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USWEST

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April 27, 1998

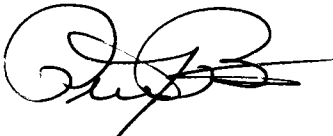
Mr. Paul Curl
Acting Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: UT-970723

Dear Mr. Curl:

Enclosed for filing are the original and 19 copies of April 27, 1998 Supplemental Comments of U S WEST Communications, Inc. in the above-identified docket. The document is also provided on disk, converted to WordPerfect 5.1 format.

Very truly yours,



PETER J. BUTLER

Enclosures

c w/enc.: All Interested Parties

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COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Proposed Rulemaking to Adopt a Methodology) DOCKET NO. UT-970723
the Determination of Just and Reasonable Rates)
for Attachments to Transmission Facilities) APRIL 27, 1998 SUPPLEMENTAL
) COMMENTS OF U S WEST
) COMMUNICATIONS, INC.
)

U S WEST Communications, Inc. ("U S WEST"), pursuant to the Notice of Opportunity to File Comments dated March 31, 1998, submits the following supplemental comments pertaining to the adoption of a methodology for determination of just and reasonable rates for attachments to transmission facilities:

I. OVERVIEW

On November 7, 1997, U S WEST filed its first set of comments on the Commission's proposal to adopt the FCC's current methodology for determining just and reasonable rates for attachments to transmission facilities. U S WEST filed supplemental comments in this docket on January 13, 1998. U S WEST stands by these previously filed comments and specifically incorporates them herein, except to the extent that such comments have been modified by this current filing.

1 **II. U S WEST SUPPORTS STAFF'S PREFERENCES FOR THE FCC'S**
2 **METHODOLOGY, NEGOTIATED AGREEMENTS AND A FLASH CUT.**

3 In its Notice of Opportunity to File Comments dated March 31, 1998, the Commission
4 noted that Commission Staff took the following three positions:

- 5 1) Staff generally agreed with the FCC's methodology, as amended in
6 the Report and order in CS Docket No. 97-151;
- 7 2) Staff desired a "flash cut" rather than the five-year FCC transition
8 period; and
- 9 3) Staff preferred negotiated agreements as the primary means of
10 attachment rates.

11 After considering Staff's positions, and reviewing the filings submitted by other parties, U S WEST
12 agrees with each of the positions taken by Staff. In particular, after reviewing the submissions of
13 other parties, U S WEST believes that an immediate flash cut to the FCC's methodology is the
14 most appropriate manner in which to implement the FCC ultimate methodology to be in place in
15 2008 on the state level. A flash cut would have the twin virtues of implementing, in one step, a
16 consistent and certain methodology and, further, eliminating the need for separate rulemakings and
17 implementations for each step taken during the five-year transition period.

18 **III. ALL OWNERS AND ATTACHERS OF TRANSMISSION FACILITIES MUST BE**
19 **TREATED EQUALLY.**

20 In its Supplemental Comments, U S WEST urged the Commission to adopt a methodology
21 which explicitly treats all owners of similar transmission facilities in an equal, nondiscriminatory
22 manner. Such treatment would disregard the type of service provided by the attacher and
23 acknowledge that all attachers should pay similar fees for the amounts of space used. Any other
24 type of arrangement would effect a subsidy in favor of some attachers to the disadvantage of other
25 attachers and facility owners. This is an anomaly which should be avoided in this era of increasing
26 competition. In this regard, U S WEST joins in the position taken by GTE that all parties using or

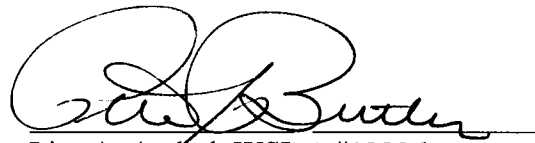
1 owning transmission facilities must be treated alike. See, Additional Comments of GTE Northwest,
2 filed January 15, 1998 at pp. 9-10.

3 **IV. THE COMMISSION SHOULD INTERPRET THE FCC GUIDELINES**
4 **CONSISTENTLY WITH THE FCC'S INTERPRETIVE ANNOUNCEMENTS.**

5 In recommending that the Commission adopt the FCC's methodology, U S WEST also
6 urges the Commission to establish a policy of adopting and applying interpretative announcements
7 issued by the FCC as to that methodology. U S WEST was recently confronted by this issue when
8 it was forced to request clarification from the FCC regarding its recent Report and Order. (See,
9 Attachment "A" hereto). In the event that the Commission chooses to adopt the FCC's
10 methodology, U S WEST submits that consistency and reason also require the Commission to
11 apply that methodology in a manner consistent with the FCC. Such a policy should be made
12 explicit in the Commission's own rules.

13 Respectfully submitted this 27th day of April, 1998.

14 U S WEST Communications, Inc.

15 

16 Lisa A. Anderl, WSBA #13236
17 Peter J. Butler, Attorney at Law

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Implementation of Section 703(e))
of the Telecommunications Act)
of 1996) CS Docket No. 97-151
)
Amendment of the Commission's Rules)
and Policies Governing Pole)
Attachments)

PETITION FOR CLARIFICATION

U S WEST, Inc. ("U S WEST") hereby requests that the Federal Communications Commission ("Commission") clarify certain aspects of its Report and Order in CS Docket No. 97-151, released February 6, 1998, which prescribed regulations to govern pole and conduit attachments used by telecommunications carriers to provide telecommunications services.¹ As the Commission noted in its Order, these regulations will not affect the rates that cable systems and telecommunications carriers providing telecommunications services² pay for pole

¹ In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Report and Order, FCC 98-20, rel. Feb. 6, 1998 ("Order").

² Hereafter, both cable systems providing telecommunications services and telecommunications carriers providing telecommunications services will be jointly be referred to as telecommunications carriers.

attachments until after February 8, 2001.³

While the Commission's Order answered many questions associated with the assessment and calculation of pole attachment rates for telecommunications carriers, a few critical questions remain unanswered. In these cases, further clarification is required in order to calculate maximum rates for the different attaching parties. Therefore, U S WEST requests that the Commission provide further clarification in two main areas: 1) third party overlashing; and 2) the cost of unusable space for conduit. In the remainder of this Petition, U S WEST addresses these subjects.

I. THIRD PARTY OVERLASHING

Despite opposition from numerous parties, including U S WEST,⁴ the Commission allowed third party overlashing with only the consent of the host attaching entity.⁵ The Commission did not require consent of the pole owner. However, the Commission did subject third party overlashers "to the same safety, reliability, and engineering constraints that apply to overlashing one's [a utility's] own pole attachment."⁶ Questions still remain as to what rate third party overlashers should pay and to whom. As such, the Commission must clarify certain language in its Order if third party overlashing is to be an option for

³ Beginning on February 8, 2001, higher rates for pole attachments for telecommunications services will be phased in over a 5 year period. Order ¶ 129; 47 U.S.C. § 224(e)(4).

⁴ Comments of U S WEST, filed herein, Sep. 26, 1997 at 10 ("U S WEST Comments").

⁵ Order ¶ 68.

telecommunications carriers.

In paragraph 69 of its Order the Commission stated that overlashing by third parties should be classified as a separate attachment.⁷ In the absence of any other comment, U S WEST would interpret this language to imply that a third party overlasher should be charged for a single pole attachment which would include both a charge for usable space and a charge for unusable space. Later in paragraph 92, the Commission states that a third party overlasher is “presumed to share the presumptive one foot of usable space of the host attachment.”⁸ In paragraph 94, the Commission states that “we conclude that it is reasonable to allow the host attaching entity to negotiate the sharing of costs of usable space with third party overlashers.”⁹ Together, paragraphs 92 and 94 imply that an overlasher only owes the pole owner the overlasher’s share of unusable space costs and that the host attacher is responsible for the costs of usable space. Any liability that the overlasher may incur for usable space would appear to depend on the outcome of negotiations with the host attacher. This result is quite different from the conclusion that one would arrive at by reading paragraph 69 in isolation. Therefore, U S WEST requests that the Commission clarify the payment obligation of a third party attacher to both the pole owner and the host attacher.

Of more concern is the fact that pole owners may be the last parties to learn

⁶ Id.

⁷ Id. ¶ 69.

⁸ Id. ¶ 92.

⁹ Id. ¶ 94.

of the existence of a third party overlasher in the absence of an explicit notice requirement. Without such a notice requirement it will be impossible for pole owners to determine whether overlashing will endanger the integrity of a pole line or create a hazardous condition.¹⁰ It would also be impossible to determine whether overlashing is done in compliance with generally accepted engineering and safety standards. Therefore, U S WEST requests that the Commission clarify that advance notice to pole owners is required by third parties prior to overlashing any existing pole attachments.

II. UNUSABLE SPACE COSTS

In discussing unusable space in conduit systems, the Commission identifies two types of unusable space: 1) “there is that space involved in the construction of the system, without which there would be no usable space;” and 2) “there is that space within the system which may be unusable after the system is constructed.”¹¹ The latter category consists of emergency/maintenance ducts and deteriorated ducts. Costs of such space would normally be determined by dividing the total linear duct-feet of deteriorated conduit and duct-feet of emergency/maintenance ducts by total linear duct-feet of conduit. The result of this calculation would then be multiplied by total conduit investment cost to produce a cost per duct-foot for conduit. This approach makes sense and it easily allows the inclusion or exclusion

¹⁰ While U S WEST opposed the adoption of rules which would permit third party overlashing, in its earlier comments in this proceeding, U S WEST permits overlashing by parties with existing pole attachments on the more than one million poles that U S WEST owns. See U S WEST Comments at 10.

¹¹ Order ¶ 110.

of emergency/maintenance or deteriorated duct space in unusable space costs (i.e., because all costs are measured in dollars per duct-foot).

U S WEST is perplexed as to how costs of the Commission's first category of unusable space are measured. It appears that the Commission is attempting to modify the approach that it uses for determining unusable space cost for poles to conduit. But it is not at all clear which costs should be included in unusable space costs of conduit or how they should be measured (e.g., dollars per duct-foot).

U S WEST agrees that there are costs involved in creating usable space but not all of these costs are unusable space costs as the Commission's statement seems to imply (i.e., "there is that space involved in the construction of the system, without which there would be no usable space.").¹² The parallel that the Commission is attempting to draw between poles and conduit with respect to unusable space is hopelessly confusing. Thus, it is imperative that the Commission further clarify its intentions with respect to the calculation of unusable space costs for conduit.

Without clarification there will be no consistency among the parties as to the appropriate way to measure these costs and the ultimate result will be an increase in the number of pole attachment complaints at the Commission.

¹² Id.

III. CONCLUSION

U S WEST requests that the Commission clarify the foregoing aspects of its pole attachment Order.

Respectfully submitted,

U S WEST, INC.

By: _____

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April 13, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true and correct copy of April 27, 1998 Supplemental Comments of U S WEST on the following parties of record by U.S. Postal Service, postage prepaid:

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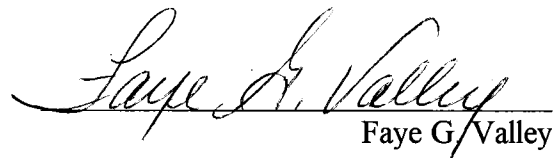
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Dated this 27th day of April, 1998.


Faye G. Valley