

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 UNITED & INFORMED CITIZEN)
ADVOCATES NETWORK, a non-profit)
4 Washington Corporation,)
Complainant,)
5 vs.)
6 PACIFIC NORTHWEST BELL)
7 TELEPHONE COMPANY, d/b/a U S)
WEST COMMUNICATIONS, INC.,)
8 U S WEST COMMUNICATIONS, INC.,)
Respondent.)
9 -----)

DOCKET NO. UT-960659
Volume 1
Pages 1 - 18

10 A pre-hearing conference in the above matter
11 was held on January 21, 1997 at 9:30 a.m. at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge MARJORIE
14 R. SCHAER.

15
16 The parties were present as follows:

17 U S WEST COMMUNICATIONS, INC. by Lisa
18 Anderl, Attorney at Law, 1600 7th Avenue, Room 3206,
Seattle, Washington 98191.

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

22 UNITED & INFORMED CITIZEN ADVOCATES NETWORK,
by J. BYRON HOLCOMB, P.O. Box 10069, 9596 Green Spot
Place NE, Bainbridge Island, Washington 98110.

23
24 Cheryl Macdonald, CSR
25 Court Reporter

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

2 JUDGE SCHAER: Let's be on the record then.
3 The hearing will come to order. This is a hearing in
4 Docket No. 960659 which is a complaint by United &
5 Informed Citizen Advocates Network against U S WEST
6 alleging improper disconnection of service. This is a
7 pre-hearing conference that was set by a notice of
8 pre-hearing conference dated November 12, 1996 and
9 continued at the request of the complainant to today.
10 It's taking place on January 21st, 1997 in Olympia,
11 Washington. The hearing is being held before
12 Administrative Law Judge Marjorie R. Schaer.

13 We had some discussion off the record. I
14 indicated we would take appearances first and we will
15 take motions and petition to intervene and we will go
16 off the record to discuss scheduling and other issues.
17 So let's begin with the appearance of the complainant,
18 please.

19 MR. HOLCOMB: I will introduce myself
20 first. I'm Byron Holcomb, the attorney for U&I CAN.
21 Representing U&I CAN are Mr. Bill Loveless and Mr. Al
22 Hooper. They're here in attendance.

23 JUDGE SCHAER: Good morning. Would you
24 give us your business address, please.

25 MR. HOLCOMB: Post Office Box 10069,

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1 Bainbridge Island, 98110. Telephone number
2 206-842-8429. Fax number is the same.

3 JUDGE SCHAER: Thank you. And for U S
4 WEST.

5 MS. ANDERL: Thank you. Lisa Anderl with
6 U S WEST Inc. representing U S WEST Communications
7 Inc. My business address is 1600 Seventh Avenue, Room
8 3206, Seattle, Washington 98191 and with me is Joyce
9 Morris.

10 JUDGE SCHAER: Thank you, and for the
11 Commission staff, please.

12 MS. SMITH: Shannon Smith, assistant
13 attorney general representing Commission staff, 1400
14 South Evergreen Park Drive Southwest, Olympia,
15 Washington 98504 and with me is Pat Dutton from
16 Commission staff.

17 JUDGE SCHAER: Ms. Anderl and Ms. Smith,
18 would you put your fax numbers into the record as well
19 at this time.

20 MS. ANDERL: Yes. My fax number is area
21 code 206-343-4040 and my phone is -- the last four
22 digits are 4052.

23 MS. SMITH: My fax number is area code
24 360-586-5522.

25 JUDGE SCHAER: Thank you. First order of

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1 business will be petition and motions to intervene. I
2 have not received any written motions before today,
3 and I believe that everyone in the hearing room has
4 been identified as being a member of one of the
5 parties so I don't expect any oral motions at this
6 time, but I believe you had something you wanted to
7 address, Ms. Anderl.

8 MS. ANDERL: Yes, Your Honor. I was just
9 in contact this morning with the attorney for GTE, and
10 GTE had not otherwise received any notice of this
11 proceeding, and upon being informed of it indicated
12 that they would like to discuss whether they would
13 file a petition to intervene, and I indicated that I
14 would ask leave of the administrative law judge to
15 extend the time for filing of those petitions beyond
16 today for a week or ten days in order to allow GTE
17 time to determine and file such a petition if they
18 wanted to be a party to this proceeding. I believe
19 that the issues raised in the proceeding do affect GTE
20 and, as I said, they were not otherwise notified.

21 JUDGE SCHAER: Is there anyone who would
22 object to leaving the time for intervention open for
23 another week to see if GTE would like to file a
24 petition?

25 MR. HOLCOMB: Yes, we'll object. I see no

1 reason to add them. They're not a party. They have
2 no factual information. I would assume there are
3 procedures they can file some kind of brief if they
4 want to without necessarily having to intervene, but
5 it is cumbersome to have to serve notices and on those
6 bases I would object.

