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BY, NW Pipeline Corp

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JAN 31 1992

SUPERIOR COURT  
SPOKANE COUNTY, WA

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Filed 3/4/92  
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GARY A. OLSON

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

NORTHWEST PIPELINE  
CORPORATION, a Delaware  
corporation, and U S WEST  
COMMUNICATIONS, INC.,  
(Formerly Pacific Northwest  
Bell Telephone Company, Inc.),

Plaintiffs,

vs.

SPOKANE COUNTY, ADAMS COUNTY,  
ASOTIN COUNTY, BENTON COUNTY,  
CHELAN COUNTY, COLUMBIA  
COUNTY, COWLITZ COUNTY,  
DOUGLAS COUNTY, FERRY COUNTY,  
FRANKLIN COUNTY, GARFIELD  
COUNTY, GRANT COUNTY, GRAYS  
HARBOR COUNTY, JEFFERSON  
COUNTY, KING COUNTY, KITSAP  
COUNTY, KITTITAS COUNTY,  
KLICKITAT COUNTY, LEWIS  
COUNTY, LINCOLN COUNTY, MASON  
COUNTY, OKANOGAN COUNTY,  
PACIFIC COUNTY, PEND OREILLE  
COUNTY, PIERCE COUNTY, SAN  
JUAN COUNTY, SKAGIT COUNTY,  
SKAMANIA COUNTY, SNOHOMISH  
COUNTY, STEVENS COUNTY,  
THURSTON COUNTY, WAHKIAKUM  
COUNTY, WALLA WALLA COUNTY,  
WHATCOM COUNTY, WHITMAN  
COUNTY, YAKIMA COUNTY,  
WATSBURG CITY and THE  
WASHINGTON STATE DEPARTMENT OF  
REVENUE,

Defendants.

NO. 91-2-03000-1

SUMMONS ON AMENDED COMPLAINT

TO THE DEFENDANTS: A lawsuit has been started against you in  
the above-entitled Court by NORTHWEST PIPELINE CORPORATION and U S  
WEST COMMUNICATIONS, INC., plaintiffs. Plaintiffs' claim is stated  
in the written Amended Complaint, a copy of which is served upon  
you with this Summons.

SUMMONS ON AMENDED COMPLAINT: 1  
P2031SCA:ELA-K013192

LAW OFFICES  
LUKINS & ANNIS  
A PROFESSIONAL SERVICE CORPORATION  
SUITE 500  
WASHINGTON TRUST FINANCIAL CENTER  
SPOKANE, WASHINGTON 99201-0006  
(509) 623-1010

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

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

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

15 DATED this 31 day of January, 1992.

16 LUKINS & ANNIS, P.S.

17 By Linda G. Tompkins for  
18 EUGENE I. ANNIS, WSB #02112  
19 Attorneys for Plaintiffs  
20  
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SUMMONS: 2

LAW OFFICE  
LUKINS & ANNIS  
A PROFESSIONAL SERVICE CORPORATION  
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WASHINGTON TRUST FINANCIAL CENTER  
SPokane, Washington 99201  
(509) 625-9700

FILED  
JAN 31 1992

CLERK OF COURT  
SPOKANE, WASH.

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

NORTHWEST PIPELINE CORPORATION,  
a Delaware Corporation, and  
U S WEST COMMUNICATIONS, INC.,  
(Formerly Pacific Northwest Bell  
Telephone Company, Inc.),

Plaintiffs,

vs.

CASE NO. 91203000-1

JUDGE MICHAEL E. DONCHUE

SPOKANE COUNTY, ADAMS COUNTY,  
ASOTIN COUNTY, BENTON COUNTY,  
CHELAN COUNTY, CLALLAM COUNTY,  
CLARK COUNTY, COLUMBIA COUNTY,  
COWLITZ COUNTY, DOUGLAS COUNTY,  
FERRY COUNTY, FRANKLIN COUNTY,  
GARFIELD COUNTY, GRANT COUNTY,  
GRAYS HARBOR COUNTY, JEFFERSON  
COUNTY, KING COUNTY, KITSAP  
COUNTY, KITTITAS COUNTY,  
Klickitat County, LEWIS COUNTY,  
LINCOLN COUNTY, MASON COUNTY,  
OKANOGAN COUNTY, PACIFIC COUNTY,  
PEND OREILLE COUNTY, PIERCE  
COUNTY, SAN JUAN COUNTY, SKAGIT  
COUNTY, SKAMANIA COUNTY,  
SNOHOMISH COUNTY, STEVENS COUNTY,  
THURSTON COUNTY, WAHKIAKUM  
COUNTY, WALLA WALLA COUNTY,  
WHATCOM COUNTY, WHITMAN COUNTY,  
YAKIMA COUNTY, WAITSBURG CITY AND  
THE WASHINGTON STATE DEPARTMENT  
OF REVENUE,

Defendants.

AMENDED COMPLAINT FOR  
REFUND OF PROPERTY TAXES  
PAID UNDER PROTEST

On January 24, 1992, the Court entered its Second  
Amended Case Schedule Order in this matter, based upon the  
consent of all parties. Pursuant to the Second Amended Case

LAW OFFICE  
LUKINS & ANNIS  
A PROFESSIONAL SERVICE CORPORATION  
SUITE 1400  
WASHINGTON TRUST FINANCIAL CENTER  
SPOKANE, WASHINGTON 99201  
(509) 325-6111

1 Schedule Order, Northwest Pipeline Corporation ("Northwest  
2 Pipeline") was allowed until January 31, 1992, to amend its  
3 June 28, 1991 Complaint.

4 Pursuant to the Second Amended Case Schedule Order  
5 and CR 15 and 20, Northwest hereby amends its June 28, 1991  
6 Complaint to add, among other things, claims with respect to  
7 the 1990 tax year; U S WEST Communications, Inc., formerly  
8 Pacific Northwest Bell Telephone Company, Inc. ("USWC/PNB"),  
9 as a Plaintiff; and Waitsburg City and Asotin, Clallam,  
10 Columbia, Douglas, Ferry, Garfield, Jefferson, Kitsap,  
11 Okanogan, Pacific, Pend Oreille, San Juan, Stevens, and  
12 Wahkiakum Counties as Defendants with respect to Plaintiff  
13 USWC/PNB only.

14 Accordingly, the June 28, 1991 Complaint is amended  
15 and realleged in its entirety as follows:

16 Northwest Pipeline and USWC/PNB (collectively the  
17 "Plaintiffs"), by and through their counsel, Lukins & Annis  
18 and Holme Roberts & Owen, upon information and belief, allege  
19 and for causes of action state as follows:

20  
21 JURISDICTION AND VENUE

22 1. Northwest Pipeline is a Delaware corporation  
23 that owns and operates a federally regulated natural gas  
24 transmission system in seven western states: Colorado, Idaho,  
25 New Mexico, Oregon, Utah, Washington and Wyoming.

26 2. USWC/PNB is a Colorado corporation that owns and  
27 operates a federally and state regulated telecommunications  
28 services and data solutions system serving approximately 25  
29 million residential and business customers in 14 western and  
30 midwestern states, including Washington.  
31

1           3. Northwest Pipeline maintains its corporate  
2 offices and principal place of business in Salt Lake City,  
3 Utah.

4           4. USWC/PNB maintains its corporate offices and  
5 principal place of business in Denver, Colorado.

6           5. Northwest Pipeline is a wholly owned subsidiary  
7 of The Williams Companies, Inc. ("Williams"). Williams is a  
8 Delaware corporation with its corporate offices and principal  
9 place of business in Tulsa, Oklahoma.

10          6. USWC/PNB is a wholly owned subsidiary of U S  
11 WEST, Inc., a Colorado corporation with its corporate offices  
12 and principal place of business in Englewood, Colorado.

13          7. Within the State of Washington, Northwest  
14 Pipeline owns and operates approximately 1,358 miles of gas  
15 pipeline, 10 compressor stations, 85 meter stations,  
16 approximately 30 sales taps, 4 district maintenance offices, 1  
17 underground storage facility and 1 liquefied natural gas plant  
18 (collectively the "Northwest Pipeline Property").

19          8. Within the State of Washington, USWC/PNB owns  
20 and operates an integrated telecommunications services and  
21 data solutions system comprised of both real and personal  
22 property (collectively the "USWC/PNB Property").

23          9. The Northwest Pipeline Property is located in  
24 Spokane, Adams, Benton, Chelan, Clark, Cowlitz, Franklin,  
25 Grant, Grays Harbor, King, Kittitas, Klickitat, Lewis,  
26 Lincoln, Mason, Pierce, Skagit, Skamania, Snohomish, Thurston,  
27 Walla Walla, Whatcom, Whitman, and Yakima Counties, counties  
28 collectively comprising twenty four of the Defendants in this  
29 action (hereinafter collectively referred to as the "Northwest  
30 Pipeline Defendant Counties").  
31



1           10. The USWC/PNB Property is located in Spokane  
2 County and in the other thirty-seven Washington Counties  
3 (hereinafter collectively referred to as the "Defendant  
4 Counties") and Waitsburg City that are Defendants in this  
5 action.

6           11. The Northwest Pipeline Property and the USWC/PNB  
7 Property (hereinafter collectively referred to as the  
8 "Property") are each "operating property" as defined in Wash.  
9 Rev. Code §§ 84.12.200(16) and 84.68.050 (hereinafter cited as  
10 "RCW"), and are each assessed as a unit for ad valorem  
11 property tax purposes by the Defendant, Washington Department  
12 of Revenue (the "Department"), pursuant to RCW § 84.12.300.

13           12. The Department has offices in Olympia, Pasco,  
14 Spokane, Wenatchee and Yakima.

15           13. The Department has assessors and officers that  
16 value property in each of the Defendant Counties.

17           14. All of the Defendants, except the Department,  
18 and Waitsburg City, are counties with their county seats at  
19 various locations within the State of Washington. Waitsburg  
20 City is a chartered municipal corporation located in Walla  
21 Walla County.

22           15. As of January 1, 1989, January 1, 1990, and  
23 January 1, 1991, the Department calculated unit values for the  
24 operating property of Northwest Pipeline located in seven  
25 western states including Washington. The Department allocated  
26 a portion of these unit values to the State of Washington.  
27 The allocated Washington values for Northwest Pipeline were  
28 then apportioned by the Department among the Northwest  
29 Pipeline Defendant Counties.  
30  
31

1 16. Pursuant to RCW 84.12.350, the Department  
2 purported to equalize Northwest Pipeline's apportioned values  
3 based upon the Department's calculated ratios of assessed to  
4 actual values for general property in each of the Northwest  
5 Pipeline Defendant Counties. The Northwest Pipeline Defendant  
6 Counties then levied and collected property taxes from  
7 Northwest Pipeline based upon Northwest Pipeline's January 1,  
8 1989 and January 1, 1990 equalized, apportioned values. The  
9 property taxes based upon Northwest Pipeline's January 1, 1991  
10 equalized, apportioned values are not payable by Northwest  
11 Pipeline prior to April 30, 1992.

12 17. As of January 1, 1990, and January 1, 1991, the  
13 Department calculated a unit value for the operating property  
14 of USWC/PNB located in Washington, Oregon and a portion of  
15 Idaho. The Department allocated a portion of USWC/PNB's unit  
16 values to the State of Washington. The allocated Washington  
17 values for USWC/PNB were then apportioned by the Department  
18 among the Defendant Counties and Waitsburg City.

19 18. Pursuant to RCW 84.12.350, the Department  
20 further purported to equalize USWC/PNB's apportioned values  
21 based upon its calculated ratios of assessed to actual values  
22 for general property in each of the Defendant Counties and  
23 Waitsburg City. The Defendant Counties and Waitsburg City  
24 then levied and collected property taxes from USWC/PNB based  
25 upon USWC/PNB's January 1, 1990 equalized, apportioned values.  
26 The property taxes based upon USWC/PNB's January 1, 1991  
27 equalized, apportioned values are not payable by USWC/PNB  
28 prior to April 30, 1992.

29 19. Pursuant to RCW § 84.68.020, on or about October  
30 22, 1990, Northwest Pipeline paid the second installment of  
31

1 its 1990 property taxes, based upon the Department's January  
2 1, 1989 valuation, under protest to each of the Northwest  
3 Pipeline Defendant Counties. Pursuant to RCW § 84.68.020, on  
4 or about April 29, 1991, and October 29, 1991, Northwest  
5 Pipeline also paid the first and second installments,  
6 respectively, of its 1991 property taxes, based upon the  
7 Department's January 1, 1990 valuation, under protest to each  
8 of the Northwest Pipeline Defendant Counties. Prior to  
9 commencement of the trial of this matter, currently scheduled  
10 for August 31, 1992, Northwest Pipeline further intends to pay  
11 its 1992 property taxes, based upon the Department's January  
12 1, 1991 valuation, under protest to each of the Northwest  
13 Pipeline Defendant Counties pursuant to RCW § 84.68.020.

14 20. Pursuant to RCW § 84.68.020, on or about April  
15 29, 1991, and October 11, 1991, USWC/PNB paid the first and  
16 second installments, respectively, of its 1991 property taxes,  
17 based upon the Department's January 1, 1990 valuation, under  
18 protest to each of the Defendant Counties and Waitsburg City.  
19 Prior to commencement of the trial of this matter currently  
20 scheduled for August 31, 1992, USWC/PNB also intends to pay  
21 its 1992 property taxes, based upon the Department's January  
22 1, 1991 valuation, under protest to each of the Defendant  
23 Counties pursuant to RCW § 84.68.020.

24 21. Pursuant to RCW § 84.68.020, this Court has  
25 subject matter jurisdiction of the claims asserted herein.

26 22. Pursuant to RCW § 84.68.050, venue of this  
27 action is properly laid in this Court.

28  
29 **FIRST CLAIM FOR RELIEF**  
30 **(Unlawful and Excessive Taxation)**

31 23. Plaintiffs reallege and incorporate by reference



1 the allegations set forth in paragraphs 1 through 22 above, as  
2 if fully set forth herein.

3 24. Pursuant to RCW § 84.12.270, the Department is  
4 required to annually determine the "true cash value" of  
5 Plaintiffs' operating property in Washington for the purpose  
6 of imposing the *ad valorem* property tax.

7 25. For assessment years 1989, 1990 and 1991, the  
8 Department determined the "true cash value" as of January 1 of  
9 each year of all of Northwest Pipeline's operating property,  
10 wherever located, as a single unit. Pursuant to RCW §  
11 84.12.300, the Department then allocated a portion of  
12 Northwest Pipeline's unit value to the State of Washington  
13 pursuant to RCW § 84.12.300.

14 26. For assessment years 1990 and 1991, the  
15 Department determined the "true cash value" as of January 1 of  
16 each year of all of USWC/PNB's operating property in the  
17 states of Washington, Oregon and a portion of Idaho as a  
18 single unit. Pursuant to RCW § 84.12.300, the Department then  
19 allocated a portion of this unit value to the State of  
20 Washington.

21 27. To determine the unit value of Northwest  
22 Pipeline's operating property as of January 1, 1989, the  
23 Department calculated and correlated two separate approaches  
24 to value: historical cost loss depreciation ("HCLD") and  
25 direct capitalization. The Department used these approaches  
26 as its cost and income approaches to value, respectively. To  
27 determine the unit values of Northwest Pipeline's operating  
28 property as of January 1, 1990, and January 1, 1991, the  
29 Department calculated and correlated three separate approaches  
30 of value: HCLD, direct capitalization, and stock and debt.  
31

1 The Department used these three approaches as its cost, income  
2 and market approaches to value, respectively.

3 28. To determine the unit values of USWC/PNB's  
4 three-state operating property as of January 1, 1990, and  
5 January 1, 1991, the Department calculated and correlated  
6 three separate approaches of value: HCLD, direct  
7 capitalization and stock and debt. The Department used these  
8 three approaches as its cost, income and market approaches to  
9 value, respectively.

10 29. The Department's correlated unit values for  
11 Northwest Pipeline's operating property were: \$800,000,000 as  
12 of January 1, 1989; \$825,000,000 as of January 1, 1990; and  
13 \$725,000,000 as of January 1, 1991.

14 30. The Department's correlated unit values for  
15 USWC/PNB's three-state operating property were: \$3,700,000,000  
16 as of January 1, 1990; and \$3,700,000,000 as of January 1,  
17 1991.

18 31. After determining the correlated unit value of  
19 Northwest Pipeline's operating property, the Department made  
20 an adjustment to remove the estimated value of Northwest  
21 Pipeline's non-depreciable, stored gas inventory from the unit  
22 value. Northwest Pipeline's adjusted system values were:  
23 \$691,380,100 as of January 1, 1989; \$736,828,933 as of January  
24 1, 1990; and \$652,435,710 as of January 1, 1991.

25 32. The Department then allocated a portion of  
26 Northwest Pipeline's adjusted system values to the State of  
27 Washington and further adjusted these allocated values for the  
28 estimated percentage of Northwest Pipeline's operating  
29 property in the State of Washington. After making these  
30 allocations and adjustments for non-taxable property, the  
31 Department determined the market (true cash) values of

1 Northwest Pipeline's taxable Washington operating property to  
2 be: \$113,920,000 as of January 1, 1989; \$141,646,000 as of  
3 January 1, 1990; and \$107,600,000 as of January 1, 1991.  
4 These values were then apportioned by the Department among the  
5 Northwest Pipeline Defendant Counties.

6 33. After determining the correlated unit values of  
7 USWC/PNB's three-state operating property, the Department  
8 allocated a portion of these unit values to the State of  
9 Washington. The allocation methodology utilized by the  
10 Department for USWC/PNB's three-state operating property was  
11 different from the allocation methodology utilized by the  
12 Department for Northwest Pipeline's operating property and is  
13 not challenged by USWC/PNB. The amounts allocated by the  
14 Department to the State of Washington for USWC/PNB's three-  
15 state operating property were: \$2,356,900,000 as of January  
16 1, 1990; and \$2,393,530,000 as of January 1, 1991.

17 34. The Department made several valuation  
18 adjustments to USWC/PNB's Washington allocated values to  
19 remove values attributable to USWC/PNB's non-operating and  
20 non-taxable property. After making these adjustments, the  
21 Department determined the true cash value of USWC/PNB's  
22 taxable, operating property in Washington to be:  
23 \$2,170,000,000 as of January 1, 1990; and \$2,210,000,000 as of  
24 January 1, 1991. These values were then apportioned and  
25 equalized by the Department among the Defendant Counties and  
26 Waitsburg City.

27 35. The aggregate amounts of the property taxes  
28 levied and collected on Northwest Pipeline's Property by the  
29 Northwest Pipeline Defendant Counties, based upon their  
30 respective, equalized, apportioned values were: \$1,562,323,  
31 based upon the Department's January 1, 1989 valuation; and

1 \$2,010,193, based upon the Department's January 1, 1990  
2 valuation.

3 36. The aggregate amount of the property taxes  
4 levied and collected on USWC/PNB's Property by the Defendant  
5 Counties and Waitsburg City, based upon their respective,  
6 equalized, apportioned shares of the Department's January 1,  
7 1990 valuation was \$27,141,264.

8 37. The property taxes levied against the Property  
9 based upon the Department's valuations are "unlawful and  
10 excessive" as described in RCW § 84.68.020.

11 38. Northwest Pipeline's ownership and operation of  
12 the Northwest Pipeline Property is extensively regulated by  
13 the Federal Energy Regulatory Commission ("FERC"). As a  
14 regulated utility, Northwest Pipeline must comply with the  
15 accounting and regulatory conventions and restrictions adopted  
16 by FERC.

17 39. USWC/PNB's ownership and operation of the  
18 USWC/PNB Property is extensively regulated by the Federal  
19 Communications Commission ("FCC") and by the Washington  
20 Utilities and Transportation Commission ("WUTC") and its  
21 counterparts in the states of Oregon and Idaho. As a  
22 regulated utility, USWC/PNB must comply with the accounting  
23 and regulatory conventions and restrictions adopted by these  
24 regulatory authorities. (FERC, FCC and WUTC and its state  
25 counterparts in Oregon and Idaho are sometimes hereinafter  
26 collectively referred to as the "Regulatory Authorities.")

27 40. When applied to a regulated public utility like  
28 Northwest Pipeline or USWC/PNB, the traditional appraisal  
29 approaches to value, including without limitation, cost,  
30 income, and market, must be adjusted in order to estimate the  
31 true cash value of the regulated utility's property.

1           41. The Department's valuations of the Property are  
2 excessive because, among other errors, the Department did not  
3 make the adjustments to its approaches to value that are  
4 necessary to account for the economic impacts of the pervasive  
5 regulation imposed by the Regulatory Authorities.

6           42. For example, if the cost indicator is to be an  
7 accurate indicator of true cash value, it must be adjusted to  
8 account for the economic effects of regulation. The cost  
9 indicator should, therefore, approximate the amount of  
10 Northwest Pipeline's and USWC/PNB's respective rate bases as  
11 determined by the Regulatory Authorities, subject to  
12 additional adjustments for construction work in progress  
13 ("CWIP") and obsolescence.

14           43. In the absence of compelling circumstances,  
15 which the Department has failed to demonstrate, the amount of  
16 Northwest Pipeline's and USWC/PNB's respective regulatory rate  
17 bases, subject to adjustments for CWIP and obsolescence, must  
18 also be considered by the Department as an additional  
19 indicator of the true cash value of their respective operating  
20 properties.

21           44. The estimated rate base of Northwest Pipeline's  
22 operating property was: \$628,928,890 as of December 31, 1988;  
23 \$586,442,743 as of December 31, 1989; and \$473,408,082 as of  
24 December 31, 1990.

25           45. The estimated rate base of USWC/PNB's three-  
26 state operating property was: \$2,739,498,995 as of  
27 December 31, 1989; and \$2,835,916,840 as of December 31, 1990.

28           46. Other valuation errors in the Department's  
29 appraisals of the Property include, but are not limited to,  
30 the following:  
31



1 A. The Department's HCLD approach overstates  
2 the true cash value of the Property because it fails  
3 to include any adjustment for obsolescence, including  
4 without limitation economic obsolescence associated  
5 with "book" costs upon which Northwest Pipeline and  
6 USWC/PNB are not allowed to earn income by the  
7 Regulatory Authorities, and functional obsolescence  
8 associated with the rapid technological advances  
9 affecting USWC/PNB's telecommunications equipment.

10 B. The Department incorrectly calculated and  
11 estimated the levels of income for Northwest Pipeline  
12 and USWC/PNB utilized in its direct capitalization  
13 approach.

14 C. The capitalization rate/financial  
15 performance ratios applied by the Department to its  
16 estimates of Northwest Pipeline's and USWC/PNB's  
17 incomes were not drawn from companies comparable to  
18 Northwest Pipeline or USWC/PNB, respectively, do not  
19 accurately reflect their respective market costs for  
20 equity or debt financing, and ignore the economic  
21 impact of their respective regulatory constraints.

22 D. The Department was also inconsistent in its  
23 selection of capitalization rates/financial  
24 performance ratios during the relevant assessment  
25 years. The capitalization rate/financial performance  
26 ratios utilized by the Department in its direct  
27 capitalization approach for Northwest Pipeline as of  
28 January 1, 1989, and for Northwest Pipeline and  
29 USWC/PNB as of January 1, 1990, were based upon  
30 ratios derived from the reported earnings of other  
31

1 non-comparable, conglomerate companies to their stock  
2 prices, sometimes referred to as earnings to price  
3 ratios ("E/P ratios"). Although the Department also  
4 utilized E/P ratios in its direct capitalization  
5 approach for USWC/PNB as of January 1, 1991, it  
6 utilized different ratios for Northwest Pipeline  
7 based upon ratios derived from the cash flows of  
8 other non-comparable, conglomerate companies to their  
9 stock prices, sometimes referred to as cash flow to  
10 price ratios ("CF/P ratio").

11 E. The Department incorrectly and  
12 inconsistently calculated and applied the traditional  
13 direct capitalization approach. As a result, the  
14 Department's direct capitalization approaches based  
15 upon non-comparable E/P ratios and CF/P ratios  
16 overstate the true cash value of Plaintiff's  
17 Property. Because of the unreliability of the  
18 Department's inconsistent and non-traditional  
19 application of the direct capitalization approach, it  
20 should not have been used by the Department as its  
21 exclusive "income" approach to value. Moreover, the  
22 Department's inconsistent and non-traditional  
23 application of the direct capitalization approach is  
24 theoretically identical to its stock and debt  
25 ("market") approach. Accordingly, the Department  
26 erred in not considering one or more separate income  
27 approaches to value in conjunction with its two  
28 "market" approaches.

29 F. The stock and debt approaches used by the  
30 Department to value Plaintiff's Property as of  
31 January 1, 1990 and January 1, 1991, should be given

1 little or no weight because there is no reliable data  
2 or methodology to allocate the gross stock value of a  
3 diversified, non-regulated, publicly-traded  
4 conglomerate, like Williams or U S WEST, Inc., among  
5 the various non-publicly traded subsidiaries of the  
6 conglomerate, like Northwest Pipeline and USWC/PNB.  
7 Even the Department itself has apparently recognized  
8 the unreliability of its stock and debt approach as  
9 demonstrated by its decision not to even calculate a  
10 stock and debt approach for Northwest Pipeline's  
11 Property as of January 1, 1989, let alone place any  
12 weight upon this approach in the correlation process.

13 G. Even if a properly calculated stock and  
14 debt were to be given some little weight in the  
15 correlation process, the Department's stock and debt  
16 approaches overstate the stock value of both Williams  
17 and U S WEST, Inc.; make no adjustment for nontaxable  
18 items; inaccurately allocate a portion of the stock  
19 (equity) values of Williams to its subsidiary,  
20 Northwest Pipeline, and of U S WEST, Inc. to its  
21 subsidiary, USWC/PNB, understate the influence of  
22 cellular operations by subsidiaries other than  
23 USWC/PNB on the stock price of U S WEST, Inc., and  
24 understate the market rates for Northwest Pipeline's  
25 and USWC/PNB's respective debt issues.

26 H. The weightings assigned by the Department  
27 for its two or three approaches in arriving at  
28 correlated values for the Property do not reflect the  
29 relative reliability of these approaches as  
30 indicators of the true cash value of the Property.  
31 Nor do the Department's correlations reflect the

1 inconsistent application by the Department of its  
2 approaches between different years and between  
3 different taxpayers or the Department's use of one or  
4 two theoretically identical "market" approaches, and  
5 no separate "income" approach.

6 I. The methods used by the Department to  
7 allocate a portion of Northwest Pipeline's estimated  
8 system value to the State of Washington and to adjust  
9 for the estimated value of Northwest Pipeline's non-  
10 taxable property as of January 1 of each of 1989,  
11 1990, and 1991 were incorrect. Moreover, the method  
12 used by the Department in each of these years was  
13 inconsistent with the method used by the Department  
14 in each of the other years. Although still  
15 incorrect, the method used by the Department for its  
16 January 1, 1991 valuation most closely approximates  
17 the proper method for determining the true cash value  
18 of Northwest Pipeline's taxable, Washington operating  
19 property.

20 J. Each of the six other western states in  
21 which Northwest Pipeline's property is located uses  
22 the same method for allocating a portion of the  
23 estimated unit value of Northwest Pipeline's property  
24 to their respective state. The method used by the  
25 Department to allocate a portion of the unit value of  
26 Northwest Pipeline's Property to the State of  
27 Washington is inconsistent with the allocation method  
28 used for Northwest Pipeline by each of these six  
29 other western states. Because Washington's  
30 allocation method for Northwest Pipeline is  
31 inconsistent with the allocation method used for

1 Northwest Pipeline by the six other western states,  
2 when Northwest Pipeline's Washington allocated value  
3 is added to Northwest Pipeline's allocated values in  
4 the six other western states, Northwest Pipeline is  
5 effectively taxed upon allocated property values  
6 exceeding 100% of the combined unit value of its  
7 property. As a result, the Department's allocation  
8 methodology for Northwest Pipeline improperly imports  
9 value from other states to Washington.

10  
11 **SECOND CLAIM FOR RELIEF**  
12 **(Violation of Due Process)**

13 47. Plaintiffs reallege and incorporate by reference  
14 the allegations set forth in paragraphs 1 through 46 above, as  
15 if fully set forth herein.

16 48. As a result of the errors in its valuation and  
17 allocation methodologies, the Department significantly over-  
18 valued the Property. This significant over-valuation is  
19 grossly excessive and taxes property having no substantial  
20 nexus with the State of Washington. Accordingly, these  
21 methodologies violate the Due Process Clauses of the United  
22 States and Washington Constitutions. U.S. Const. amend. XIV,  
23 § 1 and Wash. Const. art. I, § 3.

24 49. The Department's direct capitalization  
25 approaches utilized E/P and CF/P ratios calculated for certain  
26 diversified, non-regulated, publicly-traded conglomerates.  
27 The E/P and CF/P ratios calculated by the Department for these  
28 non-comparable conglomerates were then applied to (divided  
29 into) the Department's estimates of Plaintiffs' respective  
30 incomes to calculate estimates of Plaintiffs' respective  
31 equity values.



1 50. Similarly, the Department's stock and debt  
2 approaches utilized the trading prices of the common stock of  
3 Williams and U S WEST, Inc., also diversified, non-regulated,  
4 publicly traded conglomerates, to estimate values for the  
5 common equity of Williams and U S WEST, Inc. The Department  
6 then allocated a portion of these estimated equity values to  
7 Northwest Pipeline and USWC/PNB, respectively, by applying  
8 various ratios comparing Northwest Pipeline with the nearly 60  
9 other subsidiaries of its corporate parent, Williams, and  
10 comparing USWC/PNB to the nearly 100 other subsidiaries of its  
11 corporate parent, U S WEST, Inc.

12 51. The stock prices used by the Department in its  
13 direct capitalization and stock and debt approaches  
14 necessarily captured the value of all of the tangible and  
15 intangible property owned by the non-regulated, publicly-  
16 traded, conglomerate holding companies, including Williams and  
17 U S WEST, Inc., selected by the Department for comparison with  
18 Plaintiffs. The Department's application in its direct  
19 capitalization approach of the E/P and CF/P ratios calculated  
20 for these conglomerates to the Department's estimates of the  
21 income of Northwest Pipeline and USWC/PNB necessarily and  
22 arbitrarily assumes that Northwest Pipeline and USWC/PNB own  
23 properties comparable to the property of these conglomerates  
24 with comparable risks and income generating potential.  
25 Similarly, the use of various ratios in the Department's stock  
26 and debt approach to allocate a portion of the estimated value  
27 of the common equity of Williams and U S WEST, Inc., to  
28 Northwest Pipeline and USWC/PNB, respectively, necessarily and  
29 arbitrarily assumes that Northwest Pipeline and USWC/PNB own  
30 properties with costs, risks and income generating potential  
31 comparable to the property of each of the dozens of other,

1 subsidiaries of Williams and U S WEST, Inc. Because Northwest  
2 Pipeline and USWC/PNB generally do not engage in the same  
3 businesses as these non-comparable conglomerates or their  
4 subsidiaries and are subject to extensive regulatory  
5 constraints generally not applicable to these companies, the  
6 assumption that Northwest Pipeline and USWC/PNB own comparable  
7 properties with comparable costs, risks and income generating  
8 potential is clearly erroneous.

9 52. Because Northwest Pipeline and USWC/PNB do not  
10 own properties comparable to those owned by the conglomerates  
11 and their subsidiaries used by the Department to develop its  
12 direct capitalization and stock and debt approaches, the  
13 Department's application of the ratios developed from these  
14 non-comparable companies to Northwest Pipeline and USWC/PNB  
15 necessarily and arbitrarily imputes to Northwest Pipeline and  
16 USWC/PNB values dependent upon the ownership and non-regulated  
17 operation of property that they do not own and cannot operate.

18 53. The unreliability and arbitrariness of the  
19 Department's direct capitalization and stock and debt  
20 approaches is further demonstrated by the extreme sensitivity  
21 of the stock prices used by the Department in both approaches  
22 to global economic and political factors affecting the public  
23 stock exchanges that are not directly related to any property  
24 owned by either Northwest Pipeline or USWC/PNB or by any of  
25 the conglomerates or their subsidiaries selected by the  
26 Department as "comparables."

27 54. The Department's application to Northwest  
28 Pipeline and USWC/PNB of ratios computed for non-comparable  
29 companies, coupled with its failure to make any adjustments  
30 for the economic impacts of regulation or factors affecting  
31 the public stock exchanges, resulted in arbitrary valuations

1 of the Property that are grossly excessive. These arbitrary  
2 and grossly excessive valuations resulted in the imposition of  
3 excessive taxes and confiscated Northwest Pipeline's and  
4 USWC/PNB's property without due process of the law in  
5 violation the Due Process Clauses of the United States and  
6 Washington Constitutions. U.S. Const. amend. XIV, § 1, and  
7 Wash. Const. art. I, § 3.

8  
9 THIRD CLAIM FOR RELIEF  
(Violation of Tax Uniformity, Due Process and Equal Protection)

10 55. Plaintiffs reallege and incorporate by reference  
11 the allegations set forth in paragraphs 1 through 54 above, as  
12 if fully set forth herein.

13 56. Article VII, Section 1 of the Washington  
14 Constitution provides that "[a]ll taxes shall be uniform upon  
15 the same class of property." "The word 'property' as used  
16 herein shall mean and include everything whether tangible or  
17 intangible, subject to ownership."

18 57. Plaintiffs are informed that the valuation,  
19 reporting, assessment, and equalization methodologies used by  
20 the Defendants for their properties are not uniformly applied  
21 to some similarly situated property located in the State of  
22 Washington.

23 58. Plaintiffs are further informed that the  
24 reporting systems used by the Defendants to identify property  
25 owned by some taxpayers fail to identify some tangible and  
26 intangible property similar to that assessed to Plaintiffs.  
27 As a result, this unreported tangible and intangible property  
28 of other taxpayers is not assessed to such other taxpayers by  
29 the Defendants, while similar property is assessed to  
30 Plaintiffs by the Defendants.  
31

1 59. These disparities cause Plaintiffs' Property to  
2 be assessed at values substantially in excess of its true cash  
3 value, while some similarly situated property is assessed at  
4 or below its true cash value, or is not assessed at all.  
5 These differences in the relative valuation levels of property  
6 in the same class, coupled with the Defendants' failure to  
7 assess some types of property owned by other similarly  
8 situated taxpayers, violate the Uniformity and Privileges and  
9 Immunities Clauses of the Washington Constitution, the Equal  
10 Protection Clause of the United States Constitution and the  
11 Due Process Clauses of both Constitutions. Wash. Const. art.  
12 VII, § 1, U.S. Const. amend. XIV, § 1, and Wash. Const. art.  
13 I, §§ 3 and 12.

14 **FOURTH CLAIM FOR RELIEF**  
15 **(Violation of Equalization Requirements)**

16 60. Plaintiffs reallege and incorporate by reference  
17 the allegations set forth in paragraphs 1 through 59 above, as  
18 if fully set forth herein.

19 61. RCW § 84.12.350 requires the Department to  
20 equalize the assessed value of the Property by applying to  
21 such "value the same ratio as the ratio of assessed to actual  
22 value of the general property in [each] county" in which the  
23 Property is located.

24 62. As set forth in the previous claim for relief,  
25 the Department's valuation and reporting methods result in the  
26 taxation of the Property at a greater percentage of its actual  
27 value than is the general property in the Defendant Counties.

28 63. The Department's failure to equalize the ratio  
29 of assessed to actual value for the Property with the ratio of  
30 assessed to actual value for general property in the Defendant  
31

1 Counties violates the equalization provision of RCW  
2 § 84.12.350.

3  
4 **FIFTH CLAIM FOR RELIEF**  
5 (Discrimination Against Interstate Commerce)

6 64. Plaintiffs reallege and incorporate by reference  
7 the allegations set forth in paragraphs 1 through 63 above, as  
8 if fully set forth herein.

9 65. As set forth in Plaintiffs' Third Claim for  
10 Relief, the assessment and allocation practices of the  
11 Defendants effectively tax to Plaintiffs values associated  
12 with property owned by other taxpayers that has no substantial  
13 nexus with the State of Washington. Defendants' practices,  
14 therefore, violate the Commerce and the Due Process Clauses of  
15 the United States Constitution. U.S. Const. art. I, § 8(3)  
16 and U.S. Const. amend XIV, § 1.

17 66. In addition, the Department's methodologies  
18 discriminate against interstate commerce by failing to  
19 recognize that there are no artificial restrictions on the  
20 ability of non-regulated companies to earn profits on all of  
21 their Washington assets.

22 67. In contrast, Plaintiffs are extensively  
23 regulated by the Regulatory Authorities and are only  
24 authorized to earn profits on the regulated rate base values  
25 of their Washington assets. Moreover, the amount of income  
26 Plaintiffs earn is subject to further regulatory constraints  
27 setting a maximum authorized rate of return on their  
28 respective rate bases. To the extent Plaintiffs earn amounts  
29 in excess of their respective maximum authorized rates of  
30 return, they may and have been required to lower their rates  
31 or to refund such excess amounts to their customers.



1           68. The Defendants' assessment practices fail to  
2 consider the economic effects of regulation by the Regulatory  
3 Authorities on the value of the Property and thus impose a  
4 higher effective rate of tax on the earning potential of the  
5 Property and the property of other regulated companies than  
6 they do on the comparable property of intrastate and  
7 nonregulated companies. Taxation of the property of regulated  
8 companies at a higher effective rate than the property of non-  
9 regulated companies disadvantages interstate commerce and  
10 violates the Commerce Clause because it imposes a  
11 disproportionate and discriminatory tax burden on Plaintiff's  
12 customers in states other than Washington. U.S. Const. art.  
13 I, § 8(3).

14                               SIXTH CLAIM FOR RELIEF  
15                               (Civil Rights Violation)

16           69. Plaintiffs reallege and incorporate by reference  
17 the allegations set forth in paragraphs 1 through 68 above, as  
18 if fully set forth herein.

19           70. The Defendant's excessive and illegal valuation  
20 and taxation of the Property violates the Commerce, Due  
21 Process and Equal Protection Clauses of the United States  
22 Constitution and is a deprivation of Plaintiffs' rights  
23 secured by the United States Constitution. U.S. Const. art.  
24 I, § 8(3) and U.S. Const. amend XIV, § 1.

25           71. The deprivation of Plaintiffs' rights secured by  
26 the United States Constitution is a violation of the Civil  
27 Rights Act, 42 U.S.C. § 1983 (1986).

28           72. Pursuant to 42 U.S.C. § 1983 (1986), Plaintiffs  
29 are entitled to a judgment that the Defendants' actions  
30 violate Plaintiffs' constitutional rights.  
31

1 73. Pursuant to 42 U.S.C. § 1988 (1986), Plaintiffs  
2 are further entitled to their costs and attorneys' fees  
3 associated with this action.

4 PRAYER FOR RELIEF

5  
6 WHEREFORE, