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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re:	)	DOCKET NO. UT-
	)	
U S WEST's Petition for a Declaratory Order	)	U S WEST's Petition for a Declaratory Order
Ending Imputation of Revenues Derived from	)	Ending Imputation of Revenues Derived from
Transferred Yellow Pages Publishing Business	)	Transferred Yellow Pages Publishing Business
	)	
	)	
	)	

U S WEST Communications, Inc. (U S WEST), pursuant to RCW 34.05.240 and WAC 480-09-230, respectfully requests the Washington Utilities and Transportation Commission (the Commission) to enter a declaratory order stating:

- Fair value for the January 1, 1984 transfer of the directory publishing business (yellow pages) to an unregulated affiliate has been received; and
- Imputation of yellow pages revenue to U S WEST is inappropriate and should cease forthwith.

Such a declaration is consistent with the recent holding of the Washington Supreme Court, which held that U S WEST may seek an end to yellow pages imputation once it has shown that fair value has been

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received for the transfer of the yellow pages business in 1984.

In support thereof, U S WEST states:

**NATURE OF THE PROCEEDING**

In 1983, U S WEST’s predecessor in Washington, Pacific Northwest Bell (PNB), transferred its yellow pages publishing business to an unregulated affiliate, now known as U S WEST Dex, Inc. (DEX). At the time of the transfer, the yellow pages business had a book value of slightly more than \$23 million. Subsequent to the transfer of the yellow pages business, PNB was merged into U S WEST. The Commission approved PNB’s transfer of the yellow pages publishing business to its unregulated affiliate effective January 1, 1984. The transfer removed the yellow pages business from the regulated business of U S WEST and spun it off to a separate, unregulated corporation, DEX. Nevertheless, from January 1, 1984 through June 30, 1998, ratepayers have received at least \$750 million of yellow pages revenue. These amounts have inured to the benefit of Washington ratepayers, who otherwise would have paid higher rates to meet U S WEST’s revenue requirement.

In U S WEST’s recent general rate case, Docket No. UT-950200, the Commission ordered that annual yellow pages revenues of approximately \$80 million annually should continue to be imputed to U S WEST. U S WEST contested the imputation on a variety of grounds, among them being that the Commission lacked the statutory authority to impute revenues from an unregulated affiliate of U S WEST to the regulated telecommunications business of U S WEST. The Washington Supreme Court upheld the Commission’s imputation, but specifically noted that imputation must end upon U S WEST’s demonstration that fair value has been received for the 1984 transfer of its yellow pages business:

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2 U S WEST may petition the Commission for an end to imputation if and when it can  
3 show that it has received fair value for the transfer of the asset.

4 U S WEST Communications, Inc. v. Washington Utilities and Transportation Commission, 134 Wn.2d  
5 74, 102, 949 P.2d 1337 (1997).

6 The Washington portion of the yellow pages publishing business had a book value of  
7 approximately \$23 million and a fair market value of no more than \$281 million when it was transferred  
8 to DEX's predecessor. Since then, through June 30, 1998, at least \$750 million in value has been  
9 received for the transfer. Accordingly, pursuant to the Supreme Court's decision in U S WEST v.  
10 WUTC, supra, fair value has been received for the yellow pages business and, therefore, imputation of  
11 yellow pages revenue must cease.

### 12 **PARTIES**

- 13 1. U S WEST is a wholly-owned subsidiary of U S WEST, Inc.
- 14 2. U S WEST is in the business of, among other things, providing regulated intraLATA  
15 telephone service to subscribers throughout the State of Washington, as well as thirteen other states in the  
16 Midwest and West.
- 17 3. DEX is a wholly-owned subsidiary of U S WEST DEX Holdings, Inc., a wholly-owned  
18 subsidiary of U S WEST, Inc.
- 19 4. DEX is in the business of, among other things, publishing unregulated classified business  
20 directory advertising (commonly known as yellow pages).

### 21 **DIVESTITURE AND THE BEGINNINGS OF U S WEST, INC.**

5. In 1983, pursuant to the order of the United States District Court for the District of

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Columbia, American Telephone & Telegraph Company (AT&T) was ordered to divest itself of its 22 wholly-owned subsidiary operating companies. See, generally, United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982). As a result of that order, U S WEST, Inc. became the sole shareholder of PNB, the former AT&T subsidiary which provided regulated telephone service Washington. U S WEST, Inc. also became the sole shareholder of Mountain States Telephone and Telegraph Company (MTN) and Northwestern Bell Telephone Company (NWB). Upon AT&T's divestiture, U S WEST, Inc. also became the sole owner of the yellow pages publishing assets of PNB, MTN and NWB.