7 JUDGE SCHAER: I'm going to allow GTE to
8 file a motion for late intervention if they wish to
9 under the Commission rule that would allow for that,
10 and in order to do so they would have to give an
11 indication of good cause for why their intervention is
12 coming in late. I believe if they were here today it
13 is likely that they would be found to be -- to have an
14 interest sufficient to allow them to intervene, but
15 until I see what they may file, if they choose to file
16 something, I'm not going to rule in advance, and I am
17 going to require them to meet the late intervention
18 rule rather than just the general intervention rule.

19 MS. ANDERL: I will advise them of your
20 ruling.

21 JUDGE SCHAER: Thank you.

22 MR. HOLCOMB: Sorry, didn't hear that.

23 MS. ANDERL: I will advise the attorney of
24 GTE for his Honor's ruling.

25 MR. HOLCOMB: And his name is again?

1 MS. ANDERL: Tim O'Connell.

2 MR. HOLCOMB: Thank you.

3 JUDGE SCHAEER: Now, are the individuals who
4 are here today as counsel for the parties going to be
5 the contact persons for all distributions?

6 MS. ANDERL: Yes.

7 MR. HOLCOMB: Yes.

8 MS. SMITH: Yes.

9 JUDGE SCHAEER: Thank you. That brings us
10 next to scheduling. Have the parties discussed
11 scheduling at all among themselves?

12 MS. ANDERL: No.

13 JUDGE SCHAEER: Well, let's go off the
14 record now to discuss scheduling, discovery, exhibits,
15 that type of thing, and then we will come back on the
16 record once we have something to describe on the
17 record. We're off the record.

18 (Discussion off the record.)

19 JUDGE SCHAEER: Let's be back on the record.
20 While we were off the record we held a lengthy
21 discussion of scheduling, the need for discovery and
22 possibility of scheduling dispositive motions in this
23 proceeding. First is regards discovery, parties have
24 concurred that the discovery procedures in WAC
25 480-09-480 should be available in this proceeding.

1 This decision was made following a discussion of
2 whether the Commission would allow discovery through
3 the form of subpoena as set out in WAC 480-09-480 sub
4 2 to take place prior to dispositive motions, and an
5 indication from me that I would rule and I now do rule
6 that I would allow for discovery in this proceeding to
7 take place before dispositive motions and that I view
8 the question on discovery as one of whether the
9 complainant should have available to it the subpoena
10 and subpoena duces tecum or the data requests and
11 other methods of discovery that are available through
12 WAC 480-09-480, and upon my ruling that discovery
13 would be available I believe the parties agreed that
14 it would be more convenient to proceed using the
15 procedures described in WAC 480-09-480.

16 Is that a correct reflection of our
17 discussion of discovery while we were off the record?

18 MS. ANDERL: Your Honor, if I might just
19 clarify my position is that I did not think that any
20 discovery was appropriate prior to the dispositive
21 motions. I continue to think that the discovery rule
22 should not be invoked in this proceeding but that if
23 discovery -- and I don't think that there's a basis in
24 the rule to do that, but if discovery is going to be
25 allowed we would waive our objection to the use of

1 data requests.

2 JUDGE SCHAER: And by saying that are you
3 saying that you continue to object to use of
4 depositions and the other items that are triggered by
5 triggering WAC 480-09-480 or are you distinguishing
6 the procedures available under the rule from the
7 subpoena and the subpoena duces tecum, Ms. Anderl?

8 MS. ANDERL: We would waive our objection
9 only as to the use of data requests. We would
10 continue to oppose the use of depositions, but I
11 understand that we're not going to talk about those or
12 note those up if any are allowed unless perhaps after
13 the motion, so I guess we'll hold that discussion in
14 abeyance, but, yes, we would object to the use of
15 those.

16 JUDGE SCHAER: That's not my understanding
17 of what we had talked about off the record.

18 MR. HOLCOMB: That's not mine.

19 MS. ANDERL: I understood that all Mr.
20 Holcomb wanted to do was to do data requests prior to
21 the filing of the dispositive motions and the
22 responses thereto. We would strenuously object to the
23 use of depositions at this point in the proceedings.

24 MR. HOLCOMB: As I understand your ruling,
25 the reason you allowed us to go until completion on

1 March had 14 was to allow us to get depositions after
2 the documentation has been provided, the data requests
3 has been answered.

4 JUDGE SCHAER: I did not make any formal
5 rulings while we were off the record. It was my
6 understanding of the proposal by the complainant and
7 of the schedule that was put together that the
8 complainants thought that they could complete all
9 discovery they contemplate including data requests and
10 receiving responses thereto and then any depositions
11 they might wish to conduct and have completed their
12 discovery in all aspects by March 14.

