

SERVICE DATE

NOV 25 1997

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	
)	DOCKET NO. UT-960832
CAMELOT SQUARE MOBILE)	
HOME PARK)	
.....)	
In the Matter of)	
)	DOCKET NO. UT-961341
SKYLARK VILLAGE MOBILE)	
HOME PARK)	
.....)	
In the Matter of)	
)	DOCKET NO. UT-961342
BELMOR MOBILE HOME PARK)	
.....)	FOURTH SUPPLEMENTAL ORDER
)	INITIAL ORDER

SUMMARY

PROCEEDINGS: On June 19, 1996, Camelot Square Mobile Home Park filed a formal complaint against U S WEST Communications Inc. (U S WEST). On October 23, 1996, Camelot Square Mobile Home Park filed an amended complaint. Belmor Mobile Home Park and Skylark Mobile Home Park filed nearly identical complaints on the same day. In essence, the parks alleged that buried telephone cable at the parks has deteriorated, and that U S WEST will not repair or replace the cable until the parks provide access to a trench or provide conduit. The complaints were consolidated by Commission order dated November 22, 1996. A prehearing conference was held December 16, 1996. Hearings for presentation of evidence and cross-examination were held June 10-11, 1997. Briefs were filed on August 1, 1997, and simultaneous response briefs were filed on August 22, 1997.

PARTIES: The petitioners, Camelot Square Mobile Home Park, Skylark Mobile Home Park, and Belmor Mobile Home Park (the Parks) were represented by Walter H. Olsen, Jr., attorney, Seattle. The respondent, U S WEST was represented by Lisa A. Anderl, attorney, Seattle. The Washington Utilities and Transportation Commission (Commission Staff), was represented by Shannon E. Smith, Assistant Attorney General, Olympia.

SUMMARY: This order determines that U S WEST shall provide the trenching and all facilities including, without limitation, buried service wire and conduit to replace all buried service wire located at Camelot Square Mobile Home Park, Skylark Village Mobile Home Park, and Belmor Mobile Home Park, and shall restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by December 31, 1997.

MEMORANDUM

This matter arises from complaints filed against U S WEST by Camelot Square Mobile Home Park, Skylark Village Mobile Home Park and Belmor Mobile Home Park.

Each park filed a separate complaint against U S WEST. The complaints were consolidated by the Commission by order dated November 22, 1996. In essence, the Parks have alleged that buried telephone cable at the Parks has deteriorated and that U S WEST will not repair (or replace) the cable until the Parks provide access to a trench or provide conduit. Petitions at ¶¶ 5. The Parks further allege that U S WEST, by requiring the Parks to provide access to a trench or conduit before it will repair or replace the cable, is violating the company's tariff, and the statutes and rules governing telecommunications companies in the state of Washington. *Id.* at ¶¶ 6-12. U S WEST claims that it is not required to repair or replace the telephone cable until the Parks provide access to a trench or conduit. U S WEST's position in this case is summarized as:

U S WEST's current tariffs clearly state that the property owner is to provide support structure, such as trench, conduit or poles, for placement of U S WEST facilities on private property whether it be for new construction or for maintenance reasons.

Exhibit T-43, Direct Testimony of Theresa A. Jensen, at 1, ll. 12-14.

U S WEST relies on Section 4.6.A.2.f and Section 2.5.2.C of its WN U-31 tariff in support of its position. *Id.* at 2-3. Further, U S WEST claims that tariff language supporting its position has existed since 1961.

Commission Staff does not agree with U S WEST's interpretation of its tariff. According to its tariff, U S WEST is required to repair and maintain the telephone facilities within the Parks, which includes the excavation of a trench and placement of conduit if necessary to effectuate the repair. Exhibit T-71, Direct Testimony of Mary M. Taylor, at 2.

ISSUES PRESENTED

A. Is U S WEST responsible for trenching and conduit to repair and maintain buried service wire that was designed, engineered, installed, and maintained by U S WEST.

1. Does U S WEST's new construction tariff (Section 4.6.A.2.f) apply to the repair and maintenance of existing buried service wire at the Parks?
2. Does U S WEST's building space and electric power supply tariff (Section 2.5.2.C) apply to the repair and maintenance of buried service wire at the Parks?

RELEVANT STATUTES AND REGULATIONS

U S WEST is required to provide certain minimum levels of service as defined by Washington law. These requirements include the following:

1. RCW 80.36.080: The service so to be rendered any person, firm, or corporation by any telecommunications company shall be rendered and performed in prompt, expeditious and efficient manner and facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.
2. RCW 80.36.090: Every telecommunications company shall, upon reasonable notice, furnish to any persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.
3. WAC 480-120-500(1): The facilities of telecommunications companies shall be designed, constructed, maintained, and operated to ensure reasonable continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.
4. WAC 480-120-520(8): All reported interruptions of telecommunications services shall be restored within two working days, excluding Sundays and holidays, except interruptions caused by emergency situations, unavoidable catastrophes, and force majeure.

5. WAC 480-120-525(2): Each local exchange company shall adopt maintenance procedures and employee instructions aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate, and continuous service at all times. Effective maintenance shall include, but not be limited to, keeping all facilities in safe and serviceable repair.

DISCUSSION

A. STATEMENT OF JURISDICTION AND AUTHORITY

The Commission has authority to regulate the facilities and practices of a utility pursuant to RCW 80.01.040(3). General Telephone v. Bothell, 105 Wn.2d 579, 583, 716 P.2d 879 (1986). Specifically, RCW 80.01.040(3) provides that Commission shall:

[r]egulate in the public interest, as provided by the public service laws, the rates, services facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activity; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

Pursuant to that authority, the Commission promulgated WAC 480-120-076, which allows each telephone utility to set forth terms in its tariff for providing underground facilities. General Telephone v. Bothell, 105 Wn.2d 579, 585, 716 P.2d 879 (1986).

