

U S WEST, Inc.
1600 7th Avenue, Room 3206
Seattle, Washington 98191
(206) 343-4046
Facsimile (206) 343-4040

Peter J. Butler
Senior Attorney
Law Department

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Via Airborne

November 7, 1997

Mr. Steve McLellan
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: UT-970723

Dear Mr. McLellan:

Enclosed for filing are the original and 11 copies of U S WEST's Comments in the above-identified docket. The document is also provided on disk, converted to WordPerfect 5.1 format.

Very truly yours,

PETER J. BUTLER

Enclosures
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Proposed Rulemaking to Adopt a Methodology) DOCKET NO. UT-970723
the Determination of Just and Reasonable Rates)
for Attachments to Transmission Facilities) COMMENTS OF U S WEST
) COMMUNICATIONS, INC.
)
)
)

U S WEST Communications, Inc. ("U S WEST"), hereby responds to the Washington Utilities and Transportation Commission's (the "Commission") Preproposal Statement of Inquiry, dated September 15, 1997, seeking comments regarding the determination of just and reasonable rates for attachments to transmission facilities.

I. BACKGROUND AND SUMMARY

On September 15, 1997, the Commission solicited comments to assist it in implementing an efficient and effective methodology for determining fair, consistent and effective rates for attachments to transmission facilities.¹ The Commission also indicated that it is considering adopting the methodology currently employed by the FCC, codified at 47 C.F.R. §1404(g).

Prior to the Commission's solicitation of comments, the FCC issued a Notice of Proposed Rule Making, dated March 14, 1997. In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rule Making, FCC

1 97-94, rel. Mar. 14, 1997 ("NPRM").² In response to the FCC's NPRM, U S WEST submitted its
2 comments, which favored the retention of the FCC's current rate formula for pole attachments,
3 with one caveat and one slight modification. First, U S WEST urged the FCC to continue its policy
4 favoring private contracts for the basis of pole rental arrangements. Second, U S WEST urged the
5 FCC to modify its formula to eliminate the possibility of using a negative value for the net cost of a
6 bare pole (which could result in negative pole attachment rates).

7 U S WEST believes that attachment rates should primarily be set by the interested parties,
8 with the Commission adopting a methodology only to be used when such negotiations fail. In this
9 vein, U S WEST agrees with the Commission that the FCC's current rate formula for pole
10 attachments is a sound one, once modified to eliminate the possibility of using a negative net pole
11 value. This modified formula, coupled with an expressed preference for the private negotiation of
12 pole attachment rates, would provide the Commission with the methodology it seeks for
13 determining fair, consistent and effective rates, while also granting any concerned parties the
14 opportunity to reach their own arrangements without burdening the Commission with the job of
15 adjudicating unnecessary disputes.

16 **II. PRIVATE CONTRACTS SHOULD CONTINUE TO BE THE BASIS FOR**
17 **DETERMINING POLE RENTAL ARRANGEMENTS.**

18 At the outset, U S WEST wishes to advise the Commission of its plain preference for the
19 private negotiation of attachment rates. Traditionally, pole attachment rates have been negotiated
20 between the affected parties (i.e., telephone companies, cable companies and electric utilities) and
21 governed by individual contracts. Under the 1978 Pole Attachment Act, 47 U.S.C. § 224, cable

22 ¹ In some portions of the Commission's Statement of Inquiry, the Commission utilizes the term "pole attachments."
It is assumed that the Commission is utilizing the term "pole attachment" as it is defined in 47 U.S.C. § 224(a)(4).

23 ² The FCC subsequently sought further comments regarding pole attachment issues in a second Notice of Proposed
Rule Making. In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, FCC
24 97-151, rel. August 12, 1997. Insofar as this subsequent notice concerns rules to be effective in 2001, U S WEST
does not believe the Commission is seeking comments on such notice at this time. Should the Commission desire
25 comments on this second notice, U S WEST stands ready to accommodate the Commission.

1 companies could file complaints with the FCC if they believed that they were being charged
2 unreasonable rates or were being subjected to unreasonable terms and conditions.³ The FCC
3 became involved only if the parties could not agree on pole attachment rates, terms and conditions
4 and the disagreement resulted in a complaint. The FCC also retained authority to adjudicate pole
5 attachment disputes between contracting parties.

6 The Commission would do well to follow the FCC's lead in favoring the fixing of pole
7 attachment rates by private negotiation. Such an approach would alleviate any potential burden
8 upon the Commission in refereeing an unanticipated number of disputes. In the circumstances
9 where the parties are unable to resolve a dispute among themselves, the Commission would retain
10 the authority to mandate a fair, consistent and effective deal.

