

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST INC.,

Respondent.

Docket No. UT-040788

**WeBTEC'S BRIEF REGARDING
RATE DESIGN AND THE
DEFERRAL ACCOUNT
PROPOSAL FOR INTERIM
RELIEF**

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I. INTRODUCTION

1. The Washington Electronic Business & Telecommunications Coalition ("WeBTEC") submits the following Brief Regarding Rate Design and the Deferral Account Proposal for Interim Relief. Under separate cover WeBTEC submits, together with Public Counsel and AARP, a brief addressing the other issues relevant to Verizon Northwest Inc.'s ("Verizon NW") request for interim relief. As noted in the Public Counsel brief, WeBTEC submits that Verizon NW's request for interim relief should be denied.

2. Verizon NW does not face a financial emergency. It is an A-rated utility and has the ability to finance now and for some time into the future through the cash pool created by Verizon Network Funding Corp. Moreover, Verizon NW has no immediate plans or need for financing. Even if viewed as a stand alone company, the Washington intrastate operations of Verizon NW generate sufficient cash to fund operations until the general rate case ("GRC") is resolved.

3. Nor has Verizon NW demonstrated that it is the victim of any gross inequity or gross hardship resulting from the reduction of its switched access charges ordered in *AT&T Communications of the Pacific Northwest, Inc. v. Verizon Northwest, Inc.*, WUTC Docket No. UT-020406, 11th Supplemental Order (August 12, 2003)("Access Charge Order"). In that case, the Commission determined that the access rate reduction was necessary to correct an unlawful preference that Verizon NW and its long distance affiliate had enjoyed for some time at the expense of their interexchange competitors. The Commission also delayed implementing the reduction for two months to give Verizon NW an opportunity to file a GRC. However, Verizon NW, for its own strategic reasons, delayed that filing.

4. In short, Verizon NW has failed to show an immediate need for funds that cannot be postponed until the resolution of the GRC, nor any inequity or hardship that cannot wait to be corrected.

5. Nevertheless, if the Commission were to decide to allow interim relief, based on some notion that it would be grossly inequitable to deny Verizon NW the opportunity to recover some portion of the revenues lost because of the rate reductions ordered in the Access Charge Order, WeBTEC submits that the Commission should authorize Verizon NW to establish a deferral account to track the amount of the access revenue reductions, commencing on the date of the Commission's order and continuing until the conclusion of the GRC. Verizon NW could then seek to recover the amounts in the deferral account in future rates using the rate design that the Commission has determined in the GRC to be fair, just and reasonable. This would avoid the numerous potential problems and unnecessary administrative costs of a refund if one is required; and it would avoid the record-keeping costs of preparing for one even if no refunds would ultimately be ordered. It would avoid the debates about interim rate design and the fact that a complete record and evaluation of costs, competitive conditions, the functioning of Verizon NW's tariffs and questions about the Commission's legal authority to order rate changes for certain services. It would also avoid the inevitable customer confusion associated with multiple rate changes within a relatively short period of time. In short, it would protect the interests of Verizon NW and the interests of the ratepayers.

6. If the establishment of a deferral account is not ordered, WeBTEC believes that any interim rate increases should be imposed as an equal dollar amount on all tariffed access lines, with certain caveats discussed below. That is the fairest way to do it; everyone pays the same amount. On the other hand, increasing line rates by an equal percentage would be unfair and

inefficient. That is because services that are already overpriced would be required to bear an even larger share of the burden of funding Verizon NW's desire for interim revenue. Specifically, in spite of the fact that basic flat-rated local exchange service for business customers costs the same or less than the same service for residential customers, the existing monthly rate for business customers is significantly higher than for residential customers. Using an equal percentage increase would mean a higher increase for business customers and would exacerbate the rate discrepancy.

7. WeBTEC submits that it would be counterproductive to impose the interim increase on lines for which there is identifiable competition. Imposing such increases would likely lead to the loss of the customer to a competitor and the loss of the entire contribution Verizon NW now gets from that customer. That would be self-defeating for Verizon NW and its remaining ratepayers.

8. Also, interim increases should not be imposed on *existing* customers of term commitment options where the customer has agreed to take service for a defined period of time in exchange for a specified rate. Those arrangements are typically subject to termination liability provisions. Verizon NW testified that typically those customers would not get the benefit of any reductions offered or ordered during the terms of their agreements; therefore, it would be unfair to subject them to increases. New customers for term commitment arrangements could be included because the increase would be known upfront when they sign up for service.

9. Similarly, no interim increases should be ordered for contracted services. In order to ensure that customers can rely on their contracts with telecommunications companies, state law prohibits the Commission from treating contracts as tariffs and provides that contracts are enforceable by the parties according to their terms.

10. If interim increases are ordered, they should be subject to refund and reflect the difference between the interim rates charged and the rates ultimately approved in the GRC. In order to ensure the proper refunds are paid to customers, Verizon NW should be required to track, on a customer-by-customer basis, the services purchased by those customers, the changes to them over time and the amount of surcharges paid. This information must then be compared to the amount those customers would have paid pursuant to the rates ultimately approved in the GRC and the resulting interim overcharges paid or credited to the specific customers who paid them.

II. RATE DESIGN

A. Introduction

11. If the Commission decides to approve interim rate increases, it should adopt a rate design that is simple, practical and equitable. *See* Testimony of Timothy Zawislak, Ex. 181-T at 4, lines 1-2. WeBTEC believes that only an equal dollar increase proposal fits those criteria. The equal percentage increase proposed by Staff, while relatively easy to calculate, would also be relatively difficult to track over time as customers change the mix and quantity of services they purchase. And, it would pose the threat of additional problems in terms to getting the right amounts returned to ratepayers if a refund is ultimately required. Therefore, it would not be practical, or at least as practical, as an equal dollar increase. It would also be inequitable because it would unfairly discriminate against business customers. In addition, WeBTEC disagrees with Staff's proposal for the services that should be subject to a surcharge.

B. Equal Percentage Increase Proposal

12. If interim rate increases are to be allowed, Staff has proposed that there be an equal percentage increase assessed on all lines whether tariffed, price listed or contracted. The effect of this proposal would be to impose a significantly higher increase on business customers than on

residential customers. Tr. 615, lines 10-15. That would occur because the percentage increase would be applied to the higher rates already being paid by business customers. *Id.* In fact, the Staff proposal would result in a premium flat-rate business customer paying an additional \$4.69 per month for each line it purchases, while a residential customer purchasing essentially the same service would pay only an additional \$2.05; that is, a business customer would have to pay \$2.64 per month per line more than a residential customer would. Tr. 311, lines 17-22.

13. At page 11, Ex. 63-T, Verizon NW's policy witness, Steven Banta, addresses Staff's proposal that there be a higher increase to business local exchange service rates than to residential rates and states that "the current rate and cost relationship between residential and business rates and costs is already out of alignment." He goes on to state that a higher increase to business rates would exacerbate this rate disparity. Today, the difference between premium one-party flat business and residential local exchange rates is \$16.70 per line per month. If the Staff proposal were adopted, that rate differential would increase to a jaw-dropping \$19.34 per line per month.

14. In response to a question from Mr. Fitch, Mr. Banta testified that "if you look at the typical arrangement ... the cost characteristics are very similar [for business and residential basic service], or [you] would even expect the business cost to be lower because the average loop length is less." Tr. 302, lines 10-13. Because the rate differential "as it currently stands is improperly out of alignment" Verizon NW is requesting that the difference between basic business and residential rates "not be exacerbated by applying an equal percentage to the existing rates." Tr. 303, lines 10-12; Tr. 305, lines 7-10. The concern is basic fairness between business and residential customers. As explained by Mr. Banta:

[W]hen you look at the underlying costs associated with providing an R1 or a B1 service, essentially they're very much the same service. And that we already have ... a big disparity between what a residential customer pays and a business customer pays. And if anything, over time we would like to move these rates more towards parity, and I think the commission has recognized that in other cases in this state. And that by putting an equal percentage on both, you would be making that disparity greater rather than narrower. So I think in fairness we already, well, just in fairness between the residence and the business customers, it would be more in parity to give them both the same surcharge.

Tr. 261, lines 8-22. WeBTEC agrees.

15. In his direct testimony, Ex. 63-T, at page 11, lines 5 through 7 and note 5, Mr. Banta cites the Commission's rate order in a *US West general rate case* for the proposition that it is the Commission's policy to move business and residential rates closer over time. Mr. Trotter challenged Mr. Banta's reliance on that order on the basis that Verizon NW's rates and costs are not the same as US West's were. But, as Mr. Banta responded:

[W]hat we're talking about are relationships and not absolute cost. And the only thing I'm trying to point out here is that from a policy perspective that if Verizon is similarly situated, even though our costs are not the same, it's reasonable to assume that a similar policy for us would hold true.

Tr. 263, line 21-264, line 2. In this interim phase of the case, Verizon NW is not proposing to realign business and residential rates by moving them closer; it is simply asking the Commission to do no harm and not move those rates further apart.

16. Even though cost studies were not filed or reviewed in this phase of the case and the Commission is not in a position to make a determination about the absolute level of costs, it does have an adequate basis to conclude that the costs of providing basic business local exchange service are equal to or less than the costs of providing basic residential service.

17. In Ex. 74-C, Verizon NW identifies its estimate of the total service long run incremental costs for providing premium one party flat residential, premium one party

flat business, and premium PBX trunk service. That exhibit shows, that in Verizon NW's estimation, the costs of the two business services are less than the costs of the residential service. Tr. 313, lines 17-22. As Mr. Banta testified, one reason for the cost difference is the fact that, on average, business loop lengths are shorter than residential loop lengths. Tr. 314, lines 3-7.

18. On re-cross, Mr. Trotter attempted to minimize the significance of Ex. 74-C by getting Mr. Banta to agree that the cost estimates contained in the exhibit do not reflect prior Commission orders about the treatment of loop cost in a cost model, of usage levels, fill factors, depreciation rates, cost of money and the mix of copper and fiber. However, all of these factors except usage levels affect only the *absolute level* of the cost estimates; they would not affect the *relationship* of business costs to residential costs. In other words, business costs would be higher than residential costs only if business usage levels were so much higher that they significantly affected the overall cost estimates for the particular services.

19. In Verizon NW's own cost estimates, usage level differences between business and residential services and their relative costs are apparently not so great as to overcome the cost differences that result from the difference in average loop lengths. Interestingly, Staff's own cost estimates in the Verizon *UNE cost case*, WUTC Docket UT-023003, indicate that switching (usage) costs should be treated as a flat-rated component of the port charge. See Ex. 191, Supplemental Direct Testimony of Thomas L. Spinks, WUTC Docket No. UT-023003, at 15, lines 13-16, line 10. That means that there are *no cost differences based on the amount of usage*. In other words, the capacity of switches is such that costs are constrained only by the number of lines, not by the amount of usage. That being the case, *the import of Staff's position in the UNE cost case is that there would be no usage-related cost difference between basic business and basic residential service*. The only cost difference would be the result of differing average loop

lengths. As Mr. Banta testified, and no one disputed, business loops on average are shorter than residential loops. Therefore, the Commission can safely conclude that the costs of business service are, at worst case, equal to or, in the more likely case, less than the costs of residential service.

20. Mr. Zawislak attempts to justify his equal percentage surcharge proposal by arguing that *the rate relationship* between the residential and commercial customer classes, as well as the rate relationships between services within the same customer class, should not be changed "without any cost basis for doing so." Ex. 181-T at 9, lines 6-8. He then states that the GRC is the forum for such rate design changes, not interim rate relief. There are three problems with his position.

21. First, as discussed above, there is sufficient evidence and basis for the Commission to conclude that the costs of providing basic business services are equal to or less than the costs of providing basic residential service. The Commission need not be able to determine the absolute level of costs here; it need only be satisfied about the *cost* relationship between business and residential service. And, there is really no question about that relationship.

22. Second, the importance Mr. Zawislak places on the *rate ratio* between services is misplaced. Neither Mr. Zawislak or Mr. Banta were aware of any Commission order that states that Verizon NW's business rates should be set at a particular percentage above its residential rates. Tr. 622, lines 11-18 (Zawislak); Tr. 314, lines 8-11 (Banta). Moreover, in the past the Commission has stated clearly: "The Commission has no target ratio in mind when it establishes rates." Ex. 190, *Washington Util. & Transp. Commn v. U S West Commun., Inc.*, WUTC Docket No. UT-950200, 15th Supp. Order (April 11, 1996), at 107. Mr. Zawislak acknowledged that he had no basis for believing that this statement is not a correct statement of the Commission's

practice in setting rates. In short, Mr. Zawislak's proposal would impose greater increases on business customers than residential customers, and drive their respective rates further apart, in the name of preserving a ratio that the Commission has stated it does not consider as a basis for setting those rates in the first place.

23. Third, an equal dollar increase would not affect the existing differential between business and residential rates, which is what the Commission has indicated in the past was more important in setting rates. It, in fact, would preserve that differential, as well as the existing relationship between those rates and their respective underlying costs. Mr. Zawislak's equal percentage proposal would change that relationship.

24. In sum, WeBTEC submits that the equal percentage increase proposal advocated by Staff is not equitable because it would require business local exchange customers to pay significantly more than residential customers even though it is clear that the costs of providing business local exchange services are less than or equal to the costs of providing residential service. If interim rate increases are ordered, both classes of customers should be required to pay the same dollar amount.

25. WeBTEC also submits that the equal percentage increase proposal would be more difficult to track and could pose more problems if refunds need to be implemented than would an equal dollar increase proposal. To make sure proper refunds could be made Verizon NW would have to keep track, on a customer-by-customer basis, of the specific services each customer purchases over time and the rates for those services including any changes to those rates. This information must then be compared to the amount those customers would have paid pursuant to the rates ultimately approved in the GRC. Obviously, an adjustment would have to be made if the Commission finds in the GRC that Verizon NW's additional revenue requirement is less than

\$29.7 million on an annual basis – for example, if the Commission finds in the GRC that a certain should be increased by \$5 per month and application of that \$5 increase during the interim would have yielded more than Verizon NW's additional revenue requirement, the calculation described above would have to be adjusted. Verizon NW would have to make sure any refunds were based on that precise information, not on some percentage applied to the mix of services and the rates in effect at the time the refund is given. Particularly if significant rate design and rate level changes are adopted in the GRC, an equal percentage proposal could require a more complicated refund mechanism to avoid inequities to consumers.

C. Equal Dollar Increase Proposal

26. As stated above, WeBTEC agrees with Verizon NW that an equal dollar increase proposal is preferable to an equal percentage increase. It is more equitable, easier to implement in the event a refund is needed, and, therefore, more practical. As discussed below, there are still problems with imposing any interim increase, problems that can be avoided if the Commission were to order Verizon NW to establish a deferral account and seek recovery in future rates according to the rate design approved in the GRC instead of assessing interim rate increases subject to refund.

27. An equal dollar increase would be more equitable because all customers, business and residential, that purchase access lines from Verizon NW would pay the same amount. And, existing rate disparities would not be made worse.

28. WeBTEC also believes that an equal dollar increase would be easier to implement if refunds are required than would an equal percentage increase. Verizon NW would need to track only the number of lines purchased by each customer over time. It would then need only to compare the interim rate with the rates ultimately approved in the GRC, multiply that difference

by the number of lines each customer has purchased over time, and provide a credit or payment. Obviously, as discussed above, if the Commission determines in the GRC that Verizon NW's additional revenue requirement is less than \$29.7 million on an annual basis, this calculation might have to be adjusted. It would be irrelevant what rate changes the Commission were to order in the GRC. It would be simpler to apply a fixed amount to each access line, with adjustments made only to track changes in the number of access lines purchased by each customer.

D. Services Subject to a Surcharge (includes the WTAP issue)

29. Verizon NW originally proposed imposing a \$3.54 per line per month increase on basic business and residential local exchange lines and contended that this surcharge proposal "reflects marketplace realities. Ex. 612-T at 8, line 16. According to Verizon NW "vigorous competition would make it impossible as a practical matter" to increase data and other specialized services to business and/or governmental customers. Ex. 612-T at 8, line 20-9, line 2. In its alternative proposal, however, Verizon NW states that it could accept extending a surcharge to those data and other specialized services, even though it still has a concern about the potential effects of competition if the surcharge were so extended. Tr. 320, lines 3-18. The concern is that the price increase might cause those customers with competitive options to switch their service to another provider. Tr. 320, lines 20-24. As Mr. Banta explained in response to a series of questions from Mr. Melnikoff, the impact would be that Verizon NW would lose the entire revenue stream from those customers, thereby exacerbating the situation for Verizon NW. Tr. 325, lines 7-17. Such a result would be counterproductive and self-defeating for Verizon NW and its remaining ratepayers to say the least.

30. Verizon also proposes that any surcharge on basic local exchange lines not be applied to WTAP lines because of a concern about the potential impact on the WTAP Fund and WTAP customers.

31. In contrast to Verizon NW, Staff proposes to extend the surcharge to all access lines, whether tariffed, price listed or contracted, including lines sold to other telecommunications companies for resale to end-users and including WTAP lines. Ex. 181-T at 8, 11. As Mr. Zawislak points out, one effect of excluding the lines Verizon NW proposes to exclude is to increase the surcharge that would otherwise be paid by other customers.

32. As a general matter, WeBTEC agrees with Staff that any surcharge should be applied broadly to lessen the impact on any particular customer or group of customers. However, WeBTEC believes Staff, and Verizon NW in its alternative proposal, have gone too far in their recommendations about which services would be subject to a surcharge.