Once a utility's tariff is filed and approved, it has the force and effect of law. General Telephone, at 585 (citing Moore v. Pacific Northwest Bell, 34 Wn. App. 448, 455, 662 P.2d 398 (1983)).

The Commission has jurisdiction to apply and interpret relevant statutes and to issue appropriate orders. Tanner Elec. v. Puget Sound, 128 Wn.2d 656, 665, 911 P.2d 1301 (1996). The Commission may "[m]ake such rules and regulations as may be necessary to carry out" its duties. RCW 80.01.040(4). The Commission also may "make and issue interpretive and policy statement when necessary to terminate a controversy or to remove a substantial uncertainty as to *the application of statutes or rules of the Commission.*" Tanner Elec., at 666 (citing WAC 480-09-200(1) (emphasis in opinion)).

RCW 80.36.140 proscribes "unjust or unreasonable" practices in the provision of telephone services and authorizes the Commission, after a hearing, to order changes in company practices. Moore v. Pacific Northwest Bell, 34, Wn. App. 448, 451, 662 P.2d 398 (1983). RCW 80.36.140 reads, in pertinent part:

Whenever the Commission shall find, after a hearing had upon its own motion or upon complaint . . . that the rules, regulations or practices of any telegram company or telephone company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the Commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and enforced, and fix the same by order as provided in this title.

Whenever the Commission shall find, after such hearing that the rules, regulations or practices of any telegraph company or telephone company are unjust or unreasonable, . . . the Commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and services to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title.

B. APPLICABLE TARIFFS

U S WEST filed its current tariff on August 11, 1994. Section 2 of U S WEST's tariff provides the general regulations and conditions of offering telecommunications service to its customers. Section 2 contains eight subsections' each subsection addresses a different area of telecommunications service related to the initial offering of service and the subsequent repair and maintenance of service.

U S WEST's liability for its facilities is defined in Section 2.4. U S WEST's liability for "Maintenance and Repair" of existing facilities is defined in subsection 2.4.2. Subsection 2.4.2.A provides U S WEST with the right to enter and leave the customer's premises during normal business hours for any purpose reasonably connected with the furnishing of telephone service. Subsection 2.4.2.C provides that a U S WEST customer who negligently damages a buried service line is responsible for the damage.

1. IS U S WEST RESPONSIBLE FOR TRENCHING AND CONDUIT TO REPAIR AND MAINTAIN BURIED SERVICE WIRE THAT WAS DESIGNED, ENGINEERED, INSTALLED, AND MAINTAINED BY U S WEST?

Subsection 2.4.2.C of U S WEST's tariff WN U-31 provides:

2.4 - Liability of the Company

2.4.2 - Maintenance and Repair

C. Use of Facilities

The customer is responsible for loss of or damage to any facilities furnished by the Company unless the customer proves that such loss or damage was caused by the negligent or intentional misconduct of others or was otherwise due to causes beyond the customer's control. If it becomes necessary to bill for recovery of damages, the estimated cost for replacing such facilities will apply.

This section places the responsibility for maintenance and repair on the company unless the customer caused the damage. In a situation where service has deteriorated, at no fault of the customer, U S WEST is responsible for the repair of that service, even if replacement would be required to restore service. Maintenance and repair would include access to a trench or conduit.

U S WEST installed the buried service wire at the Parks in 1959, 1966, and 1967. The buried service wire was designed, engineered, and installed by U S WEST. U S WEST decided whether or not to use conduit. Since the buried service wire was installed, U S WEST or its predecessor Pacific Northwest Bell has accessed and maintained the telephone cable located at the Parks. The Parks had no control over how the buried service wire was installed, were not allowed to participate in its maintenance over time, and, therefore, the current problems with the buried service wire are due to causes beyond the Park's control. The Parks argue that they are not responsible for repairing the buried service wire, or providing trenching or conduit.

U S WEST argues that there is no requirement under Washington law that it provide trenching or conduit on private property. It's position is that it has filed tariffs setting forth property owner's responsibility for providing trenching and conduit for U S WEST service wire, and that it is merely seeking to comply with its lawful tariffs. U S WEST relies on three sections of its tariff in framing this argument: WN U-31, Section 4.6.A.2.f; WN U-31, Section 2.5.2.C; and WN U-31, Section 2.5.2.D.

Commission Staff does not agree with U S WEST's interpretation of its tariff. It argues that, according to the tariff, U S WEST is required to repair and maintain the telephone facilities within the Parks, which includes the excavation of a trench and placement of conduit if necessary to effectuate the repair. Exhibit T-71, p. 2.

Decision

U S WEST's tariff requires it to repair and maintain its telephone facilities, including those within the Parks. The required repair and maintenance includes excavation of a trench and placement of conduit necessary to effectuate the repair. Unless one of the tariff sections cited by U S WEST provides an exception, the company must meet this responsibility in the Parks. The three tariff sections which U S WEST argues include an exception will be discussed in turn below.

A. Does U S WEST's New Construction Tariff (Section 4.6.A.2.f) Apply to the Repair and Maintenance of Existing Buried Service Wire at the Parks?

Section 4.6.A.2.f falls under the headings "Other Construction or Conditions," "New Construction," and "Buried Construction." It states:

The property owner is responsible for the installation, maintenance and repair of the trench or conduit utilized for the Company facilities to provide service within the owner's private property.

WN U-31, Section 4.6.A.2.f.

The Parks argue that the language in this section applies only to "New Construction" and would not apply to the repair and maintenance of U S WEST's buried service wire that was installed and maintained without the Park's participation.

