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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 TCI CABLEVISION OF WASHINGTON,)
4 INC.,)
5 Complainant,) DOCKET NO. UT-950806
6 vs.) VOLUME 1
7 U S WEST COMMUNICATIONS, INC.,) PAGES 1 - 20
8 Respondent.)
9 -----)

10 A pre-hearing conference in the above matter
11 was held on November 15, 1995, at 10:15 a.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington before Administrative Law Judge MARJORIE
14 SCHAER.

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16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION
18 COMMISSION STAFF, by SHANNON SMITH, Assistant
19 Attorney General, 1400 South Evergreen Park Drive
20 Southwest, Olympia, Washington 98504.

21 TCI CABLEVISION OF WASHINGTON and WSCCA, by
22 GREGORY KOPTA, Attorney at Law, 2600 Century Square,
23 1501 Fourth Avenue, Seattle, Washington 98101.

24 U S WEST COMMUNICATIONS, by LISA ANDERL,
25 Attorney at Law, 1600 Seventh Avenue, Room 3206,
Seattle, Washington 98191.

Cheryl Macdonald, CSR

Court Reporter

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

2 JUDGE SCHAER: The hearing will come to
3 order. This is a hearing in docket No. UT-950806
4 which is a filing by TCI Cablevision of Washington
5 Inc. against U S WEST Communications, Inc. in which
6 TCI contends that U S WEST pole attachment rates are
7 too high. This is a pre-hearing conference that was
8 set by a notice of prehearing conference dated October
9 24, 1995. It's taking place on November 15, 1995 in
10 Olympia, Washington. The hearing is being held before
11 Administrative Law Judge Marjorie R. Schaer.

12 We had some discussion off the record,
13 actually rather lengthy discussion, about some of the
14 topics that are going to be discussed in a moment
15 particularly whether all necessary parties to this
16 proceeding were present. When I get to that point in
17 the hearing I will try to summarize our discussion and
18 then ask the parties to interject anything else that
19 we discussed that they think should be on the record,
20 but what I would like to do first is take appearances.
21 Then we'll take the motion, petitions to intervene,
22 and then we'll go through a few more issues, then go
23 off the record again to discuss scheduling. Let's
24 begin with the appearance of the complainant, please.

25 MR. KOPTA: Gregory J. Kopta, Davis

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1 Wright Tremaine, 2600 Century Square, 1501 Fourth
2 Avenue, Seattle, Washington, 98101. Appearing on
3 behalf of complainant TCI Cablevision of Washington,
4 Inc.

5 JUDGE SCHAER: For the respondent, please.

6 MS. ANDERL: Thank you, Your Honor. Lisa
7 Anderl with U S WEST, Inc. 1600 Seventh Avenue, Room
8 3206, Seattle, Washington 98191 appearing for U S WEST
9 Communications, Inc.

10 JUDGE SCHAER: And for the Commission
11 staff, please.

12 MS. SMITH: Shannon Smith, assistant
13 attorney general, 1400 South Evergreen Park Drive
14 Southwest, P.O. Box 40128, Olympia, Washington
15 98504-0128 on behalf of the staff of the Washington
16 Utilities and Transportation Commission.

17 JUDGE SCHAER: Is there anyone here from
18 public counsel? The record should reflect that Mr.
19 Trotter is in New Orleans.

20 Now, is there anyone else in the hearing
21 room who represents someone who wants to be an
22 intervenor in this matter? I believe that you had
23 filed a petition to intervene, Mr. Kopta.

24 MR. KOPTA: That's correct. We are also
25 appearing on behalf of the Washington State Cable

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1 Communications Association that seeks to intervene in
2 this proceeding.

3 JUDGE SCHAER: Are there going to be any
4 other petitions to intervene? No response at this
5 time.

6 I've read a copy of your petition, Mr.
7 Kopta. Do you have anything that you would like to
8 add at this time?

9 MR. KOPTA: No, Your Honor. I believe
10 we've stated in our petition our grounds for
11 intervention, and unless you have any questions I
12 would let the record stand on what we have filed
13 previously.

14 JUDGE SCHAER: There were a couple of
15 questions that I asked you off the record that I will
16 ask you again just to make sure that our record is
17 complete. First, as I understand it, TCI is a member
18 of your association; is that correct?