33. First, WeBTEC submits that the Commission should be careful in extending any surcharge to additional services where the result could be a net loss of revenue to Verizon NW. WeBTEC believes that Verizon NW's concern about competitive losses is well-taken. Competitive losses, with the attendant loss of revenue, would likely occur if large interim increases are imposed on all services. The problem is that there has not been the opportunity in this interim case to develop the kind of record necessary for the Commission and the other parties to make a meaningful determination about the actual competitive forces faced by Verizon NW. We are basically in the position of having to trust Verizon NW's judgment about where it faces a threat. This is an additional reason why it makes sense to use a deferral account approach to providing interim relief instead of approving interim rate increases; a deferral account would

allow the Commission and the parties the time to more fully consider evidence about actual competitive forces faced by Verizon NW.

34. Staff, however, dismisses any concern about competitive losses by arguing that Verizon NW has not had the services it is concerned about competitively classified. Ex. 181-T at 16, line 18-17, line 10. This argument is too cavalier and ignores marketplace realities. Further, just because a company has not filed for competitive classification does not mean that it doesn't face competitive pressures. Mr. Zawislak also says that competitive classification doesn't imply that a company cannot increase prices. If a company retains market power over the service that has been competitively classified that would be true. However, by any accepted definition, if a company does not retain market power over a service, a non-trivial price increase would turn out to be unprofitable because of losses to competitors. Therefore, Mr. Zawislak's statement makes no sense unless he believes that the Commission willingly classifies services as competitive that are still subject to the exercise of market power by the providing company.

35. In any case, it doesn't appear to WeBTEC that Verizon NW has any interest in excluding any services from a surcharge other than to protect itself from competitive pressure. For that reason, WeBTEC supports Verizon NW's original proposal; however, if Verizon NW is also willing to support a broader application of a surcharge, in spite of competitive pressure, WeBTEC would also support such a result.

36. WeBTEC disagrees with Staff's and Verizon NW's alternative proposals insofar as they would impose interim increases on *existing* customers of term commitment options where the customer has agreed to take service for a defined period of time in exchange for a specified rate. As acknowledged by Mr. Banta, those arrangements are typically subject to termination liability provisions. Tr. 316, lines 8-10. Mr. Banta also testified that typically those customers

would not get the benefit of any reductions offered or ordered during the terms of their agreements. Tr. 316, line 19-317, line 4. Therefore, it would be unfair to subject them to increases. While Mr. Banta did not know whether existing customers of term commitment arrangements were excluded from the rate reductions that resulted from the Verizon/GTE merger case (Tr. 408, line 25-409, line 3), that was the likely result based on his statement of Verizon NW's general policy. Thus, WeBTEC believes that, in contrast to existing customers of term commitment arrangements, new customers for term commitment arrangements could be included in any surcharge because the increase would be known upfront when they sign up for service.

37. Similarly, WeBTEC submits that no interim increases should be ordered for contracted services. In order to ensure that customers can rely on their contracts with telecommunications companies, state law prohibits the Commission from treating contracts as tariffs and provides that contracts are enforceable by the parties according to their terms. RCW 80.36.150. The legal effect of that statute is that the Commission lacks the authority to order changes in the terms, including the price, of contracts once they have become effective. Accordingly, the Commission should not order a surcharge that attempts to do so.

38. With respect to Staff's proposal to extend any surcharge to WTAP lines, WeBTEC agrees that the effect of excluding those lines is to increase the surcharge that must be paid by other customers. However, WeBTEC takes no position on whether WTAP lines should be excluded.

E. Mechanics of Calculating a Surcharge (if one is authorized)

39. See discussion at paragraphs 24 and 27 above.

40. At pages 18-19 of his direct testimony, Mr. Zawislak discusses the mechanics of calculating and administering any refunds. WeBTEC understands that this discussion on

mechanics is consistent with WeBTEC's recommendations in paragraphs 24 and 27 above, and, therefore, supports those comments.

III. DEFERRAL ACCOUNT PROPOSAL

41. This Commission can provide interim relief to Verizon NW without granting any interim rate increases. It can accomplish this by permitting Verizon NW to establish a "deferral account" to track or record the difference in revenues it would have received if interim rate increases had been granted. In the event Verizon succeeds in establishing an annual revenue requirement increase equal to or greater than \$29.7 million at the conclusion of the GRC, Verizon NW could then obtain future recovery of the amounts so recorded, without violating the concept of retroactive ratemaking. Verizon NW would then have been made whole, and the considerable negative impacts on ratepayers, and the costs of the recordkeeping necessary to prepare for a possible refund would be avoided. If the annual revenue requirement increase ultimately established in the general rate case turns out to be less than \$29.7 million, the costs and potential problems of a refund would have been avoided. Also, the debates about interim rate design could be avoided, and the Commission could make more informed decisions about what services are truly subject to significant competitive pressure.

42. Under the circumstances of this case, establishment of a deferral account would be far preferable to ordering interim rate increases subject to a likely imperfect refund. As this Commission is well aware, recent experience with refunds has been troubling. For example, in the *US West general rate case* approximately \$26 million was never returned to customers; \$24 million (92%) of that related to refunds for business basic exchange and hunting services. Among the problems encountered were large numbers of unclaimed refunds (returned refund checks), customers discontinuing service, problems with estimation and/or extrapolation of

refunds. See attached Affidavit of Theresa A. Jensen, *U S West Comms, Inc. v. Wash. Util. & Transp. Commn*, Cause No. 96-2-09623-7 SEA (King County Superior Court, July 29, 2000) (Exhibit 1 hereto), and associated order (Exhibit 2 hereto).

43. A deferral account is an accounting mechanism which preserves a utility's ability to track or record revenue-affecting events (both positive and negative) for recovery in future periods through future rates. Use of a deferral account avoids any potential claim that recovery of past revenue shortfalls in future rates would be barred by any concept of retroactive ratemaking.

44. The use of deferral accounts in a variety of contexts has been well established. On a number of occasions this Commission has allowed such flexible accounting treatment to enable utilities to recover costs which might not have been allowed under traditional ratemaking practices.¹ Recently, in Docket No. UE-020417, *In re the Petition of PacifiCorp For an Accounting Order Authorizing Deferral of Excess Net Power Costs*, 3d Supp. Order, at 7 (Sep. 27, 2002), the Commission acknowledged its authority to establish a deferral account (although the use of a deferral account was later denied in that case based on the utility's failure to sustain its burden of demonstrating entitlement to deferral accounting or immediate rate relief).

45. The use of a deferral or memorandum account should avoid retroactive ratemaking concerns. As the California Public Utility Commission ("CPUC") explained in *Re California Water Service Company*, D. 84-08-031, 55 CPUC 2d 704 (1994):

It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless,

¹ See, *WUTC v. Puget Sound Power And Light Company*, WUTC Docket No. UE-910626, First Supplemental Order (1991) (Commission allowed periodic rate adjustment mechanism to account for periodic cost differentials due to power contracts); *WUTC v. Washington Natural Gas Company*, WUTC Docket No. UG-920840, Third Supplemental Order (1993) (the Commission will approve under limited circumstances tracker-like mechanisms, which track and pass through to ratepayers certain expenditures).

before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking ...

46. The CPUC has found that the memorandum or deferral account practice is consistent with its rate setting authority under Public Utility Code § 728, which contains language virtually identical to that in RCW 80.36.140. Both statutes direct public utility commissions to establish just and reasonable rates "to be thereafter observed."

47. The CPUC explained that it developed a well-established practice of authorizing memorandum accounts to avoid any retroactive ratemaking prohibition whenever a strict application of the rule would be impractical or inequitable. For instance, in the case of *In re Southern California Gas Company*, D. 95-04-078 (1995), the CPUC allowed the utility to include in its rates interconnection charges from a previous period which had been tracked in a memorandum account. The CPUC said:

In this case, we authorized SoCalGas to track interconnection charged in a memorandum account and we stated that allocation of the costs would be determined in the pending BACP decision. As such, parties were on notice that these charges would be tracked and that, ultimately, they would be recovered from customers. We are well aware of the rule against retroactive ratemaking and, as we have discussed above, we have established memorandum accounts to avoid retroactivity and put all parties on notice that rates may be adjusted to recover costs not immediately recoverable. Such a result constitutes a textbook example of how the Commission's established procedures regarding the rule against retroactive ratemaking are intended to operate and did, in fact, operate in this case.

48. Two key principles support the allowance of memorandum accounts to avoid retroactive ratemaking problems. First, so long as a memorandum account is established, parties have notice that subsequent rate adjustments may be forthcoming. Second, central to the allowance of a memorandum account is retention of the agency's ability to review the subsequent

claim for recovery. According to the CPUC, establishment of a memorandum account preserves the right to seek recovery, but does not guarantee it. The CPUC said in *In re Tax Reform Act of 1986*, D. 88-01-006, 27 CPUC 2d 310, 322 (1988), "[t]he use of the memorandum account mechanism avoids any retroactive ratemaking problems and at the same time does not prejudice whether recovery will or will not be granted."

49. As demonstrated, deferral accounts provide a practical and fair solution to any retroactive ratemaking concerns. This Commission clearly has the power to order Verizon NW to establish a deferral or memorandum account, which is simply the creation of a pool of funds in an accounting sense. To the extent Verizon NW's evidence in the general rate case establishes that it is entitled to increased rates, it will be able to recover those rates and its interests will have been preserved. On the other hand, if Verizon NW's revenue requirement demonstration fails, then Verizon NW will not be entitled to recover the amount in the account and consumers will have been protected as well.