Commission Staff agrees with the Parks. It argues that this section only applies when a customer is seeking new or additional service, rather than repair of existing service, citing Exhibit T-71, at 10. Staff argues that this language was adopted as a result of the Minimum Point of Presence (MPOP) case, Docket No. UT-920474. Id. Staff witness Mary Taylor testified:

The language [in Section 4.6.A.2.f] is intended to address situations where existing support structure is unusable. The language only applies to new construction specifically when a customer requests new or additional services which would require the installation of additional facilities, such as when existing facilities at a premise are at capacity. The intent of

the language was that if the customer's existing support structure was unusable, the customer would be responsible for repairing the structure or providing a new structure for termination of the new facilities. This language was not meant to be applied to repair situations.

Id.

Commission Staff points out that U S WEST's tariff nowhere defines replacement of existing facilities as "new construction."

U S WEST argues that replacement of entire units of cable or other facilities is "new construction" as that phrase is used in Section 4.6. It argues that the Park's and Commission Staff's interpretation of the tariff would render meaningless the requirement in the section that the property owner is responsible for "maintenance and repair" of trench or conduit, and that if the property owner is only responsible for trenching and conduit at initial provision of the dial tone, there would never be a time when the property owner was required to maintain or repair the conduit or trenching.

Decision

U S WEST'S New Construction Tariff (Section 4.6.A.2.f) does not apply to the repair and maintenance of existing buried service wire at the Parks. As labeled by U S WEST and placed in the tariff, the section on its own terms applies only to new construction. This is not a case where the Parks are ordering additional service that require new conduit or trenching to add new services. Instead the Parks are attempting to obtain continued provision of U S WEST dial tone for the U S WEST customers who live in the Park. Commission Staff interpretation of the tariff makes sense of all parts of the tariff and applies it in a straight-forward manner that is consistent with the clear language of the tariff. That interpretation is adopted in this order.

B. Does U S WEST's Building Space And Electric Power Supply Tariff (Section 2.5.2.C) Apply to The Repair And Maintenance of Buried Service Wire at The Parks?

The second section of its tariff relied on by U S WEST as a clear requirement that the property owner, not U S WEST, is responsible for provision of trenching and conduit is Section 2.5.2.C, which is under the heading "Building Space and Electric Power Supply," and assigns various responsibilities with regard to the provision of electrical power to U S WEST's facilities. It states:

Any existing or new structures or work required to support telephone services on the customer's premises shall be provided at the expense of the customer. Such structure or work may include the placement or use of trenching, conduit and/or poles to support telephone services provided on the customer's premises.

WN U-31, Section 2.5.2.C.

The Parks argue that this section only applies to providing electrical power to U S WEST's facilities in building spaces, and would not apply to buried service wire at the Parks. The Parks note they are customers of U S WEST only in the sense that their offices in the Parks receive dial tone from U S WEST. U S WEST provides phone service to a large number of customers in each park.

The Parks note that the term "customer premises" is not defined in the tariff, and that U S WEST appears to rely on the definition of "premises" in WN U-31, Section 2.1 to argue that Section 2.5.2.C applies to the Parks. The term "premise" is defined in the tariff as:

The space occupied by a customer in a single building or in connecting buildings on continuous property. The space may be a dwelling unit, other building, or a legal unit of real property such as a lot on which a dwelling unit is located subject to the local telephone company's reasonable and nondiscriminatory standard operating practices. For the purposes of the Intra-premises network cable and wire in 2.8, premises may also include space occupied by a customer in multiple buildings.

The Parks claim that they are not on a single premises as defined in the tariff. U S WEST has conceded that the residents of the Parks are its customers. TR 214. Each manufactured home is a "structure that houses the customer" for purposes of the definition of "building" and "premises" as those terms are applied in Section 2.5.2.C.

The Parks argue that, if the section applies at all, it must be applied to individual residents, rather than the Parks. Individual lots in the Parks constitute "a legal unit of real property" as that term is used in the definition of "premises." See, Aldrick v. Olson, 12 Wn. App. 665, 667 (1975)(citing Conway v. Time Oil Co., 34 Wn 2d 884 (1949)). See also, the Mobile Home Landlord-Tenant Act, chapter 59.20 RCW. The Parks argue that their residents have exclusive possession of their "legal unit of property" just as any housing development, and U S WEST should similarly be required to provide trenching and conduit to install its buried service wire up to the resident's lot.

Commission Staff argues that Section 2.5.2.C does not require U S WEST's customers to excavate the trench or provide conduit to repair the company's existing facilities. Staff asserts that this tariff provision applies only to installation and repair of facilities within buildings. Exhibit T-71, p. 4. This is so first, because the section falls within the general heading "Building Space and Electrical Power Supply." Staff argues the tariff heading must necessarily limit application of the tariff sections to the subject matter of the heading. U S WEST's tariff WN U-31 is over 700 pages long, and tariff headings are an important tool in reading tariffs because they allow anyone reading the tariff to know the subject matter to which the language applies. Staff traces the history of this particular tariff section, and argues that this language was deliberately placed under its current heading.

According to Commission Staff, the language in Section 2.5.2.C was approved with the understanding that it would be applied in three situations. First, where a customer requests service within a building, and a support structure does not exist. Second, where new or additional service is requested within a building and the existing support structure is unusable. Finally, if the company's facilities are inaccessible, such as enclosed within a wall, the owner is responsible for opening the wall and providing access to the company.

Commission Staff claims that U S WEST changed the language in Section 2.5.2 as a result of the company's discussions with Staff during the MPOP case. Staff provided a copy of an E-mail message from U S WEST witness Teresa Jensen to Commission Staff witness Mary Taylor indicating that this filing was intended to modify U S WEST's IntraBuilding Wire and Cable Tariff, and that the language did not reflect new policy, but rather clarified existing tariff language found in Section 4.6.A.1.a.

Commission Staff further relies on language in section 4.6.A.1.a of WN U-31 under the headings "Other Construction or Conditions" and "New Construction" which reads:

If a supporting structure is required on the property of the applicant, it will be the applicant's responsibility to provide the structure. The structure must meet Company standards. Upon acceptance, the ownership vests in the Company.

Staff claims that this supports the position that while new construction is subject to a requirement to provide conduit or trenching, the ongoing repair of that structure is the responsibility of U S WEST. Staff notes that the section addresses the responsibilities of applicants, not customers, and notes that the U S WEST tariff distinguishes between the two. Because this section applies to applicants, it bolsters the Staff argument that current customers need not provide trenching or conduit for the maintenance, repair, or replacement of existing service.

U S WEST's position is that Section 2.5.2.C does not limit the customer's responsibilities to support structures within buildings. Section 2.5 of the tariff sets forth the "Responsibilities of the Customer." Section 2.5.2 is the only subsection within Section 2.5., and U S WEST claims it would not make sense for customers to only have responsibilities within buildings. Sections 2.5.2.B, 2.5.2.C, and 2.5.2.D all refer to the customer's premises. U S WEST argues that if section 2.5.2 is limited to a customer's responsibilities within buildings, rather than within property boundaries, the definition of premises as being a "continuous property" or "legal unit of property" is rendered meaningless.

U S WEST goes on to argue that the history of Section 2.5.2 demonstrates that the meaning of the section is not intended to be limited by its title. It provides a history of the section that varies somewhat from that provided by Commission Staff. Although it agrees that current Section 2.5.2 was given the title "Building Space and Electric Power Supply " at the time of its most recent adoption, it argues that the Parks and Commission Staff's arguments do not make sense, and should not be accepted.

U S WEST goes on to argue that the Parks, and not the U S WEST customers within the Parks, are responsible for providing trenching and conduit. It argues that this is true because the tariffed language would render the tariff useless or meaningless in a particular situation. U S WEST claims that the definition of premises extends to the "legal unit of property" on which the customer is located, and that tenants in the Parks neither own nor control the property on which they are located.

Decision

U S WEST's Building Space and Electric Power Supply Tariff (Section 2.5.2.C) does not apply to the repair and maintenance of buried service wire at the Parks. As labeled by U S WEST and placed in the tariff, the section on its own terms applies only to customer's responsibilities to provide support structure within buildings. The tariff is clear on its face. If the history of the tariff is examined, the history provided by Commission Staff more clearly accounts for the placement of the language, and meaning agreed upon between Staff and U S WEST as evidenced by the E-mail message from Teresa Jensen to Mary Taylor. The Parks are correct that each residential lot is a legal unit of real property, as that term is used in the U S WEST definition of premises, and that each individual manufactured home would be considered a building for purposes of Section 2.5.2.C However, Section 2.5.2.C would not apply in any event because the facilities requiring repair are not within the buildings. U S WEST has the same responsibility to serve the needs of its customers in the Parks as it has to serve those in other residential developments.

C. Does U S WEST's Building Space And Electric Power Supply Tariff (Section 2.5.2.D) Apply to The Repair And Maintenance of Buried Service Wire at The Parks?

The third section of its tariff relied on by U S WEST as a clear requirement that the property owner, not U S WEST, is responsible for provision of trenching and conduit is Section 2.5.2.D, which is under the heading "Building Space and Electric Power Supply," and assigns various responsibilities with regard to the provision of electrical power to U S WEST's facilities. It states:

It is the customer's responsibility to provide the premises and space satisfactory to the Company, for placement of all equipment and facilities necessary for the furnishing of service. Installation and maintenance beyond the Company's protected network facilities will be the responsibility of the customer or others requesting such work.

The Parks argue that U S WEST's past practices have been to provide trenching to repair, maintain, and replace the buried service wire at each of the Parks, and that U S WEST's past practice confirms that the Parks are not a "property owner" or "customer" and the Parks are not "owner's private property" or "customer premises" as those terms are used in the tariff. They note that U S WEST does provide trenching on public and private right-of-way property, and that U S WEST admits that the tariff does not provide for this distinction, nor is "public and private right-of-way" defined by the tariff. U S WEST has a perpetual easement to install and maintain buried service wire at Belmor and Skylark Village. The Parks agree with U S WEST that they have the duty to allow U S WEST onto their property for purposes of servicing U S WEST's telecommunication lines. Reply brief, p. 13, citing U S WEST initial brief at P. 29.

Teresa Jensen, testifying on behalf of U S WEST, explained that U S WEST provides trenching and conduit to cross private property to provide service to another customer located on different property. She provided illustrative Exhibit 70 to explain her point. See, transcript pages 342-50. The Parks argue that the example U S WEST gave as to when it will provide trenching and conduit for a private property owner is analogous to their communities. The Parks own the private roads that lead to each lot in the community. The Park owners are analogous to the property owner who owns the private road that is shown in Exhibit 70. Therefore, the Parks argue, U S WEST should provide conduit and trenching on their roads in order to reach the lots of U S WEST's customers in the Parks.

The Parks go on to argue that federal regulations and the U S WEST tariff clearly state that U S WEST is responsible for the repair and maintenance of buried service wire on U S WEST's side of the demarcation point, citing 47 C.F.R. Section 68.213(b). A demarcation point is "the point of interconnection between the Company's

regulated telecommunications facilities and terminal equipment, protective apparatus or wiring at a premises.” WN U-31, Section 2.1. The demarcation point in the Parks is located at the point of entry into a resident’s manufactured home.

