

AUG 25 1992

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UT-911306
Complainant,)	
vs.)	FIRST SUPPLEMENTAL ORDER
)	
US WEST COMMUNICATIONS, INC.,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND
Respondent.)	INITIAL ORDER ALLOWING
)	TARIFF FILING TO BECOME
)	EFFECTIVE AS FILED
.....)	

NATURE OF PROCEEDING: On November 4, 1991, U S WEST Communications, Inc. (USWC) filed tariff revisions to recover, through a rate increase, a five percent gross receipts tax levied by the Lummi Indian Tribe (Tribe), for telephone service revenues generated within the boundaries of the Lummi Indian Reservation. USWC proposed to pass this tax through to all ratepayers living on the reservation. The Washington Utilities and Transportation Commission suspended the tariff and set the matter for hearing.

HEARINGS: Hearings were held by Christine Clishe, Administrative Law Judge from the Office of Administrative Hearings, on March 6, 1992, in Olympia and on May 11, 1992, in Bellingham. The latter hearing was for the purpose of taking ratepayer testimony regarding this filing. Because all parties stipulated to the issues and facts in this proceeding, no testimony was taken from the company, Commission staff, or intervenors. After the public hearing, the parties filed briefs and memoranda.

APPEARANCES: USWC was represented by Edward T. Shaw and Steven Holmes, Attorneys at Law, Seattle. The staff of the Commission was represented by Jeffrey D. Goltz, Assistant Attorney General, Olympia. Intervenor Puget Sound Power and Light Company (Puget) was represented by James Van Nostrand and Steven Marshall, Attorneys at Law, Bellevue. Intervenor GTE Northwest, Inc. (GTE) and Contel of the Northwest, Inc. (Contel) were represented by A. Timothy Williamson, Timothy J. O'Connell, and Richard Potter, Attorneys at Law, Everett. Intervenor Fee Land Owners Association (FLOA) was represented by Charles B. Roe, Attorney at Law, Olympia. All parties were given due and proper notice of the hearings.

SUMMARY: The administrative law judge proposes that the Commission allow the tariff revisions as filed by USWC to go into effect.

MEMORANDUM

The Stipulation of the parties sets forth the agreed-upon issues and facts in this proceeding. That Stipulation (pages 1 through 10) is Attachment A to this Initial Order and incorporated by this reference.

I. ISSUES

The ultimate issue here is whether the proposed tariff revisions are fair, just, reasonable, and sufficient. A conclusion on that issue requires resolution of two issues, as listed below. Stipulation, page 2.

- o Was USWC's management decision not to challenge the Lummi utility tax, on advice of counsel that there were no grounds to do so, prudent?
- o If the answer to issue 1 is yes, then to which ratepayers should the burden be passed: (a) USWC ratepayers statewide; (b) USWC ratepayers within the boundaries of the Lummi reservation, both members and non-members of the Lummi tribe; (c) USWC ratepayers within the boundaries of the Lummi reservation who are members of the Lummi tribe; or (d) some combination of the above?

II. POSITIONS OF THE PARTIES

All parties to this proceeding agreed that USWC's management decision not to challenge the Lummi utility tax in court was prudent, given the costs and uncertainties of such a challenge. However, the parties differed on which ratepayers should incur increased telephone rates to pass through this tax.

U S WEST COMMUNICATIONS: The company contends the expense of the utility tax should be borne by ratepayers residing within the boundaries of the Lummi Reservation, both members of the Lummi Tribe and owners of fee lands, but not by ratepayers statewide.

COMMISSION STAFF: Commission Staff's position is that the burden of this tax should fall on all ratepayers within the Lummi Reservation.

PUGET SOUND POWER AND LIGHT: Intervenor Puget Power contends the burden of this tax should be borne by only those ratepayers residing on the reservation who are members of the Lummi Tribe.

GENERAL TELEPHONE AND CONTEL: Intervenors GTE and Contel maintain the tax should be passed through to all ratepayers living on the reservation.

