HAND DELIVERED

Legal Department

Richard E. Potter
A. Timothy L. Williamson
Timothy J. O'Connell

GTE Northwest Incorporated

P.O. Box 1003
Everett, WA 98206-1003

Street Address:
1800 41st Street
Everett, WA 98201-5032

Fax: 425/258-9275

425/261-5008

January 15, 1998

Steve McLellan, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: GTE Northwest Incorporated's Additional Comments; Docket No. UT-970723

Dear Mr. McLellan:

Enclosed is the original and nineteen copies of GTE Northwest's Additional Comments, as well as a formatted disk of the same in WordPerfect version 6.1.

Sincerely,

Timothy J. O'Connell
Attorney

Enclosures
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN RE RULEMAKING TO ADOPT A METHODOLOGY FOR DETERMINATION OF JUST AND REASONABLE RATES FOR ATTACHMENTS TO TRANSMISSION FACILITIES	)	DOCKET NO. UT-970723
	)	ADDITIONAL COMMENTS OF GTE NORTHWEST

GTE Northwest Incorporated ("GTE"), hereby submits its additional comments in response to the Washington Utilities and Transportation Commission's (WUTC) Preproposal Statement of Inquiry and TCI Cablevision of Washington, Inc.'s (TCI) "White paper" issued in the above-referenced docket on December 3, 1997. As an introductory matter, the Commission must recognize that GTE's comments in this matter are truly even-handed -- even though GTE is a pole owner, it is a net pole renter in Washington State.

INTRODUCTION

Fundamentally, the most critical policy this Commission must adopt is that as a general matter, any rates, rules, regulations and procedures adopted by the WUTC for pole and conduit providers should apply equally to any party requesting attachments to facilities-based providers. The same rules should apply regardless of whether the attaching party is a local exchange carrier, electric utility, CATV provider or some combination thereof. Moreover, as a necessary correlative of the general policy expressed above, such access should be mutually and reciprocally offered.

That fundamental policy underlies GTE's specific responses to the questions set forth in the WUTC letter that invited additional comments dated December 15, 1997:

1. The Commission should adopt the FCC's proposed formula as its pole/conduit formula along with all the currently defined rebuttable presumptions. Such formula should apply to both cable providers and telecommunication providers. The FCC's formula is one that all parties understand and use on a nation-wide basis, and no convincing rationale has been offered to vary from it.

2. The cost valuation basis that should be adopted for use in the WUTC pole and conduit formula should establish a range of reasonableness for determining the appropriateness of disputed rates. Only by establishing a range -- as opposed to dictating a set rate -- will the Commission empower meaningful negotiations, the preferred method of achieving attachment and conduit use relationships between parties. "Net investment" should be used as a price floor and TELRIC as the price ceiling. In lieu of TELRIC, "Gross Investment" could be used as the price ceiling.

3. Once the WUTC has adopted a formula, the Commission's normal procedural process should be used for any changes; the Commission should not automatically adopt any FCC changes. Lashing this

Commission's policies to unknown future FCC action will needlessly sacrifice useful flexibility and oversight.

4. Private negotiations should always be the preferred methodology for establishing rates, terms and conditions for pole and conduit agreements. The procedural dispute resolution methodology defined in this docket should only be applied as a last resort.

5. Upon adoption of a rate methodology, the rate formula adopted should be implemented upon the effective date of the order.

6. The cost methodology proposed by GTE in Washington State is consistent with the proposed methodology filed in other states.

DISCUSSION

GTE offers the following discussion in response to TCI's White Paper dated December 3, 1997:

NET INVESTMENT IN POLES

TCI suggests that because the FCC adopted embedded net investment as a valuation basis, the Commission should also adopt this method as the "actual capital and operating expense" for Washington. This proposal will only straight-jacket potential negotiations. Setting a range within which rates and charges can be defined as reasonable will better promote private negotiations and minimize complaint proceedings before the WUTC.

In establishing this range of reasonableness, GTE is not opposed to using embedded base "Net Investment" but recommends that it only be used as a cost floor for negotiations of pole and conduit rates. GTE also recommends that a cost ceiling be defined through the use of TELRIC.