**THE YELLOW PAGES TRANSFER**

6. Subsequent to the divestiture, U S WEST, Inc. transferred the former yellow pages assets of PNB, MTN and NWB into a separate, unregulated entity, U S WEST Direct, Inc., a subsidiary of Landmark Publishing Company (Landmark), another subsidiary of U S WEST, Inc. Under the transfer, PNB, MTN and NWB transferred their yellow pages publishing assets to Landmark in return for Landmark stock. PNB's publishing assets had an adjusted net book total value of \$23,522,946 at the time of the transfer. PNB, MTN and NWB thereafter transferred their Landmark stock to U S WEST, Inc. as a stock dividend. Landmark, as a subsidiary of U S WEST, Inc., held the yellow pages business in its own subsidiary, U S WEST Direct, Inc. At the conclusion of the transfer, U S WEST, Inc. had separated its regulated local telephone subsidiaries (PNB, MTN and NWB) from its unregulated publishing subsidiary (U S WEST Direct, Inc.).

7. The transfer required Commission approval for the Washington portion of PNB's yellow

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pages business. On December 30, 1983, the Commission *granted* PNB authority to *transfer* its yellow pages business. A copy of the Commission’s December 30, 1983 Order is attached hereto as Exhibit A.

**PNB’S PUBLISHING AGREEMENTS WITH U S WEST DIRECT, INC.**

8. Pursuant to its Fourth Supplemental Order dated January 16, 1985, in Docket No. FR-83-159, the Commission granted PNB the authority to enter into a variety of agreements with U S WEST Direct, Inc. Commission approval was required because the yellow pages had already been transferred to U S WEST Direct, Inc., an affiliated interest as defined in RCW 80.16. These agreement included a “Publishing Agreement” by which U S WEST Direct, Inc. was to pay a substantial publishir fee to PNB for the yellow pages. A copy of the Commission’s January 16, 1985 Order is attached hereto as Exhibit B.

9. On December 23, 1986, PNB applied with the Commission for approval of similar agreements between PNB and U S WEST Direct, Inc. for the years 1987 and 1988. The Commission approved the contracts “temporarily . . . pending review of the contracts and fees thereunder in the [nex general rate case.” A copy of the Commission’s Second Supplemental Order in Docket No. U-86-156, dated October 12, 1988, is attached hereto as Exhibit C.

**THE AFOR FILING AND PNB’S MERGER INTO U S WEST**

10. On February 21, 1989, the Commission, on its own motion in Docket No. U-89-2698-F, issued a complaint against U S WEST to investigate the propriety of rates and charges for services provided by U S WEST. That proceeding was resolved by a settlement agreement and the

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implementation of an alternative form of regulation (AFOR), under which:

A portion of U S WEST Direct’s directory advertising revenues (hereinafter U S WEST Direct directory revenues) associated with Washington will be imputed to regulated revenues, calculated based on measurement period data . . .

A copy of the Commission’s Fourth Supplemental Order Accepting Settlement Modifications, Resolving Complaint and Authorizing an Alternative Form of Regulation, dated January 16, 1990, is attached hereto as Exhibit D.

11. On December 7, 1989, PNB requested the Commission to authorize a transaction whereby PNB and NWB would merge into MTN with the resulting entity being known as U S WEST. The Commission granted PNB’s request and specified that the issue of U S WEST’s (f/k/a PNB) yellow pages revenues were to be decided at a later date:

The Settlement Agreement [approving the merger] will be modified to require that U S WEST Communications, Inc.’s directory advertising revenues associated with Washington be imputed, until December 31, 1994, in accordance with paragraph 18(H) of the Joint Motion for Approval of Settlement. . . . Thereafter, these revenues will continue to be imputed accordingly unless and until altered by subsequent order of the Commission.

A copy of the Commission’s Third Supplemental Order dated November 9, 1990, in Docket No. U-89-3524-AT, as amended November 30, 1990, is attached hereto as Exhibit E. In authorizing PNB’s merger into U S WEST, the Commission noted that “future problems relating to directory advertising revenues” are “best laid to rest for now.” Exhibit E at 1.

