

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3	In Re Petition of)	
4)	
5	US WEST COMMUNICATIONS, INC.,)	DOCKET NO. UT-980948
6	for a Declaration Order Ending)	VOLUME X
7	Imputation of Revenues Derived)	Pages 222 - 234
	from Transferred Yellow Pages)	
	Publishing Business.)	

8

9

10 A prehearing conference in the above matter
11 was held on July 26, 1999 at 9:10 a.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judges ROBERT WALLIS AND
14 LAWRENCE BERG.

15

16

The parties were present as follows:

17

US WEST COMMUNICATIONS, INC., by DOUGLAS N.
OWENS, Attorney at Law, 1325 Fourth Avenue, Suite 940,
Seattle, Washington 98101.

18

19

US WEST COMMUNICATIONS, INC., by LISA A.
ANDERL, Attorney at Law, 1600 Seventh Avenue, Suite
3206, Seattle, Washington 98191

20

21

THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION by GREGORY J. TRAUTMAN, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504.

22

23

TRACER, by ARTHUR A. BUTLER, Attorney at Law,
Ater Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
Washington 98101.

24

25

00223

1 AARP, by RONALD L. ROSEMAN, Attorney at Law,
2011 14th Avenue East, Seattle, Washington 98112.

2

 THE PUBLIC, by SIMON J. FFITCH, Assistant
3 Attorney General, 900 Fourth Avenue, Suite 2000,
Seattle, Washington 98164.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 Kathryn T. Wilson, CCR

25 Court Reporter

00224

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

2 JUDGE WALLIS: Let's be on the record please.

3 This is a prehearing conference in the Docket
4 UT-980948, the petition of U S West Communications Inc.
5 for a declaratory order ending imputation. This
6 conference is being held in Olympia, Washington before
7 Administrative Law Judges Lawrence Berg and Robert
8 Wallis of the Washington Utilities and Transportation
9 Commission pursuant to due and proper notice to all
10 interested parties.

11 We have engaged in some informal discussions
12 and are now prepared to summarize those discussions for
13 the record. As I go through these matters, I will ask
14 the parties if parties have any additional comments or
15 corrections that they wish to make for the record.

16 First of all, Exhibit 402-C was filed as a
17 confidential. It appears that only a small portion of
18 that is subject to confidentiality protection.
19 Consequently, the Company has removed the confidential
20 material from the entire document, and that summary,
21 the excerpt, is designated as Exhibit 402-C, and the
22 remainder of the exhibit, which has been reformulated
23 without the confidential portion, is going to be
24 identified a Exhibit 411 for identification. We will,
25 at the time witnesses come forward, list the exhibits

00225

1 that the parties have presented and assign the numbers
2 officially for record purposes at that time.

3 The supplemental exhibits, a number of
4 exhibits have been offered for possible use on
5 cross-examination, and some of those documents the
6 Company has indicated they have no objection and they
7 may be indicated supplemental exhibits. Those will be
8 identified as we proceed through the hearing and the
9 witnesses come forward and exhibits are identified.

10 The Company has indicated that it wishes to
11 make a standing objection to certain materials, and
12 let's ask the Company now for its statement of that
13 objection. Before we do that, why don't we make the
14 rounds and ask counsel just to state your name and the
15 name of the party that you're representing. If more
16 than one counsel are appearing, I'd ask the lead
17 counsel to make an appearance for both of you. When we
18 go on the record in the formal docket itself, then we
19 will ask for the full appearance. For right now,
20 Ms. Anderl?

21 MS. ANDERL: Thank you, Your Honor. Lisa
22 Anderl and Douglas Owens appearing on behalf of U S
23 West Communications, Inc.

24 MR. ROSEMAN: Ronald Roseman on behalf of
25 AARP.

00226

1 MR. BUTLER: Arthur A. Butler on behalf of
2 TRACER.

3 MR. FFITCH: Simon ffitch on behalf of the
4 Public Counsel Section of the Washington Attorney
5 General.

6 MR. TRAUTMAN: Greg Trautman, Assistant
7 Attorney General for Commission staff.

8 JUDGE WALLIS: Thank you very much.
9 Ms. Anderl?

10 MS. ANDERL: Thank you, Your Honor. Rather
11 than object to each individual piece of the testimony
12 submitted by Public Counsel and Commission staff and
13 each of the cross exhibits that would otherwise be
14 subject to this objection, we would like to make a
15 standing objection as to both relevancy and on an
16 issues preclusion basis with regard to any exhibits or
17 testimony that is offered to establish a valuation date
18 other than January 1, 1984, or to establish that a
19 transfer publishing business did not occur on that
20 date. The underlying basis for that motion is
21 contained in our motion to strike. I understand that
22 as a procedural matter, the motion to strike has been
23 denied and the testimony will not be stricken, and so
24 therefore, the motion to strike may technically be
25 moved. However, our advocacy on the underlying issues

