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WASHINGTON STS, LTD.
11117 SE EVERGREEN HIGHWAY
VANCOUVER, WASHINGTON 98664

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Mr. Paul Curl, Secretary
WUTC
PO BOX 9022
Olympia, Wa 98504-8002

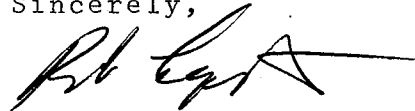
11 February 1993

Re: Docket No. UT921213

Dear Mr. Curl:

Please find enclosed, one original and 19 copies of STS's Post Hearing Memorandum of UT921213.

Sincerely,



WASHINGTON STS, LTD.
ROBERT LEPPALUOTO
PRESIDENT

ORIGINAL

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STS, LTD.,
Complainant,
vs.
US WEST COMMUNICATIONS, INC.,
Respondent.

DOCKET NO. UT-921213
POST HEARING MEMORANDUM OF
COMPLAINANT WASHINGTON STS, LTD.

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

I. STATEMENT OF FACTS.

Complainant STS CONTRACTED with Respondent USWC for the provision of 48 Complex Flat Trunks on approximately 11 June 1992. (EX. 1) Example "1" clearly states that Robert Leppaluoto is attempting to organize ~~is~~ a SHARED TELECOMMUNICATIONS SERVICE (STS) under the provisions of RCW 80.04.010. Para. five of Ex. 1 clearly states that the lines will be connected to the STS switch. When the lines were delivered by USWC to STS they were in a format foreign to normal Interexchange service and STS had to order channel banks for each individual trunk prior to using the trunks. This precluded STS from operating until early August 1992. In August 1992, SVV Sales contracted with STS for some of STS's facilities. On August 19, 1992 STS spoke with Karola Muirhead of USWC (EX 2) concerning confusion regarding deposits and prepayments that USWC requested. On 24 August 1992, STS received a letter from USWC (EX 3) advising that STS was not operating in a Shared Tenant mode as contracted.

On September 2, 1992, STS informed USWC by letter that STS only provided local dial tone for tenants of the Weston building. On September 21, 1992 USWC informed STS that its service would be disconnected on 24 September, 1992 for fraud. On 23 September 1992 STS filed an informal complaint with the WUTC against USWC. On October 16, 1992 commission staff advised that it seems that the trunks are not being used for Seattle traffic.....USWC will disconnect the service on 21 October 1992. STS filed a formal complaint against USWC on 20 October 1992 requesting commission assistance regarding USWC's alleged anticompetitive conduct and a declaratory order concerning RCW 80.04.010.

USWC filed an answer to STS's complaint on 12 November 1992 and admitted in para. 4. that USWC provided STS with one days notice that its service would be disconnected for fraud. Thats not correct, because it was the commission that gave STS one days notice that USWC was going to disconnect STS the following day.

In para. 6. USWC denied that it has been granted monopoly status in the Seattle area. When STS checked with USWC carrier division, they could not provide an alternate carrier in the Seattle area.

Para. 8. admits that USWC as the local exchange company contracted with STS to supply local exchange dial tone pursuant to tariff as a shared tenant provider in the Westin Building. USWC admits in para. 9. that STS is current on its tariffed exchange telephone account. Para. 10. admits that USWC has taken steps to place STS under its access tariff.

Para. 11. admits that STS has denied that it is providing interexchange telecommunications service and Para. 12. states that USWC denies that it has threatened to terminate all services to STS solely due to STS'S unwillingness to accept USWC's proposed terms.

On 14 December 1992 USWC filed a motion for WAIVER OF WAC 480-120-081(4)(g) as applied to STS because it establishes a dangerous precedent for other customers.

On 29 December 1992, STS filed an answer to USWC motion for waiver of WAC 480-120-081(4)(g) claiming that the motion was untimely, the burden of proof was upon USWC to prove fraud, and requesting judicial notice of UT-910286 in which the commission and USWC both set precedent regarding the matters at bar.

On 7 January 1993 the court made an oral ruling on the motion after consulting with commission staff and being told that the rule had been previously waived, the court granted the motion. STS orally requested commission resolution regarding the motion as required by the Washington Administrative Code. After STS requested commission resolution of the motion, USWC typed up a disconnect notice and served it on STS in the courtroom on 7 January 1993, prior to commission approval of the waiver of WAC-480-120-081(4)(g). The waiver still has not been approved by the commission, regardless, USWC illegally disconnected STS on 11 January 1993 at 0800 hours.

STS requested thru discovery the Docket Numbers of prior waivers of WAC 480-120-081(4)(g). On 19 January 1993 the Attorney General

notified the court that it was mistaken about any previous waivers of WAC 480-120-081(4)(g), and that this rule had never ever been waived before.

II ISSUES

IS WASHINGTON STS, LTD. a shared telecommunications service under the provisions of RCW 80.04.010?

