

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UNITED & INFORMED CITIZEN	)	DOCKET NO. UT-960659
ADVOCATES NETWORK, a non-profit	)	
Washington Corporation,	)	THIRD SUPPLEMENTAL
	)	ORDER
Complainant,	)	
	)	COMMISSION DECISION
v.	)	AND ORDER GRANTING
	)	INTERLOCUTORY REVIEW OF
	)	ORDER; AFFIRMING SECOND
PACIFIC NORTHWEST BELL TELEPHONE	)	SUPPLEMENTAL ORDER
COMPANY, d/b/a U S WEST	)	
COMMUNICATIONS, INC.,	)	
	)	
Respondent.	)	
.....	)	

**APPEARANCES:** The complainant, United and Informed Citizen Advocates Network ("U & I CAN" or "petitioner"), was represented by J. Byron Holcomb, attorney, Bainbridge Island. The respondent, U S WEST Communications, Inc. ("U S WEST") was represented by Lisa A. Anderl, attorney, Seattle. The staff of the Washington Utilities and Transportation Commission ("Commission Staff"), was represented by Shannon E. Smith, Assistant Attorney General, Olympia.

**MEMORANDUM**

**I. BACKGROUND**

**A. Procedural Background**

This is a complaint proceeding brought by U & I CAN, a Washington non-profit corporation, against U S WEST. The complaint alleged that U S WEST improperly discontinued a service provided to U & I CAN when U S WEST disabled the call transfer feature of the calling package it sold to three U S WEST customers whose phone numbers are included in the complaint. It sought renewal of the disabled service, damages, penalties, and attorney fees.

U S WEST admitted that it disabled the call transfer capability of the three phone lines, and claimed that its action was lawful because the call transfer capability was being used in a manner which violates state law. U S WEST sought a summary determination that it was lawful and proper to disable the call transfer features of U & I CAN's subscribers' Centrex systems, and that damages were not authorized.

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U S WEST sought summary determination of the issues raised in its counterclaim whether U & I CAN was acting as a telecommunications company and should be required to register as such, and further, whether complainant's use of U S WEST's exchange services was in violation of law.

U S WEST also sought, in a counterclaim, payment of access charges by U & I CAN for inter-exchange toll services U S WEST had provided to U & I CAN's members using the call transfer capabilities. This claim was not a part of the motion for summary disposition.

Commission Staff supported U S WEST.

In United and Informed Citizen Advocates Network v. U S WEST Communications, Inc., Second Supplemental Order (September 1997) ("the Order"), the Administrative Law Judge ruled on the cross-motions for summary disposition filed by U & I CAN and U S WEST pursuant to WAC 480-09-426. The Order was based on agreed facts provided in the complaint; the deposition of Joseph Thayer, with attachments; the affidavit of Joseph Thayer, with attachments; the declaration of Lisa Anderl, with attachments; responses of Commission Staff to data requests of U & I CAN; and the sworn testimony of Bill Loveless, general manager of U & I CAN.

The motion for summary disposition of U & I CAN was denied. The Order found that U & I CAN did not have standing to bring the complaint. Then, in order to provide a complete and reviewable record, the Order assumed U & I CAN did have standing, and resolved the remaining issues in U & I CAN's complaint as follows: (1) the services sought from U S WEST by U & I CAN require the payment of access charges; (2) it is illegal in Washington to provide Extended Area Service (EAS) area bridging without payment of access charges; (3) it was proper for U S WEST without giving advance notice to disconnect the call transfer features that were being used to provide EAS bridging; and (4) the disconnections did not violate U S WEST tariffs or Commission rules.

The motion for summary disposition of U S WEST was granted, in part. The Order found that U S WEST did not violate any statute, regulation, or tariff in disabling the call transfer features on lines which were used to circumvent the payment of access and/or toll charges on U S WEST's network. The Order also allowed U S WEST, at its option, to pursue its claim for access charges due from U & I CAN.<sup>1</sup> That issue remains to be litigated in this proceeding. The Order was not an initial final disposition because of this remaining U S WEST counterclaim.

