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3  
4 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

5 WASHINGTON STS, LTD., )  
6 Complainant, ) DOCKET NO. UT-921213  
7 v. ) AFFIDAVIT OF DAN HARKLEROAD  
8 U S WEST COMMUNICATIONS, INC. )  
9

10 DAN HARKLEROAD, being first duly sworn upon oath, deposes and  
11 says:

12 1. I am an employee of U S WEST, Inc.

13 2. In that capacity, I am responsible for a number of  
14 clerical activities in the U S WEST, Inc. law department, to  
15 include opening and sorting and date stamping the incoming mail.

16 3. On March 30, 1993, U S WEST, Inc. received from  
17 Washington STS, Inc. its Petition for Administrative Review.

18 6. A copy of the petition bearing the copy received stamp  
19 of U S WEST, Inc., together with the envelope bearing the  
20 incomplete address are attached.  
21

22 Dan Harkleroad  
23 DAN HARKLEROAD

24 SUBSCRIBED AND SWORN TO before me this 2nd day of April,  
25 1993.

26 Lee Annette Dornier  
27 NOTARY PUBLIC in and for the  
28 state of Washington, residing  
at Seattle. My commission  
expires 9/15/93.

**COPY RECEIVED**

*Rcvd*  
*3-31-93*  
*ml*

**MAR 30 1993**

**U S WEST COMMUNICATIONS  
LAW DEPARTMENT  
SEATTLE**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STS, LTD.,	)	
	)	
Complainant,	)	DOCKET NO. UT-921213
	)	
vs.	)	PETITION FOR ADMINISTRATIVE
	)	REVIEW
US WEST COMMUNICATIONS, INC.,	)	
	)	
Respondent.	)	
_____	)	

COMPLAINANT, STS petitions the commission for Administrative Review of the Administrative judge's order in this docket and seeks the Commission's conclusion of law regarding RCW 80.04.010.

ISSUES:

- A. IS WASHINGTON STS, LTD. a shared telecommunications service under the law, RCW 80.04.010.
- B. IS US WEST COMMUNICATIONS subject to the laws and regulations of the State of Washington and the WUTC?
- C. DID THE ADMINISTRATIVE JUDGE err in refusing to allow judicial notice to STS?
- D. IS STS entitled to Review of Administrative Judge's Order granting Waiver of WAC 480-120-081(4)(g).

Discussion

A. The administrative judge describes Shared Tenant Provider on page 6 of the First Supplemental Order under the provision of RCW 80.04.010.

USWC, STS and the Administrative Judge all agree that legally STS qualifies as a Shared Tenant Provider under the provisions of RCW 80.04.010. Certainly, STS meets the prongs of RCW 80.04.010 in that: (1) STS provides the provision of telecommunications services within a user group; (2) STS's customers are located in a high rise building (Weston Bldg.); (3) STS provides connections to the facilities of a local exchange and to interexchange telecommunications companies.

Agencies of government such as the WUTC are creatures of statute which derive their powers from those statutes. The WUTC is not at liberty to disregard those statutes without explicit authority to do so. The proper course for USWC to seek redress is in another forum (presumably the legislature) for the relief it seeks.

The Administrative Judge gives great weight to the fact that STS has only one customer in the Westin Building, however on page 49, line 22, STS clearly explains that if it had more lines then it would have more customers. In this case, USWC controlled the number of customers accessible to STS by controlling the lines.

*USWC does not agree that STS qualifies as a STP and in fact denied same in its Answer and Counter claim*

*USWC will point out that it is the Respondent in this Complaint and is entirely within its rights to defend itself and counter claim in*

*There is nothing 49, line 22, STS clearly explains that if it had more lines then it would have more customers. In this case, USWC controlled the number of customers accessible to STS by controlling the lines. Substantiate Complainants Contentions that*

*forum in which the Complaint was brought.*

In its answer to the complaint, USWC stated that it was not a monopoly in the Seattle area, but STS believes that it is because there is no alternative service available to STS.

The administrative judge also dwells on a purported affiliated interest between STS and SVV. He reaches this conclusion because Robert Leppaluoto is the President of SVV and also the President of STS, however the court failed to note that Robert Leppaluoto has no ownership interest in SVV. I think if the court would substitute in XYZ Corp. Ltd. in place of STS Ltd. then it would agree that XYZ did meet the requirements of the statute.

It is apparent now that USWC does not want STS to provide local access to the tenants of the Westin Building, but STS has not been able to find where the law prohibits STS from providing access under the shared tenant provider tariff. It may be that interpretation of Washington Law is best left to the Superior Court.

The administrative judge apparently missed the mark on page 5 of the order in which he stated: "Mr. Leppaluoto was not forthright .....Mr. Leppaluoto still professed not to know." The judge failed to mention that the commission called the SVV technician and received the required information with Mr. Leppaluoto's approval. The court is apparently hung up on what US West classifies as the normal shared tenant servide.  
Order, page 5.

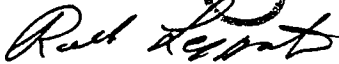
B. Is USWC subject to the laws and regulations of the State of Washington and the WUTC. Apparently not since they disconnected STS lacking proper authority from the commission. The administrative judge refused to address this issue in his order.

C. Did the administrative judge err in refusing to allow judicial notice? Yes, STS requested judicial notice on page 10 of its brief of UT-910286. If judicial notice had been granted concerning this precedent setting case, the court would have known how this court had ruled in that case.

D. Is STS entitled to Review of Administrative Judge's Order granting Waiver of WAC 480-120-081(4)(g)? Yes. STS requested commission review on 7 January 1993 and again by brief on 25 January 1993. Review is requested because the administrative judge lacked jurisdiction to grant the waiver of the regulation, the commission falsely told the judge the waiver had been granted previously, and since it is a precedent setting order, commission approval is mandatory.

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

DATED THIS 17<sup>th</sup> day of March, 1993

  
WASHINGTON STS, LTD.  
ROBERT LEPPALUOTO  
PRESIDENT

C-E-R-T-I-F-I-C-A-T-E

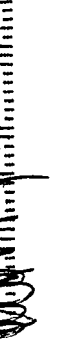
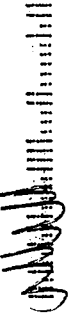
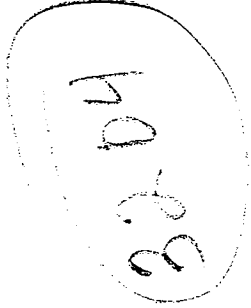
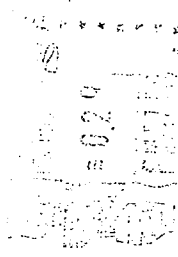
I CERTIFY that I mailed a copy of STS's Petition for Administrative Review to US WEST, Attn. Molly Hastings, 1600 7th Avenue, Seattle, Wa 98664 and Robert Simpson, Asst. A/G PO Box 40128, Olympia, Wa 98504-0128, 17 March 1993.

  
ROBERT LEPPALUOTO

**NTS NETWORK**  
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MOLLY HASTINGS  
US WEST COMMUNICATIONS  
1600 Seventh Avenue  
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CERTIFICATE OF SERVICE  
COUNSEL OF RECORD  
File No. UT-921313

I hereby certify that I have this day caused to be served one copy of the foregoing document upon the following parties of record by person or by mailing a copy thereof, properly addressed with postage prepaid:

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

Robert Simpson  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P. O. Box 40128  
Olympia, WA 98504

DATED this 2nd day of April, 1993.

  
\_\_\_\_\_  
Lee Annette Fortier