19 MR. KOPTA: That is correct.

20 JUDGE SCHAER: My second question to you
21 was what other members of your association operate in
22 the U S WEST service territory and are hooked up to
23 poles that are jointly owned by U S WEST and another
24 utility.

25 MR. KOPTA: At this point I don't have that

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1 information. I know that there are other companies
2 that are attached to U S WEST's solely and jointly
3 owned poles but at this point I don't know the
4 identity of those particular companies.

5 JUDGE SCHAER: Is that something that you
6 would be able to ascertain and to provide by letter?

7 MR. KOPTA: I believe so, yes.

8 JUDGE SCHAER: Thank you. Would you be
9 willing to do that?

10 MR. KOPTA: Yes.

11 JUDGE SCHAER: Are there any objections to
12 the petition to intervene by the association?

13 MS. SMITH: No objection from staff.

14 MS. ANDERL: Your Honor, from U S WEST no
15 objection. We believe that the petition does state a
16 basis for intervention. In our discussions off the
17 record before we started today we believe -- we
18 discussed how the rate change as to TCI might
19 potentially affect the other cable companies, and so I
20 think they certainly have an interest in the outcome
21 here. I would just ask, and we can discuss this
22 later, too, that especially since the intervenor is
23 represented by the same attorney as the complainant
24 that certainly things such as discovery and whatever
25 should not be duplicative as to these two parties, and

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1 I would hope that their interests are enough aligned
2 that they would consolidate those things, but
3 otherwise we have no objection.

4 MR. KOPTA: That is certainly our intention
5 at this time.

6 JUDGE SCHAER: All right. I will grant the
7 motion to intervene.

8 Next thing I would like to do is confirm
9 that the three of you who are appearing here today are
10 going to be the contact persons for distributions or
11 discovery contacts for your clients. Is that correct?

12 MS. ANDERL: Yes, Your Honor.

13 MS. SMITH: That's correct.

14 JUDGE SCHAER: Mr. Kopta, should two copies
15 be sent to you on behalf of your two clients or is one
16 copy to you on behalf of both TCI and the association
17 sufficient?

18 MR. KOPTA: One copy would be sufficient.

19 JUDGE SCHAER: Does the Commission record
20 center have the fax numbers of Mr. Kopta and Ms.
21 Anderl?

22 MS. ANDERL: I don't know that they do. I
23 will make sure that they have mine before I leave or I
24 can give it to you for the record.

25 JUDGE SCHAER: I have actually -- you've

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1 given me your business card and I can provide that if
2 they don't have it. I don't have a card or a fax
3 number from you, Mr. Kopta. Could you perhaps give me
4 something that I can put in the file to make sure that
5 if we need to reach you in a hurry we're able to do
6 so?

7 MR. KOPTA: I certainly will.

8 JUDGE SCHAEER: Thank you. The next item is
9 a motion by U S WEST to be allowed to file a late
10 filed answer. Is there any objection to that motion
11 by any party?

12 MR. KOPTA: No objection.

13 JUDGE SCHAEER: Then the pre-hearing order
14 will reflect that that motion is granted.

15 Next item is Exhibit A to the complaint.
16 Off the record you had mentioned to Mr. Kopta that, as
17 is noted in paragraph 6 of U S WEST's answer, the
18 complaint filed with the Commission and served on the
19 respondent did not have a copy of Exhibit A. While we
20 were off the record Mr. Kopta had provided that
21 exhibit and copies have been distributed to the
22 parties in the hearing room. Mr. Kopta has agreed to
23 file 20 copies with the Commission record center.
24 Does any party object to including Exhibit A as a part
25 of the complaint as we go forward?

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1 MS. SMITH: No objection.

2 MS. ANDERL: No objection.

3 JUDGE SCHAER: The next issue that we
4 discussed for quite a bit of time off the record is
5 the question of necessary parties. Paragraph 16 of
6 U S WEST's answer in the affirmative defense section
7 claims that TCI has failed to join necessary parties,
8 and as I understood it under the requirement in RCW
9 80.54.070 that U S WEST charge uniform pole attachment
10 rates to all licensees in its service territory. I
11 understand from comments from Ms. Anderl that maybe I
12 misunderstood what they were alleging. They may have
13 been alleging that other pole owners should have been
14 joined.