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<sup>1</sup> The Order gave U S WEST ten days to inform the Commission whether it would continue to pursue its counterclaim for access charges. On September 29, 1997, by letter filed with the Commission, U S WEST advised the Commission that it would continue to pursue its counterclaim for access charges.

The Order did not seek to determine whether U & I CAN should be classified as a telecommunications company subject to Commission jurisdiction. That issue was framed by the counterclaim of U S WEST, but its determination was found to be beyond the scope of this complaint proceeding. The evidence on the issue was incomplete and conflicting, and not subject to summary determination. Nor was determination of whether U & I CAN is a telecommunications company necessary to resolution of the questions presented by the complaint. If U S WEST or Commission Staff sought to pursue classification of U & I CAN, they were advised to do so in a separate classification proceeding.<sup>2</sup>

**B. Factual Background**

U & I CAN is organized as a non-profit corporation. U & I CAN claims to have no customers or investors, only members, whose identity is claimed to be confidential. U & I CAN members currently pay a one-time initiation fee of \$8.00 and then pay monthly membership dues of \$8.00. U & I CAN had gross receipts in 1996 of more than \$80,000. U & I CAN claims that it operates a private telecommunications system.

One advertised "benefit" of membership in U & I CAN is use of a telephone system that will allow the member to bypass toll charges for long distance. It provides a computer and "dedicated" lines to its members to enable them to interconnect access lines provided by U S WEST and other local exchange companies. U & I CAN limits its members' access to its telecommunications system to 30 calls per month.

Some U & I CAN members subscribe to telecommunications services from U S WEST, and request features which enable subscribers to transfer calls. U & I CAN purchases and maintains computer equipment which enables calls to be transferred. Such call features, as used by the individual subscribers to U & I CAN's services, with the instructions and facilities provided by U & I CAN, enable the callers to complete calls within the state of Washington. Many of these are toll calls, but because of the use of overlapping EAS areas, and the call transfer function, these calls are completed without payment of either toll charges or access charges by U & I CAN or the subscriber.

Following investigation, U S WEST concluded that U & I CAN was unlawfully bridging EAS. U S WEST then disabled the transfer features on the lines used by U & I CAN members to bridge EAS. Apparently then, at the request of the U & I CAN members, U S WEST restored the transfer features to the lines for a period of time.

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<sup>2</sup> That issue is currently being examined in In re the Classification of U & I CAN, Docket No. UT-971515.

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On March 11, 1996, U & I CAN was informed that U S WEST would again disable the transfer feature on the indicated lines, and that U & I CAN must subscribe to the appropriate underlying services from U S WEST's access tariff before U & I CAN could provide the services it was providing. U S WEST again disabled the transfer feature. U S WEST only disabled the transfer feature. All other services, including dial tone, remained.

## II. COMMISSION DISCUSSION AND DECISION

U & I CAN's petition for interlocutory review asks us to reverse the Order for five reasons, each of which is addressed separately below. The petition is made pursuant to WAC 480-09-760, and in particular relies on sections (1)(b) and (1)(c) of that rule. Attached to the petition are two affidavits which appear to be offers of proof of testimony that could have been given at the hearing in this matter. U & I CAN also seeks permission to file its motion for interlocutory review late, and to address oral argument to the Commission.

Commission Staff and U S WEST each answered. Each supported the Order. U S WEST argues that the petitioner fails to state any legal or factual justification for its challenge of the rulings in the Order. The responses of U S WEST and the Commission Staff will be further discussed in the issue areas addressed below.

### A. Should the Commission Grant Interlocutory Review?

The petition is made pursuant to WAC 480-09-760. The petitioner relies in particular on the following portions of the rule:

(1) . . .

(b) A review is necessary to prevent substantial prejudice to a party that is not remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

The petition was not filed within ten days, as required in WAC 480-09-760(2). The petitioner asks the Commission to alter the filing deadline; this is allowed by WAC 480-09-760(2) "when doing so is consistent with the public interest."

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The Order was entered September 17, 1997. The petition was filed October 1, 1997: two days late. Petitioner offers two reasons for its late-filed petition. First, that it attempted to reach the Administrative Law Judge on Thursday, September 25, to enquire whether the Order should be treated as a final order appealable to the Commission, but was told that she would be out until Monday, September 29 (the actual due date of the petition). Second, that it had to wait to see the election made by U S WEST on pursuing access charge recovery. U S WEST gave notice of its intention to pursue its counterclaim for access charges on Monday, September 29. The petitioner argues that if U S WEST had not made this election, then the Order would have become a final order. No authority for this proposition is cited.

U S WEST asks the Commission to decline review because the petition is not timely. U S WEST argues that the petitioner should have filed a motion for an extension of time to file its petition when it discovered that the Administrative Law Judge was out of the office. It notes that the Order expressly excludes the issue of the counterclaim for access charges from the scope of its ruling, and argues that the petitioner should not have waited for its election on that ruling before filing its petition.

U S WEST also argues that the petition should be denied because interlocutory review is not appropriate. U S WEST claims that the petitioner fails to prove any ground for the filing of its petition.

**Commission:** The Commission will grant interlocutory review. The basis of the grant is WAC 480-09-760(1)(c). In determining whether the public interest is consistent with granting the extension (WAC 480-09-760(2)), the Commission believes it is appropriate to consider the substantive reasons outlined by the rule for granting interlocutory review. In reviewing the Prehearing Conference Order in this matter, the Commission notes that this proceeding was designed as a bifurcated proceeding, with a first round of cross-motions for summary disposition to be followed by further scheduling, and a round of evidentiary hearings, if needed.

The Order is the resolution of the cross-motions for summary disposition. It makes an initial determination of many of the major legal issues in the proceeding. It was not known until U S WEST's election to proceed with its counterclaim, following entry of the Order, whether additional hearings would be required. These additional hearings have not yet been scheduled; the hearing transcript ("TR") at page 99 indicates that another prehearing conference will be held if additional hearings need to be scheduled. It will not disturb the orderly process of this matter to review the major contested issues now. If the Commission were to overturn the initial determination of the issues addressed in this Order, it could eliminate the need for access charge hearings. It could also require a different set of evidentiary hearings. For this reason, the Commission determines that a review could save the Commission and the parties substantial effort or expense. WAC 480-09-760(1)(c). Interlocutory review is consistent with the public interest. WAC 480-09-760(2).

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## B. Does the Petitioner Have Standing to Bring Its Complaint?

The Order determines that U & I CAN does not have standing to bring its complaint. The petitioner alleges that this means that U & I CAN was dismissed out of the proceeding. It reasons, therefore, that U & I CAN cannot be subject to any counterclaim by U S WEST. The petitioner then argues that if it does not have standing to bring its complaint, then it should be dismissed as a party.

The petitioner also argues that it is the real party in interest, citing CR 17(n), and that it should be allowed to complain on behalf of its members who have allowed U & I CAN to use the lines which U S WEST held in individual subscriber's names.

Two affidavits of U & I CAN members are attached to the petition. They indicate that C. William Loveless and Al Hooper would have testified at the hearing that they were members of U & I CAN, that they dedicated certain telephone lines to the exclusive use of U & I CAN and any of its members, that the general public was not allowed to use the telephone lines, and that they offered to testify to these facts. Our review of the record concludes that substantially these facts are already in the record. See TR 47, 81, 87.<sup>3</sup>

The Commission Staff supports the ruling that U & I CAN does not have standing to bring its complaint. Staff notes that the ruling is based on the nature of U & I CAN's complaint against U S WEST. Because U & I CAN was not the subscriber to the lines that were disabled, Staff argues that it does not have standing to complain, and that only the subscribers have standing to complain against U S WEST.

U S WEST argues that the dismissal of U & I CAN on the basis that it does not have standing to bring the complaint does not mean that U S WEST's counterclaim must also be dismissed. U S WEST believes that U & I CAN is the proper party respondent in a complaint for access charges, as it is U & I CAN which is operating as a telecommunications company and illegally circumventing the payment of access charges.

**Commission:** The ruling of the Administrative Law Judge was based upon the rationale that residential customers of a telecommunications company could not give an interest in their telephone lines to a non-profit corporation that would confer standing on the non-profit corporation. As the Order states:

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<sup>3</sup> The Commission's review of the transcript did not disclose any instance when counsel for U & I CAN sought to recall Mr. Loveless, or call Mr. Hooper as a witness, in order to put these facts in the record. We did not find any instance of refusal on the part of the administrative law judge to allow these witnesses to be called.

