

U S WEST Communications, Inc.
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Mark Roellig
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RECORDS MANAGEMENT **USWEST**

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COMMUNICATIONS 

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

March 19, 1992

Mr. Paul Curl
Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P. O. Box 9022
Olympia, WA 98504

Re: Pierce County v. U S WEST Communications, Inc.
Docket No. UT-920225

Dear Mr. Curl:

Enclosed for filing please find an original and nineteen copies of the following documents in the above-referenced matter:

1. Answer of U S WEST Communications, Inc.;
2. Motion to Dismiss; and
3. Memorandum of Authorities in Support of U S WEST Communications, Inc.'s Motion to Dismiss

Very truly yours,


MARK ROELLIG

MDR00931
Enclosure

cc: C. H. MacIver - w/encl.

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PIERCE COUNTY, a political)	
subdivision of the State)	
of Washington,	)	DOCKET NO. UT-920225
)	
Complainant,	)	ANSWER OF U S WEST
	)	COMMUNICATIONS, INC.
v.)	
)	
U S WEST COMMUNICATIONS,)	
INC., a Colorado)	
corporation,)	
)	
Respondent.)	

COMES NOW U S WEST Communications, Inc. (hereinafter "USWC") and pursuant to WAC 480-09-420 submits this Answer to the formal complaint and request for adjudicated proceedings of Complainant, Pierce County.

1. Answering paragraph No. 1, USWC admits the same. USWC further states that although the Washington Constitution grants Pierce County certain powers, Pierce County is also subject to other constitutional provisions, statutes and regulations.

2. Answering paragraph No. 2, USWC states that it is a Colorado corporation with its principal place of business in Washington at 1600 - 7th Avenue, Seattle, Washington. This is not USWC's overall principal place of business. With respect to the remaining allegations of said paragraph, USWC admits the same.

3. Answering paragraph No. 3, USWC admits the same.

1 4. Answering paragraph No. 4, USWC admits the first three
2 sentences of said paragraph. With respect to the remaining
3 allegations of said paragraph, USWC is unaware of the current
4 abilities of the CPE of Pierce County and, therefore,
5 respectfully must deny said allegations upon a failure to have
6 information sufficient to reach a conclusion as to the truth or
7 falsity of said sentence.

8 5. Answering paragraph No. 5, USWC states that the
9 automatic line identification information it provides to Pierce
10 County from its ALI database is provided through a database
11 developed and maintained by USWC and not by Pierce County.
12 Pierce County does assist in the resolution of any identified
13 address error corrections.

14 6. Answering paragraph No. 6, USWC admits the same with
15 the exception that it takes no position on whether the 1985 E-
16 911 system was "not sufficient". In addition, USWC states that
17 its Security Department has in place practices and procedures
18 to insure it complies with Washington law and its tariffs.

19 7. Answering paragraph No. 7, USWC is without information
20 sufficient to develop a belief as to the truth or falsity of
21 said paragraph and since it does not have knowledge as to the
22 current ability of Pierce County equipment it must, therefore,
23 deny the same. However, USWC recognizes that the ability set
24 forth in this paragraph has been represented to the Commission
25 by Pierce County in the past and USWC has no reason to
26 challenge its veracity.

27 8. Answering paragraph No. 8, USWC admits that a request
28 for a declaratory ruling was made, and the WUTC entered a
29 declaratory ruling on the issue of whether Pierce County's use
30 of reverse automatic line identification was a violation of
31 USWC's tariff relating to non-published information, the
32 Washington Constitution and the contract between Pierce County
33 and USWC. The Commission's Order of October 17, 1991 speaks
34 for itself and should be considered in its entirety.

1 9. Answering paragraph No. 9, USWC denies the same.

2 10. Answering paragraph No. 10, USWC is unaware of the
3 specific statutes and rules by which Pierce County desires to
4 bring its complaint. However, USWC states that the old
5 Washington Administrative Procedure Act, RCW 34.04.413, appears
6 not to be applicable to this case.