13 MR. HOLCOMB: That is correct.

14 JUDGE SCHAER: And it was my understanding
15 of their position at all times that they contemplated
16 doing both data requests and depositions.

17 MS. ANDERL: I misunderstood that.

18 JUDGE SCHAER: Does the Commission staff
19 have any position on whether or not the discovery rule
20 should be triggered? Is that now the issue that's
21 framed before us is whether if you want to have
22 subpoenas and subpoenas duces tecum or whether you
23 want to have the discovery rule?

24 MS. ANDERL: Well, as I said, we would
25 waive our objection as to the use of data requests.

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1 If Your Honor is going to allow discovery before the
2 motions we feel that data requests could appropriately
3 be used, but we would continue to object to the use of
4 depositions at this stage of the proceeding.

5 MS. SMITH: Staff has no objection to
6 invoking the discovery rule in this case.

7 JUDGE SCHAEER: I'm either going to invoke
8 the entire discovery rule or not invoke the discovery
9 rule. I believe that the complainants would be worse
10 off with just being able to ask data requests than
11 they would be being allowed to subpoena people if they
12 need to bring people to the hearing if they can't get
13 them in a deposition. So given that choice, what is
14 U S WEST's position, Ms. Anderl?

15 MS. ANDERL: Could you explain the choice
16 again?

17 JUDGE SCHAEER: The choice is either to have
18 none of the discovery rule triggered and to have the
19 complainant able to to use subpoenas and subpoenas
20 duces tecum and in conducting his discovery and in
21 bringing persons he feels needed as witnesses to the
22 hearing or to use the entire discovery rule including
23 both data requests and depositions.

24 MS. ANDERL: Well, I guess we don't have
25 any hearings contemplated at this point, so the

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1 subpoena that we would be talking about would simply
2 be a subpoena for the purposes of producing documents;
3 is that right?

4 JUDGE SCHAER: Mr. Holcomb?

5 MR. HOLCOMB: I concur in what you said
6 about data requests. The way you state it is the way
7 we want it, the way we're requesting it in terms of
8 data requests. We're going to take both. We're going
9 to require documents and deposition. You've given us
10 until March 14 to do that. I think that is
11 appropriate. That is what we request.

12 MS. ANDERL: Well, perhaps I could just
13 suggest, and maybe we do need to talk about this off
14 the record, but Mr. Holcomb, the data requests are not
15 just limited to production of documents. You can
16 actually have narrative questions in those and receive
17 a narrative response in the data requests.

18 MR. HOLCOMB: I appreciate that.

19 MS. ANDERL: I don't know if that clarifies
20 things or not, but I just don't think that this case
21 is an appropriate one as set forth in the rule for
22 invoking the discovery rule. I think the position
23 that we're taking is very reasonable that we will
24 agree to data requests. Most formal complaints before
25 this Commission proceed just fine with nothing but

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1 data requests as a discovery tool, and I just don't
2 see the need to burden U S WEST with having to produce
3 and defend individuals at deposition even prior to
4 scheduling the matter for hearing. I think that our
5 willingness to waive the rule just as limited to the
6 data requests should be more than sufficient for the
7 complainants at this point.

8 JUDGE SCHAER: So it's your position that
9 this case does not meet any of the provisions of WAC
10 480-09-480 --

11 MS. ANDERL: That's correct.

12 JUDGE SCHAER: -- that would allow
13 triggering of the discovery rule? Does staff have a
14 position on that?

15 MS. SMITH: It's staff's position that the
16 grounds for invoking the discovery rule are met by
17 this case, that this case does fit within the
18 parameters in the discovery rule for invoking it. I
19 think it's arguably precedential in nature and I think
20 as well the complaint made by U&I CAN could be deemed
21 to involve a claim of discriminatory conduct in that
22 its service was cut off by the company in a manner
23 that discriminated against it, so I think those two
24 provisions of the discovery rule either are met by
25 this case or are arguably met by this case.

1 JUDGE SCHAEER: Well, I'm going to rule then
2 that the discovery rule will be triggered in this
3 matter and that all of the discovery provisions
4 provided in WAC 480-09-480 including depositions will
5 be made available.

6 MR. HOLCOMB: Thank you.

7 MS. ANDERL: Your Honor, might I request if
8 it's the Commission's determination that it is
9 precedential that it will be incumbent upon the
10 Commission to notice out to all of the other LECs in
11 this state the issues that are raised in this
12 proceeding. The EAS bridging issue I think impacts
13 all LECs who either pay or receive access charges, and
14 we certainly should give additional notice and an
15 opportunity to appear and participate.

16 JUDGE SCHAEER: I think I would like to get
17 through the discussion of discovery and the
18 scheduling, and if you would like to make a note of
19 that and make an additional motion at the conclusion
20 you may do so and I will hear from the other parties
21 on that at that point unless you contemplate that they
22 would necessarily disturb the schedule that we've
23 already established. Do you think it would?