IV. CONCLUSION (with specific recommendations)

50. As discussed in the brief of Public Counsel, WeBTEC and AARP submitted under separate cover, Verizon NW has failed to show an immediate need for funds that cannot be postponed until the resolution of the GRC, nor any inequity or hardship that cannot wait to be corrected.

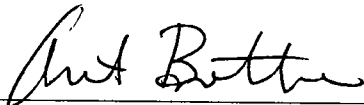
51. Nevertheless, if the Commission were to decide to allow interim relief, based on some notion that it would be grossly inequitable to deny Verizon NW the opportunity to recover some portion of the revenues lost because of the rate reductions ordered in the Access Charge Order, WeBTEC submits that the Commission should authorize Verizon NW to establish a

deferral account to track the amount of the access revenue reductions, commencing on the date of the Commission's order and continuing until the conclusion of the GRC. Verizon NW could then seek to recover the amounts in the deferral account in future rates using the rate design that the Commission has determined in the GRC to be fair, just, and reasonable. This would protect the legitimate interests of both Verizon NW and its ratepayers and avoid the numerous potential problems associated with interim rate increases and potential refunds.

52. If the establishment of a deferral account is not ordered, WeBTEC believes that any interim rate increases should be imposed as an equal dollar amount on all tariffed access lines, with the exception of existing customers of term commitment arrangements and customers of contracted services.

RESPECTFULLY SUBMITTED this 27th day of August, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of August, 2004, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn	<input checked="" type="checkbox"/>	Hand Delivered
Executive Secretary	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Washington Utilities and Transportation Commission	<input type="checkbox"/>	Overnight Mail (UPS)
1300 S Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98504-7250	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 27th day of August, 2004, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AARP:

Ronald L. Roseman	<input type="checkbox"/>	Hand Delivered
2011 14th Avenue East	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Seattle WA 98112	<input type="checkbox"/>	Overnight Mail (UPS)
<i>Confidentiality Status: Confidential</i>	<input type="checkbox"/>	Facsimile (206) 568-0138
	<input checked="" type="checkbox"/>	Email (ronaldroseman@comcast.net)

On Behalf Of AT&T:

Letty S. Friesen	<input type="checkbox"/>	Hand Delivered
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On Behalf Of WUTC:

Robert C. Wallis ALJ
Washington Utilities and Transportation
Commission
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PO Box 47250
Olympia WA 98504-7250

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Confidentiality Status: Confidential

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of August, 2004, at Seattle, Washington.

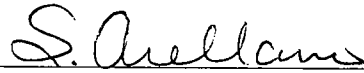


Exhibit 1

4 **FILED**
5 KING COUNTY, WASHINGTON

6
7 JUN 29 2000

8
9 SUPERIOR COURT CLERK

10
11 SUPERIOR COURT OF THE STATE OF WASHINGTON
12 FOR KING COUNTY
13

14 U S WEST COMMUNICATIONS, INC.,
15 a Colorado corporation,

16
17 Petitioner,

18
19 and

20 WASHINGTON UTILITIES AND
21 TRANSPORTATION COMMISSION,

22
23 Respondent.
24
25
26
27

NO. 96-2-09623-7 SEA

AFFIDAVIT OF THERESA A. JENSEN

28
29 STATE OF WASHINGTON)
30) ss.
31 COUNTY OF KING)
32

33
34 Theresa A. Jensen, being first duly sworn upon oath, states as follows:

35
36 1. I am employed by U S WEST Communications, Inc. ("USWC" or
37 "Company") as Director - Washington Regulatory Affairs. Part of my responsibilities
38 include ensuring that U S WEST's obligation to make refunds of amounts collected during
39 the period of the stay ordered by the Superior Court and the Supreme Court are executed
40 properly.
41

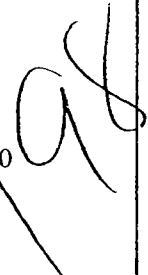
42
43
44 2. I submit this affidavit in Support of the Joint Motion of the Washington
45 Utilities and Transportation Commission ("WUTC"), the Office of the Attorney General,
46
47

AFFIDAVIT OF THERESA A. JENSEN - 1

[00000-0000/~0060506.DOC]

ORIGINAL

PERKINS COIE LLP
One Bellevue Center, Suite 1800
411 - 108th Avenue Northeast
Bellevue, WA 98004-5584
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3. After the Supreme Court remand to this Court, the parties submitted differing proposals for how to implement the refunds. On June 25, 1998, this Court detailed how the refund process would proceed, and how U S WEST would calculate and disburse refunds to customers, in its Memorandum Order on Methodology to Implement U S WEST's Refund Obligation (dated June 24, 1998) ("Refund Implementation Order").

4. The Court required U S WEST to make refunds for many services and different customer groups, including: Switched Access Service refunded primarily to interexchange carriers; Business Basic Exchange Services (including Complex Business, PBX trunks, Semi-Public Access Lines, Public Access Lines, Toll Trunks and Hotel Trunks, Simple Business, Digital Switched Services (DSS) trunks, Centrex Plus Network Access Registers (NARS) and Centrex Plus NAR Equivalents); Hunting Service; Local Measured Service Usage; and Message Toll Service.

5. The Court also directed how U S WEST would be required to attempt to reach customers that had moved or discontinued service. Current customers received bill credits and/or checks. For former customers, the Court required that U S WEST advertise for a specified time period in certain newspapers that have the largest circulation in the state.

6. The refund process was complicated by the fact that during the stay the rates U S WEST charged for specific services differed by customer location. The services customers subscribed to also differed, and customers had differing usage of any given service. In addition, customers may have changed services during the stay. Not all customers at the time of the refund were customers at all times during the stay. Not all customers who were customers at the beginning of, or during, the stay were U S WEST customers at the time of the refund.

7. The Court made specific rulings regarding how refunds would be made for each service and for the above varying circumstances. For some services, the Court adopted

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U S WEST's proposals to make refunds based on certain assumptions or averages. For example, for complex business, PBX trunks, semi-public access lines, public access lines, hunting service, toll trunks and hotel trunks, U S WEST made refunds on the assumption that each customer had the service for the full 21-month period of the stay, even though not all did, because it was administratively simpler to make refunds based on this assumption. This also resulted in credits to customers who changed service during the period of the stay with refunds equal or greater than the actual amount owed.

8. Refunds to current customers for toll service and local measured service were not based on each customer's actual billed charges. Toll rates charged to customers during the stay varied by time of day, day of week, and according to each customer's toll plan. The Court ordered that the refund for toll service be made by establishing an average rate based on revenues and overall minutes of use and that this averaged per minute of use credit be refunded to customers based on their actual minutes of use during the stay period.

9. For local measured service, U S WEST did not have data for the complete period of the stay. The Court ordered that these refunds be based on an estimate of usage for the stay period which took a customer's three months of usage prior to the expiration of the stay, and extrapolated that over the entire 21-month period.

10. U S WEST sent checks or applied bill credits, for refunds to current customers, and advertised the availability of refunds for former customers, as required by the Refund Implementation Order.

11. Many former customers responded to the advertisements. Indeed, 3,962 customers received refunds based on claims filed in response to the advertisements. Of these refunds, 1,094 were made to business customers that were either no longer with U S WEST or that had changed service during the period of the stay. In addition, current customers also were advised that they could file claims if they required a manual recalculation of their refund. Several customers requested and received customer specific calculated refunds.

U S WEST submitted several status reports to the Court during the course of the refund process. On July 30, 1999, U S WEST submitted to the Court its Final Report on U S WEST Refund Status ("Final Report") which detailed the refunds U S WEST had made and the process it had followed.

13. The WUTC and Public Counsel filed a Joint Response to U S WEST's Final Report on August 20, 1999. The WUTC and Public Counsel requested that the Court not enter an order approving U S WEST's Final Report, or otherwise closing the case, until they had an opportunity to resolve matters with U S WEST relating to the Final Report.

14. These parties have now had an opportunity to review and resolve such matters.

15. The first matter raised by the WUTC and Public Counsel involved unclaimed refunds (i.e., checks sent to customers that have been returned to U S WEST uncashed). U S WEST regularly receives returned checks as a normal function of its business. These returned refund checks have not been segregated from other returned checks received by U S WEST during the same time period. U S WEST did not segregate the returned checks because U S WEST understands that it is obligated to turn all such returned checks over to the Department of Revenue in accordance with RCW 63.29, et seq. U S WEST has held all of these funds, which, in total, amount to approximately \$1,837,967.

16. Based on U S WEST's historical unclaimed check return rate, U S WEST estimates that about \$179,829 of the \$1,837,967 is not refund related, and that approximately \$1,658,038 is refund related. The parties to this Joint Motion agree that U S WEST should also turn over such refund funds to the Department of Revenue in accordance with RCW 63.29 et seq.

17. The second matter raised by the WUTC and Public Counsel involved review of the amount of money refunded. The parties to this Joint Motion agree that the refund amount returned to customers was approximately \$26 million less than initially expected at the outset of the refund process.