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AFFIRMATIVE DEFENSES

9 Further answering the complaint of Pierce County and by way
10 of affirmative defenses, USWC states as follows:

11 11. Pierce County's complaint fails to state a claim upon
12 which relief can be granted.

13 12. Pierce County's complaint should be summarily denied
14 since it lacks the requisite signatures for filing a customer
15 complaint in the State of Washington. See RCW 80.04.110.

16 13. Pierce County's complaint has already been ruled upon
17 by the WUTC, and no motion for reconsideration for appeal was
18 filed by Pierce County. Therefore, Pierce County's complaint
19 should be barred.

20 14. Pierce County desired use of USWC's automatic line
21 identification database is a violation of the Washington
22 Constitution as defined by the case of State v. Butterworth, 48
23 Wn. App. 152, 737 P.2d 1297 (1987).

24 15. Pierce County's desired use of USWC's automatic line
25 identification database would result in a breach of the
26 contract between USWC and Pierce County.

27 DATED this 19th day of March, 1992.

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EDWARD T. SHAW
MARK ROELLIG, Of Attorneys for
U S WEST Communications, Inc.

CERTIFICATE OF SERVICE
File No. UT-920225

I hereby certify that I have this day caused to be served one copy of the foregoing document upon the following parties of record by person or by mailing a copy thereof, properly addressed with postage prepaid:

Clyde H. MacIver
Miller, Nash, Wiener,
Hager & Carlson
4400 Two Union Square
Seattle, WA 98101

DATED this 19th day of March, 1992.

Lee Annette Fortier
LEE ANNETTE FORTIER


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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PIERCE COUNTY, a political)	
subdivision of the State)	
of Washington,	)	DOCKET NO. UT-920225
)	
Complainant,	)	MOTION TO DISMISS
)	
v.)	
)	
U S WEST COMMUNICATIONS,)	
INC., a Colorado)	
corporation,)	
)	
Respondent.)	

COMES NOW the Respondent, U S WEST Communications, Inc. (hereinafter "USWC") and moves the Washington Utilities and Transportation Commission to dismiss the complaint of Pierce County, filed in the above-captioned docket. This motion is based upon the files and pleadings herein, and the Memorandum of Authorities in support of U S WEST Communication's motion to dismiss.

DATED this 19th day of March, 1992.



 EDWARD T. SHAW
 MARK ROELLIG, Of Attorneys for
 U S WEST Communications, Inc.

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File No. UT-920225

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PIERCE COUNTY, a political)	
subdivision of the State)	
of Washington,	)	DOCKET NO. UT-920225
)	
Complainant,	)	MEMORANDUM OF AUTHORITIES
	)	IN SUPPORT OF U S WEST
v.	)	COMMUNICATIONS, INC.'S
	)	MOTION TO DISMISS
U S WEST COMMUNICATIONS,)	
INC., a Colorado)	
corporation,)	
)	
Respondent.)	
)	

I. RELEVANT FACTS

On or about July 5, 1991, U S WEST Communications, Inc. (hereinafter "USWC") filed a Petition for a Declaratory Order pursuant to RCW 34.05.240 and WAC 480-09-230 with the Washington Utilities and Transportation Commission (hereinafter "WUTC") under Docket No. UT-910785. In this petition, USWC alleged that Pierce County had no right to access USWC's E-911 database for purposes other than identifying, during an emergency E-911 call, the number and address of the instrument from which the call is being placed. In particular, USWC stated that it had become aware that Pierce County was employing its customer premise equipment (hereinafter "CPE") to randomly access USWC's E-911 database in order to obtain names, addresses and telephone numbers contained in the database. USWC contended that this random access was a violation of the

1 Washington Constitution, the tariffs of USWC, and the contracts
2 entered into between Pierce County and USWC.

3 Due to the potential great injury to citizens of Pierce
4 County, USWC advised the WUTC in its pleadings that it did not
5 desire to totally disconnect Pierce County's service as a
6 result of what it believed to be a violation of the Washington
7 Constitution, USWC's tariffs and the contract. Therefore, USWC
8 requested a declaratory ruling of the WUTC outlining the
9 responsibilities of Pierce County under applicable law, tariffs
10 and the agreement. In particular, in conclusion, USWC stated
11 that it:

12 . . . requests a declaratory ruling that the
13 policy and practice of Pierce County to
14 "reverse search" USWC's 911 database without
15 a concurrent, live call to the Pierce County
16 E-911 service is in violation of applicable
17 law, USWC's tariffs, and the Agreement
18 between Pierce County and USWC.