In a related argument, the Parks argue that the costs for trenching and conduit are costs that U S WEST will capitalize and depreciate. They note that the federal regulations allow any item of property subject to plant retirement accounting to be included, and that the cost of the property to be retired can be determined by the average cost of “such items as poles, wire, cable terminals, conduit, and booths.” 47 C.F.R. Section 32.2000(f)(3)(ii)(A). Also, they argue, the instructions for balance sheet accounts regarding buried cable provide that “the cost of trenching for and burying cable in conduit” should be included in a buried cable balance sheet account. See, 47 C.F.R. Section 32.2423(a). Basically, the Parks argue that if U S WEST is allowed to make them pay for conduit and trenching, then they will pay twice--once in their rates and once directly.

Commission Staff argues that under U S WEST’s tariff, U S WEST’s obligation to maintain, repair, or replace its facilities on its own side of the demarcation point is not dependent on whether the facilities are located on public or private property. First, U S WEST’s tariff does not distinguish between public and private property with respect to repair and maintenance. Staff argues that under the plain language of the tariff, the company is obliged to maintain and repair, or replace if necessary, its facilities on the company’s side of the demarcation point without regard to the character of property ownership. WN U-31, Section 2.4.2. Staff argues that U S WEST’s argument that property ownership should determine responsibility for trenching and conduit in repair situations, if adopted, would result in discrimination between customers.

Commission Staff urges that U S WEST be required to clarify its tariff to prevent the company from continuing its illegal interpretation of the tariff. Commission Staff agrees with the Parks that U S WEST’s interpretation and application of the tariff would result in double recovery for the company. See, Exhibit T-87, p. 5.

U S WEST does not base any argument specifically on Section 2.5.2.D. It argues that its interpretation of Sections 2.5.2.C and D and 4.5.A.2.f are consistent with other sections of its tariff. It is U S WEST’s position that property owners are responsible for providing support structures and it focuses on the property line as a demarcation point in determining responsibilities. It analogizes the situation in the Parks to that of individual tenants on multi-tenant property, noting the provisions of Section 2.8.1 of the tariff. U S WEST also relies on the definition of the minimum point of entry (MPOE) in its tariff. The MPOE is:

The closest practicable point to where regulated facilities cross a property line or the closest practicable point to where the regulated facilities enter a multi-unit building or buildings.

The tariff also provides that "the Company will extend buried facilities within the BRA to a company designated point on the prospective customer property line." Section 4.1.3. Similarly, construction charges apply "in connection with the placement of new wires from a point on the customer property line to the premises to be served." Section 4.1.6. U S WEST argues that these provisions are consistent with its interpretation of its tariff that the park owners must provide necessary conduit and support structures from the edge of their property line in order to allow placement of facilities to the individual customers who are on their property.

Decision

Section 2.5.2.D does not apply in this matter, because the repairs which U S WEST has been asked to perform are not within buildings. U S WEST has access to any and all areas it needs to reach to make repairs, based on the easements in the record, and the commitment of the Parks in their reply brief. Under the plain language of the tariff, the company is obliged to maintain and repair, or replace if necessary, its facilities on the company's side of the demarcation point without regard to the character of property ownership. This should be the bright line dividing customer and company responsibility. U S WEST's costs for performing such repairs are included in its rates, and should not be charged to customers. U S WEST should also be required to clarify its tariff to prevent future disputes arising out of similar facts.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with authority to regulate telecommunications companies.
2. U S WEST Communications, Inc. is engaged in the business of furnishing telecommunication services within the state of Washington, and, as such, is a public service company subject to regulation by the Washington Utilities and Transportation Commission.
3. On June 19, 1996, Camelot Square Mobile Home Park filed a complaint against U S WEST claiming that U S WEST was failing to provide repair of its telephone facilities. On October 23, 1996, Camelot Square Mobile Home Park filed an amended complaint. Skylark Village Mobile Home Park and Belmor Mobile Home Park filed nearly identical complaints on the same day. The three complaints raise substantially similar allegations regarding whether U S WEST or the Park owners are responsible for providing the trenching and conduit on the Parks' property for replacement of the deteriorating service cable.

4. In 1995 and 1996, after experiencing an increased volume in service calls at the Parks, U S WEST proposed to replace existing, deteriorated service cable at the Parks with new service cable. U S WEST requested that the Parks provide trenching and conduit on the Parks' property for placement of the new service cable. In sum, the allegations in the complaints are that buried telephone cable at the Parks has deteriorated and that U S WEST will not repair (or replace) the cable until the Parks provide access to a trench or provide conduit.

5. Service cable and other hardware such as switches constitute "facilities" under U S WEST's tariff. "Supporting structures" include poles, trenching or conduit that support U S WEST's facilities.

6. U S WEST's tariff, WN U-31, does not provide that the customer is responsible to provide trenching, access to trenching and conduit in situations where the company's facilities need to be maintained, repaired, or replaced.

7. WN U-31, Section 2.5.2.C applies only to installation and repair of company facilities within buildings. It does not apply to the maintenance and repair of company facilities that are not located within a building.

8. WN U-31, Section 4.6.A.2.f applies only with respect to new construction. It does not apply to the maintenance and repair of existing company facilities.

9. Pursuant to the Section 4.2, all line extensions are owned and maintained by U S WEST.

10. Pursuant to the Land Developer Agreement ("LDA") tariff, Section 4.4.1, the company effectively takes ownership of the facilities placed and is responsible for maintenance and repair of the facilities.

11. Section 2.4.2.C makes U S WEST responsible for loss or damage to its facilities unless the loss or damage was caused by the negligence or intentional misconduct of the customer.

12. U S WEST has no authority in its tariff, state law or Commission rules to charge for trenching in excess of 300 feet in maintenance and repair situations.