If it where not for the fact that the opposition to the use of TELRIC might impair GTE's rights, and its ability to provision its network, then the hypocrisy of such positions might merely be bemusing. As it is, no party offers a convincing rationale why forward looking costs should be disregarded. TCI's arguments on this issue are the same as some ILEC's (but note GTE's) objections to any TELRIC methodology. In the alternative, embedded base "Gross Investment" could be used as a reasonable alternative. GTE believes that determining gross investment is not nearly as difficult as TCI attempts to make out and that gross investment information is readily available in various federal and state reports for verification by all parties, just as is reported for net investment.

It should also be noted by the Commission that the FCC is considering alternative valuation methodologies such as gross investment in their current NPRM proceedings[1]. Whether the FCC adopts gross investment or not as a valuation basis, use of this approach by the WUTC, along with the net investment approach, would negate any need for addressing the "negative net rate base" issue that concerns many of the participants in these proceedings.

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[1] NPRM 97-98 and NPRM 97-151

TREATMENT OF SAFETY SPACE ON POLES

GTE is quite familiar with the safety space issue that TCI elaborates on and how it relates to cost recovery under the FCC's formula. Although GTE believes there may be some merit in exploring alternative cost recovery approaches for safety space, GTE accepts defining of safety space as "usable" space for cost recovery purposes, for the present.

COUNTING ATTACHMENTS

TCI's suggestion that telecommunications attachments be counted by discrete route is an obvious attempt to utilize its status as a cable provider to gain a competitive advantage in the telecommunications market. In addition, this approach would prove to be an administrative nightmare, for both the pole owner and the cable operator, by necessitating continuous status changes in existing routes. Once a cable provider begins to offer telecommunications services in an area, in direct competition with the ILEC or other telecommunication providers, its status as solely a CATV provider changes to that of a telecommunications provider. This status is not dependant upon who purchases what services along what route, but the providers declared intent and capabilities in an area.

TELECOMMUNICATION RATE PHASE-IN

Under the Act, there is no question regarding when the new federal telecommunication rates are to take effect. Any increase in rates between the CATV formula and the Act formula are to be phased in over a five year period with the first

increase taking place in February, 2001 and with full rates becoming effective in February of 2005.

Admittedly, the Act did not preclude the WUTC from implementing its own schedule for placing pole and conduit rates into effect. However, any transition interval should be minimized, to the greatest degree possible. This is mandated by the rationale of this entire proceeding. If cost based rates truly do reflect the costs to the pole owner, any amount less than that represents a subsidy from the pole owner to the attacher. There is no sound public policy for pole owners to subsidize other businesses. A ten year rate transition period is, on the face of it, unreasonable wholly -- if not confiscatory, rules should be implemented immediately upon adoption by the WUTC in this docket. Thus, no phase-in should extend beyond a five year period. Accordingly, GTE strongly urges the WUTC to adopt full rate implementation that does not go beyond February, 2001.

OVERLASHING

TCI contends that over lashing cable is restricted by a pole owner in order to gain competitive advantage for affiliates or to receive additional compensation. In a word, this contention is simply false. Over lashing is a safety issue, not an attempt at putting barriers in the way of an attaching party. GTE does not restrict over lashing of facilities, and in fact, it does so quite regularly in its normal course of business. However, as a pole owner, GTE is responsible for the integrity of its poles and over lashing of cable can compromise the integrity of a pole through overloading. An

overloaded pole poses a potential safety hazard and a pole owner would be remiss if not concerned with the unknown affects of the over lashing. GTE will not willingly accept rules which require it to be negligent; overloaded poles fail, with serious adverse impact on unfortunate members of the public who might be nearby. If a pole is nearing overload, it must be changed out for a larger class pole in order to handle the additional strain. Therefore, application must be made by the lessee to overlash existing facilities.

In addition to over lashing, pole mounted CATV power supplies also place additional strain on an owners pole as well as use considerable more than the normal one foot of space rented by the CATV provider. Therefore, the pole owner must be made aware of any modifications or additional attachments that may affect the structural integrity of the pole and adversely impact the public, pole owner or other users.

In this regard, the Commission must not ignore *Building The Road Ahead: Telecommunications Infrastructure in Washington State*, the first report of the Governor's Telecommunications Policy Coordination Task Force published in April 1996. That report specifically made recommendations regarding pole attachments which are directly on point:

> "Require the entity attached to a pole to obtain prior approval from the pole owner before making any changes to that attachment."
>
> "Prohibit an entity leasing pole space from subleasing the space to a third party, unless the entity obtains prior approval from the pole owner."

