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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 ELECTRIC LIGHTWAVE, INC.;)
4 MFS INTELENET OF WASHINGTON,)
INC.; TCG SEATTLE; ENHANCED)
5 TELEMANAGEMENT, INC.; AT&T)
COMMUNICATIONS OF THE PACIFIC)
6 NORTHWEST, INC.,)
7 Complainant,) DOCKET NO. UT-951342
8 vs.) Volume 1
9 U S WEST COMMUNICATIONS, INC.,) Pages 1 - 15
10 Respondent.)

11 -----)
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
12 Complainant,) DOCKET NO. UT-951244
13 vs.)
14 U S WEST COMMUNICATIONS, INC.,)
15 Respondent.)
16 -----)

17 A pre-hearing conference in the above matter
18 was held on March 20, 1996, at 10:10 a.m., at 1300
19 South Evergreen Park Drive Southwest, Olympia,
20 Washington before Administrative Law Judge SIMON
21 FFITCH.

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23
24 Cheryl Macdonald, CSR
25 Court Reporter

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1 The parties were present as follows:

2 WASHINGTON UTILITIES AND TRANSPORTATION
3 COMMISSION STAFF, by SHANNON SMITH, Assistant
4 Attorney General, 1400 South Evergreen Park Drive
5 Southwest, Olympia, Washington 98504.

6 AT&T COMMUNICATIONS OF THE PACIFIC
7 NORTHWEST, INC., by GREGORY J. KOPTA, Attorney at Law,
8 2600 Century Square, 1501 Fourth Avenue, Seattle,
9 Washington 98101.

10 MCI METRO and METRONET SERVICES CORPORATION,
11 by BROOKS HARLOW, Attorney at Law, 601 Union Street,
12 Suite 4400, Seattle, Washington 98101.

13 U S WEST COMMUNICATIONS, INC., by LISA
14 ANDERL, Attorney at Law, 1600 Seventh Avenue, Room
15 3206, Seattle, Washington 98191.

16 ELECTRIC LIGHTWAVE, INC., by ELLEN DEUTSCH,
17 (via telephone), Attorney at Law, 8100 NE Parkway
18 Drive, Vancouver, Washington 98662.

19 FOR THE PUBLIC, DONALD TROTTER, Assistant
20 Attorney General, 900 Fourth Avenue, Suite 2000,
21 Seattle, Washington 98164.

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1 P R O C E E D I N G S

2 JUDGE FFITCH: Good morning, everyone.

3 This is the time and place set for the pre-hearing
4 conference in consolidated dockets UT-951342, which
5 is ELI vs. U S WEST Communications, and docket
6 UT-951244, Washington Utilities and Transportation
7 Commission vs. U S WEST Communications. The following
8 appearances have been entered today. On behalf of the
9 Commission staff, Shannon Smith, assistant attorney
10 general. On behalf of U S WEST Communications, Lisa
11 Anderl of U S WEST counsel's office. On behalf of
12 complainant Electric Lightwave, Ellen Deutsch,
13 attorney at law, and on behalf of AT&T, Gregory Kopta,
14 attorney at law. On behalf of intervenors MCI Metro,
15 Mr. Brooks Harlow, attorney at law, and those are all
16 the appearances today.

17 I will note for the record we do not have
18 an appearance by MFS Intelenet, TCG, Enhanced
19 Telemanagement. Also appearing today is Mr. Don
20 Trotter for public counsel. I think first I will take
21 up the petitions to intervene. The petition to
22 intervene of MCI Metro has been filed. No objections
23 have been filed, and my understanding that other
24 parties here today don't object to MCI Metro's filing,
25 and that Mr. Harlow wants to file an oral petition for

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1 another party as well.

2 MR. HARLOW: Yes, Your Honor. I have
3 nothing to add to the written petition of MCI Metro
4 unless there are any questions from the bench. For
5 the record, Brooks Harlow representing Metronet
6 Services Corporation. Metronet petitions to intervene
7 under WAC 480-09-030. Metronet does not seek to
8 broaden the issues in either of these causes.