FEE LAND OWNERS ASSOCIATION: FLOA asserts this tax should be passed on to members of the Lummi Tribe who live on the reservation. FLOA points out that non-members of the Lummi Tribe who reside on the reservation (fee land owners) are not allowed to participate in governmental affairs of the Tribe, are not subject to the Tribe's jurisdiction, receive only small, incidental benefits from the Tribe, and are not entitled to governmental benefits from the Tribe.

III. PUBLIC COMMENT

Twenty-one people testified about USWC's tariff filing, all but two of whom are fee land owners now living on the Lummi Reservation. The witnesses presented thoughtful, well-researched comments on USWC's tariff filing. All but one of those testifying opposed an increase in their telephone rates to pass through the Lummi utility tax.

Other reasons given for opposition to this tariff filing included the following: non-Lummi residents of the reservation have no say in tribal government¹ nor in how the tax revenues are spent; fee land owners pay property taxes to Whatcom County, which provides services to fee land owners; non-Lummi residents of the reservation will likely not benefit from tribal expenditures of this tax money; non-Lummi residents receive few or no services from the tribal government; some fee land owners were unaware at the time of purchase that their land was part of the Lummi Reservation; fee land owners should not have to swear allegiance to another nation (the Lummi Tribe); and the Lummi tax on utility service discourages other utilities (e.g. natural gas providers) from serving residents of the reservation.

One witness who is a resident of the Lummi Reservation but not a member of the Lummi Tribe, testified in support of this rate increase. He did not expect to vote in tribal government. He has received some services from the tribal law enforcement, e.g. traffic patrol on the reservation roads. He believes the Lummi Tribe's governance over the land and water has benefitted the way of life in the area.

The record in this proceeding reflects that all residents of the reservation and USWC (for its substation) receive some services from the Tribe, e.g. water and sewer services and police

¹To the extent that one of the objections is that there should be no taxation without representation, it is noted that the Canadian citizen who testified could not vote in any election in the United States but would nevertheless be required to pay taxes imposed under any lawful circumstance in a different jurisdiction, such as the City of Bellingham.

protection. Members of the Lummi Tribe who reside on the reservation apparently receive more services than do non-tribal residents.

IV. APPLICABLE LAW

RCW 80.01.040(3) requires the Commission to "regulate in the public interest" the rates, services, facilities and practices of telecommunications companies.

RCW 80.36.080 mandates that rates of telecommunications companies shall be "fair, just, reasonable and sufficient." RCW 80.36.170 prohibits telecommunications companies from giving any undue or unreasonable preference or advantage to any person, corporation or locality. Under RCW 80.36.180 a telecommunications company may not, by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation except as authorized by statute.

V. DISCUSSION

ISSUE 1: Was USWC's management decision not to challenge the Lummi utility tax, on advice of counsel that there were no grounds to do so, prudent?

As the memorandum of Commission staff succinctly pointed out, "This is not a tax case." The Commission's jurisdiction in this matter is to determine whether the proposed rate is "fair, just, reasonable, and sufficient." RCW 80.04.130, 80.36.080. The Commission is not empowered to decide if the Lummi utility tax is valid. However, the Commission may inquire into the prudence of USWC's payment of that tax.

All parties agreed that USWC prudently decided not to challenge the Lummi utility tax (although Puget and FLOA contended that only Lummi Indians residing on the reservation should bear the burden of higher rates). Review of case law and statutory law supports USWC's decision not to challenge the tax.

The Washington State Supreme Court decided many years ago, and has more recently affirmed its position, that taxes levied on USWC by legitimate authorities are proper expenses that USWC may recover through its rates. State ex rel. Pacific Telephone & Telegraph v. The Department of Public Service of Washington, 19 Wn.2d 200, 275 (1943); King County Water District No. 75 v. The City of Seattle, 89 Wn.2d 890 (1978).

The Commission may, however, disallow imprudent operating expenses of a utility. POWER v. Utilities & Transportation

Commission, 104 Wn.2d 798, 810 (1985). Payment of a clearly-illegal tax is one example of an imprudent operating expense.

Federal courts have approved taxes levied by Indian tribes on non-Indians. The United States Supreme Court stated:

The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribe to raise revenues for its essential services. The power does not derive solely from the Indian tribe's power to exclude non-Indians from tribal lands. Instead, it derives from the Tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction. [citations omitted]

Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137 (1982). See also, generally, Snow v. Quinault Indian Nation, 709 F.2d 1319 (9th Cir. 1983); Burlington Northern Railroad Company v. The Blackfeet Tribe, 924 F.2d 899 (9th Cir. 1991), cert. denied 60 U.S.L.W. 3859 (1992).

However, in a 1989 decision on zoning, the United States Supreme Court held that the Yakima Indian Reservation did not have civil zoning power over what was called the "open area" (with the larger non-Indian population), but did have such power over the "closed area" (which was almost exclusively trust land with Indian residents). Brendale v. Confederated Tribes and Bands of the Yakima Indian Reservation, 492 U.S. 408. The facts of Brendale are quite different from this case, because here the tax is on a utility doing business on fee and trust lands. Brendale concerned tribal jurisdiction of fee land use. Whether the Supreme Court would now draw an analogy from that decision to invalidate taxes levied by tribes is unknown.

Given Federal court decisions, the Lummi utility tax is arguably valid. It is certainly not clearly invalid. For USWC to challenge this tax in the Federal courts might require expenditure of thousands, even hundreds of thousands, of dollars. Stipulation ¶ 30. The total Lummi utility tax on USWC for 1990 and 1991 was \$15,757.55. Stipulation ¶ 25. The relatively small amount of the Lummi tax on USWC does not justify the expenditure of many times more dollars on a court challenge to the tax, particularly when Federal case law supports the validity of such a tax. USWC's management decision not to challenge this tax is indeed prudent,

and the answer to the question posed as Issue 1 is in the affirmative.

ISSUE 2: To which ratepayers should the burden be passed: (a) USWC ratepayers statewide; (b) USWC ratepayers within the boundaries of the Lummi reservation, both members and non-members of the Lummi Tribe; (c) USWC ratepayers within the boundaries of the Lummi reservation who are members of the Lummi Tribe; or (d) some combination of the above?

No party advocated that USWC ratepayers statewide bear increased rates to pass through the entire Lummi utility tax. Washington law specifically holds that local taxes on utilities should be passed on to ratepayers within the jurisdiction of the taxing entity. Pacific Telephone & Telegraph, 19 Wn.2d at 282. If the Lummi tax were in fact a franchise fee (which was discussed in briefs and memoranda but which no party advocates), USWC could appropriately expect its ratepayers statewide to bear the burden of increased rates. Id. at 281-282. Under current law the first alternative of who should pay the higher rates must be eliminated.

Puget Power and FLOA contend that only USWC ratepayers who are members of the Lummi Tribe living on the reservation should pay the increased rates. The other parties champion the second alternative, USWC ratepayers residing on the reservation, both members of the Lummi Tribe and non-members.

FLOA and Puget base much of their choice on the Tribe's lack of jurisdiction to tax the fee land owners, citing State ex rel. Seattle v. Department of Public Utilities, 33 Wn.2d 896 (1949) and King County Water District No. 75 v. City of Seattle, 89 Wn.2d 890 (1978). Those cases do not support the contention that only tribal members should pay the increased rate. It is essential to remember the Tribe is taxing USWC here, not the fee land owners. The fee land owners live within the reservation boundaries and receive some services from the tribal government. Thus, they are within the taxing authority's jurisdiction and, as ratepayers, can expect to shoulder the burden of increased rates to pass through the Lummi utility tax.

Although the Tribe does not have the same broad jurisdiction over residents which a city has, as a general rule it is not unjust to require residents of a jurisdiction to pay taxes for the common good, even to fund services which they may never use. Surely most taxpayers fervently hope they never require the services of the fire department or paramedics. Taxpayers without school-age children must pay taxes to support schools, although they may never receive a direct benefit.

USWC's proposed revisions to its tariff, establishes rates which are just, fair, reasonable and sufficient. All residents of the Lummi reservation should bear the increased rates.

VI. REQUEST FOR CONDITIONAL ORDER

The assistant attorney general representing the Commission staff urged that three caveats be included in this order. They generally concern the Commission reserving the power to reopen this proceeding if the factual or legal circumstances surrounding this or other tribal taxes change.

The Commission has jurisdiction over utility rates. Rather than conditioning this order on future changes, the better course would be to consider any change of circumstances through a separately filed petition or complaint. This initial order proposes an unconditional acceptance of USWC's tariff filing.

FINDINGS OF FACT

Having discussed in detail all material matters inquired into, and having stated findings and conclusions, the administrative law judge now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate facts are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington with statutory authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. U S WEST Communications, Inc. (USWC) furnishes telecommunications services within the State of Washington, and, as such, is a public service company subject to regulation by the Washington Utilities and Transportation Commission.

3. On November 4, 1991, USWC filed revisions to its tariffs to increase rates and charges. By its Complaint and Order entered December 18, 1991, the Commission suspended the tariff revisions and set the matter for hearing.

4. The facts as stipulated to by the parties (Attachment A to this order) are incorporated herein by this reference.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding. RCW 80.01.040(3); RCW 40.130; Chapter 80.36 RCW.

2. The proposed tariff revisions now under suspension will result in rates that are fair, just, reasonable and sufficient. Those tariff revisions should be accepted.

3. The Order of Suspension of the tariff revisions filed on November 4, 1991, should be dismissed.

4. All motions made in the course of this proceeding which are consistent with findings and conclusions made in this order should be granted, and those which are inconsistent should be denied.

On the basis of the above analysis of the evidence, and the above findings and conclusions, the Administrative Law Judge proposes the following order.

O R D E R


IT IS HEREBY ORDERED That the tariff revisions filed by respondent on November 4, 1991, now under suspension in Docket No. UT-911306, are accepted in their entirety; and

IT IS FURTHER ORDERED That the Order of Suspension entered on December 18, 1991, is hereby dismissed; and

IT IS FURTHER ORDERED That all motions consistent with this order are granted and those inconsistent with it are denied.

DATED at Olympia, Washington, and effective this 25th day of August, 1992.

OFFICE OF ADMINISTRATIVE HEARINGS


CHRISTINE CLISHE
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A

Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P. O. Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.

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ATTACHMENT A

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	Docket No. UT-911306
)	
Complainant,)	STIPULATED ISSUES AND RECORD
)	
vs.)	
)	
U S WEST COMMUNICATIONS, INC.,)	
)	
Respondent.)	
.....)	

I. INTRODUCTION

The parties to this proceeding stipulate that this case may be decided based on the issues and record described below as well as testimony to be heard at the public hearing to be held on May 11, 1992 in Bellingham. This stipulated record should not be construed as an admission by any party that any portion of this record may be construed as an admitted fact in any context other than this proceeding. In addition, this stipulation should not be construed as an admission by any portion of this record is necessarily relevant.

The parties reserve the right to seek permission from the Commission either to reopen the stipulation to contain other matters or to seek permission to offer further evidence if either (1) there be testimony at the public hearing which contradicts any items in the record stipulated to below, or (2) a party believes it is necessary to rebut an affidavit filed pursuant to paragraph 29 below.

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II. STIPULATED ISSUES

The issues in this proceeding to be addressed by the parties are:

1. Was USWC's management decision not to challenge the Lummi utility tax, on advice of counsel that there were no grounds to do so, prudent?

