

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

**Peter J. Butler**  
Senior Attorney  
Law Department

RECEIVED  
RECORDS MANAGEMENT

98 JAN 14 PM 2:55

STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

**USWEST**

**Via Messenger**

**January 14, 1998**

**Mr. Paul Curl**  
**Acting Secretary**  
**Washington Utilities & Transportation Commission**  
**1300 S. Evergreen Park Drive SW**  
**P.O. Box 47250**  
**Olympia, WA 98504-7250**

**RE: UT-970723**

**Dear Mr. Curl:**

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

**Very truly yours,**

  
**PETER J. BUTLER**

**Enclosures**

**c w/enc.: All Interested Parties**

y:\pbutler\public\ut970723\curlfram.doc

**DISK**

RECEIVED  
RECORDS MANAGEMENT

98 JAN 14 PM 2: 55

STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

U S WEST Communications, Inc. ("U S WEST"), pursuant to the Notice of Preproposal Statement of Inquiry dated September 15 and December 15, 1997, submits the following supplemental comments pertaining to the adoption of a methodology for determination of just and reasonable rates for attachments to transmission facilities.

**I. OVERVIEW**

On November 7, 1997, U S WEST filed its first set of comments on the Commission's proposal to adopt the FCC's current methodology for determining just and reasonable rates for attachments to transmission facilities. U S WEST supported the Commission's proposal, emphasizing that U S WEST prefers the use of a formula only as a fallback for stalled negotiations, or to resolve disputes. U S WEST also requested the Commission to adopt the FCC's formula

1 adjustment for negative net salvage.<sup>1</sup> The Commission solicited comments to assist it in  
2 implementing an efficient and effective methodology for determining fair, consistent and effective  
3 rates for attachments to transmission facilities.<sup>2</sup> U S WEST stands by its original comments and  
4 specifically reincorporates them herein.

5 At the first workshop held in this docket, however, certain additional issues and problems  
6 were raised and identified by the parties. Accordingly, U S WEST submits these additional  
7 comments to address some (but not all) of the issues raised. U S WEST reserves the right to  
8 supplement these comments, if and when required.

## 9 **II. CONCERNS PERTAINING TO EQUAL TREATMENT**

10 U S WEST believes that the Commission should adopt a methodology which explicitly  
11 treats all owners of similar transmission facilities in an equal, nondiscriminatory manner. Similarly,  
12 the Commission should treat all attachers to transmission facilities in an equal, nondiscriminatory  
13 manner. Accordingly, U S WEST rejects the notion that PUDs should be exempted from the  
14 proposed methodology. Further, U S WEST also submits that the Commission should reject Puget  
15 Sound Energy and Washington Water Power's suggestion to charge market value for transmission  
16 facilities. All transmission facilities owners and attachers should be treated in an even-handed  
17 manner, across the board, regardless of their underlying business.

18 Specifically, U S WEST urges the Commission to provide nondiscriminatory treatment  
19 between telecommunications carriers. Incumbent local exchange carriers ("ILECs") must be  
20 accorded the same rights and duties as competitive local exchange carriers ("CLECs"). Rights and  
21 duties must be reciprocal. This would contrast with 47 U.S.C. § 224(a)(5), which creates an

---

22  
23 <sup>1</sup> In its Briefing Paper for Workshop, dated December 3, 1997, TCI characterized U S WEST's concerns as a "minor  
24 anomaly." (TCI Whitepaper at 6). U S WEST objects to TCI's minimizing this problem. As U S WEST noted in  
25 its comments, negative net salvage is a problem in five (5) of its fourteen state region. This problem will not go  
away, and U S WEST urges the Commission to proactively address this problem before it occurs in Washington.

<sup>2</sup> Several parties have expressed their desire to have the Commission clarify exactly which such transmission  
facilities are to be included in this rulemaking proceeding. U S WEST joins in these requests.

1 artificial – and unnecessary – distinction between ILECs and CLLECs. Section 224(a)(5) excludes  
2 ILECs from the definition of “telecommunications carriers.” Section 224(f)(1) requires utilities to,  
3 “. . . provide a cable television system or any telecommunications carrier with nondiscriminatory  
4 access to any pole, duct, conduit or right-of-way owned or controlled by it.” By excluding ILECs  
5 from “telecommunications carriers,” the FCC seems to imply that ILECs are second-class citizens  
6 vis-a-vis transmission facility access. The Commission should take active steps to correct this  
7 injustice when it adopts its methodology.