9 Metronet's address is 800 Stewart Street, Suite 320,
10 Seattle, Washington 98101. Metronet --

11 JUDGE FFITCH: Would you repeat that
12 address, please.

13 MR. HARLOW: 800 Stewart Street, Suite 320,
14 Seattle, Washington 98101.

15 JUDGE FFITCH: And the name of the
16 intervenor is Metronet?

17 MR. HARLOW: Metronet Services Corporation.

18 JUDGE FFITCH: Thank you.

19 MR. HARLOW: Metronet's attorney's address,
20 I'm an attorney at 601 Union Street, Suite 4400,
21 Seattle, Washington 98101-2352. Metronet is a
22 registered telecommunications company, is a rebiller
23 of U S WEST services, primarily Centrex type services.
24 As such, Metronet is a competitor of U S WEST as well
25 as a dependent customer of U S WEST, and U S WEST

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1 rates and practices with regard to its access lines
2 with which Metronet must compete will be considered in
3 these dockets, and accordingly Metronet may be
4 affected by the order in this complaint case. Based
5 on that Metronet seeks to intervene in both dockets.

6 JUDGE FFITCH: Any objection to Metronet
7 intervening in both dockets? Hearing none, the
8 petition of Metronet to intervene will be granted.

9 Any objection to the petition of MCI Metro
10 to intervene in both dockets? Hearing none the MCI
11 petition will be granted.

12 A petition to intervene has also been filed
13 by GTE Northwest, Incorporated. There has been a
14 service problem with the GTE petition to intervene.
15 Are there any objections to the GTE petition for the
16 record?

17 MR. TROTTER: This is Donald T. Trotter for
18 public counsel section. We will object to the
19 petition. Just had a chance to review it this
20 morning, and it doesn't appear that GTE is alleging
21 that they are a competitor or that they are a
22 customer, but rather that they're interested in some
23 allegations in the complaint on a generalized basis,
24 and I don't believe that's sufficient. Given that GTE
25 could not be here I wouldn't object to perhaps

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1 allowing them to reinstitute their petition at some
2 other date when they can be here because I don't want
3 to take advantage of that situation. On the other
4 hand, they aren't here, and now is the time to object
5 so that's my objection and the basis.

6 JUDGE FFITCH: Your objection is noted for
7 the record. Because of the service problem GTE only
8 learned of the pre-hearing conference late yesterday
9 and was unable to have counsel present. I'm going to
10 allow GTE an opportunity to respond to public
11 counsel's objections before making a ruling.

12 MS. ANDERL: Your Honor, if I could just
13 add something. Just reading Commission's rules on
14 intervention, I think that GTE's petition does
15 disclose a substantial interest in the subject matter
16 of the proceedings. I don't think that that's
17 necessarily limited to showing that they're a customer
18 or a competitor, but certainly that they could be
19 affected by the Commission's decision on these issues
20 to the extent that might also affect their practices
21 or practices of competitors who compete with them, and
22 I believe on that basis that the petition could be
23 granted today, but perhaps we'll be taking that
24 petition up later if GTE files something else in
25 writing.

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1 MR. TROTTER: Just a brief response. This
2 is not a generic docket. This is a docket specific to
3 a tariff of a specific company. I think the
4 Commission needs to evaluate interest. Under the APA
5 I think it plainly requires more than what GTE has so
6 far put forth.

7 JUDGE FFITCH: Mr. Trotter, I'm going to
8 ask public counsel to place its objections to the
9 intervention in the form of a written motion so that
10 Mr. Williamson or other counsel for GTE can respond in
11 writing, and we may be able to resolve that then
12 perhaps by -- I will just either resolve it on the
13 written motions or we can have if necessary telephone
14 argument, and I would ask that you would file that
15 motion by Friday. Is that a reasonable time?

16 MR. TROTTER: Yes.

17 JUDGE FFITCH: So the record will reflect
18 that counsel's objection will be filed by motion and
19 served on Friday of this week.

20 The other intervention issue is the
21 question of intervention of the complainants from the
22 951342 docket into the single number tariff review
23 docket. It's my understanding that there is no
24 objection on the part of U S WEST to the granting of
25 intervention to the complainants from the 951342

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1 docket into the single number docket. Is that
2 correct, Ms. Anderl, with the exception of GTE which
3 has not yet been ruled on?

4 MS. ANDERL: Actually, I think I kind of
5 would like -- maybe I would like to hear a little bit
6 more from those parties as to what their interest
7 specifically in the single number service docket would
8 be. I guess if it's limited just to the termination
9 liability, but even then I might not object. Even
10 then, though, without an allegation that this somehow
11 affects them or their customers, I guess I might have
12 a hard time understanding what interest they did show
13 in that particular docket.

14 JUDGE FFITCH: Do you want to respond to
15 that, Ms. Deutsch? I will go to you first.

16 MS. DEUTSCH: Yes, Your Honor. You know,
17 ELI's interest is identical to the interest in the
18 Customchoice docket. We are both a customer of
19 U S WEST and a competitor, and the pricing of the
20 service has a direct effect on our ability to compete,
21 so I think our interests are parallel in both dockets.

22 JUDGE FFITCH: Other counsel wish to
23 address the intervention issue? Mr. Kopta.

24 MR. KOPTA: Yes, thank you, Your Honor. I
25 would simply echo Ms. Deutsch's comments that AT&T is

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1 as interested in the single number filing as in the
2 Customchoice, and in fact AT&T was the only party
3 that filed comments at the open public meeting in
4 discussion of a single number and this issue with the
5 contract provisions and with U S WEST provision of the
6 services as outlined in their tariff. So AT&T
7 certainly has a strong interest in that proceeding,
8 and I would also say I've spoken with counsel for TCG
9 and with counsel for MFS and all of them are not able
10 to be here. They have given me their proxy to act on
11 their behalf, and I would say that as registered
12 companies authorized to provide local exchange
13 services that they are also interested in the issues
14 raised in the single number docket.

15 JUDGE FFITCH: Any other comments on the
16 interest of the intervenors in the single number
17 docket? Do you want to say anything further, Ms.
18 Anderl?

19 MS. ANDERL: No. I guess I'm hearing that
20 their interests are in fact limited to the term
21 contract and the termination liability provisions, and
22 on that basis I would not object to their
23 intervention. If they were in fact intending to
24 broaden the scope of the proceedings to address the
25 other rates set forth in the single number service

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1 tariff, I guess I would like to know about that, but

2 --

3 JUDGE FFITCH: I'm going to grant the
4 request for intervention of the complainant parties
5 from 951342 into the single number docket. The
6 parties have also requested that a protective order be
7 issued in both dockets. There's no objection to the
8 request, and requests for standard Commission
9 protective order is granted and an order will be
10 issued, and I would expect that that would go out no
11 later than next week.

12 That brings us to the withdrawal issue with
13 regard to the Customchoice tariff, which is the
14 subject of complaint in 951342, and I guess I will
15 just state my understanding of the situation and then
16 counsel can correct me on the record if I'm getting it
17 wrong, but discussion prior to going on the record,
18 U S WEST has advised that they are intending to
19 withdraw the Customchoice tariff which is the subject
20 of the complaint by written withdrawal filing. Within
21 seven days of the pre-hearing conference today, U S
22 WEST will file a motion to withdraw in this docket and
23 will simultaneously file the ordinary advice letters
24 and other documents required for withdrawal of tariffs
25 with the Commission. I will then advise the parties

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1 of the procedural form in which the withdrawal will be
2 considered, and that would be either in this docket or
3 the withdrawal will be presented to public meeting in
4 April, and I would expect to advise the parties of the
5 procedural approach to be taken next week. Ms.

6 Anderl, did you want to say anything further on the --
7 on that matter of the withdrawal of the tariff?

8 MS. ANDERL: Well, I guess to just
9 reiterate what I was indicating when we were talking
10 about this off the record is I am not too sure we need
11 to file a motion to withdraw in this docket and am
12 more comfortable with going forward with filing the
13 standard tariff revision sheets that we would outside
14 the course of this proceeding, but I have agreed, as I
15 said, to file kind of a notice to the parties and
16 a motion of some kind so that at least if there were
17 any ex parte issues everyone would know that this
18 is what we're doing, and I will certainly accomplish
19 service on all the parties in this docket of the
20 tariff revisions.

21 I think the tariff revisions that we filed
22 will have an effective date, and to the extent that
23 that effective date would come up in April I would
24 expect that they would have to be addressed either at
25 an open meeting or if in this docket then at least

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1 before that effective date.