15 Paragraph 5 of TCI's reply to the
16 counterclaim of U S WEST alleges that to the extent
17 U S WEST asks the Commission to impose a rate increase
18 on all of its pole attachment licensees through this
19 complaint proceeding, U S WEST has failed to join
20 those necessary parties. Do all parties here today
21 agree that some necessary parties may be missing?

22 MS. ANDERL: Well, Your Honor, I guess I
23 will just repeat what we discussed off the record, and
24 that is that in U S WEST's answer the reference to
25 failure to join necessary or indispensable parties was

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1 to any of the -- referencing any of the co-owners of
2 the poles. However, recognizing that the co-owners
3 are municipal utilities or PUDs and recognizing prior
4 decisions of this Commission that it lacks
5 jurisdiction to bring those parties in and mandate
6 that they participate, we are not going to move to
7 dismiss the complaint or otherwise try to impede the
8 progress of this hearing on that basis, and we also
9 recognize that there are many wholly-owned poles, and
10 the determination as to those rates of course would
11 not be contingent on bringing any co-owner in since
12 there aren't any co-owners. Just to clarify what we
13 meant.

14 JUDGE SCHAER: Mr. Kopta.

15 MR. KOPTA: Yes, thank you, Your Honor.
16 Our concern in paragraph 5 of our reply was for other
17 cable television companies. It's my understanding
18 that all cable television companies have pole
19 attachment license agreements with U S WEST as a
20 prerequisite to attaching their facilities to U S WEST
21 solely or jointly owned poles, and those contracts
22 require U S WEST to give advance notice of any
23 increase as opposed to seeking an increase from the
24 Utilities and Transportation Commission's part of this
25 proceeding. However, having the Washington State

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1 Cable Communications Association intervene addresses
2 those concerns I think to a large extent. There is
3 still an open question whether there are other cable
4 companies that attach to U S WEST's solely or jointly
5 owned poles that are not members of the association,
6 but that is something that we will work with U S WEST
7 to try and discover and to at least give those parties
8 notice of these proceedings.

9 JUDGE SCHAER: Thank you. Ms. Smith.

10 MS. SMITH: I don't have anything to add.

11 JUDGE SCHAER: I believe that while we were
12 off the record you had obtained some information about
13 who the complaint had been served on by the
14 Commission. Could you provide that to the record,
15 please.

16 MS. SMITH: Yes. The master service list
17 from the record center indicates that TCI has been
18 served with documents from the record center as has
19 U S WEST and the Washington State Cable Communications
20 Association and public counsel. There's no indication
21 that any other persons have been served with
22 information regarding this complaint from the
23 Commission record center.

24 JUDGE SCHAER: I have some concern about
25 people who should know about this proceeding and

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1 should be allowed to be here or who would choose to
2 be here and don't know that we are doing this, and I
3 think that we should provide some additional notice of
4 what is going on in this proceeding. It's my
5 understanding, Ms. Anderl, that your client would be
6 able to produce a list of the persons whom it bills
7 for pole attachments in the state of Washington, and
8 would they also be able to produce a list of who you
9 co-own poles with?

10 MS. ANDERL: Yes. I believe I can
11 represent that the only entities with whom we co-own
12 poles that our records reflect would be Seattle City
13 Light, City Light, Clark County PUD and possibly a
14 very small number of poles jointly with Puget Power.
15 I should also note that the Seattle City Light
16 co-ownership is in some instances actually only a one
17 third ownership with Metro and Seattle City Light
18 both.

19 JUDGE SCHAER: So you also co-own some with
20 Metro?

21 MS. ANDERL: Most of those I think are the
22 ones that we co-own with City Light, but that is not
23 testimony.

24 JUDGE SCHAER: Certainly not.

25 MS. ANDERL: I don't know for sure.

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1 JUDGE SCHAER: I think it would be a good
2 idea for us to give notice of this proceeding to the
3 co-owners and to the persons who are billed.

4 MS. ANDERL: We can provide you with a list
5 of the people who are billed.

6 JUDGE SCHAER: And I believe -- I don't
7 view any of them as necessary parties in the sense
8 that if they choose not to intervene it would be fatal
9 to this proceeding, but I believe that any of those
10 parties who might wish to intervene should have
11 knowledge that this is going on and of their ability
12 to join at the table and be part of the proceeding. I
13 would like to go off the record for a moment perhaps
14 to discuss how that should be done. Would you like to
15 say something before we go off the record?

