

SERVICE DATE  
SEP 23 1998

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	)	SIXTH SUPPLEMENTAL ORDER
	)	GRANTING RECONSIDERATION,
.....	)	IN PART

**SUMMARY**

**PROCEEDINGS:** On June 19, 1996, Camelot Square Mobile Home Park filed a formal complaint against US WEST Communications Inc. (US 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.<sup>1</sup> The Parks alleged that buried telephone cable at the Parks has deteriorated, and that US WEST had announced that the cable needs to be replaced, but would not repair or replace the cable until the parks provide access to a trench or provide conduit. US WEST answered alleging that the parks were required to provide access. The complaints were consolidated by Commission order dated November 22, 1996. Hearings were held on December 16, 1996, and June 10-11, 1997. Briefs were filed on August 1, 1997, and simultaneous response briefs were filed on August 22, 1997.

An initial order entered November 25, 1997, determined that US WEST should provide trenching and all facilities including, without limitation, buried service wire and conduit to replace all buried service wire located at the Parks, and should restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by December 31, 1997.

U S WEST petitioned for administrative review of the initial order. The Commission Staff and the Parks answered, supporting the order.

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<sup>1</sup> The three mobile home parks will be referred to in this order as "the Parks."

A final order, the Fifth Supplemental Order in this proceeding, was entered on August 18, 1998. The Commission affirmed and adopted the initial order. US WEST was required to provide 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 to restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by September 30, 1998.

U S WEST petitioned for reconsideration on August 28, 1998. U S WEST asked for more time to comply with the final order, due to the then present strike by U S WEST service workers; that the Commission not require it to provide the names of customers who have been asked to provide access to a trench or conduit for maintenance, repair, or replacement within the past two years; and for the Commission to strike its conclusion that U S WEST would be double recovering the cost of support structures if it obtained payment for those costs from customers.

The Commission called for answers to the petition for reconsideration. On September 11, 1998, the Parks answered the petition, asking that the petition be denied. The Commission Staff also answered the petition for reconsideration. The Commission Staff does not oppose U S WEST's request to extend the deadline to complete the repair work beyond September 30, 1998. But the Commission Staff seeks a specific deadline of November 30, 1998, for completion of all of the work at all three parks. The Commission Staff agrees that an alternate method of listing all customers who have paid for trenching and conduit in the last two years may be appropriate.

**COMMISSION:** The Commission will grant a defined extension to U S WEST for completing the repairs ordered in the Final Order. The Commission will allow U S WEST to use an alternate method to develop a list of customers who have provided access to trench or conduit. The conclusion that recovery from its customers for the costs of trenching or conduit would result in double recovery to U S WEST is correct, and we will not delete this conclusion. The Commission will require U S WEST to adhere to its commitment to maintain all service to its customers in the Parks, pending the repairs ordered in this matter. The Commission will require U S WEST to follow all terms of its customer care program when dealing with its customers in the Parks. Any failure to comply with the customer care program or the deadlines established in this order will be subject to fines by the Commission for failure to comply with this order.

**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, US WEST was represented by Lisa A. Anderl, attorney, Seattle, and Kirsten Dodge, attorney, Bellevue. The staff of the Washington Utilities and Transportation Commission (Commission Staff), was represented by Shannon E. Smith, Assistant Attorney General, Olympia.

## MEMORANDUM

### I. BACKGROUND

This matter arises from complaints filed against US WEST by Camelot Square Mobile Home Park, Skylark Village Mobile Home Park and Belmor Mobile Home Park. The present dispute arose after US WEST decided to improve service quality and reduce the number of individual customer repairs at the Parks by replacing the service cable US WEST had previously installed at the Parks. US WEST informed the Parks of its proposal, and asked the Parks to provide trenching and conduit to support the replacement of US WEST's service cable.