11 **III. THE COMMISSION SHOULD ADOPT THE FCC'S CURRENT RATE FORMULA**
12 **AND ASSUMPTIONS, MODIFIED TO REMOVE THE EFFECTS OF NEGATIVE**
13 **RATE SALVAGE.**

14 In the event interested parties were unable to come to an agreement and, thus, invoke the
15 aid of the Commission in settling their impasse, U S WEST submits that the FCC's current
16 formula for determining pole attachment rates is an appropriate methodology (once modified as
17 more fully explained below). Currently, the FCC uses the following formula to determine the
18 maximum cable attachment rate for poles:

$$18 \quad \begin{array}{l} \text{Maximum} \\ \text{Rate} \end{array} = \frac{\text{Space Occupied Buy Attachment}}{\text{Total Usable Space}} \times \begin{array}{l} \text{Net Cost of} \\ \text{A Bare Pole} \end{array} \times \begin{array}{l} \text{Carrying} \\ \text{Charge Rate} \end{array}$$

19 The FCC applies the following formula to determine the net cost of a bare pole owned by a
20 telecommunications company:

$$21 \quad \begin{array}{l} \text{Net Cost of} \\ \text{a Bare Pole} \end{array} = \frac{.95 \times \text{Net Pole Investment}}{\text{Number of Poles}}$$

22
23
24 ³ The 1978 Pole Attachment Act only gave the FCC authority over pole attachment disputes in those states which
25 had not adopted their own pole attachment regulations: 47 U.S.C. § 224(c)(1).

1 In applying these formulas, the FCC has adopted a rebuttable presumption of an average
2 pole height of 37.5 feet, an average amount of usable space of 13.5 feet, and an average amount of
3 24 feet of unusable feet of space on a pole. In general, U S WEST has found the FCC's rebuttable
4 presumptions to be an fairly accurate assessment of the poles currently used by it. In the event
5 that the Commission should decide to adopt the FCC's formula, U S WEST submits that the
6 Commission should also employ the presumptions currently used by the FCC as to pole height and
7 usable and unusable space.⁴

8 U S WEST notes, however, that the FCC recently has been asked to modify its pole
9 attachment formula to eliminate the possibility of using a negative value for the net cost of a bare
10 pole (which, under the formula, could result in negative pole attachment rates). See, NPRM, pp.
11 8-10. This anomaly arises when the cost to remove a pole exceeds the pole's salvage value (i.e.,
12 negative net salvage) and when, under certain circumstances, the depreciation reserve exceeds
13 gross pole investment. Generally, the removal costs for a pole are included in the original cost of
14 a pole. These original costs of a pole are depreciated over time. Eventually, the accumulated
15 depreciation exceeds the pole's original cost, resulting in negative net pole investment. When
16 these figures are plugged into the FCC's formula, a negative or unusually low pole attachment rate
17 results.

18 This possibility is not merely theoretical. Indeed, U S WEST's accumulated depreciation
19 reserve exceeds its gross pole investment in five states which it serves — Iowa, Nebraska,
20 Minnesota, North Dakota and South Dakota. In three other U S WEST states, the net cost of a
21 bare pole is very close to zero and is expected to turn negative in the very near future. These

22 ⁴ In response to the FCC's NPRM, several commentators urged that the FCC to increase its presumptions pertaining to
23 pole size and usable space. In that proceeding, U S WEST vigorously opposed any such increase. Insofar as this
24 current proceeding merely contemplates the adoption of the FCC's methodology as it is now used, U S WEST does
25 not deem it appropriate to address this issue here. If and when this issue should arise in this proceeding, U S WEST
26 reserves its right to submit factual data pertaining to the poles it currently has in service.

1 states are Idaho, Wyoming and Montana. Admittedly, negative net salvage is not yet a problem
2 for U S WEST in Washington, however, the possibility plainly exists that it may become so.
3 Clearly, the negative net salvage problem is a continuing problem looming on the horizon and one
4 which should be dealt with by the Commission in this proceeding.

5 U S WEST does not believe that it is appropriate to have negative pole attachment rates,
6 even if the accumulated depreciation exceeds gross pole investment. Furthermore, U S West
7 believes that the cost of pole removal is a bona fide cost associated with providing poles and that
8 all pole users should share in covering this cost.

9 The FCC has proposed to resolve this problem by removing the net salvage value of a pole
10 from the accumulated depreciation balance when the net value of poles becomes negative.
11 Removal of the net salvage value would, for the purposes of pole attachment rate calculations,
12 restate the accumulated depreciation account to reflect only the depreciation of the pole
13 investment, restoring the net pole investment to a positive balance. In its comments in response to
14 the FCC's NPRM, U S WEST supported the FCC's approach as a reasonable middle ground,
15 despite the fact rates may unexpectedly fluctuate in the year that the accumulated depreciation
16 reserve exceeds gross plant investment in poles. U S WEST still believes that this is the most
17 efficacious way of addressing this problem and submits that the Commission should adopt the
18 FCC's current formula for pole attachment rates, with this one modification.

19 **IV. CONCLUSION**

20 For the foregoing reasons, U S WEST supports the Commission's proposed adoption of the
21 FCC's methodology, provided:

- 22 1. the Commission acknowledges its preference to have pole attachment rates negotiated
23 between parties (when possible); and
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2. the formula is modified to eliminate the possibility that negative net pole salvage value would be used to determine maximum attachment rates.

Respectfully submitted this 7th day of November, 1997.

U S WEST Communications, Inc.



Lisa A. Anderl, WSBA #13236
Peter J. Butler, Attorney at Law