1 U.S. WEST believes that this differential relates to two sources. First, as
2 described above, for many services, the actual amounts refunded were estimated or
3 extrapolated and not necessarily a return of the precise monies paid in by each customer. In
4 many cases, customers received more than what they originally paid based on the Court's
5 direction.
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10 19. Second, there was a change in the customer base between May 1996 and July
11 1999, the time between when the stay commenced and when U S WEST filed its Final
12 Report on the status of the refund. Each month, approximately 5,000 business customers
13 discontinue their service with U S WEST. Over the twenty-one month period of the stay,
14 approximately 105,000 business customers discontinued service with U S WEST.
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18 20. The parties to this Joint Motion agree that \$26 million is acceptable as the
19 total refund liability for purposes of this settlement presented to the Court. This is derived
20 from the status reports provided to this Court by U S WEST during the implementation of the
21 court ordered refund methodology. Attachment A to this Affidavit sets forth an overall
22 breakdown of the services that are believed to make up this \$26 million.
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27 21. For purposes of simplification, the analysis set forth on Attachment A ignores
28 that any of the \$26 million differential is related to estimation and/or extrapolation inherent
29 in the refunds for many services (as described above). It is impossible to quantify what
30 amount of the differential (between the actual refund amount and that expected at the outset
31 of the stay) is attributable to the use of refund methodology based on estimation and/or
32 extrapolation. So, Attachment A assumes that none of the differential is caused by
33 estimation and/or extrapolation though we know this is not the case. However, this is
34 immaterial to the overall assessment of the major sources of the differential.
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40 22. Attachment A shows that approximately \$24 million (92%) of the \$26 million
41 appears to be related to refunds for Business Basic Exchange and Hunting services purchased
42 by business customers. (Some residential customers subscribe to Hunting service, but most
43 subscribers are business customers.)
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An additional \$1.9 million appears to relate to Switched Access Service, which is a service primarily utilized by other telecommunications carriers that sell long distance services. U S WEST believes this amount is basically attributable to the change in the number of telecommunications carriers operating in Washington between May 1996 and April 1998. All telecommunications carriers operating in Washington in April 1998 received refunds as did former telecommunications carriers that could be located. The residual amount appears to be associated with former telecommunications carriers that could not be found or are no longer in business. However, such former carriers most likely recovered the rates they were charged for switched access service through the toll rates they charged their end user customers.

24. Finally, as depicted in Attachment A, less than \$400,000 appears to relate to Local Measured Service, a service utilized by business and residential customers. (Attachment A also shows that U S WEST overpaid refunds for another service also used by both business and residential customers -- Message Toll Service (long distance)).

25. The \$26 million differential has not been, and cannot practicably be, allocated to any specific customer.

26. The parties to this Joint Motion have agreed, for purposes of this motion, to a settlement in which U S WEST would fund particular projects in the amount of \$26 million. Attachment B hereto sets forth a detailed breakdown of the proposed projects. Attachment C hereto shows a breakdown of the funding per project.

2 EXECUTED this 27th day of June, 2000, at Seattle, Washington.
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5
6 Theresa A. Jensen
7 Theresa A. Jensen
8
9

10 SUBSCRIBED and SWORN to before me this 27th day of June, 2000.
11



Angie Leifer
Print Name: Angie Leifer
Notary Public in and for the State of Washington,
residing at Seattle
My commission expires: 8/8/02

	Principal		Difference
	Estimate	Paid	
Message Toll Service	52,426,655	52,627,057	-200,402
Local Measured Service	3,576,610	3,182,869	393,741
Business Basic Exchange	79,360,059	55,321,306	21,613,116
Supplemental Refund		1,310,929	
Manual Refund Claims		1,014,756	
Subsequent Manual Refund Claim		99,952	
		57,746,943	
Hunting	7,325,093	5,011,092	2,314,001
Switched Access Service	64,423,710	62,498,045	1,925,665
Centrex NAR Equivalent		2,815,262	
Total:	207,112,127	183,881,268	26,046,121

EX A

U.S. WEST, Public Counsel, TRACER, and AARP respectfully submit this Joint Proposal whereby U.S. WEST would contribute \$26 million to fund programs described below.

E911 Network Improvements: \$5,300,000

The E911 network improvement would modify the existing E911 telecommunications network to allow for recognition of new area codes and telephone numbers ported from new telecommunications carriers. The current state E911 system was designed based on a single telephone number area code per geographic area and assumed a single telecommunications carrier. With the advent of multiple telecommunications carriers serving within the same geographic area, two new problems in the operation of the state E911 service have occurred. The first is the need for the system to recognize that telephone numbers are no longer specific to a single telecommunications carrier and may in fact involve multiple carriers. When a carrier moves a customer's telephone number from its prior carrier to the new carrier's service, the number is "ported" to the new carrier. The E911 system needs to know the ultimate location of the ported number. This requires the deployment of new software by U S WEST, Customer Premise Equipment ("CPE") modifications at the Public Safety Answering Point ("PSAP") location and rearrangement of existing E911 trunks by the PSAP agency. The second problem requires recognition of multiple telephone number area codes within the same geographic area. This also requires software enhancements to the E911 network, to the E911 switch and to the PSAP CPE. The cost of these system and network enhancements is estimated at \$5,300,000. \$3,600,000 of this amount will be spent on U S WEST E911 network enhancements and \$1,700,000 will be reserved for PSAP trunk rearrangements and PSAP CPE modifications.

Deployment of these network and CPE E911 enhancements will protect the integrity of the E911 system and the data it relies upon to ensure efficient and expedient dispatch of fire, police and aid to Washington residents. Seven E911 selective routing switches require a network upgrade; they are located in Yakima, Vancouver, Tacoma, Seattle, Spokane, Bremerton and Pasco. At least one hundred and nine PSAPs require CPE modifications. Approximately 1,640 PSAP trunk rearrangements may be required.

Community Voice Mail: \$650,917

Community Technology Institute is a not-for-profit organization based in Seattle, Washington that has helped more than thirty communities across the country (and six in Washington State) install community owned and operated voicemail systems. These resulting programs, known as Community Voice Mail, act as a communication link for thousands of homeless and phoneless people, essentially a temporary substitute for dialtone for those in transition. Community Voice Mail sites purchase telecommunications services from local telecommunications companies which are then connected to voice messaging software. These

... mail projects
... communications product and
... be reserved for six new community
... technical assistance requirements related to
... would be reserved for program expansion at six
... would be reserved for network expansion requirements associated with this
... \$1,200,000 is required for network expansion requirements associated with this
... The remainder of the funds would be for toll free message retrieval services.

Collectively, the Washington State Community Voice Mail programs connect more than 5,000 people every year via more than 150 social service agencies. Six additional Washington State Communities are currently organizing themselves for Community Voice Mail installation and operations. This proposal would provide for a communication link for twelve total communities (six new communities) and an estimated 7,000 people every day. The communities that would receive new installations under this proposal include Everett/Snohomish County, Whidbey Island/Island County, Chehalis/Lewis County, Walla Walla, Colville and Skagit Valley. This proposal would also fund the expansion of existing Community Voice Mail operations in Seattle/King County, Spokane, Bellingham, Vancouver, Tacoma/Pierce County and Yakima Valley.

Telemedicine Services: \$3,928,660

Northwest TeleHealth Services is a unique telemedicine network sponsored by Inland Northwest Health Services, a not-for-profit organization comprised of Deaconess Medical Center, Holy Family Hospital, Sacred Heart Medical Center and Valley Hospital and Medical Center. The program objectives include promoting the exchange of resources among regional partners, tracking patients in their home communities for improved outcomes and/or until more complex and comprehensive health care is required, linkage of rural health care providers with appropriate consultants and other resources in tertiary centers, continuing professional education opportunities and community health education programs

Under this proposal, \$2,728,660 would be designated to Northwest TeleHealth Services to improve healthcare delivery systems to rural patients in Eastern Washington. This would fund telecommunications related projects at twenty-six new sites which include the addition of Walla Walla General, St. Mary's Hospital, Dayton General, Sunnyside Community Hospital, Mid-Valley Hospital, Kadlec Hospital, Central Washington Hospital, Martin Hall, Airway Heights, Walla Walla State Penitentiary as well as several care providers in these communities which include Richland, Wenatchee, Pasco, Kennewick, Deer Park, Ritzville, Lone and Clarkston. The funds would be designated to digital telecommunications networks, equipment and services and related administrative costs.

The remaining \$1,200,000 will be designated to the University of Washington Telemedicine Program to fund equivalent telemedicine projects in Western Washington.

communications technology in these areas has generally been lacking in comparison to the potential benefits due to insufficient resources (funding for many of these expenditures would generally come from tax dollars), the high cost of deploying services in rural areas, or the cost of purchasing those services.