12. Effective January 1, 1991, U S WEST Direct, Inc., among other corporate entities, were merged into a new surviving corporate entity, U S WEST Marketing Resources Group, Inc. (“Market Resources, Inc.”). After this merger, however, the yellow pages directory business still did business

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under the name U S WEST Direct. In November 1995, U S WEST, Inc. stock was divided into two groups of targeted stock. The two groups were: (a) U S WEST Communications Group, Inc., of which U S WEST was a subsidiary; and (b) U S WEST Media Group, which was an unincorporated division of U S WEST, Inc. Marketing Resources, Inc. became one of the targeted assets of U S WEST Media Group. In November 1996, Marketing Resources, Inc. was renamed DEX. The yellow pages publishing business of U S WEST Media Group began using the DEX name in January 1997.

13. Effective June 12, 1998, the two groups of U S WEST, Inc. stock were divided into two separate corporations, U S WEST, Inc. and MediaOne Group, Inc. U S WEST, Inc. generally received all of the assets of the former U S WEST Communications Group, Inc., while MediaOne Group, Inc. generally received the assets of the former U S WEST Media Group. As part of the separation, DEX was transferred from U S WEST Media Group to U S WEST Communications Group, Inc. for a consideration valued at \$4.75 billion (consisting of the issuance of \$850 million in U S WEST stock to U S WEST Media Group shareholders and \$3.9 billion in debt to be held by a separate U S WEST subsidiary).

**THE IMPUTATION DISPUTE**

14. On February 17, 1995, U S WEST in Docket No. UT-950200, filed certain tariff revisions designed to effect a general rate increase. In that docket, U S WEST argued that no DEX revenues should be imputed to U S WEST on a variety of grounds, among them that the Commission lacked the statutory authority to impute revenues.

15. The Commission rejected U S WEST's arguments and ordered that U S WEST's

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operating income be adjusted in the amount of approximately \$80 million to reflect imputed income from DEX. A copy of the Commission's Fifteenth Supplemental Order dated April 11, 1996 in Docket No. UT-950200, imposing yellow pages imputation, is attached hereto as Exhibit F.

16. On December 24, 1997, the Washington Supreme Court affirmed the Commission's Order, including its imputation of yellow pages revenue to U S WEST. See U S WEST v. WUTC, supra. The Supreme Court, however, limited the time such imputation could occur until the time that fair value for the 1984 transfer of the yellow pages business had been received:

U S WEST may petition the Commission for an end to imputation if and when it can show that it has received fair value for the transfer of the asset.

Id., 134 Wn.2d at 102. In so ruling, the Supreme Court fully endorsed the Commission's earlier statements in Docket No. U-86-156:

We note that, under the Commission's Order, the imputation is not necessarily permanent, and the Commission's prior orders show that when the Company has shown it has received fair compensation from its affiliate for the value of the asset it transferred, imputation may cease.

Id.



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**COUNT I**

**IMPUTATION SHOULD END BECAUSE  
FAIR VALUE HAS BEEN RECEIVED FOR  
ITS 1984 TRANSFER OF THE YELLOW PAGES**

17. As of January 1, 1984, the Washington yellow pages business transferred by PNB, as predecessor to U S WEST, to U S WEST Direct, Inc., as a predecessor to DEX, had a fair market value of between \$234 million and \$281 million. The company-wide business book value was approximately \$23 million.

18. From January 1, 1984 through June 30, 1998, the Commission has deemed that at least \$750 million in value has been received for the transferred Washington yellow pages business.

19. The Supreme Court has determined that imputation of yellow pages revenues must cease when U S WEST demonstrates that fair value for the transferred asset has been received.

20. As is demonstrated above, fair value for its 1984 transfer of its yellow pages business has been received.

21. Nevertheless, if uncorrected, the Commission's decision in Docket No. UT-950200 will continue to impute yellow pages revenues to U S WEST of approximately \$80 million annually (increased in Docket No. UT-970766 to \$85 million effective February, 1998).

22. Ongoing imputation of yellow pages revenues to U S WEST is improper, contrary to the Supreme Court's holding, and should be ended. U S WEST is prejudiced by the continued imputation of yellow pages revenue.

