

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 In the Matter of Investigation on)  
4 the Commission's Own Motion: )  
5 Into the Propriety and Adequacy ) DOCKET NO. UT-951425  
6 of Certain Current Depreciation ) VOLUME 1  
7 Rates of U S WEST COMMUNICATIONS, ) Pages 1 - 18  
8 INC., )  
9 And the Changes, If Any, that )  
Should be Ordered to Such )  
Depreciation Rates. )  
-----)

10 A pre-hearing conference in the above matter  
11 was held on February 27, 1997 at 9:35 a.m. at 1300  
12 South Evergreen Park Drive Southwest, Olympia,  
13 Washington, before Administrative Law Judge TERRENCE  
14 STAPLETON.

15  
16 The parties were present as follows:

17 THE WASHINGTON UTILITIES AND TRANSPORTATION  
18 COMMISSION STAFF, by SALLY G. JOHNSTON, Assistant  
19 Attorney General, 1400 South Evergreen Park Drive  
20 Southwest, Olympia, Washington 98504

21 U S WEST COMMUNICATIONS, INC., by ED SHAW,  
22 Attorney at Law, 1600 Seventh Avenue, Room 3206,  
23 Seattle, Washington 98181.

24 FOR THE PUBLIC, SIMON FFITCH, Assistant  
25 Attorney General, 900 Fourth Avenue, Suite 2000,  
Seattle, Washington 98164.

Cheryl Macdonald, CSR  
Court Reporter

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APPEARANCES (Cont'd.)

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MCI TELECOMMUNICATIONS CORPORATION, INC.,  
MCI METRO ACCESS TRANSMISSION SERVICES, INC., by CLYDE  
MACIVER, Attorney at Law, 4400 Two Union Square, 601  
Union Street, Seattle, Washington 98101.

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AT&T COMMUNICATIONS OF THE PACIFIC  
NORTHWEST, INC., by KRAIG BAKER, Attorney at Law, 2600  
Century Square, 1501 Fourth Avenue, Seattle,  
Washington 98101.

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TRACER, by ARTHUR A. BUTLER, Attorney at  
Law, 5450 Two Union Square, 601 Union Street, Seattle,  
Washington 98101.

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## 1 P R O C E E D I N G S

2 JUDGE STAPLETON: This hearing will come to  
3 order. This is a pre-hearing conference in docket No.  
4 UT-951425 in the matter of the investigation on the  
5 Commission's own motion into the propriety and  
6 adequacy of certain current depreciation rates of U S  
7 WEST Communications, Incorporated, and the changes, if  
8 any, that should be ordered to such depreciation  
9 rates. The Commission on February 1, 1997 entered an  
10 order instituting investigation into the matters  
11 previously described pending hearings concerning the  
12 justness and reasonableness of depreciation rates.  
13 The Commission has determined that it will review the  
14 propriety and adequacy of certain depreciation rates  
15 for certain accounts reflected on the books of U S  
16 WEST. Those plant and equipment accounts and current  
17 parameters are described more fully in distributing  
18 investigation and the notice of hearing.

19 Commission set this pre-hearing conference  
20 by notice of February 12, 1997. Today's date is  
21 February 27, 1997. My name is Terrence Stapleton, and  
22 I will be conducting this pre-hearing conference on  
23 behalf of Administrative Law Judge John Prusia who  
24 will be the presiding ALJ as assigned by the  
25 Commission. The commissioners have indicated that

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1 they will preside at hearings in this matter.

2 I will take appearances at this time  
3 beginning with the company, please.

4 MR. SHAW: Yes. Ed Shaw for U S WEST  
5 Communications, Incorporated, 1600 Seventh Avenue,  
6 Room 3206, Seattle, 98181. Phone number 206-343-4067  
7 fax number 206-343-4040.

8 JUDGE STAPLETON: Thank you. For  
9 Commission staff.

10 MS. JOHNSTON: Sally G. Johnston, assistant  
11 attorney general appearing on behalf of Commission  
12 staff. My address is 1400 South Evergreen Park Drive  
13 Southwest, Olympia, 98504. My telephone number is  
14 area code 360-664-9598. Fax, area code 360-586-5522.