### 8 **III. RIGHTS-OF-WAY AND EASEMENTS OWNED BY THIRD PARTIES**

9 U S WEST joins Pacificorp in requesting that the Commission’s rules, once adopted, reflect  
10 the difference between leased and/or granted rights-of-ways and easement, on the one hand, and  
11 owned transmission facilities, on the other. Plainly, use and access to a right-of-way or easement  
12 are defined by state law and we limited to the terms of the grant by the grantor to the grantee. A  
13 grantee cannot unilaterally expand access to a right-of-way or easement without the consent of the  
14 grantor. Thus, the Commission should frame its rules so as to allow access to rights-of-way or  
15 easements only to the extent that such access is consistent with the terms of the right-of-way or  
16 easement.

17 Where requested access is inconsistent with the terms of the grant, U S WEST submits the  
18 party seeking to expand the grant should pay any costs incident to the expansion. The owner of  
19 the right-of-way or easement should not be forced to pay to acquire greater property rights to  
20 accommodate the request of an attaching entity.

### 21 **IV. IMPLEMENTATION**

22 Some parties have advocated that the Commission “flashcut” to mirror the contemplated  
23 FCC methodology which will prevail in 2006. Others have noted that at least one other state has  
24 adopted provisions which would automatically follow future FCC modifications pari passu.

1 U S WEST objects to both proposals, and agrees with TCI's proposal that the FCC's  
2 methodology should be adopted as it currently exists (once adjusted to eliminate negative net  
3 salvage). Subsequent FCC modifications should be implemented by the Commission only after the  
4 Commission has held a proposed rulemaking docket. While such a procedure may appear to be  
5 cumbersome, it does have two virtues. First, the users of transmission facilities would not be  
6 burdened by onerous (yet unforeseen) regulations without having the opportunity to present their  
7 views. Second, it would allow the Commission the opportunity to assess any future FCC  
8 regulations before giving them effect, which is consistent with the Commission's decision to  
9 preempt the FCC in regulating transmission facilities.

#### 10 **IV. CONDUITS**

11 It is unclear whether the current rulemaking docket is to address conduit rents. GTE  
12 included a discussion of conduit rents in its initial filing. TCI, prompted by GTE, discussed conduit  
13 rents in its Whitepaper. TCI contends that an one-third duct methodology should be rejected in  
14 favor of a one-fourth duct methodology.

15 If the Commission is disposed toward addressing conduit rents, U S WEST submits that the  
16 one-third duct methodology is most appropriate. In its recent Notice of Proposed Rulemaking, the  
17 FCC proposed a one-half duct methodology. Mindful of the wide variety of conduits and conduit  
18 use among conduit owners, and, further, mindful of the increasing capacity of conduit facilities, U S  
19 WEST urged the FCC to adopt a one-third methodology in its comments in the federal proposed  
20 rulemaking. Other parties, like TCI in the present docket, went even further and proposed a one-  
21 fourth conduit methodology. U S WEST believes that the one-third methodology is sufficient and  
22 that TCI's proposed one-fourth methodology goes too far. While TCI claims that "evidence has  
23 been advanced" in the FCC proceedings to negate the one-third duct methodology, such evidence is  
24 notably lacking in this proceeding. The one-fourth duct methodology would place an unwarranted  
25

1 and unjustified carrying cost upon conduit owners, who would have difficulty recovering their costs  
2 from users. U S WEST submits that a one-third duct methodology adequately addresses the flaws  
3 in the FCC's proposed one-half methodology without going too far in the other direction, as TCI  
4 proposes.

#### 5 **VI. COMPLAINT PROCEDURES**

6 U S WEST agrees with TCI that parties to negotiated attachment agreements should not be  
7 deemed to waive their rights to challenge the justness and reasonableness of the terms of the  
8 agreement before the Commission. (TCI Whitepaper at 11-13). As TCI noted, access to  
9 transmission facilities are often time-sensitive, i.e., immediate access may override concerns over  
10 negotiating a fair deal. Agreements executed in such circumstances closely resemble adhesion  
11 contracts. Moreover, the gross disparity in information available to the parties during negotiations  
12 requires the Commission to scrutinize these contracts closely when one party is subject to unusually  
13 harsh terms.

