote, however, can be.[22]

We believe that the public and consumer interests the Commission seeks to advance would be as well served by an oral alert tone, followed by a visual rate display, as it would be by an oral rate quotation. Thus, we ask the Commission to modify its rules to allow for such a display.

Granting this request for reconsideration would further advance the public interest by avoiding the incurrence of incrementally burdensome OSP costs with respect to the Commission's objectives. In order for U S WEST to enhance the visual chip currently incorporated into our smart payphones, we would incur capital and expense costs of around $1.8M. This converts to about $80.00 per phone. To move from a visual rate quotation to an oral one, at a minimum the cost to

[22] The payphone would peruse the rate table information incorporated into the payphone itself and provide the relevant information on a screen already existing in the payphone station.

U S WEST would be $2.7M. This cost could only be "held" if, in changing out the existing voice chip from the phones, the rate quotation information could be incorporated back into the memory currently available on the existing chip. If so, this conversion activity would convert to $120.00 per phone. If the rate quotation information requires more memory or capacity than is currently available with respect to the existing voice chip, an entire new Control Board would be required at a cost of $7.7M (bringing this type of upgrade to a total of $10.4M). Should the "worst case" present itself, the costs would convert to **$465.00 per phone.**

For all of the above reasons, U S WEST requests the Commission grant OSPs the right to provide the rate quotation either orally or visually, as best meets their embedded equipment and their future business plans.

V. INMATE CALLS SHOULD NOT BE REQUIRED TO MAKE RATE DISCLOSURES TO THE CONSUMER ON THE TERMINATING END

As with the above item, U S WEST here addresses another portion of the Commission's Order that we believe warrants reconsideration. The criticality of securing such relief is obviously dependent on whether the Commission holds its current Order to be applicable to LECs. But because the issue we raise below is not LEC-dependent, we believe it appropriate to raise it, at this time.

In its Order, the Commission imposes the same rate disclosure obligations on OSPs providing service from inmate-only telephones as on other providers of OSP services.[23] While it is true that the Commission previously included inmate-calling

[23] Order ¶ 60.

situations within the context of its BPP considerations, it is equally true that the Commission has never deemed such calling context to involve "aggregator" calling.[24] For that reason, the rate quotation capabilities and obligations that were imposed on other "providers of operator services" were not required of inmate-calling service providers.[25]

In its Order, for the first time, the Commission imposes rate quotation obligations on service providers providing inmate-calling capabilities.[26] It imposes such obligation, in large part, due to its concern over complaints alleging that "excessive charges" are "being collected from consumers for interstate collect calls."[27]

U S WEST is aware of the fact that claims of excessive charging in an inmate-calling environment are on the rise and that the claims raise serious and emotional issues for all parties involved. However, the Commission's mandates regarding ubiquitous rate quotations inappropriately apply a shot-gun approach to

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[24] See OSP Reform Notice, 11 FCC Rcd. at 7300 n.122 (quoting TOCSIA Order), referenced and cited in the current Order at ¶ 60 and n.178. In the Matter of Billed Party Preference for InterLATA 0+ Calls, Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7274 (1996).

[25] Essentially, a "provider of operator services" is a carrier or other person who provides "operator services." Those services are "interstate telecommunications services initiated from an aggregator location." 47 U.S.C. § 226(a)(8), (7), (2); 47 C.F.R. § 64.708(i), (g), (b). An "aggregator," under Commission precedent, does not "apply to correctional institutions" where inmate-only calling systems are in place.

[26] Order ¶ 60 ("all providers of operator services from inmate-only telephones [must] identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge").

