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ELI / WWP

CLIENT NO.: 1510.03

COLE, RAYWID & BRAVERMAN, L.L.P.

Suite 200
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 659-9750
(202) 452-0067 FAX NUMBER

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FROM: T. Scott Thompson

DATE: January 14, 1998

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MESSAGE:

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COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW

SECOND FLOOR

1919 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-3458

(202) 658-9750

ALAN RAYWID
(1930-1991)

OF COUNSEL
FRANCES J. CHETWYND

FACSIMILE
(202) 452-0067

INTERNET
WWW.CRBLAW.COM

JOHN P. COLE, JR.
BURT A. BRAVERMAN
ROBERT L. JAMES
JOHN D. SEIVER
WESLEY R. HEPPLER
PAUL GLIST
DAVID M. SILVERMAN
JAMES F. IRELAND, III
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MARK S. KRISTIANSEN*

January 14, 1998

*ADMITTED IN MARYLAND ONLY

Via Facsimile and Federal Express

Mr. David Meyer
General Counsel
Washington Water Power Company
1411 E. Mission Avenue
Spokane, WA 99202

Re: Electric Lightwave, Inc. Pole Attachments In Spokane, Washington

Dear Mr. Meyer:

This firm represents Electric Lightwave, Inc. ("ELI") in connection with certain pole attachment matters in ELI's service areas, including its attachment to Washington Water Power's ("WWP") poles and conduits in Spokane, Washington. We have learned that WWP and its telecommunications subsidiary, WWP Fiber, Inc. ("WWP Fiber"), have engaged in unlawful and anticompetitive activities regarding access to WWP's poles and conduits in Spokane, and continue to do so. This unlawful activity includes the misappropriation of proprietary, trade secret information, discrimination in access to poles and conduits, and the imposition of unnecessary costs on ELI in violation of the pole attachment agreement ("Agreement") currently in effect between the parties, and state and federal law. As a result of WWP's and WWP Fiber's actions, ELI has been forced to incur unnecessary expenses, has been thwarted in its attempts to construct its telecommunications network, and has suffered irreparable injuries to its competitive position. WWP's and WWP Fiber's actions must cease immediately.

At this point, WWP's and WWP Fiber's unlawful actions have manifested themselves in at least three separate instances. First, in August, 1997, ELI, pursuant to the

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Agreement, applied for permits to attach to certain WWP poles in and around north Spokane. Pursuant to the Agreement, in support of those applications, ELI supplied WWP with specific information regarding ELI's route, the poles to be used, and ELI's proposed location on the poles. That information was highly confidential and competitively sensitive.¹ In September, 1997, WWP approved ELI's applications to construct on the poles in downtown Spokane.

In October, however, ELI discovered that WWP Fiber had just constructed communications facilities in the precise space on the poles that WWP had authorized ELI to occupy. Clearly, WWP had provided its subsidiary with information regarding ELI's proposed construction and route. When ELI complained to WWP regarding this matter, ELI's representatives were told that access to WWP's poles was "first-come-first-serve," not as to the filing of permits, but rather as to the construction on the poles. As a result of WWP's actions in this instance, ELI is being forced to incur substantially greater make ready expense, and moreover, has lost critical confidential, competitive information to its competitor, WWP Fiber.

The second incident occurred in downtown Spokane in connection with access to WWP's underground conduits. Pursuant to the Agreement, ELI had applied for permits, and had been approved by WWP, to access WWP's conduit along specific routes in downtown Spokane. The routes chosen by ELI were highly confidential, as they were based on specific market and demographic research by ELI. In mid-November, 1997, ELI learned that WWP Fiber had obtained copies of ELI's construction plans for the downtown conduit areas. Once again, the only way that WWP Fiber could have had such documents is if WWP had provided them with copies from ELI's applications.

The final, and most recent incident, occurred in the past few days. ELI had applied for permits from, and had received WWP's approval to place its facilities on poles along a route linking downtown Spokane to ELI's switch site. Obviously, this is a critical construction project for ELI. On January 8, 1998, ELI representatives drove-out a particularly important two-mile stretch of the route (where the poles were in most cases only capable of accommodating one more attachment, *i.e.*, ELI's, without replacement). On January 12, 1998, Jeff Jarvis of ELI contacted Tim Rahman of WWP to inform him that ELI was preparing to construct along this two-mile stretch. On January 13, 1998, ELI discovered that WWP Fiber had suddenly moved its construction crews to the area that Mr. Jarvis had informed Mr.

¹ Indeed, at a meeting on November 11, 1997, WWP representative, Tim Rahman, recognized and admitted that such information and materials are confidential and proprietary.

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Rahman about just the day before, and that WWP Fiber was constructing strand on poles in that area.

Several conclusions are clear from this string of events. First, WWP is providing WWP Fiber with copies of ELI's construction routing and timing documents, despite the fact that, by WWP's own admission, such documents are highly confidential and competitively sensitive. Second, WWP Fiber is engaging in activities designed to thwart ELI's access to WWP's poles and thereby to gain a competitive advantage over ELI (both by being the first to access new areas and by taking advantage of the demographic market research underlying ELI's construction plans). Third, from WWP Fiber's ability to relocate, on a day's notice, its construction crews to a new set of poles, it is clear that WWP Fiber is not subject to the same permitting requirements as ELI, or indeed any. Finally, WWP is aiding its subsidiary by imposing unreasonable and unjust terms and conditions on ELI's access to WWP's poles in the form of added make ready and discriminatory conditions of access.

All of these acts and practices are unlawful under Sections 80.54.020 and 80.04.110 of the Revised Code of Washington,² and Section 224 of the federal Communications Act, 47 U.S.C. § 224, among other laws. ELI is suffering irreparable injury as a result of WWP's and WWP Fiber's unlawful actions in the form of loss of confidential, competitively sensitive information and delayed access to the market.

Compounding the egregiousness of WWP's and WWP Fiber's actions is the fact that WWP Fiber has not even been authorized by the Washington Utilities and Transportation Commission to provide telecommunications services in the state. WWP Fiber's construction, therefore, is in violation of RCW § 80.36.350.

Accordingly, we demand that WWP immediately cease and desist from (1) providing information to WWP Fiber regarding ELI's construction plans, (2) allowing WWP Fiber to construct without first undergoing the same permitting requirements as imposed on ELI, and (3) imposing unjust and unreasonable make ready and access conditions on ELI.

² RCW § 80.54.020 prohibits WWP from imposing unjust and unreasonable terms and conditions of attachment to its utility poles. RCW § 80.54.020. RCW § 80.04.110 prohibits WWP from engaging in acts or practices that are "unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly. . . ." RCW § 80.04.110(1).

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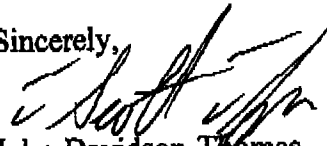
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We demand that WWP Fiber immediately cease and desist construction on poles where ELI has been approved to construct.

If, within forty eight (48) hours of the transmission of this letter, WWP does not either cause WWP Fiber to cease construction on poles for which ELI has gained approval or provide ELI with written, verified evidence demonstrating that WWP Fiber had filed applications for access to such poles prior to ELI's applications, and had been approved by WWP prior to WWP's approval of ELI, ELI will seek immediate injunctive relief in an appropriate forum.

Please contact the below signed counsel regarding this matter.

Sincerely,



John Davidson Thomas
T. Scott Thompson

cc: Christine Gregore, Attorney General, State of Washington
Jeff Goltz, General Counsel, Washington Utilities and Transportation Commission