IS US WEST COMMUNICATIONS, INC. a local exchange company with monopoly status in the Seattle area?

DID US WEST COMMUNICATIONS, INC. have legal authority to terminate STS.

DID THE COURT err in refusing to allow judicial notice?

III LEGAL ARGUMENT

(A) Counsel for USWC describes what the regulation reads at page 52, line 14 of the transcript. USWC and STS are in agreement at this point that STS is technically correct in that it is a private shared telecommunications system or provider, and if the court will read from page 52 thru page 55 I believe the court will agree with the parties, STS is in compliance with RCW 80.04.010. STS only sells its service in the Westin Building thru privately owned customer premises equipment, the switch, including the provision of connections to the facilities of a local exchange and to the interexchange telecommunications companies. What seems to bother USWC is that STS

doesn't seem to be a normal shared tenant provider as defined by USWC. STS holds that what USWC calls normal is secondary to what the law describes. On page 7, line 17 -20 counsel for USWC states that their expert witness will describe the manner in which STS operates and describe how dissimilar that manner is in what has become the established method of operation and practices in the shared tenant environment. On page 11, line 17 the expert witness states, none of these normal shared tenant service provider functions appear to be occurring.....And it is my belief that these trunks do not terminate on any customer premise in the Westin Building. On the next several pages USWC states that STS does not operate in the normal fashion at least four times. Whose ruler does USWC use to measure normal, theirs or the legislatures? Even USWC witness Mary Owen is confused as to what proper means. On page **98** she states, then you get into the definition of what do you mean by proper so - - STS means what do you mean by normal?

As the court is aware, USWC conducted no discovery prior to this hearing and USWC had no idea at all how STS operated, they only believed that STS did not operate in a normal manner.

USWC assumed wrongfully that STS was a call transfer operation similar to Metrolink. By no stretch of the imagination could STS be compared to Metrolink. Page 13 of USWC exhibit A states that Metrolink is not a private shared service because its customers are scattered throughout Puget Sound. If Metrolink did have a customer base in a private building such as the Weston Building, then Metrolink would have met the test and been exempted from the regulations. Metrolink

had no switch such as STS has. Metrolink was classed not as a shared tenant provider but as a telecommunications company as listed in RCW 80.04.010 because it provided telecommunications for hire, sale, or resale to the general public within the state of Washington. STS does not sell to the general public, STS ONLY sells within the Weston Building as it was told it could by US WEST.

On page 89 USWC expert witness Owen's states she can't testify as to whether Metrolink was a shared tenant provider. We know from USWC exhibit A that Metrolink was not a shared tenant as STS is. Expert witness Owen states that STS is in fact an arbitrageur the same as Metrolink. On page 89, line 13 STS requests the regulation that USWC uses to regulate arbitrageurs. Owens testify's that we have it in the US West tariffs as well as in the RCW. STS requests a copy of these regulations. To date no such regulation is forthcoming from US West and it's probably safe to say there is no such regulation. The record is clear that USWC and the commission thought STS was operating a call transfer operation similar to Metrolink's, using some kind of dialer or teleexpander to link interexchange EAS areas together to get around USWC central switch. Both the commission and USWC describe the clicking sound similar to some sort of dialer when they violated the STS switch. They should know since they are a telephone company, what a hunt group sounds like within a switch when it hunts for the next available number. It is obvious that neither the commission or USWC bothered to find out if STS actually had a switch, nor did they make any effort at all to contact STS to determine if STS had a switch, and how did STS operate.

What is most impossible to comprehend is that the commission, USWC and the attorney general did not know that SVV Sales was an interexchange carrier doing approximately \$130,000 per month with USWC in private line, DID and FGA access service. That's just negligence per se as both the commission staff and the attorney general's staff have investigated SVV's operation. It is interesting to note that in its answer to the STS formal complaint, USWC relies on testimony of SVV's carrier representative who works for USWC, Ed Wiggins, and Lynn Arthur. Both of these USWC employees have extensive knowledge of SVV's operation as well as commission staff, Pat Dutton and Mary Taylor and Tom Wilson. USWC expert witness, Mary Owen had no prior knowledge of SVV except she told Robert Leppaluoto she thought SVV was also a shared tenant provider because they checked the number I gave them for SVV, 441-5022 and found out that it was registered to a shared tenant provider, MetroNet. When I told her that was not correct, MetroNet only provided the local access for the office phones, and that SVV does most of its business through private line DID and FGA access, and that SVV had hundreds of DID's, she was shocked. This conversation occurred in the USWC tariff room in Seattle, 8 January 1993 before two of the tariff room employees. At the hearing none of the witnesses who supposedly supplied USWC with its evidence were presented by USWC. They purposely offered no evidence at all to the court, and the only witnesses they presented were totally ignorant of the facts offered as evidence in their answer. The fact that this court has to deal with is that according to the law, RCW 80.04.010, STS was a legal operation under the shared tenant rule.