Under this proposal, \$5,028,000 would be designated to the Washington Department of Information Services ("DIS") for K-20 Phase III telecommunications projects of general benefit to education and libraries. The K-20 Phase III project is currently not funded by the legislature due to budget constraints. Approval of this proposal would establish funding for the installation of internet access services in 68 library districts across Washington. These districts would interconnect with DIS sites in Spokane, Olympia, Seattle, Vancouver, and Yakima to provide statewide internet access and connectivity. \$3,000,000 would be designated for telecommunications products, services or equipment and operations expenses. \$1,300,000 would be designated for telecommunications related projects which include operations expense and consumer education. \$728,000 would be designated for U S WEST network infrastructure improvements necessary to support the individual K-20 projects.

Community Economic Development: \$5,000,000

Telecommunications infrastructure and services are a critical component to economic development opportunities in today's economy. Yet, the use of telecommunications technology in these areas has generally been lacking in comparison to the potential benefits due to insufficient resources (funding for many of these expenditures would generally come from tax dollars), the high cost of deploying services in rural areas, and the cost of purchasing those services.

Under this proposal, \$5,000,000 will be designated to support telecommunications projects of general benefit to economic development in the state of Washington. Projects within U S WEST's serving area or with a strong community, regional (within the state) or statewide benefit shall receive priority. Under this proposal, the Washington State Community Economic Revitalization Board ("CERB") shall be directed to solicit community economic development proposals for a period not to exceed 90 days from the date of the court's order. The Board shall make all funding decisions within 90 days after the solicitation period.

The following criteria would apply to the project selections made by the Board:

- All projects identified to receive funds must be related to telecommunications in Washington State.
- The funds disbursed by the Board must be spent on telecommunications services, equipment or U S WEST network infrastructure improvements necessary for the

operations expense associated with
of such projects.
Preference will be given to projects advancing the broad public interest and providing
community, statewide or intrastate-regional benefits.

Consumer Education and Outreach: \$2,000,000

The recent changes in the telecommunications environment across the nation have created new demands for telecommunications related consumer education and outreach programs. Consumers, particularly many small and medium sized business customers, and residential customers, are frequently confused by numerous choices available to them from multiple telecommunications providers for a variety of telecommunications services. Consumers also need help understanding the variety of special taxes, surcharges and miscellaneous fees that frequently appear on their telephone bills. Under this proposal, \$2,000,000 would be granted to the Seattle Foundation to support consumer education and outreach projects of general benefit to consumers in the state of Washington. Under this proposal, the Seattle Foundation shall be directed to solicit consumer education and outreach proposals for a period not to exceed 180 days from the date of the court's order. The Foundation shall make all funding decisions within twelve months after the solicitation period. A minimum of three separate entities shall receive these designated awards. The total amount to be awarded will be the \$2 million plus any interest earned thereon, less any fees or charges by the Seattle Foundation to administer this grant approval process.

The following criteria would apply to the project selections made by the Foundation:

- All projects identified to receive funds must provide consumer education and/or outreach on telecommunications services and/or policy issues affecting residential, business or low income consumers in Washington State. These services and/or policy issues include rates, services, service quality, competitive choice, marketing and consumer protection, and participation in, and understanding of, state telecommunications policymaking proceedings.
- Only non-profit or governmental agency projects are eligible. Recipients of funds will be required to certify that they have no affiliation with, and do not receive any funds from, telecommunications services providers. Applicants must demonstrate the ability to properly account for the use of the funds, must establish how such funds will be administered and will provide a final report to the Seattle Foundation of how the funds were utilized that includes an evaluation of the results within 24 months of the fund disbursement.
- The funds disbursed by the Foundation must be spent on consumer education and outreach programs that provide consumers with information on telecommunications related issues. Funds may also be designated for operations expense associated with such projects.

U S WEST will disburse funds to the Seattle Foundation upon court approval of this Joint Proposal. Once the Seattle Foundation has designated all funds, in accordance with the above criteria, the Foundation will notify the parties to this settlement of the disposition of funds and conclusion of the project.

The Provision of Telecommunications Services to Unserved Washington Areas: \$900,000

Customers currently are unable to obtain telecommunications services due to the lack of an assigned telecommunication provider, as well as a lack of telecommunications facilities, in two areas in Washington. These areas are in eastern and southwestern Washington and are located in geographic areas outside any telecommunications carrier's service territory, including U S WEST. These customers have been unable to obtain service due to the high cost to both the customer and available telecommunications carriers to extend facilities. The cost of these two projects is estimated at \$900,000.

Under this proposal, U S WEST would agree to extend new facilities and reinforce its existing facilities to serve customers located within these unserved areas. Customers located in these areas would receive service under the same rates and conditions as customers currently served by U S WEST. The first area is known as Wilderness Lake. It is located north of the U S WEST Elk exchange, in Pend Oreille County. There are approximately 10-20 residences. The cost to provision service to these customers is approximately \$500,000.

The second area is located near Mt. St. Helens. The location is approximately 15 miles northeast of the U S WEST Castle Rock exchange (north of Vancouver) in an area currently not assigned to any telecommunications carrier. No facilities are currently available from any registered telecommunications carrier other than wireless telecommunications service. There are currently less than five residences and approximately five commercial businesses. Cost to provision service would be approximately \$400,000.

Network Infrastructure Improvements (Analog Carrier System Replacement): \$3,192,423

The remaining funds (estimated at about \$3,192,423), less any escrow fees associated with the separate escrow account that are not offset by interest earnings on that account, would be designated for U S WEST network infrastructure improvements to replace existing analog carrier systems with digital carrier systems, as allowed for based on these limited funds. The WUTC believes that the old analog carrier systems are a frequent source of network trouble and limit the ability of the network to provide modern digital based services to rural areas. Approximately seventy-eight systems would be replaced across Washington.

Infrastructure Expenditures

U S WEST agrees to create within its financial system an account for \$8,433,423 associated with U S WEST specific infrastructure improvements for the E911, Unserved Washington Areas, K-20, Community Voicemail and Analog Carrier System Replacement projects discussed above. This separate account will provide record keeping which will separately identify charges against such amount. The Company agrees to make records available for the inspection of the signatories to this agreement and will provide such parties with a status report at the end of the year 2000, and quarterly status reports thereafter.

U S WEST shall complete the E911, and Analog Carrier System Replacement infrastructure projects, by no later than January 1, 2001, except for the E911 work associated with the Pasco central office switch (which shall be completed by no later than May 18, 2001 in accordance with the Settlement Agreement in Docket No. UT-991358) and the Unserved Area Project (which shall be completed by no later than January 1, 2002.) Any of the \$7,692,423 funds for the E911, Unserved Washington Areas and Analog Carrier System Replacement Projects remaining in the separate account after January 1, 2002 shall be moved to the escrow account (discussed below). The other \$886,000 is for customer specific projects and may be incurred after January 1, 2002.

The parties agree that U S WEST's total infrastructure obligation is limited to \$8,433,423. Should any individual project (other than the Analog Carrier System Replacement project) require more infrastructure investment than anticipated, the parties agree that the Analog Carrier System Replacement project infrastructure amount shall be reduced accordingly.

U S WEST shall set aside into this infrastructure account the amounts for each program shown under the "Infrastructure" column on Attachment C.

2. Escrow Account

Within thirty days following the Court's approval of the programs set forth in Attachment B and the parties' Joint Motion, U S WEST agrees to deposit \$15,566,577 into an interest bearing escrow account at a financial institution of its choosing from which disbursements of funds for purposes described in Attachment B will be made (except that (1) the Consumer Education and Outreach programs will not be funded by this escrow account, but will be separately funded by a direct grant to the Seattle Foundation and (2) funding for Unserved Washington Areas, Analog Carrier System Replacement, and the infrastructure elements of E 911, K-20 and Community Voicemail, will be not be funded by this account but will be separately funded as described under the "Infrastructure Expenditures" paragraph above). Escrow fees shall be paid from the escrow account. Interest earned on the account shall be added to the principal and be available for payment of escrow fees, or disbursement. Disbursements shall be made on the joint approval of authorized U S WEST, WUTC and Public Counsel representatives upon receipt of bona fide directions from the awarded agency.

...the escrow account shall remain open until all funds have been disbursed.

U S WEST shall deposit into the escrow account the amounts for each program shown under the "Customer" column on Attachment C.

3. Remaining Funds

Should there be any funds remaining after completion of any of the above projects, such funds, plus any interest earned on moneys placed in escrow, shall be allocated for use to the K- 20 program.

4. Allocation of Funds

The allocation of funds to these projects (specifically including but not limited to the K-20, CERB, E911 and the University of Washington Telemedicine programs) is conditioned on the funds not being used for projects otherwise budgeted by the legislature, nor are they to replace appropriated funds. Furthermore, some of these funds may be subject to the Legislative and Accounting Act and recipients should consult, as applicable, with the Office of Financial Management regarding any budget requirements if received by a state agency. There should be no expectation of additional funding for these programs from this source in the future. The purpose of these monies is not to replace appropriated funds, but is to provide additional, not otherwise available, benefits to consumers.