U & I CAN is not the customer of U S WEST, and U S WEST does not owe it a duty in connection with these lines. To hold otherwise would be to reward a subterfuge that attempts to avoid payment of a fair share of costs as required by the legislature.

The Order, p. 5.

This is a complaint proceeding brought by U & I CAN against U S WEST. The theory of the complaint is that U S WEST owed a duty to U & I CAN which it did not meet. The Order correctly concludes that U & I CAN is not owed any duty by U S WEST because U & I CAN is not a customer of U S WEST. As discussed below, it was not improper for U S WEST to disable the call transfer features of the individual customer's lines, because they were being used for an illegal purpose: to provide interexchange telephone service without payment of access charges.

The conclusion that U & I CAN has been dismissed, or should be dismissed, from this proceeding does not follow from the dismissal of its complaint, since it is still a party to the U S WEST counterclaim. U & I CAN brought itself before the jurisdiction of the Commission. U S WEST filed a valid counterclaim against U & I CAN for unpaid access charges. U S WEST should be allowed to pursue this claim in this forum; as discussed in the next section, the Commission has jurisdiction to award access charges to U S WEST in this proceeding. U S WEST will be allowed to pursue its counterclaim before the Commission.

**C. Does the Commission Have Jurisdiction to Award Access Charges?**

The petitioner argues that the Commission does not have jurisdiction to award access charges. It argues, further, that U S WEST should be required to go into state court to assert such claim, and that the claim is beyond the jurisdiction of the Commission. The petitioner argues that the Metrolink<sup>4</sup> decision referred to in the Order is inapplicable because Metrolink was offering its services to the general public while U & I CAN asserts that it is not.

The Commission Staff argues that the finding that U & I CAN does not have standing to bring a complaint against U S WEST does not preclude subsequent action to recover access charges. It would have the Commission bring a classification proceeding with respect to U & I CAN, and would have recovery of

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<sup>4</sup> In the Matter of Determining the Proper Classification of U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order, p. 14 (May 1989).

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access charges follow a decision that U & I CAN must register as a telecommunications company.

The Commission Staff argues that the Commission has jurisdiction to order U & I CAN to pay access charges. Staff claims that access charges are not damages, are mandated by RCW 80.36.160, and are an important part of the telephone exchange system in the state of Washington. Staff notes that the importance of access charges and EAS are highlighted in WITA v. TRACER, 75 Wn.App. 356, 358-60, 880 P.2d 50 (1994).

**Commission:** U & I CAN should not be allowed to bypass the access charge system and ignore EAS boundaries. The Commission has jurisdiction pursuant to RCW 80.36.160 to:

[E]stablish reasonable joint rates or charges by or over [telephone] lines and connections and just, reasonable, and equitable divisions thereof between the telecommunications companies participating therein.

Even if U & I CAN were never to be classified or registered as a telecommunications company, RCW 80.36.160 would still confer on the Commission jurisdiction to require U & I CAN to pay access charges.

**D. Is U & I CAN a Private Telecommunications System?**

The petitioner argues that the Order is wholly in error in its conclusion that U & I CAN is not a private telecommunications system. U & I CAN apparently intends to invoke the provision of RCW 80.36.370(2), which states that the Commission shall not regulate a private telecommunications system. The petitioner alleges that Commission Staff agrees with its position. It further alleges that U & I CAN does not in any way offer a service to the public requiring registration. In support of this argument the petitioner notes that the Order does not cite that portion of the RCW 80.04.010 definition of "private telecommunications system" which states:

"Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

U & I CAN claims that the failure to include this provision renders the Order null and void.

Commission Staff argues that the omission of this language is of no significance. It emphatically rebuts the allegation that it agrees with U & I CAN, and



notes that it has been Staff's unequivocal position that U & I CAN is operating as a telecommunications company and should be required to register as such. Staff notes that U & I CAN does not control its telecommunications system for its own use, as is required for a private telecommunications company, but rather for the use of its members. Thus, Staff argues, U & I CAN does not meet the first criterion for a private telecommunications company.