16 MS. ANDERL: Just one other thing along
17 those same lines is I wonder to the extent that the
18 Commission might be interpreting these provisions of
19 the statute and that is the first time it's ever been
20 done, the other LECs might not be interested also.

21 JUDGE SCHAER: Perhaps then we could also
22 serve the other LECs unless --

23 MR. KOPTA: Well, to add on that, I hate to
24 expand to parties that we need to serve this, but not
25 only local exchange companies but other utilities that

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1 are regulated by the Utilities and Transportation
2 Commission would also own poles, specifically electric
3 utilities, and so if there's a feeling that those
4 parties need notice of this then it seems to me that
5 not only other local exchange companies but also
6 electric utilities, at least those that are regulated
7 by the Commission, should also be included.

8 JUDGE SCHAER: I believe that Puget Power
9 was already going to be included. We could certainly
10 add the other electric companies, the other two,
11 without undue burden I think.

12 MS. ANDERL: As I said, certainly to the
13 extent that this involves a statutory interpretation
14 that's going to apply to all of the companies going
15 forward, I wouldn't argue with that.

16 JUDGE SCHAER: Let's go off the record for
17 just a moment and discuss how we're going to
18 accomplish what we've just agreed we need to do.

19 (Discussion off the record.)

20 JUDGE SCHAER: Let's go back on the record.
21 While we were off the record a number of items were
22 discussed. First was an issue of how to give notice
23 to other parties who we believe should have notice of
24 this proceeding and have not yet been notified. I
25 believe that the agreement that was reached was that

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1 Ms. Anderl would come up with a list by Monday,
2 November 20 of all of the entities whom U S WEST bills
3 in the state of Washington for pole attachments; that
4 she would provide names and addresses for companies
5 other than regulated utilities; and for the regulated
6 utilities she would just provide names because
7 addresses for service would be better found in the
8 Commission's own files.

9 It's also my understanding that Mr. Kopta
10 would come up with a list of the names and addresses
11 of the members of the association which is an
12 intervenor in this proceeding. The parties agree that
13 those -- that those companies do not need to be given
14 additional notice since they are already appearing in
15 this proceeding through the association.

16 It's my understanding that the office of
17 attorney general will prepare a notice of pre-hearing
18 conference for a conference to be held on December 12
19 in this matter, and will serve it on those lists of
20 individuals or corporations, and we have discussed
21 then your having a hearing in Commission's hearing
22 room on December 12 or if before December 12 there are
23 no additional motions to intervene in this proceeding,
24 we may convert that to an additional pre-hearing
25 conference to be conducted by telephone conference

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1 call, and I will contact the parties by December 6 to
2 let them know whether that would be done by conference
3 call or whether they need to come to Olympia.

4 Does that accurately reflect our off the
5 record discussion on giving notice to other parties?

6 MS. ANDERL: Did we talk about notice to
7 the LECs, the other registered telecommunications
8 companies? Was that included in what you said? I'm
9 sorry.

10 JUDGE SCHAER: I had said that regulated
11 utilities would -- and I had meant by that both the
12 LECs who are registered with the Commission and the
13 electric companies who are regulated by the
14 Commission.

15 MS. ANDERL: Thanks.

16 JUDGE SCHAER: Maybe I should have said
17 registered or regulated.

18 MS. ANDERL: And this is with, I think,
19 your earlier statement that failure of any of these
20 people who were given additional notice to choose to
21 participate will not impede this proceeding from going
22 forward.

23 JUDGE SCHAER: That's correct. We will
24 give all of these parties notice and an opportunity to
25 appear, but I don't believe that any of them is a

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1 necessary party in the sense that their failure to
2 appear would mean that the Commission could not
3 proceed in this matter with sufficient jurisdiction to
4 address the issues presented to it involving the
5 complainant, the respondent, and the intervenor.

6 The next item on my list of questions I
7 wanted to ask today is a question I want to address to
8 Ms. Anderl regarding the U S WEST counterclaim.
9 Paragraph 15 of U S WEST's answer in the affirmative
10 defense section claims that U S WEST's current pole
11 attachment rates are not sufficient and cites the
12 requirement in RCW 80.54.030 that the Commission
13 determine just, reasonable or sufficient rates. And
14 my question to you is, has the company included a
15 request for increased pole attachment rates in its
16 general rate request filing?

17 MS. ANDERL: I don't believe the requested
18 relief in this proceeding has been incorporated into
19 the general rate filing. I will check on that and
20 have a more definite answer for you by the next
21 pre-hearing conference.