If that is not the fact, then STS requests that the court inform it of what regulation or law STS has violated, because USWC has refused to do so.

(B) Is USWC a monopoly LEC in Seattle? They appear to be. STS has no idea why they claimed they were not a monopoly in their answer. When USWC disconnected STS, apparently without commission approval, STS contacted the USWC carrier department and asked Ed Wiggins if he could tell them about another carrier STS could contract with in Seattle. After some consultation, Mr. Wiggins advised that there really is none that he knows about. If USWC is a monopoly, then they may have shown reckless disregard for the rights of STS by disconnecting STS. STS requests that the court rule on the status of USWC.

(C) DID US WEST have legal authority to terminate STS? US WEST COMMUNICATIONS, INC. was apparently anxious to disconnect STS for reasons known only to USWC, so much so that they may have violated STS's due process rights, and the rules, regulations and laws of the state of Washington. Unfortunately, the court was erroneously advised that WAC 480-120-081(4)(g) had been subject to waiver previously. Transcript page 21, line 23. Judge Canfield: Mr. Simpson, to your knowledge has this particular provision of the WAC been subject to waiver previously? Mr. Simpson: Yes, your honor, it has. Upon learning that the waiver had been previously

granted, the court granted the USWC motion to waive WAC 480-120-081(4)(g). STS orally requested commission resolution regarding the waiver of the regulation and the court affirmed the request and included it in a written order, No. UT-921213, Interlocutory Order granting Waiver of WAC 480-120-081(4)(g) for commission resolution.

When STS requested commission resolution, USWC apparently went into the commission's office and typed up an immediate disconnect notice and served Robert Leppaluoto, President of STS in the courtroom on 7 January 1993. (Ex. A) There don't appear to be any extenuating circumstances that would mitigate USWC liability for disconnecting STS with reckless abandon, disregarding the rules, regulations and laws of the state of Washington, and USWC may have incurred liability for damages under RCW 80.04.440. Of course STS was no big drink of water, however, the Main Place contract that was lost to STS when USWC wrongfully terminated STS has the potential for substantial damages. Tr. 64, line 13. As a pro se, STS only has access to the WAC & RCW thru the public library, but these public books clearly state that no "utility" shall ever deviate from these rules unless authorized in "writing" by the "commission". USWC had no written authority from the commission when it disconnected STS, at least none that STS is aware of. The Washington Administrative Code clearly states that if any party does not agree with the administrative law judge's ruling on the motion, it may orally request commission resolution of the motion. STS did request such resolution.

Certainly, the ALJ lacked jurisdiction to terminate STS as that had the same effect as issuing a final order in that STS was eliminated from the proceedings. It was never the intent of the legislature to replace the jurisdiction of the commission with an administrative judge. USWC did not serve STS WITH A PROPER disconnect notice. In addition to the fact that USWC lacked authority to deviate from the regulations, the disconnect notice they served upon STS was legally insufficient in that it does not comply with WAC 480-120-081(4)(b) or WAC 480-120-081(4)(e). USWC will attempt to get around these regulations by claiming that the ALJ waived all the regulations concerning the termination of STS. That is not the case as the ALJ was very specific about what regulation was being waived.

(D) Did the court err in refusing to allow judicial notice? Yes! If the court had allowed judicial notice of UT-910286 as properly requested, the court would have known how the commission has ruled in precedent setting cases regarding disconnection of service. The position of USWC is also presented in UT-910286 in that USWC claimed WAC480-120-081(4)(b) and (4)(e) had to be strictly adhered to. As you can see in the case at bar, they completely ignored the regulations in their haste to disconnect STS before the commission could intervene.

CONCLUSION:

Hopefully, if jurisdiction stays in place, the court can issue

an order supporting the provision of RCW 80.04.010, in that if STS meets the requirements of the statute, does it qualify as a shared tenant service provider. If STS is found not to be a shared tenant service provider, will the court or USWC advise STS what regulation or law it has violated.

Will the court render an opinion regarding the termination notice served upon STS, and whether the commission must approve in writing the waiver of all regulations that protect the rights of the public?

This pleading is true and correct to the best of the signer's belief.

DATED THIS 10th day of FEBRUARY, 1993



WASHINGTON STS, LTD.
ROBERT LEPPALUOTO
PRESIDENT - pro se

The undersigned certifies that on this day he caused a copy of this document to be served upon respondent and the attorney general by mailing a true copy to the last known address for the parties.



ROBERT LEPPALUOTO

January 7, 1993

Mr. Robert Leppaluoto
Washington STS, Ltd.
11117 SE Evergreen Highway
Vancouver, WA 98664

Dear Mr. Leppaluoto:

This is to notify you that pursuant to WAC 480-120-081 your service, (206) 728-0232, will be terminated on Monday, January 11, 1993 in the morning.

Sincerely,



Lynn Arthur
Market Consultant

EXHIBIT

"A"