00227

1 of judicial estoppel and equitable estoppel, we
2 believe, is still a live issue in this docket. We
3 believe that the Commission stated that in its Twelfth
4 Supplemental Order, stating that it was not making a
5 ruling on that underlying issue, and if we need to
6 formally renew the motion to strike as some other type
7 of a motion, since it won't be to strike anymore
8 because that's already been denied, we're happy to do
9 that. However, we would like the objection noted for
10 the record to each and every piece of testimony and
11 each and every exhibit that, as I said, attempts to
12 establish a valuation date other than January 1, 1984,
13 or establish that the transfer did not, in fact, take
14 place on that date.

15 JUDGE WALLIS: Responses?

16 MR. FFITCH: Yes, Your Honor, for Public
17 Counsel, Simon ffitch. Public Counsel would just state
18 that the motion is not well taken for several reasons.
19 First of all the Commission's notice of July 16th,
20 1999, required that any objections to evidence be made
21 by Thursday, July 22nd, 1999, or be waived. It could
22 only be renewed upon a showing of good cause. In
23 addition, with regard to the specific line of objection
24 by the Company, the parties were advised, quote,
25 "Parties who have previously stated objections or made

00228

1 motions to strike exhibits should not repeat those
2 matters." At this point, I don't have any response on
3 the merits. I believe that based on the Commission's
4 ruling, no response is necessary or called for by the
5 parties at this point. However, should one be
6 necessary, I will state on the record there is no basis
7 whatever on the face for these objections to be
8 allowed.

9 JUDGE WALLIS: Mr. Trautman?

10 MR. TRAUTMAN: Staff concurs with Public
11 Counsel.

12 JUDGE WALLIS: Very well.

13 MS. ANDERL: May I respond? I would just
14 like it clear on the record, I understood from a series
15 of e-mails that the parties exchanged amongst
16 themselves as well as with the administrative law
17 judges in this matter as well as some formal
18 correspondence that the deadline for filing
19 cross-examination exhibits as well as the deadline for
20 making objections to testimony had been extended until
21 today, and if there is any indication that my motion
22 would be denied because it is late, we would seek an
23 opportunity to put that additional information on the
24 record, and then we're obviously not here trying to
25 attempt to repeat our arguments. Public Counsel and

00229

1 Staff have designated additional exhibits to those
2 which had already been filed; that it is to those
3 exhibits that this objection is directed as well as the
4 objection is made, we believe, timely prior to the
5 start of the hearing.

6 JUDGE WALLIS: Thank you, Ms. Anderl. The
7 Commission understands that your legal position
8 continues to be that the material is not appropriately
9 considered, and consequently, we'll accept your
10 standing objection to those documents. The Commission
11 did not rule on the merits but deferred that decision
12 until following the hearing. I'm sure that parties
13 will be arguing the substance of that objection.

14 Moving on, the Staff has advised us that the
15 document that they have submitted as a possible exhibit
16 on cross-examination and designated in our list of
17 exhibits as Exhibit 305 will not be offered and that
18 may be removed, and that empowers me at this moment to
19 make the comment that any of the documents that have
20 been submitted for possible use on cross-examination
21 but are not offered are not a part of this record for
22 any purpose, and they will just disappear, and those
23 numbers will disappear in the final record of the
24 proceeding. Is that acceptable to the parties?

25 MS. ANDERL: Yes, Your Honor. Just with the

00230

1 clarification that you're not going to renumber things.

2 JUDGE WALLIS: We will not renumber things.

3 MS. ANDERL: There will be a 304 and a 306.

4 JUDGE WALLIS: Yes. The use of a possible
5 illustrative exhibit by Public Counsel during the
6 testimony of Witness Inouye has been mentioned, and I
7 have asked the parties to discuss among themselves
8 whether that will be appropriate.

9 The question of official notice of Commission
10 orders has been raised, and it is the view of the Bench
11 that no official notice of Commission orders or
12 judicial decisions which are reported need be made.
13 Instead, those may be cited as any other material of
14 the sort for the authority contained therein. We
15 believe that briefs are of a different nature, however,
16 and have asked the parties by the end of next week to
17 identify any brief that parties intend to rely on in
18 their argument and to provide copies to those persons
19 who do not have such copies. Also, we'll ask that the
20 parties identify those and provide copies to the
21 Commission.