15 JUDGE STAPLETON: Thank you. For public  
16 counsel.

17 MR. FFITCH: Simon ffitch, assistant  
18 attorney general, office of public counsel. The  
19 address is Suite 2000, 900 Fourth Avenue, Seattle,  
20 Washington, 98164-1012. Phone number is 206-  
21 389-2055. Fax number subject to check is  
22 206-389-2058.

23 JUDGE STAPLETON: Thank you. Apparently we  
24 have people appearing to intervene. Mr. Butler.

25 MR. BUTLER: Yes. Arthur A. Butler

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1 appearing on behalf of TRACER. My address is Ater  
2 Wynne Hewitt Dodson and Skerritt, LLP. Two Union  
3 Square, Suite 5450, 601 Union Street, Seattle,  
4 Washington, 98101-2327. Phone number 206-623-4711.  
5 Fax number 206-467-8406.

6 JUDGE STAPLETON: Mr. MacIver.

7 MR. MACIVER: My name is Clyde H. MacIver.  
8 I'm appearing on behalf of MCI Telecommunications  
9 Corporation and MCI Metro Access Transmission  
10 Services, Inc. My address is 4400 Two Union Square,  
11 601 Union Street, Seattle, Washington, 98101. My  
12 telephone number is 622-8484, and I can't recall my  
13 fax number.

14 JUDGE STAPLETON: I received a petition to  
15 intervene from AT&T.

16 MR. BAKER: We're here. My name is Kraig  
17 Baker and I'm from Davis Wright Tremaine and I'm  
18 appearing on behalf of AT&T, and our address is 2600  
19 Century Square, 1501 Fourth Avenue, Seattle, 98101.  
20 My telephone number is 206-628-7619 and our fax number  
21 is 206-628-7699.

22 JUDGE STAPLETON: Let's take up the first  
23 order of business, the petitions to intervene. Mr.  
24 MacIver, do you want to make your formal petition to  
25 intervene here orally, please.

1                   MR. MACIVER: Yes. We have not prefiled a  
2 written petition, Your Honor. MCI Telecommunications  
3 Corporation is an interexchange carrier operating in  
4 the state of Washington, and MCI Metro is registered  
5 to provide switched and nonswitched intraexchange and  
6 interexchange services within the state of Washington.  
7 We view depreciation lives and methodology as having a  
8 significant impact on rates for MCI as well as a  
9 customer and as a competitor of U S WEST, and  
10 therefore have an interest in the issues in this  
11 proceeding.

12                   We are participating also in the  
13 interconnect proceeding, the rate case proceeding and  
14 the pricing proceeding which all relate in one way or  
15 another to these depreciation rates. We do not intend  
16 to broaden the issues in this case. We are hopeful to  
17 join with another party if we decide to present  
18 testimony. We have under discussions the possibility  
19 to improve efficiency of our participation to join in  
20 presenting testimony with another party if that's  
21 possible.

22                   JUDGE STAPLETON: Objection to the  
23 petition?

24                   MR. SHAW: Yes. If the theory of this  
25 proceeding is that it's the Commission taking up the

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1 results of the informal three-way negotiations of last  
2 March, which is a process that historically has never  
3 provided for intervention, we'll object to  
4 intervention of MCI as well as other intervenors on  
5 the basis that it's not appropriate. Past Commission  
6 practice for what we are trying to do here, the  
7 Commission simply is presumably identifying and not  
8 making up a cost, depreciation expense of the company.  
9 This is not a rate proceeding. There are no tariffs  
10 or prices associated with this in any shape  
11 whatsoever. The outcome of this proceeding will be a  
12 nonevent in the sense of immediately affecting prices,  
13 and since the only announced stated relevancy of the  
14 MCI companies participating in this is concern about  
15 impact on prices, their intervention is not required  
16 to produce a full record in this case.

17           As the Commission knows, the negotiations  
18 between the staff and the company in the informal  
19 three-way process did not produce anything and so  
20 presumably the function of this is for the staff to  
21 present to the Commission its position and the company  
22 its position and the Commission would then issue an  
23 expeditious decision. The presence of multiple  
24 intervenors, special interest intervenors, whose sole  
25 focus is not on identifying accurate depreciation

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1 rates for U S WEST but whose focus is on holding  
2 prices as low as possible would just simply serve to  
3 prolong unnecessarily this investigation.

4 As we talked off the record, contemplating  
5 with intervenors a proceeding that's going to take  
6 virtually the rest of 1997 and the company is not of  
7 the view that that is in any way a timely resolution  
8 of the informal three-way process. Therefore, we  
9 object to the intervention.

10 JUDGE STAPLETON: Commission staff, any  
11 comment on the MCI petition?

12 MS. JOHNSTON: Commission staff has no  
13 objection to MCI's participation in this proceeding.  
14 I would like to respond briefly to Mr. Shaw's comments  
15 concerning the need for urgency and would like to  
16 remind the company that the Commission extended an  
17 invitation to the company in an August 28, 1996 open  
18 meeting to file a petition to examine the status quo  
19 and the current depreciation rates and parameters, and  
20 it's my understanding that that invitation was  
21 declined. I don't believe that Commission staff's  
22 position in this case is going to be that the  
23 three-way -- that we will just be, to use your words,  
24 taking up the result of the three-way, the 1996 trial  
25 and prescription process, although I just would like



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1 to point out that the depreciation statute itself, the  
2 80.04.350 expressly states that the current rates  
3 serve as a benchmark or point of reference for any  
4 analysis of depreciation rates and parameters. But  
5 Your Honor, no, staff does not object to MCI's  
6 participation.

7 JUDGE STAPLETON: Public counsel?

8 MR. FFITCH: Public counsel does not object  
9 to MCI's participation.

10 JUDGE STAPLETON: Mr. Shaw, did you wish to  
11 add something?

12 MR. SHAW: I only wish to point out that  
13 counsel for the staff herself, at that opening meeting  
14 she referenced, urged the Commission not to do  
15 anything because of the pending appeal of the rate  
16 case and previous depreciation order of the  
17 Commission, so the characterization that the  
18 Commission extended an invitation for the company to  
19 file a petition in August and the company declined to  
20 do that is not accurate.

21 MS. JOHNSTON: Well, Your Honor, I take  
22 great issue with that. Without belaboring the point  
23 --

24 JUDGE STAPLETON: Let's not belabor the  
25 point. The facts are a matter of public record and

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1 may speak for themselves and I don't think they are  
2 appropriate to resolving the issue of MCI's  
3 intervention at this time.

4 I'm going to deny the petition, the oral  
5 motion of MCI to intervene in this proceeding. I  
6 don't believe that the subject matter of this  
7 proceeding warrants that type of participation. I  
8 don't know that the Commission would find benefit from  
9 that kind of a participation, and I think that in a  
10 matter of expediting and come to a quick conclusion to  
11 this proceeding I'm going to deny the oral motion to  
12 intervene.

13 JUDGE STAPLETON: Mr. Butler.

14 MR. BUTLER: TRACER as an association of  
15 large business consumers, customers of U S WEST, we  
16 believe has a stake and interest in the results of  
17 this proceeding because depreciation rates --  
18 depreciation rates of the company provide an extremely  
19 important element of the cost of service and the  
20 prices that will be paid by customers. The results of  
21 this proceeding will be incorporated into the  
22 calculation of the costs that we pay and may well  
23 force the filing of a rate case, change of rates,  
24 since U S WEST will be entitled to recover the  
25 operating expenses represented by the depreciation --

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1 resulting from the depreciation rates that are  
2 ultimately adopted.

3 I can't imagine anybody that has a more  
4 direct interest in the results of this proceeding than  
5 the customers of U S WEST. It appears to us that the  
6 three-way negotiations between the staff, the company  
7 and the FCC failed to result in negotiated agreement  
8 of what those rates should be. The Commission has  
9 apparently filed a petition starting a contested case  
10 to decide whether those rates should be changed. We  
11 think we have an interest and a right to participate  
12 in that proceeding since it will directly affect  
13 prices that we pay.

14 We don't intend to broaden the issues in  
15 the proceeding. We do note that we were permitted to  
16 intervene and did participate in the last depreciation  
17 case, which was initiated by petition filed by U S  
18 WEST. We think on the same rationale and grounds that  
19 we were granted intervention in that proceeding we  
20 should be granted intervention in this proceeding as  
21 well.

22 JUDGE STAPLETON: Mr. Shaw, any comment on  
23 --

24 MR. SHAW: Yes. In addition to my comments  
25 in regard to MCI counsel's, last statement that TRACER

1 was allowed to intervene in the previous depreciation,  
2 that was a petition by U S WEST to change its  
3 depreciation lives, amortization schedules and  
4 methodologies out of the traditional timing of the  
5 three-way informal negotiation process which was  
6 substantially different than the character of the  
7 present proceeding which does not involve changes in  
8 methodologies. It is, according to the order  
9 instituting investigation in the notice of hearing,  
10 those two enumerated accounts and the lives that  
11 should be assigned to those accounts by this  
12 Commission, so therefore that is no precedent.

13           Additionally, expanding upon my earlier  
14 observation that this proceeding in and of itself does  
15 not set any rates, this Commission is charged with  
16 identifying costs, not creating them. A rate case, if  
17 it happens in the future, will involve many judgments  
18 by the Commission, then current expenses, and there is  
19 no way to speculate that depreciation lives  
20 automatically evolve dollar for dollar into rate  
21 increases. Certainly not to just TRACER members,  
22 whoever they are, there are rate spread considerations  
23 to be made and there is no absolute determination in  
24 this case that any rates will be affected at all.

25           I also observed that the Commission without

1 this kind of an extended proceeding on a Wednesday  
2 morning meeting changed the lives that other incumbent  
3 LECs in the state of Washington are allowed to charge  
4 without necessity of the lengthy and heavy hearing  
5 process that TRACER contemplates, so I would object to  
6 intervention of TRACER. Their position is  
7 indistinguishable from that of MCI.

8 JUDGE STAPLETON: Commission staff, any  
9 comments?

10 MS. JOHNSTON: Commission staff has no  
11 objection to TRACER's intervention in this proceeding.  
12 I think Mr. Shaw has pointed out a distinction without  
13 a difference in terms of a proceeding initiated on the  
14 Commission's own motion versus a proceeding initiated  
15 by virtue of a petition filed by the company. Also,  
16 Mr. Shaw's reference to the WITA open meeting  
17 Commission approval of changes in rates and  
18 parameters was reached by virtue of a stipulation with  
19 the companies involved. So that, I believe, is a  
20 distinction with a great difference, but staff has no  
21 objection to TRACER's participation.

22 JUDGE STAPLETON: Public counsel.

23 MR. FFITCH: Public counsel does not object  
24 to TRACER's participation. We would urge that the  
25 Commission grant the request for the reasons stated by

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1 Mr. Butler. I think that to characterize this  
2 proceeding as a nonevent is really inaccurate. I  
3 think the ability of customers to affect the outcome  
4 on depreciation issues if they haven't participated at  
5 this level to have some kind of significant impact in  
6 a subsequent rate case is significantly limited, so we  
7 would urge the petition be granted.

8 JUDGE STAPLETON: Thank you. The oral  
9 motion of TRACER to intervene will be granted. Does  
10 AT&T wish to supplement its written petition to  
11 intervene with any comments at this time?

12 MR. BAKER: I don't believe so.

13 JUDGE STAPLETON: Objections, Mr. Shaw, to  
14 AT&T's petition to intervene?

15 MR. SHAW: Same objection on the same  
16 grounds as made to MCI and TRACER.

17 JUDGE STAPLETON: Thank you. Commission  
18 staff, any comment?

19 MS. JOHNSTON: No objection.

20 MR. FFITCH: No objection to AT&T  
21 intervention.

22 JUDGE STAPLETON: On the same basis that  
23 MCI's petition to intervene has been denied, I'm going  
24 to deny the AT&T petition. To the extent that they  
25 are both companies that are competitors, that is not,

1 I think, the focus at issue here in this proceeding,  
2 and to the extent that they are both customers of U S  
3 WEST, I suspect that they can work very closely with  
4 Mr. Butler, and I am sure you will probably appreciate  
5 their assistance as customers can be represented by  
6 TRACER.

7 MR. MACIVER: May I be heard on the record,  
8 Your Honor?

9 JUDGE STAPLETON: Yes.

10 MR. MACIVER: Your Honor, we do request  
11 that you reconsider your ruling in that we are indeed  
12 customers of U S WEST, and it would not be appropriate  
13 in our view to distinguish between customer classes of  
14 some customers get to have input on depreciation which  
15 affects cost of service which affects rates. It would  
16 not be appropriate and would be denying due process to  
17 other customers who were denied that access.

18 While we are competitors, which is true, we  
19 are also customers, and we would not broaden the  
20 issues in this case, and we would be subject to  
21 objections or subject to whatever restrictions that  
22 you or the other parties convince you are appropriate  
23 as this proceeding goes forward, but to deny us access  
24 to a proceeding which will in fact have an impact on  
25 us, just as it has an impact on any other customer as

1 represented by Mr. TRACER, I believe is discrimination  
2 against our class and our standing here in this  
3 proceeding as customers, and we urge you to  
4 reconsider. We will not expand this proceeding and  
5 broaden the issues in any way, Your Honor.

6 JUDGE STAPLETON: Thank you, Mr. MacIver.  
7 I am not swayed, and my ruling on the petitions of MCI  
8 and AT&T stand for the moment. I assume the parties  
9 will want to invoke the discovery rule. Does anyone  
10 so move?

11 MS. JOHNSTON: Yes, Your Honor.

12 JUDGE STAPLETON: Thank you. WAC  
13 480-09-480 will be invoked. Do we need to alter in  
14 any way the time lines within that rule for filing  
15 receipt of data requests?

16 MS. JOHNSTON: I don't believe so, assuming  
17 we can arrive at an acceptable hearing schedule.

18 JUDGE STAPLETON: All right. The parties  
19 of course are always encouraged to use informal  
20 discovery at every opportunity. I also need to advise  
21 you the responses to discovery requests need to be  
22 sent directly to parties of record, attorneys in this  
23 matter, and not sent through the Commission secretary  
24 nor directly to the administrative law judge.

25 Will anyone be requesting a protective



1 order in this matter?

2 MR. SHAW: I think that we will, yes. We  
3 ask for the standard form to be issued.

4 JUDGE STAPLETON: The Commission will enter  
5 a protective order modeled on docket No. UT-901029,  
6 the Electric Lightwave case. Also remind the company  
7 that any confidential materials filed as part of a  
8 prefiling need to be segregated and not served on any  
9 party who has not signed a -- what is that thing  
10 called -- witness execution agreement.

11 Let's go off the record a moment and we'll  
12 continue our discussion of scheduling.

13 (Recess.)

14 JUDGE STAPLETON: Let's be back on the  
15 record, please. While we were off the record we  
16 discussed scheduling. The following schedule is  
17 adopted for this proceeding. Commission staff will  
18 file its direct case May 19, 1997. U S WEST will file  
19 its direct case June 23. TRACER, public counsel will  
20 file their case July the 23rd. Simultaneous reply  
21 round for all parties will be due August the 25th.  
22 Staff will have the option to file on September the  
23 8th a final reply round.

24 Cross-examination of all testimony will be  
25 conducted the week of September 22nd through the 26th

1 and briefs will be due on October the 27th. Mr.  
2 MacIver, you indicated you wanted to speak on record,  
3 please.

4 MR. MACIVER: Yes. Your Honor, since your  
5 rule denying the interventions of MCI as well as AT&T  
6 for obvious reasons impact the rights of these -- of  
7 MCI, speaking for them, not AT&T -- as both a customer  
8 and competitor of U S WEST, we request, and it's  
9 important we request that you issue a written order on  
10 this motion, ruling, so that we can key to that for  
11 appeal purposes.

12 JUDGE STAPLETON: Certainly.

13 MR. MACIVER: And that I assume our appeal  
14 time runs from the service date of that order.

15 JUDGE STAPLETON: That's correct. I will  
16 be asking for an expedited transcript so you can  
17 expedite your appeal of that order.

18 MR. MACIVER: I appreciate that.

19 JUDGE STAPLETON: Anything else to come  
20 before us at this time? We'll stand in recess. Thank  
21 you very much.

22 (Hearing adjourned at 10:35 a.m.)

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