24 MS. ANDERL: I don't know.

25 JUDGE SCHAEER: Ms. Smith, was your grounds

1 for seeing that the discovery rule should be triggered
2 that this was a precedential case or was it based on
3 discriminatory?

4 MS. SMITH: Either of those. I don't know
5 what the precedential value of this case is. I know
6 that many of the issues that are presented in this
7 case have already been decided by the Commission in
8 the Metrolink case and that case -- that those issues
9 have been decided in that case, and so to the extent
10 that this case does not present any unusual issues
11 that were not already determined in that case then
12 this case wouldn't be precedential in nature.

13 However, I do think that the complaint filed by U&I
14 CAN is a complaint that could be deemed
15 discriminatory, a complaint against discriminatory
16 treatment by U S WEST against U&I CAN. I think it
17 falls within that category as well.

18 JUDGE SCHAEER: Then I'm going to ground my
19 ruling on triggering the discovery rule on the
20 Commission staff position that this case is one that
21 involves claims of discriminatory and/or
22 anticompetitive conduct, and I do not contemplate
23 renouncing this proceeding to all of the LECs in the
24 state at this time.

25 MS. ANDERL: Your Honor, we would just

1 continue to have our objection noted for the record,
2 if you please. I don't believe that the complaint
3 does raise either a claim either implied or expressed
4 of discriminatory conduct, and we would simply like it
5 clear for the record that we do not believe this is an
6 appropriate proceeding for the discovery rule to be
7 invoked.

8 JUDGE SCHAER: Thank you. That's noted.
9 So at this point I have determined that the discovery
10 rule should be triggered in this proceeding, and as
11 part of the discovery discussion the complainant has
12 agreed to complete his discovery by March 14, 1997, so
13 I will note that discovery cutoff date as part of the
14 pre-hearing order in this matter.

15 Looking further at the schedule the parties
16 have agreed that dispositive motions in this matter
17 should be filed by February 28, 1997 and that answers
18 to those dispositive motions are going to be due by
19 March 21, 1997 and those are receipt dates. Those
20 materials should be in the hands of other parties and
21 of the Commission by the dates indicated.

22 Oral argument on dispositive motions, if
23 any are made, will be held on March 25, 1997 at 1:30
24 in the afternoon in the Commission's hearing room in
25 Olympia. It was decided that no further scheduling in

1 this matter would be done at this time, but we would
2 wait until the conclusion of that process to determine
3 if additional hearing dates were necessary and if so
4 to schedule those dates.

5 As a part of the scheduling discussion it
6 was noted by Commission staff that this complaint was
7 filed in May of 1996 and that under RCW 80.04.110 a
8 decision in this case would usually be required within
9 10 months, and I believe that off the record all
10 parties including the complainant, U S WEST and staff
11 indicated their willingness to waive that 10 months.
12 Would you please indicate that on the record at this
13 time if that is your position.

14 MR. HOLCOMB: On behalf of U&I CAN we would
15 be willing to waive the 10 months as set forth in the
16 WAC.

17 JUDGE SCHAER: Thank you.

18 MS. ANDERL: U S WEST waves the 10 months.

19 MS. SMITH: Staff does too.

20 JUDGE SCHAER: Thank you. The next
21 discussion we had was regarding whether or not a
22 protective order would be required in this proceeding.
23 It was the consensus of the parties that at this point
24 there is not a need for a protective order, but there
25 was discussion if a need were to appear the parties

1 could contact the Commission and that such an order
2 could be issued expeditiously to allow discovery and
3 responses to discovery to proceed, and so please, if
4 that need does arise either contact me by telephone or
5 by fax and we will attempt to turn around a protective
6 order quickly to allow you to get answers out in a
7 timely manner.

8 Is there anything else that we discussed
9 off the record that we should put on the record at
10 this time? Oh, there is one other matter although I
11 believe that did occur on the record. The discussion
12 of interventions were made both on and off the record;
13 is that correct?

14 MS. ANDERL: I think so.

15 JUDGE SCHAER: Is there anything else that
16 was discussed off the record that should be placed on
17 the record at this time?

18 MS. ANDERL: No.

19 MR. HOLCOMB: As far as U&I CAN is
20 concerned, I believe that covers what we discussed off
21 the record.

22 JUDGE SCHAER: Thank you.

23 MS. ANDERL: We have nothing further.

24 JUDGE SCHAER: Well, then a pre-hearing
25 conference order will issue. As will be indicated in

1 that order, parties will have 10 days to appeal any
2 portion of that order with which they disagree and any
3 portions that are not appealed or are not overturned
4 on appeal will provide the rules under which we
5 proceed in this matter.

6 Is there anything further to come before us
7 this morning? Hearing nothing we are off the record.

8 (Hearing adjourned at 11:15 a.m.)

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