**Commission:** The terms "private telecommunications system" and "private shared telecommunications service" are defined in RCW 80.04.010:

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

Apparently the petitioner would conclude that any system that is not offered for hire, sale, or resale to the general public is a private telecommunications system. The petitioner admits that it provides telecommunications facilities. TR 46. The definition of private telecommunications system, however, contains affirmative requirements which the petitioner does not meet.

First, the petitioner does not provide "private shared telecommunications services." The petitioner was asked, and answered, as follows:

Q Do all of your members live in a single high-rise building?

A Oh, no.

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Q Do all of your members work in the same business complex?

A No.

TR 45.

The petitioner's members do not constitute a "user group" within the definition of "private shared telecommunications services." To accept this analysis the Commission would be forced to accept the notion that each U & I CAN member was occupying a portion of the U & I CAN premises. The Commission rejected such a notion in Metrolink, supra., when there were three distinct premises involved. U & I CAN has several hundred members. These members do not constitute a "user group". Thus, the telecommunications system provided by U & I CAN is in no sense of the word a private shared telecommunications service within the contemplation of RCW 80.36.370(5).

To meet the statutory definition of a private telecommunications system, the system must be controlled by a person or entity for the sole and exclusive use of such person or entity or affiliate thereof. RCW 80.04.010. U & I CAN is a non-profit corporation. By its own admission, it controls the telecommunication system not for its own use as a non-profit corporation, but for the use of its members. A non-profit corporation is a separate and distinct legal entity from its members. Members of a voluntary nonprofit organization have no individual exclusive ownership of any particular part of the organization's property. Apostolic Faith Mission v. Christian Evangelical Church, 55 Wn.2d 364, 367 (1958). Thus, the telecommunications system provided by U & I CAN is in no sense of the word a private telecommunications system within the contemplation of RCW 80.36.370(2).

#### E. Classification

The petitioner argues, in its claim that it is a private telecommunications system, that it is of critical importance to the finding of whether or not U & I CAN is a private telecommunications system that U & I CAN is not currently registered with the Commission as a telecommunications system.

**Commission:** The issue of whether U & I CAN is a private telecommunications system is not determined by whether U & I CAN must register with the Commission as a telecommunications company. The two issues should not be confused. RCW 80.04.010 defines a "private telecommunications system." As we concluded in the previous section, U & I CAN is not a private telecommunications system. It does not necessarily follow from this conclusion that U & I CAN must register as a telecommunications company with the Commission. The Order decides that this is not a classification proceeding (the proceeding that determines whether a company must register with the Commission). The Order also decides that the issue

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of whether U & I CAN must register is not one that it could determine, because the facts were conflicting and the record was incomplete. The issue, thus, could not be determined on cross-motions for summary disposition.

As discussed in the following section, the access charge system is mandated by RCW 80.36.160. The Order determined that even if the Commission finds the operations of U & I CAN to be exempt from direct regulation, it will be necessary to extend our jurisdiction to U & I CAN at least as far as necessary to satisfy our obligations under RCW 80.36.160. The authority of the Commission to so extend its jurisdiction is specifically set forth in the second paragraph of this statute. Therefore, U & I CAN cannot escape its obligation of making an appropriate contribution toward the fixed and variable costs associated with accessing the public switched telecommunications network.

It is clear on the record in this proceeding that U & I CAN must purchase services from the U S WEST access tariff if it wishes to provide service between exchanges to its members. This is equally true whether U & I CAN is subject to direct regulation, or whether its form of telecommunications system is subject to a lesser form of regulation. This determination is based on the kind of services it is using and how it is using them.

The Commission agrees with the Order that the proper forum for determining whether U & I CAN is subject to direct regulation is a classification proceeding. In fact, in Metrolink, the Commission required a classification proceeding to determine whether that company was subject to direct regulation (the Commission found that it was). The record in this matter is not sufficient to determine whether U & I CAN should be registered as a telecommunications company. This proceeding has so far been decided on agreed facts. The facts are in dispute regarding the need for registration, and the record is incomplete. Nor is that decision necessary.