Each park filed a separate complaint against US WEST. The complaints were consolidated by the Commission, by order dated November 22, 1996. In essence, the Parks alleged that buried telephone cable at the Parks has deteriorated and that US 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 alleged that US WEST, by requiring the Parks to provide access to a trench or conduit before it will repair or replace the cable, was violating the company's tariff, and the statutes and rules governing telecommunications companies in the state of Washington. *Id.* at ¶¶ 6-12.

US WEST claimed that it is not required to repair or replace the telephone cable until the Parks provide access to a trench or conduit. US WEST's position is that the property owner must provide support structures, such as trench, conduit, or poles, for placement of US WEST facilities on private property whether it be for new construction or for maintenance.

Commission Staff did not agree with US WEST's interpretation of its tariff. Staff argued that according to its tariff, US 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.

An initial order entered November 25, 1997, determined that US WEST should provide trenching and all facilities including, without limitation, buried service wire and conduit to replace all buried service wire located at the Parks, and should restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by December 31, 1997.

U S WEST petitioned for administrative review of the initial order. The Commission Staff and the Parks answered, supporting the order.

A final order Entered on August 18, 1998, affirmed and adopted the initial order. US WEST was required to provide trenching and all facilities including, without limitation, buried service wire and conduit to replace all buried service wire located at the Parks, and to restore petitioners' property to the same condition it was in prior to replacement of the buried service wire by September 30, 1998.

U S WEST petitioned for reconsideration on August 28, 1998. U S WEST asked: for more time to comply with the final order, due to the then present strike by U S WEST service workers; that the Commission not require it to provide the names of customers who have been asked to provide access to a trench or conduit for maintenance, repair, or replacement within the past two years, or that the Commission allow use of an alternate means for compiling the list; and for the Commission to strike its conclusion that U S WEST would recover double the cost of support structures if they were allowed to charge customers for these structures.

The Commission called for answers to the petition for reconsideration. On September 11, 1998, the Parks answered the petition, asking that the petition be denied. The Parks note that U S WEST service workers were back to work the first week of September. The Parks also recommend some alternate time lines that would be acceptable to them. Finally, the Parks express concern that certain residents at Belmor and Skylark currently are without service, and that some temporary repairs by U S WEST are unsafe. They note that Belmor Mobile Home Park provides housing for older persons pursuant to the federal Fair Housing Act, and that residents may require telephone service in case of a health related emergency. The Parks ask that the Commission require U S WEST to provide cell phones to all residents who are without service, or who will be without service during the repair.

The Commission Staff also answered the petition for reconsideration. The Commission Staff does not oppose U S WEST's request to extend the deadline to complete the repair work beyond September 30, 1998. But the Commission Staff seeks a specific deadline of November 30, 1998, for completion of all of the work at all three parks. The Commission Staff urges the Commission not to reconsider that portion of its order which requires U S WEST to provide the Commission with a list of all customers who have been asked by U S WEST to provide access to a trench or conduit within the last two years; however, Staff does not object to an alternative method of compliance with this requirement. Finally, the Commission Staff asks the Commission to retain its conclusion that allowing the company to require its customers to pay the costs of trenching or conduit would result in double recovery.

**II. COMMISSION DISCUSSION AND DECISION**

The Commission will address the issues in the order in which they were presented by the parties.

**A. Should the Deadline for Compliance with the Final Order Be Extended?**

The Commission has ordered U S WEST to provide the trenching and repairs at issue at all the Parks by September 30, 1998. This date is forty-three days after the service date of the order. U S West argues that this is far too short a time for it to complete the work at issue at all three parks. U S WEST also noted that on August 15, 1998, approximately 35,000 of its service workers went on strike.

U S WEST indicated that, without the strike's interference, it could have completed the Skylark job within the 43 day deadline; that the Camelot job is more extensive and would have taken longer, and that the Belmor job fell somewhere in between the other two. U S WEST asked the Commission to extend the deadline for Skylark and Belmor to sixty days after striking workers returned to work, and the Camelot deadline until ninety days after striking workers returned to work.

