

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of,

DOCKET NO. UT-991930

MOUNT ST. HELENS TOURS, INC.

For Designation of a Telecommunications
Common Carrier to Serve an Unserved
Community, or Portion Thereof

In the Matter of the Petition of

DOCKET NO. UT-991931

BARBARA BRADY

For an Exchange Area Boundary Change.

In the Matter of Designation of a
Telecommunications Common Carrier to Serve
WILDERNESS LAKE COMMUNITY, or Portion
Thereof, on the Commission's Own Motion

DOCKET NO. UT-993000

GTE NORTHWEST INCORPORATED'S
RESPONSE TO AND JOINDER IN U S WEST'S
MOTION TO DISMISS DOCKET NO. UT-
993000

U S WEST COMMUNICATIONS, INC.

GTE NORTHWEST INCORPORATED

GTE Northwest Incorporated ("GTE") supports U S WEST's Motion to Dismiss dated March 28, 2000. GTE joins in this motion which would also dismiss GTE as a named party in Docket No. UT-993000.

_____ 1. U S WEST Correctly Argues That The Commission's Authority Under 47 U.S.C. § 214(e)(3) Is Absent.

The necessary condition precedent to this Commission's jurisdiction, or ability, to force a

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common carrier to serve an unserved area is a finding that the area is “unserved.” So long as a carrier is willing, and able to provide telephone service to a geographic area such an area is considered “with service.” In Prescott Telephone & Telegraph Co. v. WUTC, 30 Wn. App. 413, 634 P.2d 897 (1981), the court found that a geographic area included within Pacific Northwest Bell’s exchanges on its exchange maps could not be deemed “unserved” just because no one lived there or requested any service.

In this case U S WEST has offered to provide service to Wilderness Lake. As evidenced by the Prescott case, this “offer to provide service” negates any finding that an area is “unserved.” Thus, the predicates in the language in Section 214(e)(3) which require a finding that no carrier will provide service and that the requesting community is “unserved” are not present in this docket.

GTE supports dismissal of the Wilderness Lake order, which also named GTE as a party because the facts required by 47 U.S.C. § 214(e)(3) are not present in this case.

_____ 2. RCW 80.36.230 Does Not Give The Commission Authority To Force A Provider To Provide Service.

GTE agrees with U S WEST that RCW 80.36.230 provides no independent authority for the Commission to order the provision of service in an area not included within a carrier’s serving area. That statute may enable the Commission to define the geographical limits of the company’s service area. However, this occurs when a carrier voluntarily files exchange maps as part of its tariffs which are approved by the Commission. See Prescott, 30 Wn. App. At 416. There is no authority which supports the proposition that the Commission can force a carrier to define its service area pursuant to RCW 80.36.230. This statute is not a mechanism intended to circumvent the real problem in this case, which is the lack of a universal service fund which would provide assistance for customers in high cost service areas. As former Commission Chairperson Sharon Nelson wrote, quoted in Electric Lightwave, Inc., 123 Wn.2d 530, 869 P.2d 1045 (1994),

It appears the real purpose of [RCW 80.36.230] was to bring some order out of the chaos associated with small independent telephone companies, to clearly delineate local and interexchange telephone calling, and to create call zones for local telephone service . . .

Id. at 538.

In sum, the statute does not give the Commission an independent basis for initiating a proceeding to realign exchange boundaries for the purpose of providing universal service.

_____3. GTE Agrees That the Order Fails to Comply With Procedural Due Process Requirements.

The order instituting this docket is not clear and has no readily apparent basis in the Commission's existing rules of procedure. If this order, which was instituted by the Commission, is deemed a complaint, then the Commission will have the burden of proving all material legal and factual obligations. What those allegations are is not clear. Ordering an exchange area boundary change pursuant to RCW 80.36.230 does not automatically lead to the conclusion that either U S WEST or GTE must absorb the costs of providing service in the new area over either company's protest, or on terms and conditions objectionable to either company.

If this case is deemed an adjudicatory proceeding for the purpose of establishing the statutory elements in 47 U.S.C. § 214(e)(3) then again, the Commission must be required to meet its burden of proof, which it cannot do given the admitted state of the factual record at this point.

In sum, GTE supports and joins in U S WEST's Motion to Dismiss Docket No. UT-993000 which is proceeding on a fundamentally wrong basis to address a universal service problem which must be addressed in the future in a proceeding where the Commission has clear authority.

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The Motion to Dismiss should be granted.

RESPECTFULLY SUBMITTED this 3rd day of April, 2000.

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By

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