14 Accordingly, U S WEST supports a preference for negotiated contracts, but such contracts  
15 should not prevent either party from presenting a complaint to the Commission when circumstances  
16 so warrant. Moreover, the existence of such a contract should not place a greater burden upon the  
17 complaining party in pressing its complaint before the Commission. No rebuttable presumption of  
18 fairness should be imputed to a negotiated contract. The Commission should undertake a de novo  
19 review of such contracts in the context of a complaint proceeding.

#### 20 **VII. TIMING OF THESE PROCEEDING**

21 U S WEST notes that the FCC is scheduled to issue a modification to some of its rules  
22 regarding transmission facilities on February 8, 1998. U S WEST requests the Commission to  
23  
24  
25

1 schedule the second workshop in this docket to allow the parties to file additional comments (if  
2 any) after the FCC's rulings and before the second workshop.

3 Respectfully submitted this 3<sup>rd</sup> day of January, 1998.

4 U S WEST Communications, Inc.

5  
6 

7 Lisa A. Anderl, WSBA #13236  
8 Peter J. Butler, Attorney at Law  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true and correct copy of U S WEST's Supplemental Comments on the following parties of record by U.S. Postal Service, postage prepaid:

Kristoff Bauer  
City of Shoreline  
17544 Midvale Avenue North  
Shoreline, WA 98133

Tom Brubaker  
City of Kent  
220 - 4th Avenue South  
Kent, WA 98032

Bill Clingenpeel  
GTE  
600 Hidden Ridge  
MC: E03N56  
Irving, TX 75038

Robert Coates  
PacifiCorp  
920 SW Sixth Avenue  
Public Service Building, Room 1000  
Portland, OR 97204

Judith Endejan  
Williams Kastner & Gibbs, PLLC  
Two Union Square  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380

Richard Finnigan  
2405 Evergreen Park Drive SW, Suite B-3  
Olympia, WA 98502

Joan M. Gage  
GTE Telephone Operations  
1800 - 41st Street  
Everett, WA 98201

Ron Gayman  
AT&T Communications  
2601 - 4th Avenue, Floor 5  
Seattle, WA 98121-1353

Paul Glist  
Cole Raywid Braverman  
1919 Pennsylvania Avenue NW, Floor 2  
Washington, D.C. 20006

William E. Guenzler  
City of Bellevue  
Transportation Department  
301 - 116th Avenue SE  
P.O. Box 90012  
Bellevue, WA 98009-9012

Kristin Hall  
Snohomish County PUD  
Public Utility District No. 1  
P.O. Box 1107  
Everett, WA 98206

Elizabeth Hammond  
Arter & Hadden  
1801 K Street, NW, Suite 400K  
Washington, D.C. 20006

Glenn Harris  
United Telephone of the Northwest  
Regulatory Relations Administration  
902 Wasco Street  
Hood River, OR 97031

James Heidell  
Puget Sound Energy  
P.O. Box 97034  
Bellevue, WA 98009-9734



Greg Kopta  
Davis Wright Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Victoria Lincoln  
Association of Washington Cities  
1076 S. Franklin Street  
Olympia, WA 98501

Bill Luce  
GTE Northwest, Inc.  
WA0101RA  
1800 - 41st Street  
P.O. Box 1003  
Everett, WA 98206

Robert Manifold  
Office of the Attorney General  
Public Counsel  
900 - 4th Avenue, Suite 2000  
Seattle, WA 98164

Timothy O'Connell  
GTE Northwest, Inc.  
P.O. Box 1003  
Everett, WA 98206

James C. Paine  
Stoel Rives Boley Jones & Grey  
900 SW Fifth Avenue, Suite 2300  
Portland, OR 97204-1268

Timothy Rahman  
Washington Water Power  
1411 E. Mission  
Spokane, WA 99220-3727

Carrie Rice  
Enhanced Telemanagement, Inc.  
1221 Nicollet Mall, Suite 300  
Minneapolis, MN 55403-2420

Richard Rucker  
Puget Sound Energy  
P.O. Box 90868  
Bellevue, WA 98009-0868

Bruce Shaull  
Sprint  
6720 Gold Creek Drive SW  
Tumwater, WA 98512

Mark Simonson  
GTE Northwest, Inc.  
P.O. Box 1003  
Everett, WA 98206

Mary E. Steele  
Davis Wright Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1662

Terry Vann  
WITA  
P.O. Box 2473  
Olympia, WA 98507

Dated this 14th day of January, 1998.

  
\_\_\_\_\_  
Faye G. Valley