U S WEST made the following commitment to the Commission:

U S WEST's proposal to extend the Commission imposed deadlines for completion of this work will not mean a deterioration of service to Park residents. U S WEST will respond immediately to service outages in those Parks as with its other customers.

Petition, p. 4.

The Parks answer that U S WEST's petition should be denied, and that U S WEST should end this two-year journey and begin its repair of telecommunications service at the Parks. They note that U S WEST has already admitted that all of its buried service wire at the Parks needs to be replaced. The complaints in this matter were filed in 1996. Before they were filed, U S WEST had decided to improve service quality and reduce the number of individual customer repairs at the Parks by replacing the service cable U S WEST had previously installed at each of the Parks. U S WEST, however, refused to repair (or replace) the cable until the Parks provided access to a trench or provided conduit.

The Parks note that U S WEST's striking workers went back to work the first week in September. The Parks are concerned that they have not seen signs of U S WEST beginning the work required by the final order. The Parks also express concern that some residents at Skylark and Belmor are currently without service. Counsel for the Parks represents that he has called on U S WEST to provide repairs or a complimentary cell phone, but U S WEST has not responded. The Parks also express concern that certain temporary repairs provided by U S WEST are unsafe, and ask that they be made safe immediately. The Parks offer an alternative, asking that the Skylark work be required to be complete by October 15, 1998, the Belmor repair work be required to be complete by October 30, 1998, and the Camelot Square repair work be required to be complete by November 30, 1998.

The Commission Staff does not oppose U S WEST's request to extend the deadline to complete repair work beyond September 30, 1998. The Commission Staff seeks a specific deadline, however, and asks that all work be required to be completed by November 30, 1998. The Commission Staff gives notice that it will recommend that the Commission issue penalties against U S WEST pursuant to RCW 80.04.380 if the work is not completed on time. In addition, the Commission Staff reminds U S WEST that it must continue to provide customers at the Parks with the service quality and consumer protection requirements set forth in Commission rules and Docket Nos. UT-950200 and UT-970766, including the provision of wireless telephone service for those customers who do not have primary service due to the deterioration of the company's facilities at the Parks.

**Commission Decision:** The Commission will grant a defined extension to U S WEST for completing the repairs ordered in the final order. The Skylark work is required to be complete by October 15, 1998, the Belmor repair work is required to be complete by October 30, 1998, and the Camelot Square repair work is required to be complete by November 30, 1998. Excluding the days when its employees were on strike, this gives the company the amount of time it indicated was needed to complete the work. No stay of the final order was sought, so we feel safe in assuming that U S WEST has been working diligently on each of the projects since mid-August.

The Commission will require U S WEST to meet its commitment to immediately repair all needed services to its customers in the Parks, pending the repairs ordered in this matter. The Commission will require U S WEST to follow all terms of its customer care program when dealing with its customers in the Parks. The Commission Staff should work with counsel for the Parks to determine whether there are any customers without service, or any unsafe conditions in the Parks. If there are current violations of service quality and consumer protection requirements set forth in Commission rules and Docket Nos. UT-950200 and UT-970766, including the requirement for provision of wireless telephone service for those customers who do not have primary service due to the deterioration of the company's facilities at the Parks, penalties should be sought. Any failure to comply with the customer care program or the deadlines established in this order will be subject to fines by the Commission for failure to comply with this order.

**B. Should U S WEST be required to provide names of customers who have provided access to a trench or conduit?**

U S WEST asks that the Commission reconsider its order requiring U S WEST to provide the Commission with names of customers who have been asked to provide access to a trench or conduit for maintenance, repair, or replacement within the last two years or, at a minimum, to adopt U S WEST's proposal for compliance with this directive. U S WEST argues that the Commission is not authorized to order U S WEST to provide information regarding customers who have hired third-party vendors for opening trench and conduit. U S WEST also argues that there is no data base or automated search tool that would allow it to search its records electronically, and that it would have to conduct a manual search of thousands of customer records.