19 Petition of U S WEST Communications, Inc. for a Declaratory
20 Order, Docket No. UT-910785 at 4.

21 Due to the important issues involved, pursuant to RCW
22 34.05.240, the WUTC gave notice of the petition and in
23 accordance with WAC 480-09-230(3) called for the submission of
24 a statement of facts upon the matter from Pierce County. In
25 addition, the WUTC authorized Pierce County to submit a
26 memorandum of law in response to USWC's petition. See, Notice
27 of Petition for Declaratory Order; Call for Statement of Fact,
28 Docket No. UT-910785 (July 11, 1991).

29 On August 12, 1991 the WUTC submitted questions to USWC
30 raised by the response of Pierce County. On or about
31 September 3, 1991 USWC responded to these questions and
32 responded to the Statement of Facts and Memorandum of Law
33 submitted by Pierce County. See, Reply of U S WEST
34 Communications, Inc. and Request for Oral Argument, Docket No.
UT-910785. In this pleading, USWC unequivocally stated that it

1 was USWC's position that the reverse searches by Pierce County
2 in fact do violate USWC's non-published information tariffs and
3 were a E-911 service not involved, USWC would proceed with
4 disconnection without filing a declaratory order to resolve
5 beforehand the validity of Pierce County's arguments. Id. at
6 4. In addition, among other things, USWC pointed out how it
7 appeared that Pierce County was employing its reverse search
8 capability to violate the constitutional protections which the
9 Court of Appeals discussed in the case of State v. Butterworth,
10 48 Wn. App. 152, 737 P.2d 1297 (1987). Id. at 7-8. Finally,
11 USWC identified that the numerous reverse searches conducted by
12 Pierce County appeared to violate its own rules. USWC
13 concluded:

14 USWC is acutely aware of the WUTC's
15 conservative stance regarding the supposed
16 privacy interests of non-published
17 subscribers. The WUTC has ordered USWC, over
18 USWC's objections, to file a tariff which
19 very narrowly limits the circumstances under
20 which third parties can obtain non-published
21 information. This tariff in relevant part
22 allows non-published information to be
23 provided to a public safety agency only
24 "where calls are placed to an emergency 911
25 or similar service". There is no rational
26 basis for reading the 911 privacy exception
27 to encompass reverse searches of the database
by counties where there has been no
contemporaneous call by the subscriber to
911, since there has been no subscriber
action on which to base an implied waiver of
rights. The tariff forbids Pierce County's
conduct.

28 Id. at 9.

29 After a review of all of the pleadings submitted, on
30 October 18, 1991, the WUTC granted USWC's request for a
31 declaratory judgment. In so doing, the WUTC stated that:

32 The Commission grants the petition and
33 declares that the company's tariff does not
34 allow reverse line inquiry access (R-ALI) in
the absence of an emergency call imminently

1 placed from the subject number. The County
2 is free to challenge the tariff in a
3 complaint before the Commission in a full
4 proceeding in which a complete record can be
built and affected parties can participate.

5 Commission Declaratory Order Interpreting Tariff, Docket No.
6 UT-910785 at 1.

7 The WUTC went on to enter an Order stating that:

8 IT IS ORDERED that reverse line inquiry
9 access to information about non-published
10 numbers in U S WEST's E9-1-1 data base, as
11 practiced by Pierce County under its protocol
12 of record, violates the provisions of Item
13 III(B)(2) of U S WEST's Rule and Regulation
14 No. 11 on Original Sheet No. R11-3 of its
15 tariff WN U-24. Under the tariff, the county
16 may use R-ALI to secure information about
lines from which 9-1-1 calls have been
placed, but the connection has been lost. A
protocol allowing only that use would comply
with the tariff.