The issue that has been decided in this proceeding is whether it was wrong for U S WEST to disable the telephone lines that U & I CAN was using to provide interexchange telecommunications service without paying access charges. The issue remaining in this proceeding is whether, given the fact that U & I CAN did use those lines, it should now be required to pay access charges. The classification issue is being addressed in another proceeding. See, footnote 2.

**F. Is it Legal for U & I CAN to Provide EAS Without Paying Access Charges?**

The petitioner argues that the Order is patently in error when it concludes that “[i]t is illegal in Washington to provide Extended Area Service (EAS) without payment of access charges.” Petition p.5; Order p. 1. U & I CAN bases this

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argument on the fact that one feature of the Centrex package purchased for the lines involved in its provision of telecommunications services is a call transfer feature. It argues that payment for the Centrex package is all that is required, and that its practice of connecting these lines to computers which have a voice card that will "hook flash and redial" [TR-39] the calls between exchanges does not require payment of access charges.

The petitioner admits that it provides service between exchanges. TR 53-54. It also admits that it does not pay access charges to U S WEST. TR 55.

Commission Staff argues that U & I CAN is wrong, and that "[o]ne cannot justify perpetrating a fraud on the fact that it is possible to do so." Response at 4. Staff argues that the fact that a custom call management feature makes it possible to bridge EAS does not make it legally permissible to do so.

U S WEST argues that the call transfer function of its customized call management feature should allow parties within the same exchange area to transfer calls to one another. They state that its purpose and intent is not to enable a computer, which in turn performs a function as a telecommunications facility, to transfer that call to another line outside or in an overlapping EAS area, thereby circumventing the access charge system and the payment of access charges and toll.

As counsel for U S WEST stated in her oral argument:

One of the big problems we have with U & I CAN is that they are providing inter-exchange services without paying access charges. Now, if you can do that without being a telecommunications carrier, you at least have to pay access charges.

TR 65.

**Commission:** There is no doubt that U & I CAN used the hook flash feature of the computers it hooked up to the telephone lines which are the subject of this complaint to provide telecommunications services between exchanges without paying toll charges for the calls. Thus, neither U & I CAN nor its members contribute to the access charge system. The access charge system is mandated by RCW 80.36.160.

As the Commission explained in Metrolink:

The access charge system which the Commission has adopted is mandated by RCW 80.36.160 as explained in the Eighteenth Supplemental Order in our Cause

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No. U-85-23. Even were the Commission inclined to find the operations of Metrolink to be exempt from direct regulation, it would be necessary to extend our jurisdiction to Metrolink at least insofar as necessary to satisfy our obligations under RCW 80.36.160. The authority of the Commission to so extend its jurisdiction is specifically set forth in the second paragraph of this statute. Therefore, Metrolink has no hope of escaping its obligation of making an appropriate contribution toward the fixed and variable costs associated with accessing the public switched telecommunications network.

Supra., Page 4.

Because U & I CAN's operations unlawfully bypass the access charge system, U S WEST did not wrongfully discontinue the telephone features that make the unlawful activity possible. U S WEST should not be ordered to immediately restore the customized call management features it disabled. U S WEST should be allowed to pursue recovery of access charges that were due but not paid by U & I CAN.

#### H. Oral Argument

The petitioner seeks oral argument. No basis for the request is given.

**Commission:** Under WAC 480-09-760, Interlocutory orders, no provision is made for oral argument. In contrast, WAC 480-09-780, Entry of initial and final orders--Administrative review, does provide for the Commission to hear oral argument at its discretion. A party seeking oral argument under that rule must move for argument, stating why the oral argument will assist the Commission in making its decision and why written presentations will be insufficient. No such information has been provided by the petitioner. The Commission will deny this request.

### III. CONCLUSION

The Commission adopts the findings of fact and conclusions of law in United and Informed Citizen Advocates Network v. U S WEST Communications, Inc., Second Supplemental Order (September 1997) as its own.

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**ORDER**

THE COMMISSION ORDERS That United and Informed Citizen Advocates Network v. U S WEST Communications, Inc., Second Supplemental Order (September 1997) is affirmed.

Dated at Olympia, Washington, and effective this 4<sup>th</sup> day of February 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chair



RICHARD HEMSTAD, Commissioner