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BROOKS E. HARLOW

April 6, 1992

Mr. Paul Curl, Secretary  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
Olympia, Washington 98504-8002

VIA FEDERAL EXPRESS

Subject: Pierce County v. U S West Communications -  
Docket No. UT 920225

Dear Mr. Curl:

Enclosed for filing is an original and 19 copies of  
Answer And Memorandum Of Pierce County In Opposition To U S  
West's Motion To Dismiss in the above-referenced matter. One  
additional copy is enclosed to file stamp and return for our  
records.

Very truly yours,



Brooks E. Harlow

cc w/enc: Mr. Edward T. Shaw

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BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION

PIERCE COUNTY, a political	)	
subdivision of the State of	)	
Washington,	)	
	)	
Complainant,	)	Docket No. UT 920225
	)	
v.	)	ANSWER AND MEMORANDUM
	)	OF PIERCE COUNTY IN
US WEST COMMUNICATIONS, INC., a	)	OPPOSITION TO US WEST'S
Colorado corporation,	)	MOTION TO DISMISS
	)	
Respondent.	)	
_____	)	

INTRODUCTION

The motion of US West Communications, Inc. ("USWC") to dismiss Pierce County's complaint ignores the Commission's statements in its declaratory order in docket No. UT-910785 ("Declaratory Order"), in which the Commission specifically stated that, "The County retains the right to complain against the tariff provision under the public service laws." Id. at 5. Even if it were not for this statement (and other statements) in the Declaratory Order to the effect that Pierce County can complain against USWC's nonpublished tariff, USWC's argument that the County's complaint is insufficient would still have to be rejected under the RCW 80.04.110 and other laws and rules.

1 USWC's second argument, that Pierce County is  
2 improperly seeking a rehearing of the Declaratory Order by its  
3 complaint, is frivolous. Pierce County is not seeking to  
4 modify the prior finding that use of R-ALI violates USWC's  
5 current tariff. Pierce County is exercising its "right to  
6 complain against the tariff provision," a right the Commission  
7 specifically held the County retained. Id.

8 DISCUSSION

9 I. A Complaint Against the Rules and Regulations Relating to  
10 the Services of a Public Service Company Need Only Be  
Subscribed to by One Party.

11 A. RCW 80.04.110 only requires 25 signers for a complaint  
12 against USWC's "rates and charges," not its "rules and  
regulations."

13 USWC's argument that Pierce County's complaint  
14 requires the signature of an additional 24 consumers focuses on  
15 the narrow restrictive proviso of RCW 80.04.110 and ignores the  
16 grant of standing to complain that precedes it. The grant  
17 gives the right to complain to "any person or . . . body  
18 politic." The 25 signer proviso (upon which USWC relies)  
19 applies only to a complaint against "the reasonableness of the  
20 schedule of the rates or charges" of a utility. RCW 80.04.110  
21 (emphasis added). Pierce County is not, in the complaint  
22 herein, challenging "rates or charges" of USWC.

23 WAC 480-80-040 (upon which USWC apparently relies)  
24 clearly distinguishes between rates and charges and rules and  
25

1 regulations: "Each utility shall file with the commission  
2 . . . its tariff or tariffs containing schedules showing all  
3 rates, charges, tolls, rentals, rules and regulations, . . .  
4 for service rendered or commodity furnished." (Emphasis  
5 added.) The Commission's definition of a "tariff" also makes  
6 this distinction:

7 "Tariff," as used in these rules, shall mean the  
8 complete tariff or any portion thereof containing  
9 those rate schedules and rules and regulations  
relating to charges and service . . . .

10 WAC 480-80-030(3).

11 Pierce County's complaint is against USWC's rules and  
12 regulations, not "rates and charges." Under the plain language  
13 of RCW 80.04.110, the signature of the County alone is  
14 sufficient for the Commission to entertain the complaint.

15 B. RCW 80.36.140 also authorizes Pierce County's  
Complaint.

16 Not only does USWC make an unsupported and unwarranted  
17 assumption regarding interpretation of RCW 80.04.110, USWC  
18 completely ignores RCW 80.36.140, which also gives Pierce  
19 County the right to complain against USWC:

20 Whenever the commission shall find, after a hearing  
21 had upon its own motion or upon complaint, that the  
22 rates, charges, tolls or rentals demanded, exacted,  
23 charged or collected by any telecommunications  
24 company . . . or that the rules, regulations or  
25 practices of any telecommunications company affecting  
26 such rates, charges, tolls, rentals or service are  
unjust, unreasonable, unjustly discriminatory or  
unduly preferential, or in anywise in violation of  
law, . . . the commission shall determine the just and  
reasonable rates, charges, tolls or rentals to be  
thereafter observed and in force, and fix the same by  
order as provided in this title.