2. If the answer to issue 1 is yes, then to which ratepayers should the burden be passed: (a) USWC ratepayers statewide; (b) USWC ratepayers within the boundaries of the Lummi reservation, both members and non-members of the Lummi tribe; (c) USWC ratepayers within the boundaries of the Lummi reservation who are members of the Lummi tribe; or (d) some combination of the above.

III. STIPULATED RECORD

Parties

1. USWC is a telecommunications company doing business in 14 states, including Washington. Within its service area is a portion of the Lummi Indian reservation.

2. Puget Power is an electric company doing business in the State of Washington and provides electric service to customers on the Lummi Indian reservation.

3. Contel of the Northwest is a telecommunications company doing business in the State of Washington and serving customers on the Lummi Indian reservation.

4. Fee Land Owners Association (FLOA) is a non-profit corporation under the provisions of RCW 24.03. Its membership is approximately 150. The purpose of FLOA, as stated in its Articles of Incorporation, is "to promote and protect the members' rights of

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peaceful enjoyment of their properties as located within the exterior boundaries of the Lummi Indian Reservation in order that they shall receive and be afforded all their rights as property owners and residents within the United States as guaranteed to them by the Constitution and other laws of the United States."

The Lummi Utility Tax

5. On July 6, 1990, the Lummi Indian Business Council (LIBC) passed resolution No. 90-89 imposing a set of tribal taxes, including the utility tax which is the subject of this proceeding. Filed as Joint Exhibit 1 is a copy of that resolution. Filed as Joint Exhibit 2 is a copy of the opinion of the Regional Solicitor's Office of the Bureau of Indian Affairs regarding that tax. Non-members may not vote in elections for the LIBC. Filed as Joint Exhibit 3 is a copy of LIBC Resolution 91-67, which extends that tax to July 31, 1992.

6. On April 27, 1989, the LIBC passed Resolution No. 89-57, to levy and enforce a tax on the retail sale of utility services on all persons residing within the reservation. Resolution 89-57 directed utilities to collect the retail sales tax from customers, regardless of whether they were members or non-members. The tax rate was 5% of the selling price. Filed as Joint Exhibit 4 is a copy of Resolution No. 89-57. On November 28, 1989, the Regional Solicitor's Office of the Bureau of Indian Affairs in Portland issued an opinion regarding the tax imposed by LIBC Resolution 89-57. Filed as Joint Exhibit 5 is a copy of the Solicitor's opinion.

7. Under Art. VII of the Lummi Constitution, voting members of the Tribe may reject an assessment by referendum. Filed as

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Joint Exhibit 6 is a copy of the Lummi Constitution. On December 9, 1989, voting members of the Lummi Indian Tribe rejected the assessment imposed by Resolution 89-57. Non-members residing on the reservation were not allowed to vote on the referendum.

8. On November 4, 1991, US West Communications, Inc. (USWC) filed with the Washington Utilities and Transportation Commission (Commission) pursuant to Advice No. 2248T, revised tariffs seeking to include that tribal tax as an expense of USWC to be passed on to the ratepayers of the company within the boundaries of the Lummi Reservation. A copy of that USWC filing is filed as Joint Exhibit 7. On December 18, 1991, the Commission suspended the filing.

Characteristics of the Lummi Reservation

9. The Lummi Indian reservation is a federally recognized reservation established by the Treaty of January 22, 1855, and the Executive Order of November 11, 1873. See Joint Exhibits 8 and 9. Tribal governance on the reservation is conducted pursuant to the constitution and bylaws of the Lummi tribe. The Commissioner of Indian Affairs approved the tribal constitution on April 10, 1970.

10. Filed as Joint Exhibit 10 is the BIA Land Status Map to the Lummi Indian Reservation.

11. According to the 1990 Census, there were 1,553 non-Indians residing on the reservation and 1,594 Indians, Aleuts or Eskimos residing on the reservation. Also according to the 1990 Census, for persons ages 18 or over, there were 1,267 non-Indians and 916 Indians, Aleuts or Eskimos. (The total Indian figure

includes non-tribal members as well as members of the Lummi Indian Tribe.)