[27] Id. ¶ 58 and n.179 citing to various informal and formal complaints against three separate companies.

all service providers and will simply operate to "exacerbat[e] the problem of high cost calls."[28]

Below, U S WEST discusses the inmate systems we provide to penal institutions and the problems we see associated with the Commission's requirements in this area. We also propose certain alternatives, but believe that neither would satisfactorily address the Commission's or the public's concern in an appropriate matter. For this reason, we urge the Commission to address the matter of excessive charges in an inmate-calling context through a case-by-case process. As the Commission itself acknowledged, "because rates must be filed with the Commission and must conform to the just and reasonable requirements of Section 201 of the Act, . . . it is more efficient and less intrusive to proceed on a case-by-case basis."[29]

U S WEST provides service to penal institutions through systems called inmate call control systems ("ICCS"). While the "intelligence" of such systems is in facility-based customer provided equipment ("CPE"), rather than the pay station itself, the system is considered a "store-and-forward technology" system. The ICCS are provided by three vendors and leased to U S WEST.

While it is not impossible to envision these ICCS as being modified to be capable of providing the type of rate disclosure contemplated by the Commission, it is obvious that any updates and modifications to these systems done by the vendors

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[28] Id. ¶ 57 (citing this consideration as a primary reason for rejecting a BPP approach to such calling).

will result in the costs being passed on to U S WEST in the form of a higher per-call transaction fee. Those increased costs would, most likely, be passed on to those persons associated with the call. In an inmate-calling context, that means the party accepting the collect call.

U S WEST can imagine two "alternatives" to modifying or replacing the equipment which might go toward achieving the Commission's objective. We are not confident, however, that they are appropriate alternatives.

First, it is possible to pursue with the vendors some sort of "generic" upgrade that would allow for a quotation of the highest possible rate that the call might entail. While, from U S WEST's perspective, this would be more efficient from a systems standpoint, it would not necessarily be accurate with respect to any particular call and it might serve to dissuade callers from accepting calls. Whether this is an appropriate societal consequence, we are not certain.

Second, the Commission might require that the called party be able to secure actual rate quote information by dialing a separate number (similar to the current Commission rules). While such a model would give the called party access to the information, it would have the negative consequence of "opening up" what is designed to be a closed system.[30] The ICCS incorporate several fraud prevention features including automated operator, three-way call detect and disconnect, call blocking, call duration timing and call detail records. One of the primary fraud

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[29] Id. ¶ 59.

control features is to deny access by the inmate or the party he/she is calling (the "consumer" under the Commission's rules, who might also be an accomplice of the inmate) to a live outside line. Thus, this "solution" would totally undermine one of the fundamental "cures" built into the ICCS themselves.

Since U S WEST does not believe that either of the alternatives proposed above is a feasible one, we ask that the Commission simply vacate the extension of its aggregator rules to inmate-calling contexts. The matter of excessive rates complaints should be resolved on a case-by-case basis where the facts can be fully explored and the remedy appropriate to those specific facts can be crafted.

VI. CONCLUSION

For the above reasons, U S WEST asks that the Commission clarify that its Order does not apply to LECs. Alternatively, the Commission should request additional information from potentially-affected LECs regarding the amount of interstate traffic they process and the estimated costs of compliance with the Commission's Order. We believe that the information provided to the Commission by other LECs will only make obvious that the costs of compliance with respect to interstate traffic far outweigh the expected benefits.

We urge the Commission to engage in the above actions expeditiously. Given the substantial costs associated with compliance with the Commission's Order, it would be imprudent for a LEC to begin expending the sums prior to such a

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[30] The Commission acknowledged that inmate-calling systems involved "special security requirements applicable to inmate calls." Order ¶ 57.

Commission clarification.

Should the Commission ultimately determine that LECs are required to provide the mandated rate disclosures on interstate traffic, the Commission should grant an additional six months from the date of such decision for LECs to bring their systems and operations into compliance with the Commission's mandates.

Additionally, the Commission should clarify that the only surcharges that need to be incorporated into an OSP/carrier's tariffs are those involving contractual agreements between the OSP and the aggregator where the surcharges are collected by the OSP. The Commission should conform its rule Section 64.709 accordingly.

The Commission should also amend its rules to permit OSPs to provide rate quotations either orally or visually. Finally, the Commission should vacate its rules to the extent they impose, for the first time, aggregator-type obligations on service providers serving penal institutions. The costs of accommodating such requirements will clearly outweigh the societal or public interest benefits. The