13. That facilities needing repair are located on private property, as opposed to public or private right of way, is irrelevant to the determination that U S WEST is responsible for the costs of trenching and conduit involved in the maintenance and repair of U S WEST's facilities.

14. Petitioner Camelot Square Mobile Home Park (Camelot Square) is located at 3001 South 288th, Federal Way, Washington 98003.

15. Camelot Square is a community of 400 manufactured housing lots. Residents lease a legal unit of real property from Camelot Square that is individually identified in the lease by a lot number and description of the lot's physical dimensions. Residents own their manufactured home that is placed on their leased lot. Residents are responsible for all maintenance of their lot and manufactured home. Residents request telephone and utility service directly from the service providers who provide and maintain service to the point of entry into the residents' manufactured homes.

16. U S WEST's predecessor in interest, Pacific Northwest Bell, designed, engineered, and installed buried service wire at Camelot Square in 1967. The service wire was buried by U S WEST's predecessor without conduit. Since 1967, U S WEST or its predecessor has accessed and maintained the buried service wire located at Camelot Square.

17. In 1974, a new addition was added to Camelot Square and new underground utilities were installed by Pacific Northwest Bell, Puget Power, and Washington Natural Gas.

18. No service provider other than U S WEST has requested that Camelot Square provide trenching or conduit.

19. U S WEST never required Camelot Square to provide trenching or conduit to replace buried service wire from 1967 to 1995.

20. In 1995 and 1996, U S WEST received numerous repair calls from residents of Camelot Square concerning their telephone service. U S WEST has determined that the buried service wire located at Camelot Square needs to be replaced. Camelot Square has made demand on U S WEST to replace the buried service wire. However, U S WEST refuses to replace the buried service wire until Camelot Square provides trenching and conduit for U S WEST.

21. In refusing to repair the buried service wire at Camelot Square, U S WEST relies on the following provisions of U S WEST's Washington State Tariff for Exchange and Network Services ("Tariff"):

(a) Section 4.6.A.2.f:

The property owner is responsible for the installation, maintenance and repair of the trench or conduit utilized for the company facilities to provide service within the owner's private party.

(b) Section 2.5.2.C:

Any existing or new structures or work required to support telephone service on the customer's premises shall be provided at the expense of the customer. Such structure or work may include the placement or use of trenching, conduit, and/or poles to support telephone services provided on the customer's premises.

22. Camelot Square had no control over how the buried service wire was installed. If Camelot Square had initially installed the buried service wire, it could have installed conduit or taken other measures to protect the buried service wire from deterioration. Because the Park had no control over how the buried service wire was installed, and was not allowed to participate in its maintenance over time, the need to replace the buried service wire is due to causes beyond Camelot Square's control.

23. Unless the buried service wire is replaced, residents of Camelot Square will continue to experience problems with their telephone service.

24. U S WEST's records confirm that it provided trenching to repair, maintain, and replace buried service wire ("BSW") at each of the communities on the following occasions:

<u>Date</u>	<u>Petitioner</u>	<u>Description</u>
6/2/94	Camelot	U S WEST repaired BSW.
4/14/95	Camelot	U S WEST repaired BSW.
10/16/95	Camelot	U S WEST repaired BSW.
1/28/96	Camelot	"BSW REPAIRED."
1/31/96	Camelot	U S WEST repaired BSW.
2/14/96	Camelot	U S WEST repaired BSW.
9/16/96	Camelot	"REPR BSW REPL SNI REPR TEA."
8/27/96	Camelot	"BSW REPAIRED."
8/28/96	Camelot	U S WEST repaired BSW.
11/20/96	Camelot	"BSW REP."
11/25/96	Camelot	"DEF BSW CT2YBK REFERRED."
2/6/97	Camelot	U S WEST "REPAIRED BSW AT TERMINAL."

25. A demarcation point is the point of interconnection between U S WEST's regulated telecommunications facilities and terminal equipment, protective apparatus or wiring at a premises. The demarcation point for each resident at Camelot Square is the point of entry into each resident's manufactured home.

26. Petitioner Skylark Village Mobile Home Park (Skylark Village) is located at 800 - 29th Street S.E., and 3225 "M" Street S.E., in Auburn, Washington.

27. Skylark Village is a community of 400 manufactured housing lots. Residents lease a legal unit of real property from Skylark Village that is individually identified in the lease by a lot number and description of the lot's physical dimensions. Residents own their manufactured home that is placed on their leased lot. Residents are responsible for all maintenance of their lot and manufactured home. Residents request telephone and utility service directly from the service providers who provide and maintain service to the point of entry into the residents' manufactured homes.

28. U S WEST's predecessor in interest, Pacific Northwest Bell, designed, engineered and installed buried service wire at Skylark Village in 1959. The service wire was buried by U S WEST's predecessor without conduit. Skylark Village retains its business records since 1975. Since 1975, U S WEST or its predecessor has accessed and maintained the buried service wire located at Skylark Village.

29. In 1978, a new addition was added to Skylark Village and new underground utilities were installed by Pacific Northwest Bell, Puget Power, and Washington Natural Gas. In 1987, a new addition was added to Skylark Village and new underground utilities were installed by Pacific Northwest Bell, Puget Power, and Washington Natural Gas.

30. No service provider other than U S WEST has requested that Skylark Village provide trenching or conduit.

31. U S WEST never required Skylark Village to provide trenching or conduit to replace buried service wire from 1975 to 1995.

32. In 1995 and 1996, U S WEST received numerous repair calls from residents of Skylark Village concerning their telephone service. U S WEST has determined that the buried service wire located at Skylark Village needs to be replaced. Skylark Village has made demand on U S WEST to replace the buried service wire. However, U S WEST refuses to replace the buried service wire until Skylark Village provides trenching and conduit for U S WEST.