<u>Project</u>	<u>Infrastructure</u>	<u>Customer</u>	<u>Grant Program</u>	
E911	\$3,600,000	\$1,700,000		
K-20	\$728,000	\$4,300,000		\$5,300,000
Voice Mail	\$13,000	\$637,917		\$5,028,000
TeleHealth		\$2,728,660		\$650,917
UW TeleHealth		\$1,200,000		
Unserved Areas	\$900,000			
Analog Carrier	\$3,192,423			
CERB		\$5,000,000		
Seattle Foundation			\$2,000,000	
	<u>\$8,433,423</u>	<u>\$15,566,577</u>	<u>\$2,000,000</u>	
			<u>\$2,000,000</u>	
				Total: <u>\$26,000,000</u>

EXC

Exhibit 2

U S WEST Communications, Inc.
Colorado corporation

Petitioner,

v.

Washington Utilities and Transportation
Commission,

Respondent.

NO. 96-2-0967-7 SEA

**[PROPOSED] ORDER GRANTING JOINT
MOTION REGARDING FINAL REFUND
DISPOSITION**

This Court has before it the Joint Motion of Respondent, the Washington Utilities & Transportation Commission, Petitioner, U S WEST, Public Counsel, and intervenors AARP (American Association of Retired Persons) and TRACER ((Telecommunications Ratepayers Association for Cost-Based and Equitable Rates) Regarding Final Refund Disposition. The Court has reviewed the Joint Motion and supporting Affidavit of Theresa A. Jensen and Attachments thereto, and the file in this action, and has heard argument of counsel. The Court retained jurisdiction over this matter pursuant to prior orders, and by order of the Supreme Court of the State of Washington. The Court hereby

ORDERS that the relief requested in the Joint Motion is granted; and

checks that have been returned to U S WEST from customers; and

ORDERS that the settlement reached by the parties to the Joint Motion as to the disposition of any further U S WEST refund liability is appropriate and lawful, and is hereby approved in accordance with the conditions set forth in the Joint Motion, and Attachments B (revised version submitted at the hearing) and C to the Affidavit of Theresa A. Jensen (dated June 27, 2000), copies attached hereto and incorporated herein. Such funds are not subject to escheat to the state under any state statute, and this Court hereby approves the parties' proposed settlement and distribution under the cy-pres doctrine and orders disposition of the \$26 million fund as set forth in the Joint Proposal; and further

Orders that this Order, requiring the returned checks amount to be turned over to the Department of Revenue, and ordering disposition of an additional approximately \$26 million according to the parties' Joint Proposal, is approved as U S WEST's full and final refund liability in this case, and U S WEST is hereby discharged from any further liability, and further

Orders that the Court retains jurisdiction to address any issues that may arise in connection with carrying out the settlement approved herein. It is so

ORDERED this 4 day of August, 2000



Judge Palmer Robinson

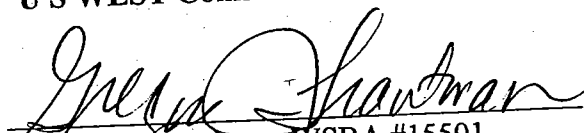
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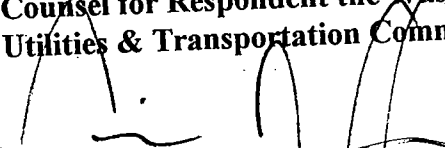
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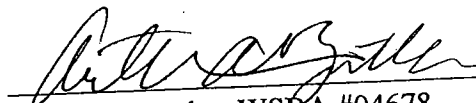
By 
Sherilyn Peterson, WSBA #11713

Attorneys for Petitioner
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Counsel for Intervenor TRACER

**[PROPOSED] ORDER GRANTING JOINT
MOTION REGARDING FINAL REFUND
DISPOSITION - 3**

[13141-0049/BA003685.263]

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Bellevue, WA 98004-5584
(206) 453-6980

Ronald L. Roseman WSBA #15396

2015 14th Avenue East

Seattle, Washington 98122

Counsel for Intervenor

American Association for Retired Persons

disposing of his own assets. The court should not be asked to...

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[PROPOSED] ORDER GRANTING JOINT
MOTION REGARDING FINAL REFUND
DISPOSITION - 4
[13141-0049/BA003685.263]

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network to allow for recognition of new area codes and telephone numbers ported from new telecommunications carriers. The current state E911 system was designed based on a single telephone number area code per geographic area and assumed a single telecommunications carrier. With the advent of multiple telecommunications carriers serving within the same geographic area, two new problems in the operation of the state E911 service have occurred. The first is the need for the system to recognize that telephone numbers are no longer specific to a single telecommunications carrier and may in fact involve multiple carriers. When a carrier moves a customer's telephone number from its prior carrier to the new carrier's service, the number is "ported" to the new carrier. The E911 system needs to know the ultimate location of the ported number. This requires the deployment of new software by U S WEST, Customer Premise Equipment ("CPE") modifications at the Public Safety Answering Point ("PSAP") location and rearrangement of existing E911 trunks by the PSAP agency. The second problem requires recognition of multiple telephone number area codes within the same geographic area. This also requires software enhancements to the E911 network, to the E911 switch and to the PSAP CPE. The cost of these system and network enhancements is estimated at \$5,300,000. \$3,600,000 of this amount will be spent on U S WEST E911 network enhancements and \$1,700,000 will be reserved for PSAP trunk rearrangements and PSAP CPE modifications.

Deployment of these network and CPE E911 enhancements will protect the integrity of the E911 system and the data it relies upon to ensure efficient and expedient dispatch of fire, police and aid to Washington residents. Seven E911 selective routing switches require a network upgrade; they are located in Yakima, Vancouver, Tacoma, Seattle, Spokane, Bremerton and Pasco. At least one hundred and nine PSAPs require CPE modifications. Approximately 1,640 PSAP trunk rearrangements may be required.

Community Voice Mail: \$650,917

Community Technology Institute is a not-for-profit organization based in Seattle, Washington that has helped more than thirty communities across the country (and six in Washington State) install community owned and operated voicemail systems. These resulting programs, known as Community Voice Mail, act as a communication link for thousands of homeless and phoneless people, essentially a temporary substitute for dialtone for those in transition. Community Voice Mail sites purchase telecommunications services from local telecommunications companies which are then connected to voice messaging software. These

Under this proposal, \$6,917 would be designated to community voice mail projects managed by the Community Technology Institute for telecommunications product and services and related equipment. Of this, \$435,684 would be reserved for six new community voice mail sites. \$98,700 would be reserved for technical assistance requirements related to the telecommunications projects. \$103,533 would be reserved for program expansion at six existing sites. \$13,000 is required for network expansion requirements associated with this project. The remainder of the funds would be for toll free message retrieval services.

Collectively, the Washington State Community Voice Mail programs connect more than 5,000 people every year via more than 150 social service agencies. Six additional Washington State Communities are currently organizing themselves for Community Voice Mail installation and operations. This proposal would provide for a communication link for twelve total communities (six new communities) and an estimated 7,000 people every day. The communities that would receive new installations under this proposal include Everett/Snohomish County, Whidbey Island/Island County, Chehalis/Lewis County, Walla Walla, Colville and Skagit Valley. This proposal would also fund the expansion of existing Community Voice Mail operations in Seattle/King County, Spokane, Bellingham, Vancouver, Tacoma/Pierce County and Yakima Valley.

Telemedicine Services: \$3,928,660

Northwest TeleHealth Services is a unique telemedicine network sponsored by Inland Northwest Health Services, a not-for-profit organization comprised of Deaconess Medical Center, Holy Family Hospital, Sacred Heart Medical Center and Valley Hospital and Medical Center. The program objectives include promoting the exchange of resources among regional partners, tracking patients in their home communities for improved outcomes and/or until more complex and comprehensive health care is required, linkage of rural health care providers with appropriate consultants and other resources in tertiary centers, continuing professional education opportunities and community health education programs.

Under this proposal, \$2,728,660 would be designated to Northwest TeleHealth Services to improve healthcare delivery systems to rural patients in Eastern Washington. This would fund telecommunications related projects at twenty-six new sites which include the addition of Walla Walla General, St. Mary's Hospital, Dayton General, Sunnyside Community Hospital, Mid-Valley Hospital, Kadlec Hospital, Central Washington Hospital, Martin Hall, Airway Heights, Walla Walla State Penitentiary as well as several care providers in these communities which include Richland, Wenatchee, Pasco, Kennewick, Deer Park, Ritzville, Ione and Clarkston. The funds would be designated to digital telecommunications networks, equipment and services and related administrative costs.

The remaining \$1,200,000 will be designated to the University of Washington Telemedicine Program to fund equivalent telemedicine projects in Western Washington.

Yet, the use of telecommunications technology in these areas has generally been lacking in comparison to the potential benefits due to insufficient resources (funding for many of these expenditures would generally come from tax dollars), the high cost of deploying services in rural areas, or the cost of purchasing those services.

Under this proposal, \$5,028,000 would be designated to the Washington Department of Information Services ("DIS") for K-20 Phase III telecommunications projects of general benefit to public libraries. The K-20 Phase III project is currently not funded by the legislature due to budget constraints. Approval of this proposal would establish funding for the installation and ongoing transport of telecommunications and internet services to library systems across Washington. These systems would interconnect with DIS sites in Spokane, Olympia, Seattle, Vancouver, and Yakima to provide statewide internet access and connectivity. \$3,000,000 would be designated for telecommunications products, services or equipment and operations expenses. \$1,300,000 would be designated for telecommunications related projects which include operations expense and consumer education. \$728,000 would be designated for U S WEST network infrastructure improvements necessary to support the individual K-20 projects.