12. USWC currently has 475 subscribers on the reservation. Of these, 30 have advised USWC that they are enrolled Lummi tribal members, for purposes of avoiding certain state and federal taxes that USWC is obligated to collect.

13. The total acreage of the reservation is approximately 12,000 acres, of which, according to the 1989 Bureau of Indian Affairs' figures, 7,865 acres (or 64%) are owned by tribal members, the tribe, or the United States for the benefit of the tribe or member thereof. The overwhelming majority of the remaining lands have been removed from special trust status and are owned by non-tribal members or entities.

The Operations of US West Communications, Inc., on the Lummi Reservation

14. Of those Indian tribes within USWC service territory, only the Lummi Indian Tribe has imposed a gross receipts tax on USWC's business operations.

15. USWC provides telephone service to 475 entities or persons within the Lummi Indian Reservation.

16. Filed as Joint Exhibit 11 is a copy of USWC's Bellingham Exchange Area Map.

17. USWC's Lummi Remote Central Office is located at Gooseberry Point on Haxton Way. There appears to be no specific listed street address, but the building is located in Section 34, Township 38 N, Range 1 East. USWC owns the building, which was constructed in 1965, and the land thereunder in fee. Filed as

Joint Exhibit 12 is USWC's Statutory Warranty Deed, dated April 29, 1964.

18. Equipment within the building includes a remote serving module, run off the Bellingham No. 5 ESS switch, via transmit and receive trunk lines over copper cable. This module contains all the equipment necessary to provide local and toll service for that portion of the reservation located within USWC's Bellingham Exchange, and to Lummi Island.

19. All business and residence customers within the Lummi reservation are served by copper cables, either aerial or buried, that feed from the above-described remote serving module. The cables are of varying sizes and types, depending on the requirements of the specific street or housing development that they serve.

20. For USWC's facilities placed in the public right-of-way, USWC obtains encroachment permits from Whatcom County. An example is filed as Joint Exhibit 13. USWC may retain these permits for varying lengths of time, depending on the nature of the job. It has not been USWC's practice to request permission from the Lummi Tribal Council before working in the public right-of-way. To USWC's knowledge, there have never been any complaints about USWC's practices.

21. USWC has obtained, over the course of time, various permits and easements to place facilities across other lands located within Lummi reservation boundaries. Filed as Joint Exhibit 14 are copies of such permits and easements.

22. For 1991, USWC was assigned a taxable value of property in Whatcom County of \$38,890,160.

23. The Lummi reservation includes all of or part of the following Whatcom County tax codes:

<u>Tax Code</u>	<u>Taxable Value</u>	<u>Estimated % Lummi</u>	<u>Taxable Value</u>
2001	\$ 2,468	95%	\$ 4,345
2006	0	100%	0
2015	73	40%	29
2035	243,821	100%	243,821
2050	281,136	100%	281,136
2060	440,190	100%	440,190
2065	0	100%	0
2070	0	100%	0
TOTAL			\$967,521

The above total value of \$967,521, while an estimate, is USWC's description of the value for tax purposes of USWC's property on the Lummi reservation.

24. USWC is fee owner of its Lummi Remote Central Office and the land thereunder, as described above. The easements attached as part of Joint Exhibit 14 may describe certain fee property within reservation boundaries through which USWC has placed facilities. USWC has no knowledge of whether such lands are still owned in fee by Indians on non-Indians.