PROCEDURAL PROCESS

TCI's "White Paper" would have the Commission believe that TCI is a defenseless victim, unable to negotiate timely agreements without being coerced into rates, terms and conditions it does not want to accept. Furthermore, it would want the Commission to believe that TCI has no control over the timing of its negotiations. GTE believes it is unfair of TCI to blame pole owners for TCI's lack of a planning horizon of when to negotiate an attachment agreement. The time table for contract negotiations has been well defined by the FCC with regards to the state arbitration process which has included pole and conduit agreements as part of those proceeding.

Negotiations are always two sided. It would not make sense for GTE to *not* negotiate in good faith when both parties know that the Commission will rule on disagreements and disputes. Besides, as mentioned previously, GTE is interested in entering into reciprocal agreements with TCI and others for space on their facilities. It would make no sense to negotiate rates, terms and conditions that would be disadvantageous to GTE in a reciprocal agreement. On the contrary, GTE has a history of working with other utilities, as well as potential competitors, in a mutually cooperative manner on pole, conduit and trenching projects.

GTE is only asking the WUTC to be fair in its procedural process to ensure private negotiation are given a chance to succeed. That is why GTE has proposed that the WUTC only intervene in disputes after certain criteria have been met by both parties. GTE does not believe it is unreasonable for the WUTC to require a "Notice of

Intent to File Complaint", a time frame for resolving remaining disputes once formal notice has been given, documentation of the parties positions on each issue and restricting the scope of which complaints the Commission will hear in proceedings. All of this can be done within a reasonable time frame and without TCI feeling coerced due to time constraints.

The Commission should reject TCI's proposal of allowing a privately negotiated contract to be disputed after it has been executed. Allowing a party which has negotiated a contract to turn around and initiate a dispute over the terms of that contract will wholly undercut those negotiations. If parties are unable to reach agreement, procedures are in place to resolve such contract formation disputes. TCI's disingenuous proposal would undermine useful voluntary negotiations.

APPLICATION TO PUBLICLY OWNED UTILITIES

As stated in GTE's original comments, the transition to the established rate should apply immediately upon Commission approval and include all attaching parties as well as pole owners, i.e. ILECs, CLECs, CATV and both private and public electric utilities (public utilities brought under same rate rules is a recommendation of Governor's Telecommunication Policy Coordination Task Force, April 1996). To exclude any party from rules established by this Commission places the party with the least leverage, be it ILEC to CLEC or ILEC to electric, at the mercy of the party with the most leverage.

Whatever basis is used to establish a fair and equitable rate methodology by this

Commission, it should apply equally to all attaching parties. It is not logical that the cost of a foot of space would be different, solely based on the type of service the lessee is providing. It is within this Commission's jurisdiction to rectify this anomaly, promote nondiscrimination among all legitimate attaching parties and provide an equitable return to the pole owner for space used.

To require a pole owner to provide space at other than an equitable, cost based rate, does indeed mean that one party is subsidized at the expense of another and creates a barrier to fair, cost- based competition. Once established, delaying transition to a fair, equitable rate, further exacerbates the subsidizing of the lessee at the expense of the pole owner.

Therefore, GTE reiterates the need to treat all parties in an equitable, non-discriminatory manner in order for a level playing field to be established for competitors, future competitors and pole owners.

UNAUTHORIZED ATTACHMENTS

TCI questions GTE's recommendation that the Commission establish a uniform penalty for unauthorized attachments. The use of the five year penalty is not something new but is based on existing agreements that are currently in affect with CATV and power companies and are widely accepted in the utility industry. GTE is affected by these same unauthorized attachment penalties as it is a net lessee on power owned poles. However, as a pole owner, GTE also understands the deterrent factor of the unauthorized attachment fee. Contrary to TCI's claim that penalties for unauthorized

attachments do not reflect "industry custom," such penalties are in fact routine. Indeed, other public utilities commissions have recognized the value of such deterrents and have included such penalties -- at the precise rate requested by GTE -- in their administrative rules.[2]

In addition to safety issues presented by unauthorized attachments, unauthorized attachments may unfairly penalize a party whom legitimately makes application to attach to a pole. If otherwise available space is made unavailable by unauthorized attachments, the only other alternative is to place a taller pole, at the applicants expense.