1 RCW 80.36.140 (emphasis added). This section also gives the  
2 Commission specific authority to conduct a hearing on the rules  
3 and regulations of telecommunications companies upon complaint:

4 Whenever the commission shall find, after such  
5 hearing that the rules, regulations or practices of  
6 any telecommunications company are unjust or  
7 unreasonable, or that the equipment, facilities or  
8 service of any telecommunications company is  
9 inadequate, inefficient, improper or insufficient, the  
commission shall determine the just, reasonable,  
proper, adequate and efficient rules, regulations,  
practices, equipment, facilities and service to be  
thereafter installed, observed and used, and fix the  
same by order or rule as provided in this title.

10 Id. (Emphasis added).

11 There is no requirement of a minimum number of signers  
12 in RCW 80.36.140. Moreover, the structure of this section is  
13 further evidence of the legislature's intent that the  
14 Commission consider the rates and charges separately from the  
15 rules and regulations of telecommunications companies.

16 II. Pierce County Is Not Seeking to Affect the WUTC's Prior  
17 Order.

18 Pierce County is not seeking to modify the  
19 Commission's prior order. USWC's motion argues that its  
20 petition for declaratory relief was based not only on its  
21 tariff, but also on "applicable law" and the "agreement"  
22 between Pierce County and USWC. However, it is clear that the  
23 Declaratory Order addressed only USWC's tariff argument. The  
24 Commission specifically stated that it "need not, and does not,  
25 decide issues arising from the contract." Order at 4, n.3.  
26 Also, the "applicable law" raised by USWC consisted of

1 privacy cases, which the Commission also stated it was not  
2 addressing: "We do not address these [privacy case] arguments,  
3 as the sole issue before us is tariff interpretation." Order  
4 at 5.

5 As USWC notes in its motion, Pierce County did not  
6 appeal the Commission's ruling on the interpretation of USWC's  
7 existing nonpublished tariff. Pierce County accepts that it is  
8 bound by the Commission's finding that USWC's current tariff  
9 prohibits R-ALI. However, the Commission did not find that the  
10 prohibition against R-ALI is fair, just, and reasonable. To  
11 the contrary, the Commission explicitly recognized that it was  
12 leaving issues unresolved which could be better addressed if  
13 Pierce County filed a complaint against the tariff:

14 The context for this decision is a petition for  
15 declaratory order. It is not the most opportune  
16 vehicle for obtaining a complete record, resolving  
17 issues or creating solutions for vexing problems. A  
18 complaint against the tariff by a public safety agency  
19 would present a better procedural setting for  
20 developing a record, exploring options and promoting  
21 participation by affected interests.

22 . . .

23 The County retains the right to complain against  
24 the tariff provision under the public service laws.  
25 Doing so would allow the development of a full and  
26 complete record, with the participation of affected  
interests. It would also provide an opportunity for  
discussions among those interests to pursue solutions  
that may protect constitutional and statutory privacy  
rights while facilitating emergency services.

Order at 2, 5 (emphasis added).

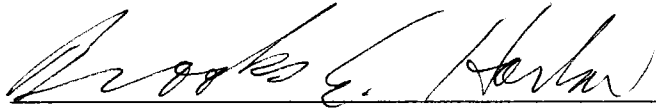
1 USWC's argument that Pierce County is precluded from  
2 bringing the complaint herein because of the prior Declaratory  
3 Order is devoid of merit.<sup>1</sup>

4 CONCLUSION

5 For the foregoing reasons, USWC's motion to dismiss  
6 should be denied.

7 DATED this 6th day of April, 1992.

8 MILLER, NASH, WIENER, HAGER & CARLSEN

9  
10 

11 Clyde H. MacIver  
12 Brooks E. Harlow

13  
14 <sup>1</sup> Moreover, USWC's suggestion that Pierce County should  
15 instead commence a rule-making proceeding should also be  
16 rejected. The Commission has recognized that a complaint  
17 proceeding is the preferable procedure for building a  
18 proper record, and Pierce County agrees. Pierce County is  
19 entitled to complain and has complained and the County's  
20 choice of the complaint as a procedural vehicle should not  
21 be disturbed at USWC's behest.


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1 CERTIFICATE OF SERVICE

2 I hereby certify that I have this day caused to be  
3 served one copy of the foregoing document upon the following  
4 parties of record by personally serving via ABC-Legal  
Messengers, Inc., a copy thereof to:

5 Edward. T. Shaw  
6 U S West Communications, Inc.  
7 1600 Bell Plaza, Suite 3204  
8 Post Office Box 21225  
9 Seattle, Washington 98111

10 Dated at Seattle, Washington this 6<sup>th</sup> day of April,  
11 1992.

12   
13 \_\_\_\_\_  
14 Carol Munnerlyn