23. The question of the continuation of yellow pages revenue imputation constitutes an actu

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2 controversy which can be resolved through the issuance of an appropriate declaratory order; such an  
3 order would not be an advisory opinion; and such a resolution would not be against the public interest  
4 because full value for the yellow pages transfer has been received.

5 **COUNT II**

6 **IMPUTATION SHOULD END BECAUSE**  
7 **IT IS CONTRARY TO 47 U.S.C. § 253**

8 24. U S WEST incorporates paragraphs 1 through 23 above.

9 25. Pursuant to 47 U.S.C. § 253:

10 No state or local statute or regulation, or other state or local legal requirement, may  
11 prohibit or have the effect of prohibiting the ability of any entity to provide any interstate  
12 or intrastate telecommunications service.

13 26. Continued imputation of yellow pages revenue to U S WEST subsidizes local telephone  
14 service with the unregulated revenues of DEX and thus creates artificially low telephone rates.

15 27. The artificially low telephone rates create a barrier to competitive entry in the local  
16 telephone market, contrary to the mandate of 47 U.S.C. § 253.

17 28. Moreover, continued yellow pages imputation cannot be justified on the grounds that it  
18 is a mechanism for universal service. Section 254 of the Telecommunications Act of 1996, 47  
19 U.S.C. § 254(b), requires all contributions to universal service to be equitable and nondiscriminatory:

20 Every telecommunications carrier that provides intrastate  
21 telecommunications services shall contribute, on an equitable and  
nondiscriminatory basis, in a manner determined by the State, to the  
preservation and advancement of universal service in the State.

By continuing to impute yellow pages revenue to U S WEST, the Commission imposes an inordinately

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large burden upon U S WEST to support universal service; a burden not imposed upon other telecommunications companies which do not publish yellow pages directories. Thus, yellow pages imputation creates artificial competitive disadvantages in two ways: (1) only U S WEST must bear the entire cost of this sizable inequitable and discriminatory universal service subsidy; and (2) competitors faced with an artificial market situation in which they must compete against prices subsidized by state mandate. Thus, yellow pages imputation discriminates on both the contribution and disbursement side.

29. An actual controversy exists between U S WEST and the Commission regarding the continued legality of further imputation of yellow pages revenues to U S WEST, and U S WEST is adversely affected by the lack of resolution of this matter.

30. A declaration by the Commission would effectively resolve this matter and would not constitute an advisory opinion.

31. Resolution of this matter would benefit both U S WEST and the citizens of Washington

**COUNT III**

**IMPUTATION MUST END BECAUSE IT IS AN UNCONSTITUTIONAL INFRINGEMENT ON SPEECH**

32. U S WEST incorporates paragraphs 1 through 31 above.

33. Yellow pages publication is an expressive activity protected both by (a) the Speech and Press Clauses of the First Amendment, which applies to the State of Washington through the Due Process Clause of the Fourteenth Amendment; and (b) Article 1, Section 5 of the Washington Constitution. Yellow pages publishing involves the exercise of creativity and editorial discretion. Directory revenue imputation directly and substantially infringes on this editorial discretion and on the

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constitutional rights of U S WEST, U S WEST, Inc. and DEX.

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**COUNT IV**

**IMPUTATION MUST END BECAUSE IT CONSTITUTES  
A TAKING WITHOUT JUST COMPENSATION**

34. U S WEST incorporates paragraphs 1 through 33 above.

35. Imputing yellow pages revenue violates U S WEST's rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 16 of the Washington Constitution. Yellow pages publishing is not an activity associated with the furnishing of telephone service by U S WEST, but rather belongs to DEX and its shareholders. Imputing yellow pages revenue to U S WEST means that rates for its regulated telephone service are set in part by reference to a non-public utility activity involving property in which telephone ratepayers have no interest and for which no value has been received, and denies U S WEST revenue to which it would otherwise be entitled. A state may not set utility rates by reference to non-public utility business involving property in which ratepayers have no interest, regardless of whether this results in an unconstitutionally confiscatory rate of return.

**RELIEF REQUESTED**

WHEREFORE, U S WEST respectfully requests that the Commission issue an order finding that imputation of yellow pages is no longer warranted and contrary to law.

Respectfully submitted this 10th day of July, 1998.

U S WEST Communications, Inc.

\_\_\_\_\_  
Lisa Anderl, WSBA No. 13236  
Peter J. Butler, Attorney at Law