ACCESS ISSUES

With regards to right-of-ways, GTE stands ready to exercise a utility's right of eminent domain authority on behalf of the telecommunications provider, provided such authority is exercised as a last resort when all of the requestors attempts to negotiate a good faith settlement with the land owner have failed and the full cost of such eminent domain proceedings are borne by the requesting party. In those situations, GTE must

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[2] "Licensees shall report all attachments to the pole owner. A pole owner may impose a penalty charge for failure to report and pay for all attachments. If a pole owner and licensee do not agree on the penalty amount and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was installed until the appropriate rental rate is paid. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment." OAR 860-022-0055(7)(Oregon Public Utilities Commission).

reserve the right to fully disclose to the property owner that it is conducting the condemnation on behalf of the requesting party.

GTE seldom uses its right of eminent domain due to the adverse publicity and adversarial nature of such proceedings, preferring instead to reach equitable settlements through private negotiations with the land owner. It would be inherently unfair for a utility to bear the brunt of such adverse publicity if good faith efforts at reaching a negotiated settlement are not first employed by the requiring party.

CONCLUSION

The Act has clearly indicated that the Commission can establish its own rates, rules and regulations so long as it is applied equally and consistently to all parties.[3] The WUTC is free to establish its own state rules and regulations for dispute resolution, its own cost basis for rate development and its own implementation time line.

DATED this 15th day of January, 1998.

Timothy J. O'Connell
Attorney for GTE Northwest Incorporated
1800 41st Street WA0105LE
Everett, WA 98201
Phone: (425) 261-5008
Fax: (425) 258-9275

[3] Section 242(c)(1)

CERTIFICATE OF MAILING

I hereby certify that on this date I mailed a true and correct copy of the foregoing GTE NORTHWEST INCORPORATED's Additional Comments to the parties and/or their counsel of record as listed below:

Kristoff Bauer
City of Shoreline
17544 Midvale Ave. N.
Shoreline, WA 98133

Tom Brubaker
City of Kent
220th 4th Ave. S.
Kent, WA 98032

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

Ron Gayman
AT&T Communications of the
Pacific Northwest
2601 Fourth Ave. 5th Flr.
Seattle, WA 98121-1253

William B. Guenzler
City of Bellevue
Transportation Dept.
P.O. Box 90012
Bellevue, WA 98009-9012

Kristin Hall
Snohomish County PUD
P.O. Box 1107
Everett, WA 98206

Elizabeth Hammond
Arter & Hadden
1801 K Street NW Ste. 400K
Washington, DC 20006

Gregory J. Kopta
Davis, Wright Termaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Victoria Lincoln
Assn. of Washington Cities
1076 S. Franklin St.
Olympia, WA 98501

Robert F. Manifold
Office of the Attorney General
Public Counsel
900 4th Avenue Ste. 2000
Seattle, WA 98164

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

Peter Butler
US WEST
1600 7th Ave. Rm. 3206
Seattle, WA 98191

Robert Coates
PacifiCorp
Public Service Bldg. Rm. 1000
920 SW Sixth Ave.
Portland, OR 97204

Paul Glist
Cole, Raywid, Braverman
1919 Pennsylvania Ave. NW Fl. 2
Washington, D.C. 20006

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

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

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

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

Richard Finnigan
2405 Evergreen Park Dr. SW Ste. B-3
Olympia, WA 98502

Glenn Harris
United Telephone of NW
Regulatory Relations Admin.
902 Wasco St.
Hood River, OR 97031

James C. Paine
Stoel, Rives
900 W Fifth Ave. Ste. 2300
Portland, OR 97204-1268

Mark Reynolds
US West Communications
1600 Seventh Ave. Rm. 3001
Seattle, WA 98191

Bruce Shaull
Sprint
6720 Gold Creek Dr. SW
Tumwater, WA 98512

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

in a sealed envelope with postage prepaid, addressed as shown above, and deposited

in the post office at Everett, Washington, on January 15, 1998..

Angela Stehl

J:\LEGAL\SRVLIST\616-265.CM/