22 MR. FFITCH: Excuse me, Your Honor. There
23 was a limiting discussion or limiting directive placed
24 on that in our off-the-record discussion with regard to
25 the subject matter of the briefs. It's my

00231

1 understanding that we were not required to identify
2 briefs or portions of material in this process by the
3 end of next week; that we're simply discussing the
4 Yellow Pages issues in other proceedings.

5 JUDGE WALLIS: Let's be off the record for a
6 moment.

7 (Discussion off the record.)

8 JUDGE WALLIS: By the end of next week,
9 parties will, in discussions with one another, identify
10 all briefs in prior proceedings which the parties at
11 that time intend to cite. This doesn't foreclose some
12 surprise coming up and requiring an expansion of that,
13 but those would be treated on an individual basis.

14 If the parties intend to address a topic that
15 is not Yellow Pages related, then the parties must
16 advise each other of that. In other words, parties may
17 cite to the general discussion in the briefs which may
18 be relevant to Yellow Pages subjects, even though it
19 doesn't contain the words "Yellow Pages," and they may
20 also cite to any portions of the brief that
21 specifically address Yellow Pages without advising each
22 other of that. If, however, they intend to cite
23 portions of the brief relating to another topic, such
24 as a specific adjustment to income expense or assets
25 that is not related to the Yellow Pages issue, then

00232

1 they must advise each other of that potential citation.
2 Is that clear to the parties? Ms. Anderl?

3 MS. ANDERL: Thank, Your Honor. We object to
4 the process outlined for the following reasons: We've
5 reviewed the Commission rule regarding what documents
6 are appropriate for official notice, and we do not
7 believe that parties' briefs in prior proceedings fall
8 under any of the enumerated items therein. We also
9 believe that the briefs are not currently otherwise
10 evidence in this docket nor are they nor have they been
11 identified as potential exhibits through the witnesses
12 which are to be offered by either of the opposing
13 parties. Given that the Commission can only render
14 decisions in this docket based on evidence of record
15 and given that these briefs cannot come in as evidence
16 because they've not been identified as exhibits and
17 cannot be officially noticed, we think that this
18 procedure is improper and the parties should not be
19 permitted to cite to or use the briefs, other than what
20 U S West has done, which is three months ago identify
21 those portions of the other parties' briefs in other
22 dockets on which it wishes to rely and offer those as a
23 separate exhibit through one of U S West's own
24 witnesses.

25 JUDGE WALLIS: Thank you, Ms. Anderl. We

00233

1 appreciate your comments. Is there response?

2 MR. TRAUTMAN: I wanted to make a short
3 response, and I would object very much if, with notice
4 having been given to which portions of prior briefs
5 would be used, if those briefs were not allowed to be
6 referred to in this proceeding. I think it's highly
7 relevant if the discussion goes to the matter of Yellow
8 Pages or the related topics of what parties have said
9 regarding these transactions in the past. It would be
10 highly improper for the Commission not to take notice
11 of such materials, and I don't believe that it should
12 be necessary for a lay witness to make references to
13 legal arguments in briefs to have the Commission take
14 notice of those arguments as long as they are
15 identified for the parties ahead of time.

16 JUDGE WALLIS: Any other party wish to
17 comment?

18 MR. FFITCH: We support the Bench's ruling on
19 the use of the briefs. We agree with the Staff's
20 position that it would be unworkable if any reference
21 to any brief that had already been filed as a matter of
22 public record with the Commission would have to be
23 classified as evidence which could only be offered
24 through the testimony of expert witnesses for parties.

25 MS. ANDERL: May I ask a clarification? Is

00234

1 counsel only intending to refer to briefs that have
2 been filed as a matter of public record with the
3 Commission or briefs that have been filed with the
4 Court as well?

5 MR. TRAUTMAN: I would imagine we would be
6 referring, perhaps, to briefs both with the Commission
7 and briefs to the Court.

8 MR. FFITCH: That's our position as well.

9 JUDGE WALLIS: Is there anything further?
10 Any amplifications or supplements to our discussions at
11 this point? It appears that there are not, and this
12 prehearing conference is concluded. Thank you very
13 much.

14 (Prehearing conference concluded at 9:30 a.m.)

15
16
17
18
19
20
21
22
23
24
25