17 Id. at 5.

18
19 II. LEGAL ARGUMENT

20 A. The Complaint of Pierce County Should be Dismissed
21 Based Upon Its Failure to Comply with RCW 80.04.110.

22 The laws of the state of Washington prescribe the
23 circumstances under which a complaint can be filed against a
24 public service company. These statutes provide in part that:

25 Complaint may be made by the commission of
26 its own motion or by any person or
27 corporation, chamber of commerce, board of
28 trade, or any commercial, mercantile,
29 agricultural or manufacturing society, or any
30 body politic or municipal corporation, or by
31 the public counsel section of the office of
32 the attorney general, or its successor, by
33 petition or complaint in writing, setting
34 forth any act or thing done or omitted to be
done by any public service corporation in
violation, or claimed to be in violation, of
any provision of law or of any order or rule
of the commission: PROVIDED, That no

1 complaint shall be entertained by the
2 commission except upon its own motion, as to
3 the reasonableness of the schedule of rates
4 or charges of any gas company, electric
5 company, water company, or telecommunications
6 company, unless the same be signed by the
7 mayor, council or commission of the city or
8 town in which the company complained of is
9 engaged in business, or not less than twenty-
10 five consumers or purchasers of such gas,
11 electricity, water or telecommunications
12 service, or at least twenty-five percent of
13 the consumers or purchasers of the company's
14 service: PROVIDED, FURTHER, That when two or
15 more public service corporations, (meaning to
16 exclude municipal and other public
17 corporations) are engaged in competition in
18 any locality or localities in the state,
19 either may make complaint against the other
20 or others that the rates, charges, rules,
21 regulations or practices of such other or
22 others with or in respect to which the
23 complainant is in competition, are
24 unreasonable, unremunerative, discriminatory,
25 illegal, unfair or intending or tending to
26 oppress the complainant, to stifle
27 competition, or to create or encourage the
28 creation of monopoly . . .

21 RCW 80.04.110 (emphasis added).

22 The undisputed facts in this case are that Pierce County
23 has never registered as a telecommunications company within the
24 state of Washington. In fact, in the declaratory ruling
25 proceeding, Pierce County vigorously denied that the WUTC had
26 any jurisdiction over it. Pierce County's Statement of Facts
27 and Memorandum of Law, Docket No. UT-910285 at 6-7. Therefore,
28 with respect to the complaint filed by Pierce County against
29 USWC's tariff (i.e., "schedule of rates and charges," See, WAC
30 480-05-040), Pierce County is filing the complaint simply as
31 any other customer of a telecommunications company. Such a
32 complaint must be accompanied by the signature of twenty-four
33 other consumers. As is clear from the complaint of Pierce
34 County, it is not a complaint of twenty-five consumers.

USWC'S MEMORANDUM OF AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS - 5 -
MDR00926

U S WEST COMMUNICATIONS, INC.

1600 Bell Plaza, Suite 3204
P.O. Box 21225
Seattle, WA 98111
Telephone: (206) 345-7838

1 In a similar case brought by CTSI of Washington, Inc.
2 against U S WEST Communications, an Administrative Law Judge
3 held that:

4 The complainant is not a registered
5 telecommunications company. It purchases
6 services from respondent and, in its
7 complaint, argues that the respondent's
8 tariffs are unjust and unreasonable. It
9 urges the Commission to require respondent to
10 amend its tariffs. Such a complaint without
11 the required twenty-five signatures is
12 properly subject to dismissal.

13 CTSI of Washington, Inc. v. U S WEST Communications, Inc.,
14 Initial Order Dismissing Complaint, Docket No. UT-910090 at 2
15 (July 23, 1991), aff'd CTSI of Washington, Inc. v. U S WEST
16 Communications, Inc., Commission Decision and Order Affirming
17 and Adopting Initial Order Dismissing Complaint, Docket No. UT-
18 910090 (Aug. 28, 1991). Based upon the foregoing, the WUTC
19 should summarily dismiss the complaint of Pierce County for its
20 failure to comply with RCW 80.04.110.

21 B. Pierce County has Failed to Present any Additional
22 Facts in Its Complaint Which Could be Established in a
23 Hearing That Would Affect the WUTC's Prior Order.

24 The Washington Administrative Procedure Act provides for
25 the entering of a declaratory order by an Administrative
26 Agency. This statute provides in part that:

27 Any person may petition an agency for a
28 declaratory order with respect to the
29 applicability to specified circumstances of a
30 rule, order, or statute enforceable by the
31 agency. . . .

32 . . .
33 A declaratory order has the same status as
34 any other order entered in an agency
adjudicative proceeding. Each declaratory
order shall contain the names of all parties
to the proceeding in which is it based, the

1 particular facts on which it is based, and
2 the reasons for its conclusions.

3 RCW 34.05.240(1)(8) (emphasis added).

4 Pierce County never requested an appeal of the adjudicative
5 decision entered by the WUTC. At this point, it apparently has
6 requested a re-hearing through the process of filing a
7 complaint.¹ The Washington statute relating to re-hearings do
8 not give the authority to the WUTC to allow a re-hearing based
9 upon a petition of an individual customer. RCW 80.04.200
10 allows for a re-hearing only upon request of "any public
11 service company". Likewise, the WUTC's procedural rules
12 relating to re-hearings specifically indicate that they can
13 only be brought pursuant to RCW 80.04.200 and RCW 81.04.200.
14 See, WAC 480-09-820(1). Therefore, Pierce County is without
15 statutory authority to request a re-hearing or re-opening of
16 the declaratory ruling entered by the WUTC since it, as a non-
17 public service company, has no standing pursuant to
18 RCW 80.04.200.

19 Pierce County has also failed to comply with the
20 requirements of WAC 480-09-820 relating to re-hearing which
21 provides that the WUTC will only grant a petition for re-
22 hearing:

23 (a) If there are changed circumstances
24 injurious to the petitioner since the entry
25 of the final order which were not considered
by the commission; or

26 (b) To correct defects in the order; or
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31 ¹Re-openings apply to situations where the record is
32 closed and the final order has not been entered. These
33 circumstances are not applicable to the dockets sub judice.
34 WAC 480-09-820(2).

1 (c) For any good and sufficient cause which,
2 for any reason, was not considered and
3 determined in the original order.

4 WAC 480-09-820(1)(a)-(c).

5 Pierce County has not outlined in its complaint, even in
6 the most basic form, any additional or changed facts that in
7 any way would alter the prior decision of the WUTC. Without
8 such allegations, the WUTC should not waste its time to review
9 a decision which has already been adjudicated. See, State v.
10 Dupard, 93 Wn.2d 268, 609 P.2d 961 (1980) (discussing res
11 judicata effect of agency orders).

12 Under the statutory scheme in the state of Washington,
13 Pierce County should have filed an appeal pursuant to
14 RCW 34.05.514 if it desired judicial review of the decision of
15 the WUTC. However, Pierce County failed to timely perfect its
16 appeal pursuant to RCW 34.05.542. Therefore, any appeal of the
17 declaratory order of the WUTC by Pierce County would now be
18 time barred.


19
20 III. CONCLUSION

21 Based upon the foregoing, USWC respectfully submits that
22 the WUTC should summarily dismiss the complaint of Pierce
23 County. USWC further notes that Pierce County is not left
24 without a remedy for its complaint under the statutes and rules
25 relating to the WUTC. If Pierce County desires that the WUTC
26 change the current practices of a telecommunications company,
27 it may start the process through a request for a rulemaking
28 pursuant to RCW 34.05.330. Such a rulemaking proceeding, if
29 approved by the WUTC, would allow for comments by all
30 interested and affected parties and would not limit its

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application to only the parties involved in an adjudicative proceeding.

DATED this 19th day of March, 1992.



EDWARD T. SHAW
MARK ROELLIG, of Attorneys for
U S WEST Communications, Inc.

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