25. The total revenues of USWC from services provided on the reservation and the total tax burden on the company from the tax in question are as follows:

1990 Revenues (August through December):	\$ 92,854.20
Taxes Paid:	\$ 4,641.71
1991 Revenues:	\$222,316.60
Taxes Paid:	\$ 11,115.84
<hr/>	
Total Revenues:	\$315,170.80
Total Taxes Paid:	\$ 15,757.55

26. The company collects from utility users on the reservation on behalf of other entities various state or local taxes on the utility and passes the burden on to utility users on the reservation. These include:

<u>Tax Description</u>	<u>Tax Rate</u>	<u>Enrolled Indians Exempt</u>
Whatcom County 911 Tax	\$.50/line	Yes*
State 911 Tax	\$.20/line	Yes*
State and Local Sales Tax	7.5%	Yes*
Washington TDD Tax	\$.10/line	Yes*
Washington Lifeline Tax	\$.05/line	Yes*
Federal Excise Tax	3%	No**

*Only enrolled members of the Lummi Tribe and tribal entities are exempt from these taxes. As set forth in USWC's response to Request for Information No. 5, about 30 enrolled Indians claim exemption from tax.

**For federal excise tax purposes, tribal entities are exempt, but individual Indians are not exempt.

27. No Washington city utility taxes are imposed on USWC on the Lummi reservation. If they were, the effect of such taxes would be passed on to all subscribers on the reservation, including enrolled Indian subscribers. This is what occurs, for example, in Tacoma, where the company services part of the Puyallup reservation within city boundaries. The Tacoma city utility tax is passed on

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to enrolled members of the Tribe who are living on reservation land within the city.

Other Taxes Imposed as Non-Members within the Reservation

28. The State of Washington and various local governments impose a number of taxes on non-member individuals and entities within the reservation. These include:

- 3.873% utility tax on electricity
- 3.852% utility tax on natural gas
- 7.5% sales tax on telephone service
- 3.6% refuse tax on garbage collection
- 1.0% solid waste tax on garbage collection
- 7.5% sales tax on residential heating fuel
- 1.5% excise tax on cable
- 4.4% copyright tax on cable
- 4.0% franchise tax on cable
- 7.5% sales tax on cable equipment

Services Provided by the Lummi Tribe, Other Governmental Entities, and Utilities to Non-Members of the Tribe Within the Reservation

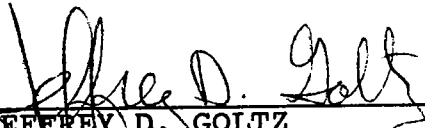
29. The parties may file as part of this record affidavits regarding various services provided within the reservation to USWC, Puget, Contel, and members of FLOA. Such affidavits will be filed no later than May 8, 1992.


Miscellaneous

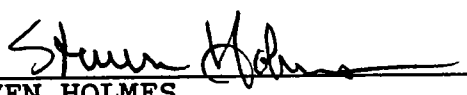
30. USWC estimates that a minimum of \$20,000 in legal fees would be expended at the trial court level to challenge the subject tax. However, since this would not be a normal case and would include the issue of the sovereign authority of a tribe to levy a tax, the cost to litigate this issue in federal district court, including expert witness fees, would be in the \$50,000 to \$80,000 range. And because this case goes to the power of the Tribe to levy a tax, it is clear that this case would ultimately have to go to the U.S. Supreme Court for resolution. Taking such a case to


the U.S. Court of Appeals and then on to the U.S. Supreme Court would entail another \$100,000 to \$400,000 in legal fees.

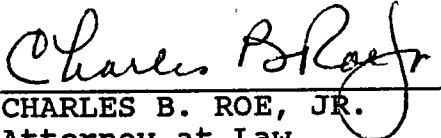
31. Neither USWC, Contel, or Puget has ever entered into any consensual agreements with the Lummi Indian Tribe to provide service to customers within the reservation.


JEFFREY D. GOLTZ
Assistant Attorney General
on behalf of Washington
Utilities and Transportation
Commission Staff
DATED:


TIMOTHY J. O'CONNELL
Attorney at Law
on behalf of GTE and Contel
of the Northwest
DATED:


STEVEN HOLMES
Attorney at Law
on behalf of U S West
Communications, Inc.
DATED:


STEVE MARSHALL
Attorney at Law
on behalf of Puget Sound Power
& Light Company
DATED:


CHARLES B. ROE, JR.
Attorney at Law
on behalf of Fee Land Owners
Association
DATED: