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JUN 30 1989

Master Section  
Superior Court Clerk

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GTE NORTHWEST INCORPORATED, a  
Washington corporation,

Plaintiff,

v.

STATE OF WASHINGTON, DEPARTMENT  
OF REVENUE; BENTON COUNTY, a  
municipal corporation; CHELAN  
COUNTY, a municipal corporation;  
CLARK COUNTY, a municipal corpor-  
ation; COWLITZ COUNTY, a municipal  
corporation; DOUGLAS COUNTY, a  
municipal corporation; GRANT  
COUNTY, a municipal corporation  
ISLAND COUNTY, a municipal corpor-  
ation; KING COUNTY, a municipal  
corporation; OKANOGAN COUNTY, a  
municipal corporation; PEND  
ORIELLE COUNTY, a municipal  
corporation; SKAGIT COUNTY, a  
municipal corporation; SKAMANIA  
COUNTY, a municipal corporation;  
SNOHOMISH COUNTY, a municipal  
corporation; SPOKANE COUNTY, a  
municipal corporation; and WHITMAN  
COUNTY, a municipal corporation,

Defendants.

89-2 12965 5  
NO.

SUMMONS

CARLYN OLSON

SEP 8 10 48 AM '89

FILED FOR RECORD  
SKAMANIA CO. WASH.  
BY *Carly Olson*

1-1589

TO THE DEFENDANTS: A lawsuit has been started against you in the above  
entitled Court by plaintiff, GTE NORTHWEST INCORPORATED. Plaintiff's claim  
is stated in the written Complaint, a copy of which is served upon you with  
this Summons.

In order to defend against this lawsuit, you must respond to the

SUMMONS -1-

LEGAL DEPARTMENT  
GTE NORTHWEST INCORPORATED  
1800 FORTY-FIRST STREET  
SEATTLE, WASHINGTON 98149

1 Complaint by stating your defense in writing, and by serving a copy upon the  
2 person signing this Summons within twenty (20) days after the service of this  
3 Summons, excluding the day of service, or a default judgment may be entered  
4 against you without notice. A default judgment is one where plaintiff is  
5 entitled to what he asks for because you have not responded. If you serve a  
6 Notice of Appearance on the undersigned person, you are entitled to notice  
7 before a default judgment may be entered.

8 You may demand that the plaintiff file this lawsuit with the Court. If  
9 you do so, the demand must be in writing and must be served upon the person  
10 signing this Summons. Within fourteen (14) days after you serve the demand,  
11 the plaintiff must file this lawsuit with the Court, or the service on you of  
12 this Summons and Complaint will be void.

13 If you wish to seek the advice of an attorney in this matter, you should  
14 do so promptly so that your written response, if any, may be served on time.

15 This Summons is issued pursuant to Rule 4 of the Superior Court Civil  
16 Rules of the State of Washington.

17 DATED this 30<sup>th</sup> day of June, 1989.

18  
19  
20 Judith A. Endejan  
21 JUDITH A. ENDEJAN  
22 S. LEIGH FULWOOD  
23 A. TIMOTHY L. WILLIAMSON  
24 Attorneys for GTE Northwest Incorporated  
25 1800 41st Street  
26 Everett, Washington 98201  
206-261-5008

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In Any County State of Washington

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GTE NORTHWEST INCORPORATED, a  
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municipal corporation; and WHITMAN  
COUNTY, a municipal corporation,

Defendants.

89-2 12965 9

NO.

COMPLAINT FOR DE NOVO REVIEW  
OF BOARD OF TAX APPEALS DECISION  
AND FOR REFUND OF TAXES PAID

Plaintiff, GTE Northwest Incorporated ("GTE-NW"), for its complaint  
against defendants, states as follows:

I. PARTIES

1. Plaintiff GTE-NW is a Washington corporation which is wholly-owned by  
GTE Corporation, a New York corporation. GTE-NW maintains its corporate

COMPLAINT -1-

LEGAL DEPARTMENT  
GTE NORTHWEST INCORPORATED  
1800 FORTY-FIRST STREET  
EVERETT, WASHINGTON 98201

1 headquarters and principal place of business in Everett, Washington.

2 2. GTE-NW is an interstate company duly authorized to do business in  
3 the states of Washington, Oregon, Idaho and Montana (hereinafter: GTE-NW's  
4 "four-state network area"). GTE-NW operates a telecommunications system in  
5 its four-state network area providing services as a public utility under the  
6 rate and tariff regulation of the four states involved.

7 3. GTE-NW owns and utilizes real and personal property (hereinafter:  
8 "operating property") located across its four-state network area to provide  
9 public utility telecommunication services to customers in portions of the  
10 following counties in the state of Washington: Benton, Chelan, Clark,  
11 Cowlitz, Douglas, Grant, Island, King, Okanogan, Pend Oreille, Skagit,  
12 Skamania, Snohomish, Spokane and Whitman.

13 4. Defendant, State of Washington Department of Revenue (hereinafter:  
14 the "DOR") is an agency of the state of Washington which is charged by  
15 Washington law with the responsibility, on an annual basis, of:

- 16 (a) Determining the true cash value of the operating property of  
17 each interstate company operating in Washington;  
18 (b) Apportioning to Washington that part of the value of each  
19 interstate company's operating property which represents the  
20 value of the portion of that property in Washington;  
21 (c) Apportioning the value of the operating property in Washington  
22 equitably among the counties in Washington where the interstate  
23 company operates;  
24 (d) Determining the equalized value of the operating property  
25 apportioned to each county; and,  
26 (e) Certifying the equalized value of the operating property to  
local county assessors for placement on each county's  
respective tax roll.

5. Defendant counties, Benton, Chelan, Clark, Cowlitz, Douglas, Grant,

1 Island, King, Okanogan, Pend Oreille, Skagit, Skamania, Snohomish, Spokane  
2 and Whitman are public corporate bodies which have each levied and collected  
3 1987 assessment year ad valorem property taxes from GTE-NW for operating  
4 property of GTE-NW, which was subjected by DOR to a palpably excessive,  
5 fundamentally erroneous, discriminatory, and grossly inequitable valuation as  
6 set forth more fully below.

7 **II. NATURE OF ACTION**

8 6. Plaintiff GTE-NW brings this action against defendant DOR and  
9 defendant counties pursuant to R.C.W. 82.03.180, 84.68.020 and 84.68.050.00  
10 to recover a refund of the excessive ad valorem property taxes (plus interest  
11 thereon) which GTE-NW was required to pay for the 1987 assessment year, and  
12 did pay (under protest) as a result of the DOR's excessive valuation.

13 **III. THE CHALLENGED VALUATION AND TAX OVERPAYMENT**

14 7. On August 19, 1987, the DOR determined the "true cash value" for  
15 assessment year 1987 of the operating property in GTE-NW's four-state network  
16 area to be \$1,333,000,000 of which 59% was allocated to Washington, resulting  
17 in \$746,200,000 in value being apportioned to the defendant counties for ad  
18 valorem taxation purposes.

19 8. GTE-NW contended that the "true cash value" of its four-state  
20 operating property should have been determined to be \$1,081,409,600,  
21 resulting in an apportionment of \$597,761,664 in value to be taxed by  
22 defendant counties in the state of Washington. The DOR over-valued GTE-NW's  
23 operating property in its four-state network area by over One Quarter Billion  
24 Dollars, resulting in an excessive valuation of GTE-NW's Washington state  
25 operating property.

26 9. GTE-NW requested and obtained an informal review of the DOR's



1 valuation by the Washington Board of Tax Appeals ("BTA"). By decision dated  
2 August 25, 1988, the BTA sustained the DOR's valuation of GTE-NW's Washington  
3 operating property at \$746,200,000.

4 10. GTE-NW paid ad valorem taxes to the defendant counties in 1988 for  
5 the assessment year 1987 in the following amounts which substantially  
6 exceeded the property tax liability that GTE-NW would have borne had its  
7 operating property been assessed in an equitable fashion:

8	Benton County	\$ 1,152,570.64
	Chelan County	\$ 541,430.60
9	Clark County	\$ 122,488.53
	Cowlitz County	\$ 25,035.82
10	Douglas County	\$ 186,912.68
	Grant County	\$ 86,188.40
11	Island County	\$ 243,623.00
	King County	\$ 1,849,657.02
12	Okanogan County	\$ 27,159.07
	Pend Orielle County	\$ 63,006.46
13	Skagit County	\$ 259,183.08
	Skamania County	\$ 13,312.16
14	Snohomish County	\$ 4,516,845.58
	Spokane County	\$ 29,793.38
15	Whitman County	\$ 346,884.48
16	TOTAL	\$ 9,464,090.90

17 11. GTE-NW paid the aforementioned excessive ad valorem property taxes  
18 to the defendant counties under protest, advising each of the counties of the  
19 basis for its protest. This was a tax overpayment of in excess of \$1.5  
20 Million.

#### 21 IV. FIRST CAUSE OF ACTION

##### 22 The DOR's Valuation Rests On A Fundamentally Wrong Basis or Theory

23 12. Plaintiff GTE-NW realleges and incorporates by reference herein the  
24 allegations set forth in paragraphs 1 through 11, inclusive, above.

25 13. Pursuant to its own regulations (WAC 458-50-080), the DOR was  
26 required to ascertain the "true cash value" of GTE-NW's "operating property"

1 by reference to its "...market value,' i.e., the amount of money a buyer  
2 willing but not obligated to buy would pay for such operating property from a  
3 seller willing but not obligated to sell. In arriving at a determination of  
4 such value, the [DOR] may consider only those factors which can within reason  
5 be said to affect the price in negotiations between a willing purchaser and a  
6 willing seller, and the department shall consider all such factors to the  
7 extent the reliable information is available to support a judgment as to the  
8 probable effect of such factors on price." [Emphasis added.]

9 14. The DOR determined that the market-oriented valuation rule of WAC  
10 458-50-080 could best be followed by applying a "unit valuation" or "going  
11 concern" approach that considered the value of GTE-NW's four-state network  
12 area operating property as part of an integrated business entity. In so  
13 doing, the DOR recognized that the value of GTE-NW's operating property had  
14 to be the probable price the interstate network would command in a public  
15 arm's length sale. However, the DOR then deviated from this principle by  
16 setting the value of GTE-NW's operating property at the historic cost of the  
17 operating property, less depreciation--an accounting figure that was clearly  
18 unrelated to the income-generating capacity of the system in violation of WAC  
19 458-50-080.

20 15. When the DOR used historic cost, less depreciation, as a surrogate  
21 for the market value of GTE-NW's operating property, the DOR refused to make  
22 any deduction or to give any recognition to a significant disputed fact,  
23 namely: \$209,558,800 of the historic cost of GTE-NW's operating property  
24 represents "accumulated deferred federal income taxes"--assets on which  
25 GTE-NW is precluded from earning any return by regulators in its four-state  
26 network area.

1 16. GTE-NW is informed and believes, and thereon alleges, that the DOR  
2 relied solely on the valuation it had derived from GTE-NW's historic cost  
3 data, less depreciation, and ignored elementary and fundamental financial and  
4 regulatory principles that would be a primary consideration to a willing  
5 buyer of GTE-NW's operating property. Additionally, GTE-NW is further  
6 informed and believes, and thereon alleges, that the DOR constructed an  
7 income appraisal which artificially approximated its historic cost, less  
8 depreciation valuation, (a) by using short term market data skewed to avoid  
9 and disregard real market factors (e.g., the precipitous equity yield  
10 increases for the fourth quarter in 1987); (b) by relying on a capitalization  
11 rate (8.63%) which was derived from raw common stock earnings/price ratios,  
12 and which patently disregarded fundamental economics principles (e.g.,  
13 "opportunity cost"); and (c) by applying a "direct capitalization" approach  
14 that, only one year previously, both the DOR and the BTA had rejected as  
15 being unsupportable in a valuation of GTE-NW's operating property (in a case  
16 where application of that technique would have reduced the valuation of  
17 GTE-NW's property for taxation).

18 **V. SECOND CAUSE OF ACTION**

19 **The DOR's Arbitrary Valuation Techniques And Its Disregard**  
20 **Of Principles of Utility Regulation Deny GTE-NW Equal Protection**  
21 **Under The Law And Results In Non-Uniform Taxation**

22 17. GTE-NW realleges and incorporates by reference herein the  
23 allegations set forth in paragraphs 1 through 16, inclusive, above.

24 18. Under the Washington Constitution (Const. art. 7, § 1 (amendment  
25 14)), the DOR is obligated to assure that "...all taxes [are] uniform upon  
26 the same class of property within the territorial limits of the levying  
authority..." Additionally, under the 14th Amendment to the U. S.



1 Constitution, the DOR is precluded from subjecting GTE-NW to fundamentally  
2 unfair hearing and review procedures or to discriminatory taxation.

3 19. The valuation technique applied by DOR to GTE-NW's operating  
4 property for assessment year 1987 was fundamentally unfair because the  
5 methodology used to value GTE-NW's operating property is arbitrarily  
6 altered from year to year to obtain the highest possible valuation for tax  
7 purposes in violation of GTE-NW's constitutional rights.

8 20. GTE-NW is informed and believes, and thereon alleges, that the  
9 valuation technique applied by the DOR for GTE-NW's operating property for  
10 assessment year 1987 was discriminatory, and violated the Washington state  
11 constitutional mandate for uniform taxation because similar property held by  
12 different taxpayers for the same income-generating purposes is subject to  
13 different tax burdens without any logical basis for distinction.  
14 Specifically, DOR has based its valuation of GTE-NW's operating property  
15 solely on the historic cost of property and facilities on which GTE-NW is  
16 prohibited from realizing any return. GTE-NW is informed and believes, and  
17 thereon alleges, that any non-utility taxpayer which could document a  
18 comparable discrepancy between the historic cost and income-generating  
19 capacity of its property would be granted a reduction in value for tax, e.g.,  
20 for "economic obsolescence."

21 **VI. RELIEF REQUESTED ON BOTH CAUSES OF ACTION**

22 21. For the reasons set forth in paragraphs 1 through 20, inclusive,  
23 above, the valuation of GTE-NW's operating property in Washington was  
24 palpably excessive, non-uniform and discriminatory. The defendant counties'  
25 actions in levying and collecting taxes based on that valuation was,  
26 therefore, unlawful.

1 22. Having paid excessive taxes under protest, GTE-NW is entitled to a  
2 refund from each of the defendant counties in an amount to be calculated on  
3 the basis of a proper, equitable and uniform valuation of GTE-NW's Washington  
4 operating properties in accordance with the findings of the court after  
5 trial.

6  
7 WHEREFORE, based upon the foregoing, GTE-NW demands judgment against the  
8 DOR and each county defendant as follows:

- 9 1. Determining the proper valuation of GTE-NW taxable system  
10 properties in Washington based upon proper valuations for the  
11 1987 assessment year;  
12 2. Ordering payment to GTE-NW of excessive and/or unlawful  
13 property taxes paid to each defendant county for the 1987  
14 assessment year together with legal interest and allowable  
15 costs herein;  
16 3. For an order reversing the BTA's decision, stating the proper  
17 valuation as determined by this Court of GTE-NW's taxable  
18 property in Washington State;  
19 4. For such other relief as the Court deems just and proper.

20 DATED this 30<sup>th</sup> day of June, 1989.

21 *Judith A. Endejan*  
22 JUDITH A. ENDEJAN  
23 LEIGH FULWOOD  
24 A. TIMOTHY L. WILLIAMSON  
25 Attorneys for GTE Northwest Incorporated  
26 1800 41st Street  
Everett, Washington 98201  
206-261-5008