U S WEST proposes an alternative method for compliance with this requirement by placement of advertisements inviting customers to come forward with claims that they have provided such trenching so that refund claims can be reviewed, calculated, and issued. In addition, U S WEST would survey 34 designated engineers to determine what information they can provide, and following up with customers they identify.

The Commission Staff answers that the Commission should not reconsider its decision to require U S WEST to provide the names of all customers who have been asked by U S WEST to provide access to a trench or conduit for maintenance, repair, or replacement within the last two years. Commission Staff does not, however, object to an alternative method of compliance with this requirement.

The Commission Staff agrees with U S WEST's proposal to advertise the refund on its Web site, and in several newspapers around the state in the same manner it did in its recent rate refund. In addition, the Staff asks the Commission to require the company to provide a notice to all of its customers either by direct mail or by a bill stuffer, within 60 days of this order on reconsideration. The Staff also seeks a right to review and approve the notice and media announcement prior to release.

**Commission Decision:** The Commission will allow U S WEST to use an alternate method to develop a list of customers who have provided access to trench or conduit. The method proposed by the Commission Staff should be followed. In addition, U S WEST should follow through with its proposal to survey 34 designated engineers to determine what information they can provide, and following up with customers they identify.

**C. Should the Commission Delete the Portion of the Final Order Which Finds that U S WEST Would Be Recovering Twice the Cost of Repair and Maintenance if It Collected The Cost From Customers?**

U S WEST asks the Commission to delete that portion of the final order that finds that U S WEST would be recovering double the cost of repairing facilities if it does not refund the amounts paid to it by customers for trenching and conduit. U S WEST argues that the finding is not supported by evidence, and that it is unnecessary to the decision.

The Commission Staff argues that the Commission should not delete this portion of the order because it is correct. Staff notes that Commission Staff witness Thomas Spinks testified that U S WEST's costs of installing, operating, and maintaining its plant and equipment are fully included in its current rates. Exhibit T-85, p. 5. Staff goes on to state that U S WEST's claim that Mr. Spinks did not testify that U S WEST is recovering these costs in its rates is wholly incorrect.

**COMMISSION DECISION:** The conclusion that recovery from its customers for the costs of trenching or conduit would result in double recovery to U S WEST is correct, and we will not delete this conclusion. Mr. Spinks testified that the historic costs for repair of trenching and conduit were historically included in rate base and were, thus, already included in rates, stating:

I know through my own knowledge and experience that the costs that are capitalized in the plant accounts, as regards the material cost of, say, poles or a cable account, the material only forms about 50 percent of the investment that's capitalized in the plant account. The remaining portion of that investment is for nonmaterial items, and they include the installation. Also, the uniform system of accounts requires that the trenching cost be capitalized in the appropriate account where the trenching work is associated with. So if you're plowing in cable, both the trenching as well as costs of the cable, the worker's time, overheads, there's a number of costs that are all capitalized into the plant account.

TR 433-44.

Mr. Spinks also testified that he had reviewed U S WEST vendor invoice data in conjunction with another case and reviewed a number of vendor invoices for contracts that it has with vendors for trenching and plowing, and billings from those vendors to the company for putting in drops. The invoices that he reviewed included the cost of trenching that was billed to the company for that work. So it's very clear that those costs are included in the company's costs.



**D. Conclusion**

Except for the compliance deadlines extended above, and the compliance method for compiling a list of customers modified above, the Commission affirms its Findings of Fact, Conclusions of Law, and Fifth Supplemental Order in these proceedings.

**ORDER**

**THE COMMISSION ORDERS:**

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 by November 30, 1998; Skylark Village by October 30, 1998; and Belmor Mobile Home Park by October 15, 1998; and shall restore petitioners' property to the same condition it was in prior to replacement of the buried service wire.

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, using the means described in this order to compile the list.

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.

DATED at Olympia, Washington, and effective this 23rd day of September 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
 ANNE LEVINSON, Chair  
  
 RICHARD HEMSTAD, Commissioner