22 JUDGE SCHAER: Are the pole attachment
23 rates in a tariff?

24 MS. ANDERL: No.

25 JUDGE SCHAER: Could you find out when

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1 you're getting information for the next conference
2 where the revenues and expenses for pole attachment
3 rates show up on the company's books?

4 MS. ANDERL: Yes.

5 JUDGE SCHAEER: Thank you. The next matter
6 that we discussed off the record was scheduling the
7 remainder of this proceeding, and it's my
8 understanding that the parties have agreed to pursue
9 the following schedule. There will be two rounds of
10 prefiling of testimony. All parties will prefile at
11 each round. The first prefiling will be on January 8
12 of 1996 and the second on February 5 of 1996 and
13 hearing in this matter for cross-examination of that
14 testimony will take place on February 26 and 27.
15 Briefs will be due on March 12, 1996 and I had
16 previously mentioned to Mr. Kopta, and I'm not certain
17 Ms. Anderl was in the room, but the Commission will be
18 asking the companies involved to file proposed
19 findings of fact and conclusions of law with their
20 briefs in this matter, and then the Commission will
21 issue -- I will issue an initial order and then if
22 there's a request for a review there will be review
23 and a final order by July 12 of 1996. Is that a
24 correct reflection of the schedule that we discussed?

25 MR. KOPTA: That's correct.

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1 MS. SMITH: Yes.

2 JUDGE SCHAER: The next item that we
3 discussed was discovery, and the parties have agreed
4 that the Commission should invoke the rule relating to
5 methods for obtaining data in adjudicative
6 proceedings, which is WAC 480-09-480. I believe
7 that's appropriate and so that rule is invoked in this
8 proceeding.

9 And the final thing that we discussed was a
10 need for protective order. U S WEST has indicated
11 that they would like to have a protective order issued
12 because there are certain sensitive costs data which
13 may need to be released in this matter, and the
14 Commission will issue a protective order in the usual
15 format. I will try to get it out as soon as possible,
16 and in the meantime if the parties want to act as if
17 they are already bound by a protective order in order
18 to aid discovery they are welcome to do that. Please
19 remember when you're distributing materials that any
20 items which are confidential need to be segregated,
21 and please do not distribute anything that is
22 protected material to anyone who has not signed the
23 protective order.

24 One final note, when you're sending
25 responses to discovery requests, please send those

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1 directly to counsel for the Commission staff and do
2 not send them to the secretary of the Commission. All
3 other prefiled materials and case-related
4 correspondence needs to be filed through the
5 Commission's secretary. If the Commission's secretary
6 has not logged it in it is not filed under the
7 Commission's rules.

8 Commission is asking people to use the post
9 office box address which is Post Office Box 47250,
10 Olympia, Washington, 98504-7250. For prefiled
11 materials you need to send an original plus 19 copies,
12 please. You do not need to send a courtesy copy to
13 me. If at any time you are sending time-sensitive
14 materials to me, you need to make sure that the
15 Commission record center knows the materials are time-
16 sensitive and that my copy needs to be hand delivered
17 to me immediately so that there's not a one or two day
18 lag on me getting something that you want action on
19 within 24 hours.

20 Is there anything that we discussed off the
21 record that we need to talk about and we haven't?

22 MS. ANDERL: Your Honor, this isn't
23 something we discussed off the record, and just when
24 you mentioned the filing of an original and 19, I
25 wondered if we could find out now or maybe at the next

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1 pre-hearing conference if this isn't the type of case
2 where maybe that number could be reduced because of
3 the fairly limited scope of the proceeding. I don't
4 know who is all distributed to here at the Commission
5 but if there were fewer than that required that would
6 be fine.

7 JUDGE SCHAER: I checked the distribution
8 list in the record center yesterday because I thought
9 about that also, and there were 17 names on the
10 distribution list now, and I'm not certain there was
11 somebody in the policy section on there yet, so I
12 think that probably the 20 copies is what we're going
13 to need. We may have one or two extra but we aren't
14 going to have 10 or 12 extra.

15 MS. ANDERL: Thanks.

16 JUDGE SCHAER: Is there anything else that
17 needs to come before us this morning?

18 All right. A pre-hearing order will issue
19 and we're off the record.

20 (Hearing Adjourned at 11:45 a.m.)

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