33. In refusing to repair the buried service wire at Skylark Village, U S WEST relies on the following provisions of U S WEST's Washington State Tariff for Exchange and Network Services ("Tariff"):

(a) Section 4.6.A.2.f:

The property owner is responsible for the installation, maintenance and repair of the trench or conduit utilized for the company facilities to provide service within the owner's private party.

(b) Section 2.5.2.C:

Any existing or new structures or work required to support telephone service on the customer's premises shall be provided at the expense of the customer. Such structure or work may include the placement or use of trenching, conduit, and/or poles to support telephone services provided on the customer's premises.

34. Skylark Village had no control over how the buried service wire was installed. If Skylark Village had initially installed the buried service wire, it could have installed conduit or taken other measures to protect the buried service wire from deterioration. Because the Park had no control over how the buried service wire was installed, and was not allowed to participate in its maintenance over time, the need to replace the buried service wire is due to causes beyond Skylark Village's control.

35. Unless the buried service wire is replaced, residents of Skylark Village will continue to experience problems with their telephone service.

36. U S WEST never required Skylark Village to provide trenching or conduit from 1975 to 1995 to repair buried service wire. In mid-summer, 1994, U S WEST installed new buried service wire from Space A-1 to Space B-7, which is approximately 200 feet. U S WEST provided its own trenching to access and repair the buried service wire.

37. In the spring of 1995, the resident of Space B-17 experienced problems with his telephone service. U S WEST installed a temporary line on top of the ground initially, but subsequently provided its own trenching to install new buried service wire.

38. In December 1995, the residents of Space Nos. E-6, E-12, E-24, E-28, and E-30 experienced problems with their telephone service. U S WEST installed a temporary service line to restore service to Space Nos. E-6, E-12, E-24, E-28 and E-30. The temporary service line was still in place as of March 4, 1997.

39. On December 7, 1995, Skylark Village filed an informal complaint against U S WEST with the Washington Utilities and Transportation Commission.

40. In January 1996, the resident of Space 38 in Skylark Village II experienced problems with her telephone service. U S WEST provided its own trenching to access and replace approximately 100 feet of buried service wire.

41. In February 1996, the resident of Space E-7 experienced problems with his telephone service. As a temporary remedy, U S WEST installed a temporary service line above the ground initially to restore service. In April 1996, U S WEST returned to Space E-7 and provided its own trenching to install new buried service wire.

42. U S WEST's records confirm that it provided trenching to repair, maintain, and replace buried service wire ("BSW") at each of the communities on the following occasions:

<u>Date</u>	<u>Petitioner</u>	<u>Description</u>
1/20/95	Skylark	U S WEST "CUT OVER TO NEW BSW RMVD GRD LAY."
12/26/95	Skylark	U S WEST referred a repair to the Buried Service Wire department of U S WEST.
4/16/96	Skylark	U S WEST repaired BSW.

43. U S WEST has a perpetual easement at Skylark Village which provides U S WEST "with the right to place, construct, operate and maintain, inspect, reconstruct, repair, replace and keep clear underground communication lines with wires, cables, fixtures and appurtenances attached thereto as [U S WEST] may from time to time require, upon, across, over and/or under the [property]."

44. A demarcation point is the point of interconnection between U S WEST's regulated telecommunications facilities and terminal equipment, protective apparatus or wiring at a premises. The demarcation point for each resident at Skylark Village is the point of entry into each resident's manufactured home.

45. Petitioner Belmor Mobile Home Park (Belmor) is located at 2101 South 324th Street, Federal Way, Washington, 98003.

46. Belmor is a community of 400 manufactured housing lots. Residents lease a legal unit of real property from Belmor that is individually identified by a lot number and description of the lot's physical dimensions. Residents own their manufactured home that is placed on their leased lot. Residents are responsible for all maintenance of their lot and manufactured home. Residents request telephone and utility service directly from the service providers who provide and maintain service to the point of entry into the residents' manufactured home.

47. U S WEST's predecessor in interest, Pacific Northwest Bell, installed buried service wire at Belmor in 1967. The service wire was buried by U S WEST's predecessor without conduit. Since 1967, U S WEST or its predecessor has accessed and maintained the buried service wire located at Belmor.

48. In 1995 and 1996, U S WEST received numerous repair calls from residents of Belmor concerning their telephone service. U S WEST has determined that the buried service wire located at Belmor needs to be replaced. Belmor has made demand on U S WEST to replace the buried service wire. However, U S WEST refuses to replace the buried service wire until Belmor provides trenching and conduit for U S WEST.

49. In refusing to repair the telephone cable at Belmor, U S WEST relies on the following provisions of U S WEST's Washington State Tariff for Exchange and Network Services ("Tariff"):

(a) Section 4.6.A.2.f:

The property owner is responsible for the installation, maintenance and repair of the trench or conduit utilized for the company facilities to provide service within the owner's private party.

(b) Section 2.5.2.C:

Any existing or new structures or work required to support telephone service on the customer's premises shall be provided at the expense of the customer. Such structure or work may include the placement or use of trenching, conduit, and/or poles to support telephone services provided on the customer's premises.

50. Belmor had no control over how the buried service wire was installed. If Belmor had initially installed the buried service wire, it could have installed conduit or taken other measures to protect the buried service wire from deterioration. Because the Park had no control over how the buried service wire was installed, and was not allowed to participate in its maintenance over time, the need to replace the buried service wire is due to causes beyond Belmor's control.

51. Unless the buried service wire is replaced, residents of Belmor will continue to experience problems with their telephone service.

52. U S WEST never required Belmor to provide trenching or conduit to replace buried service wire from 1966 to 1995.

53. During the summer of 1995, U S WEST provided its own trenching to access and replace the buried service wire for Space Nos. 150 through 165. U S WEST also provided its own trenching to access and replace the buried service wire behind the row of homes from Space Nos. 183 through 254.

