

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

UNITED & INFORMED CITIZENS	)	
ADVOCATES NETWORK	)	DOCKET NO. UT-960659
	)	
Complainant,	)	
	)	
v.	)	
	)	
U S WEST COMMUNICATIONS,	)	
INC.,	)	
	)	
Respondent	)	
.....	)	
	)	
GTE NORTHWEST INC.	)	DOCKET NO. UT-970257
	)	
Complainant,	)	SIXTH SUPPLEMENTAL
	)	ORDER;
v.	)	PREHEARING CONFERENCE
	)	ORDER REGARDING
UNITED & INFORMED CITIZEN	)	SCHEDULING;
ADVOCATES NETWORK	)	NOTICE OF PREHEARING
Respondent	)	CONFERENCE
.....	)	<b>(November 13, 2001)</b>

1     **Proceeding.** Docket No. UT-960659 is a complaint proceeding brought by United & Informed Citizen Advocates Network (“U&I CAN”) against U S WEST Communications, Inc. (“US WEST”), which has been consolidated with a complaint proceeding brought by GTE Northwest, Inc. (“GTE”) against U&I CAN. The U&I CAN complaint alleges that U S WEST improperly discontinued a service provided to U&I CAN when U S WEST disabled the call transfer feature of the calling package it sold to three U S WEST customers whose phone numbers are included in the complaint. It sought renewal of the disabled service, damages, penalties, and attorney fees. On April 10, 1997, the Commission entered a Protective Order in Docket No. UT-960659.

2     U S WEST admitted that it disabled the call transfer capability of the three phone lines, and claimed that its action was lawful because the call transfer capability was being used in a manner that violates state law. U S WEST sought a summary determination that it was lawful and proper to disable the call transfer features of U&I CAN’s subscribers’ Centrex systems, and that damages were not authorized.

- 3 U S WEST also sought summary determination of the issues raised in its counterclaim whether U&I CAN was acting as a telecommunications company and should be required to register as such, and further, whether complainant's use of U S WEST's exchange services was in violation of law.
- 4 U S WEST also sought, in a counterclaim, payment of access charges by U&I CAN for inter-exchange toll services U S WEST had provided to U&I CAN's members using the call transfer capabilities.
- 5 The Second Supplemental Order in Docket No. UT-960659 determined that U&I CAN is acting as a telecommunications company, and that U&I CAN's use of U S WEST's exchange service is in violation of law. *United and Informed Citizen Advocates Network v. U S WEST Communications, Inc.*, Second Supplemental Order (September 1997). The Commission affirmed the Second Supplemental Order in its Third Supplemental order following an interlocutory appeal by U&I CAN. *United and Informed Citizen Advocates Network v. U S WEST Communications, Inc.*, Third Supplemental Order (February 1998).
- 6 The Third Supplemental Order granted U S WEST's motion for summary disposition, in part. The Order found that U S WEST did not violate any statute, regulation, or tariff in disabling the call transfer features on lines used to circumvent the payment of access and/or toll charges on U S WEST's network. The Order also allowed U S WEST to pursue its counterclaim for access charges due from U&I CAN. That is the issue that remains to be litigated in this proceeding. The Order was not a final order under RCW 34.05 because of this remaining U S WEST counterclaim seeking payment of access charges.
- 7 In Docket No. UT-970257 GTE seeks to recover unpaid access charges from U&I CAN in GTE's service territory. The Commission consolidated the two dockets for hearing on these related issues. The Commission extended the Protective Order from Docket No. UT-960659 to additionally protect confidential data in Docket No. UT-970257 on June 21, 1999.
- 8 A prehearing conference held on May 4, 1999, established a procedural schedule and allowed for discovery under WAC 480-09-480. A prehearing conference order was entered on June 8, 1999. The prehearing conference order included the schedule and discovery rulings made at the prehearing conference. No objections to this prehearing conference order were filed with the Commission.
- 9 On June 14, 1999, US WEST filed a motion seeking to compel U&I CAN to respond to discovery requests. This motion was granted in the 5<sup>th</sup> Supplemental Order, entered July 9, 1999. On July 20, 1999, US West and GTE filed a joint motion seeking to suspend the procedural schedule. On July 22, 1999, the Commission entered a notice of suspension of the schedule of these consolidated matters.

- 10 On September 7, 1999, US WEST filed a joint motion seeking a subpoena duces tecum from the Commission. On November 9, 1999, the Commission found that a subpoena duces tecum directed to United & Informed Citizen Advocates Network, and to Mr. Bill Loveless, its manager, was valid and should be served. From November 1997 to June 1999 the Commission did not receive any input from the parties regarding U S WEST's or GTE's plans to pursue collecting access charges from United & Informed Citizens Advocates Network in these consolidated matters.
- 11 On June 25, 2001, the Commission served a letter instructing U S WEST (now d/b/a Qwest Corporation) and GTE (now d/b/a Verizon Northwest, Inc.) to file with the Commission no later than July 12, 2001, a notice of either their intention to pursue collecting access charges from United & Informed Citizens Advocates Network in this consolidated matter or of their motions to dismiss the matters.
- 12 On July 12, 2001, both U S WEST and GTE responded indicating their intention to pursue collecting access charges from United & Informed Citizen Advocates Network. On August 3, 2001, the Commission gave notice that a prehearing conference would be held September 10, 2001, as a status conference to plan the resolution of these consolidated proceedings.
- 13 **Conference.** The Commission convened a prehearing conference in this docket at Olympia, Washington on September 10, 2001, before Administrative Law Judge Marjorie R. Schaer.
- 14 **Appearances.** The parties and their representatives remained the same as it had been at earlier stages of this proceeding. Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.
- 15 **Protective order.** The protective order entered April 10, 1997, and expanded to cover the GTE portion of the proceeding on June 21, 1999, continues to govern. The order gives specific protection to membership lists of U&I CAN.
- 16 **Discovery.** Discovery, to the extent provided in WAC 480-09-480, remains available to the parties.
- 17 **Procedural Request.** At the outset of the hearing, U&I CAN distributed a document denominated Response to Prehearing Notice. The document lists a variety of issues that U&I CAN seeks to have addressed. U&I CAN sought to have a schedule established for briefing and argument on these issues listed in the document before the case proceeds any further. The document had not been provided in advance of the hearing, as would be required for a motion to the Commission. Nor was it accompanied by argument and authority as to why this method of proceeding should be allowed.

18 GTE, US WEST, and the Commission Staff argued that the appropriate order for proceeding is to allow the parties to complete discovery, establish the factual predicate for any arguments that are to be framed, and then to have argument and authority provided by briefs or appropriately filed motions. GTE noted that many of the points raised by the document could appropriately be viewed as issues to be resolved in the case rather than motions, per se. GTE claimed that it would be precisely backwards to argue these points before the parties have an opportunity to conduct full and fair discovery and have a hearing on all of the relevant evidence. TR 183.

19 After hearing argument from all parties, including a response from U&I CAN (TR-185-186) the administrative law judge made an oral ruling that the matter should proceed as argued by GTE, US WEST, and the Commission Staff. The ruling indicated that the Commission has procedural rules regarding for filing motions, and that U&I CAN would be able to bring any motions it seeks in a manner that complies with the Commission's procedural rules, noting that motions for summary determination might not be able to be addressed if factual questions were still unresolved. The "Response to Prehearing Notice" will not be further considered. U&I CAN may make what motions it deems appropriate, and must follow the Commission rules regarding service of motions, and provision of briefing with motions.

20 **Conduct of Counsel.** Counsel for U&I CAN interrupted the oral ruling, and would not cease his interruption and wait for his turn to speak. TR 187. Counsel was informed that he was out of order, but persisted in interrupting the ALJ's ruling. At that point the ALJ called a brief recess to allow Counsel to regain his self-control, indicating: "We are off the record. I will return in at least five minutes after people have cooled off." TR 187, ll. 18—19. The hearing reconvened after a brief recess. At that point counsel for U&I CAN had left the hearing room. The three remaining counsel sought permission to put on the record the conversations each held with counsel for U&I CAN before he departed.

21 Counsel for GTE related:

I would just recount for the record that during your absence and while we were waiting here, Mr. Holcomb observed that you had adjourned the hearing, to which all counsel advised him that that was incorrect; that the hearing had just taken a brief recess. When he expressed his intention to leave, I urged him not to do so because it was my belief that the hearing examiner would continue on with this status conference and would issue a set of procedural rulings whether he was here or not, and since he had chosen to leave, Mr. Holcomb nonetheless insisted that he was going to leave, and he has left. TR 188, ll. 10—22.

22 Counsel for US WEST confirmed this account, stating:

That's accurate, Your Honor, and I will also add that Mr. O'Connell advised Mr. Holcomb that he would place on the record his advice to Mr. Holcomb that it was his opinion that the procedure was not adjourned but was merely in recess and that the administrative law judge would be returning. TR 188, l. 25--189, l. 4.

23 Counsel for the Commission Staff added:

I concur in the comments made by Mr. O'Connell and Ms. Anderl, and I too informed Mr. Holcomb that we were not adjourned but were in a brief recess. TR 189, ll. 7—10.

24 It is clear from the record of the proceeding that Mr. Holcomb, counsel for U&I CAN, refused to refrain from conduct that disrupted the proceeding. He was first warned by the presiding officer not to interrupt her (TR 187, l.9), then warned that he was out of order (TR 187, ll.12-13) and persisted in his efforts to talk over the presiding officer, until that officer was forced to take the hearing off the record and leave the room to allow Mr. Holcomb to recover his self control. (TR 187, ll. 17-19). His conduct was contemptuous and disruptive. See, RPC 3.5(c). At the conclusion of the "cooling-off" recess, Mr. Holcomb had walked out, and his client was not represented through the remainder of the hearing.

25 The Commission has rules regarding the conduct of those who appear before the Commission as a representative. WAC 480-09-710(3) provides:

(3) Unethical conduct. Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to those standards, the commission may expel the person from the proceeding and decline to permit the person to appear before it in a representative capacity in any future proceeding.

U&I CAN is warned that if its representative again is disruptive and contemptuous during a hearing, he will be expelled. U&I CAN should review this issue with counsel in order to protect its interest in being represented in hearings before the Commission.

26 **Schedule.** The parties present agreed to the following schedule. Because previous data requests are possibly stale, US WEST, GTE and Commission Staff agreed to withdraw any outstanding data requests, and to issue fresh requests by September 20, 2001. An outline for further proceedings is that once full and complete answers to discovery are received, US WEST, GTE and Commission Staff will file direct testimony and exhibits 60 days later. U&I CAN will file its responsive testimony 30

days thereafter, and rebuttal testimony and exhibits will be filed 30 days thereafter. A hearing for receipt and cross-examination of testimony will be scheduled two to four weeks later.

27 The administrative law judge asked for a check-back date to review the status of the proceeding, and to keep matters progressing. The parties agreed to hold another prehearing conference on Tuesday, November 13, 2001, at 1:30 in the afternoon, and the hearing was set on the record. A second notice follows.

28 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter, to address any discovery issues and to schedule the remainder of the proceeding. The conference will be held in Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, **at 1:30 p.m. on Tuesday, November 13, 2001.**

29 **Document preparation and process issues.** Parties must file thirteen (13) copies of each document filed with the Commission. Appendix B states relevant Commission rules and other directions for the preparation and submission of evidence and for other process in this docket. Parties will be expected to comply with these provisions.

Dated at Olympia, Washington, and effective this 1st day of November, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARJORIE R. SCHAER  
Administrative Law Judge

**NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.