2 JUDGE FFITCH: Obviously there's an
3 interest for U S WEST here in getting the complaint
4 proceeding resolved and nothing that I'm saying today
5 precludes U S WEST from conferring with the other
6 parties and arriving at an acceptable procedural
7 approach for dealing with the withdrawal issues, and I
8 will just also note for the record that complainants
9 are interested in preserving their right to respond to
10 the request for withdrawal, and so in reviewing the
11 procedural options available to us here I will be
12 keeping that in mind also. Any other comment on the
13 motion for withdrawal at this point?

14 MS. DEUTSCH: I just have one question.
15 This is Ellen. Ms. Anderl said that they would make
16 available the number of customers under Customchoice
17 after the protective order has been issued. Do we
18 have to make data requests for that or will she make
19 available?

20 JUDGE FFITCH: It would be my understanding
21 that you would be asked to make a request.

22 MS. ANDERL: If they just want to send me a
23 letter attached with the confidentiality agreement
24 signed that would probably be fine.

25 MR. HARLOW: I understand that you are also

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1 willing to make available the number of lines.

2 MS. ANDERL: I told you that both of those
3 numbers were confidential. I don't know what we're
4 going to be able to make available. Under the
5 protective order I assume that we can but certainly
6 not until the protective order.

7 MR. HARLOW: Understand.

8 JUDGE FFITCH: Just from my notes here, the
9 two matters the complainants are interested in are the
10 number of lines and number of customers, but not
11 customer identity. It seems to me that the
12 complainants can certainly initiate the process by
13 filing a letter request with U S WEST and when the
14 protective order is in place then U S WEST would have
15 had some advance notice what the specific request was.
16 In anticipation that the order would be entered you
17 could then be starting to already get that information
18 ready for distribution to the requesting parties.

19 MS. ANDERL: Ellen, we'll be expecting a
20 request, and we'll be prepared with our response by
21 the time the protective order comes out.

22 MS. DEUTSCH: Okay.

23 JUDGE FFITCH: I think that at this point
24 we have placed on the record all of the matters that
25 we had discussed previously. At this time we're going

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1 to take a recess and allow counsel to discuss a
2 schedule for the single number docket, and we will go
3 off the record.

4 (Discussion off the record.)

5 (Recess.)

6 JUDGE FFITCH: We've been off the record
7 and had a discussion regarding scheduling and other
8 matters. The matter of scheduling for these
9 consolidated dockets will be deferred and taken up at
10 a second pre-hearing conference. The second
11 pre-hearing conference will be noticed for Thursday,
12 May 2, at 9:30 a.m. in the Commission hearing room.
13 In addition, the order procedure issue will be brought
14 on by a motion by Commission staff to be filed by
15 February -- excuse me -- by Friday, March 29. U S
16 WEST will have the standard response time under the
17 Washington Administrative Code, and the results of
18 just a brief interchange regarding the status of
19 discovery here, and I don't know that we had -- I
20 don't believe that had been placed on the record, but
21 the -- at this point the discovery rules are available
22 for -- I believe parties had agreed they would be
23 available for the 951342 complaint docket; is that
24 correct? I guess maybe I just need to get the
25 understanding of the parties. We had talked about

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1 that, and primarily focused on the protective order
2 issue. Maybe that's the only discovery we're talking
3 about here. Do we need any further clarification of
4 discovery in the order on pre-hearing conference?

5 MS. SMITH: Except for staff would invoke
6 the discovery rule in the single number service
7 docket. I don't know if that's something that we need
8 to address here or not.

9 JUDGE FFITCH: Well, if you're planning to
10 do discovery before the next pre-hearing conference.
11 Otherwise we can simply take it up at that time and
12 have that be part of the order on the pre-hearing
13 conference. The discovery rules are not invoked at
14 this time except as to the protective order, which
15 we've discussed previously.

16 Any other matters that we need to take up
17 today? Hearing none, I will issue a order on
18 pre-hearing conference memorializing these pre-hearing
19 decisions and we are adjourned. Thank you for your
20 attendance.

21 (Hearing adjourned at 10:42 a.m.)

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