54. In October 1995, the resident of Space 71 lost phone service and called U S WEST for repair. As a temporary remedy, U S WEST installed a new service line above ground and behind Space Nos. 71, 72, and 73 to regain service to Space 71. Similarly, the resident of Space 227 lost phone service and U S WEST installed a new service line above ground and behind Space Nos. 227, 228, and 229.

55. On January 9, 1997, the resident of Space 159 contacted U S WEST to request another service line for a modem to his computer. As a temporary remedy, U S WEST installed a temporary service line above ground from the back yard of Space 158 to Space 159. On January 13-14, 1997, U S WEST provided trenching to install the new buried service wire for Space 159.

56. U S WEST's records confirm that it provided trenching to repair, maintain, and replace buried service wire ("BSW") at each of the communities on the following occasions:

<u>Date</u>	<u>Petitioner</u>	<u>Description</u>
8/25/94	Belmor	U S WEST prepared drawings and installed 300 feet of trenching and conduit.
9/8/95	Belmor	U S WEST "REPAIRED BSW."
1/2/96	Belmor	U S WEST "REPAIRED BSW."
2/8/96	Belmor	"DEF BSW."
2/11/96	Belmor	U S WEST "REPAIRED BSW INSTALLED SNI."
7/8/96	Belmor	U S WEST "REPAIRED BSW."
10/3/96	Belmor	U S WEST "LOC & REPR DEF BSW."
12/13/96	Belmor	"BSW BAD/REPAIRED/CTTN67002."
12/14/96	Belmor	"BSW BAD/REPAIRED/CTTN67002."
12/28/96	Belmor	U S WEST "LOCATED AND REPAIRED OPEN IN BSW."
1/14/97	Belmor	U S WEST provided its own trenching to install a new service line for Space No. 159.

57. U S WEST has a perpetual easement to serve Belmor which provides U S WEST "with the right to place, construct, operate and maintain, inspect, reconstruct, repair, replace and keep clear communication lines with wires, cables, fixtures and appurtenances attached thereto, as [U S WEST] may from time to time require, upon, across, over and/or under the [property]."

58. A demarcation point is the point of interconnection between U S WEST's regulated telecommunications facilities and terminal equipment, protective apparatus or wiring at a premises. The demarcation point for each resident at Belmor is the point of entry into each resident's manufactured homes.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The Commission has the lawful authority to interpret U S WEST's tariff.
3. U S WEST's interpretation and application of its tariff to require customers to be responsible for trenching and conduit necessary to repair the company's facilities is not supported by its tariff.
4. U S WEST's interpretation and application of its tariff to require customers to be responsible for trenching and conduit necessary to repair the company's facilities is unreasonable and unlawful.
5. The Commission has authority to correct U S WEST's unlawful and unreasonable interpretation of its tariff by requiring U S WEST to file language to clarify its tariff to ensure that customers are not held responsible for trenching and conduit necessary to repair the company's facilities.
6. The Commission has authority to require U S WEST to issue refunds to customers who paid the U S WEST directly for trenching performed and conduit provided by the company in the case of maintenance, repair or replacement of U S WEST's facilities.
7. The Commission has authority to require U S WEST to issue refunds to customers who paid outside contractor for trenching performed and conduit provided in the case of maintenance, repair or replacement of U S WEST's facilities.
8. Pursuant to WAC 480-120-500(1), U S WEST is required to provide buried service wire and conduit that are designed, constructed, maintained, and operated to ensure reasonable continuity of service, uniformity in the quality of service furnished, and the safety of persons and property at Camelot Square, Skylark Village, and Belmor.
9. Pursuant to WAC 480-120-525(2), U S WEST is required to adopt maintenance procedures and employee instructions aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate, and continuous service at all times at Camelot Square, Skylark Village, and Belmor, including without limitation, keeping all facilities in safe and serviceable repair.

10. As provided in Section 2.4.2.C of the Tariff, petitioners are not responsible for the damage to the buried service wire that was installed at petitioners' properties by U S WEST and maintained by U S WEST without the petitioners' input or participation.

11. Section 2.5.2.C of the Tariff does apply to the replacement of U S WEST's existing buried service wire that was installed at petitioners' properties by U S WEST and maintained by U S WEST without the petitioners' input or participation.

12. U S WEST has misapplied its tariff to require petitioners to provide trenching and conduit for U S WEST's buried service wire, and has adopted an "unjust and unreasonable" practice in violation of RCW 80.36.140.

ORDER

Based upon the above findings and conclusions, IT IS ORDERED THAT:

1. U S WEST shall provide the trenching and all facilities including, without limitation, buried service wire and conduit to replace all buried service wire located at Camelot Square, Skylark Village, and Belmor, and shall restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by December 31, 1997.
2. U S WEST shall file amendments to its tariff clarifying that customers are not responsible for providing the company with access to a trench or for providing conduit in situations where the company's facilities need to be repaired, replaced or maintained.
3. U S WEST shall provide to the Commission the names of all customers who have been asked to provide access to a trench or conduit, for maintenance, repair or replacement, within the past two years.
4. U S WEST shall refund to customers all payments made to U S WEST for trenching or conduit resulting from maintenance, repair or replacement of the company's facilities within the past two years.

5. U S WEST shall immediately refund the amounts paid by customers to third-party contractors who provided the trenching or conduit to necessitate maintenance, repair or replacement of the company's facilities within the past two years to maintain, repair, or replace U S WEST's facilities.

DATED at Olympia, Washington, and effective this 25th day of November 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Marjorie R. Schaer

MARJORIE R. SCHAER
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service is required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P. O. Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.