Community Economic Development: \$5,000,000

Telecommunications infrastructure and services are a critical component to economic development opportunities in today's economy. Yet, the use of telecommunications technology in these areas has generally been lacking in comparison to the potential benefits due to insufficient resources (funding for many of these expenditures would generally come from tax dollars), the high cost of deploying services in rural areas, and the cost of purchasing those services.

Under this proposal, \$5,000,000 will be designated to support telecommunications projects of general benefit to economic development in the state of Washington. Projects within U S WEST's serving area or with a strong community, regional (within the state) or statewide benefit shall receive priority. Under this proposal, the Washington State Community Economic Revitalization Board ("CERB") shall be directed to solicit community economic development proposals for a period not to exceed 150 days from the date of the court's order. The Board shall make all funding decisions within 150 days after the solicitation period.

The following criteria would apply to the project selections made by the Board:

- All projects identified to receive funds must be related to telecommunications in Washington State.
- The funds disbursed by the Board must be spent on telecommunications services, equipment or U S WEST network infrastructure improvements necessary for the

Preference will be given to projects advancing the broad public interest and providing community, statewide or intrastate-regional benefits.

Consumer Education and Outreach: \$2,000,000

The recent changes in the telecommunications environment across the nation have created new demands for telecommunications related consumer education and outreach programs. Consumers, particularly many small and medium sized business customers, and residential customers, are frequently confused by numerous choices available to them from multiple telecommunications providers for a variety of telecommunications services. Consumers also need help understanding the variety of special taxes, surcharges and miscellaneous fees that frequently appear on their telephone bills. Under this proposal, \$2,000,000 would be granted to the Seattle Foundation to support consumer education and outreach projects of general benefit to consumers in the state of Washington. Under this proposal, the Seattle Foundation shall be directed to solicit consumer education and outreach proposals for a period not to exceed 180 days from the date of the court's order. The Foundation shall make all funding decisions within twelve months after the solicitation period. A minimum of three separate entities shall receive these designated awards. The total amount to be awarded will be the \$2 million plus any interest earned thereon, less any fees or charges by the Seattle Foundation to administer this grant approval process.

The following criteria would apply to the project selections made by the Foundation:

- All projects identified to receive funds must provide consumer education and/or outreach on telecommunications services and/or policy issues affecting residential, business or low income consumers in Washington State. These services and/or policy issues include rates, services, service quality, competitive choice, marketing and consumer protection, and participation in, and understanding of, state telecommunications policymaking proceedings.
- Only non-profit or governmental agency projects are eligible. Recipients of funds will be required to certify that they have no affiliation with, and do not receive any funds from, telecommunications services providers. Applicants must demonstrate the ability to properly account for the use of the funds, must establish how such funds will be administered and will provide a final report to the Seattle Foundation of how the funds were utilized that includes an evaluation of the results within 24 months of the fund disbursement.
- The funds disbursed by the Foundation must be spent on consumer education and outreach programs that provide consumers with information on telecommunications related issues. Funds may also be designated for operations expense associated with such projects.

U S WEST will disburse funds to the Seattle Foundation upon court approval of this Joint Proposal. Once the Seattle Foundation has designated all funds, in accordance with the above criteria, the Foundation will notify the parties to this settlement of the disposition of funds and conclusion of the project.

The Provision of Telecommunications Services to Unserved Washington Areas: \$900,000

Customers currently are unable to obtain telecommunications services due to the lack of an assigned telecommunication provider, as well as a lack of telecommunications facilities, in two areas in Washington. These areas are in eastern and southwestern Washington and are located in geographic areas outside any telecommunications carrier's service territory, including U S WEST. These customers have been unable to obtain service due to the high cost to both the customer and available telecommunications carriers to extend facilities. The cost of these two projects is estimated at \$900,000.

Under this proposal, U S WEST would agree to extend new facilities and reinforce its existing facilities to serve customers located within these unserved areas. Customers located in these areas would receive service under the same rates and conditions as customers currently served by U S WEST. The first area is known as Wilderness Lake. It is located north of the U S WEST Elk exchange, in Pend Oreille County. There are approximately 10-20 residences. The cost to provision service to these customers is approximately \$500,000.

The second area is located near Mt. St. Helens. The location is approximately 15 miles northeast of the U S WEST Castle Rock exchange (north of Vancouver) in an area currently not assigned to any telecommunications carrier. No facilities are currently available from any registered telecommunications carrier other than wireless telecommunications service. There are currently less than five residences and approximately five commercial businesses. Cost to provision service would be approximately \$400,000.

Network Infrastructure Improvements (Analog Carrier System Replacement): \$3,192,423

The remaining funds (estimated at about \$3,192,423), less any escrow fees associated with the separate escrow account that are not offset by interest earnings on that account, would be designated for U S WEST network infrastructure improvements to replace existing analog carrier systems with digital carrier systems, as allowed for based on these limited funds. The WUTC believes that the old analog carrier systems are a frequent source of network trouble and limit the ability of the network to provide modern digital based services to rural areas. Approximately seventy-eight systems would be replaced across Washington.

1. Infrastructure Expenditures

U S WEST agrees to create within its financial system an account for \$8,433,423 associated with U S WEST specific infrastructure improvements for the E911, Unserved Washington Areas, K-20, Community Voicemail and Analog Carrier System Replacement projects discussed above. This separate account will provide record keeping which will separately identify charges against such amount. The Company agrees to make records available for the inspection of the signatories to this agreement and will provide such parties with a status report at the end of the year 2000, and quarterly status reports thereafter.

U S WEST shall complete the E911, and Analog Carrier System Replacement infrastructure projects, by no later than January 1, 2001, except for the E911 work associated with the Pasco central office switch (which shall be completed by no later than May 18, 2001 in accordance with the Settlement Agreement in Docket No. UT-991358) and the Unserved Area Project (which shall be completed by no later than January 1, 2002.) Any of the \$7,692,423 funds for the E911, Unserved Washington Areas and Analog Carrier System Replacement Projects remaining in the separate account after January 1, 2002 shall be moved to the escrow account (discussed below). The other \$886,000 is for customer specific projects and may be incurred after January 1, 2002.

The parties agree that U S WEST's total infrastructure obligation is limited to \$8,433,423. Should any individual project (other than the Analog Carrier System Replacement project) require more infrastructure investment than anticipated, the parties agree that the Analog Carrier System Replacement project infrastructure amount shall be reduced accordingly.

U S WEST shall set aside into this infrastructure account the amounts for each program shown under the "Infrastructure" column on Attachment C.

2. Escrow Account

Within thirty days following the Court's approval of the programs set forth in Attachment B and the parties' Joint Motion, U S WEST agrees to deposit \$15,566,577 into an interest bearing escrow account at a financial institution of its choosing from which disbursements of funds for purposes described in Attachment B will be made (except that (1) the Consumer Education and Outreach programs will not be funded by this escrow account, but will be separately funded by a direct grant to the Seattle Foundation and (2) funding for Unserved Washington Areas, Analog Carrier System Replacement, and the infrastructure elements of E 911, K-20 and Community Voicemail, will be not be funded by this account but will be separately funded as described under the "Infrastructure Expenditures" paragraph above). Escrow fees shall be paid from the escrow account. Interest earned on the account shall be added to the principal and be available for payment of escrow fees, or disbursement. Disbursements shall be made on the joint approval of authorized U S WEST, WUTC and Public Counsel representatives upon receipt of bona fide directions from the awarded agency.

U S WEST shall deposit into the escrow account the amounts for each program shown under the "Customer" column on Attachment C.

3. **Remaining Funds**

Should there be any funds remaining after completion of any of the above projects, such funds, plus any interest earned on moneys placed in escrow, shall be allocated for use to the K- 20 program.

4. **Allocation of Funds**

The allocation of funds to these projects (specifically including but not limited to the K-20, CERB, E911 and the University of Washington Telemedicine programs) is conditioned on the funds not being used for projects otherwise budgeted by the legislature, nor are they to replace appropriated funds. Furthermore, some of these funds may be subject to the Budget, Accounting and Reporting Act and recipients should consult, as applicable, with the Office of Financial Management regarding any budget requirements if received by a state agency. There should be no expectation of additional funding for these programs from this source in the future. The purpose of these monies is not to replace appropriated funds, but is to provide additional, not otherwise available, benefits to consumers.

PA and/or other Acts

Project	Infrastructure	Customer	Program	
E911	\$3,600,000	\$1,700,000		\$5,300,000
K-20	\$728,000	\$4,300,000		\$5,028,000
Voice Mail	\$13,000	\$637,917		\$650,917
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	<u>\$8,433,423</u>	<u>\$15,566,577</u>	<u>\$2,000,000</u>	Total: <u>\$26,000,000</u>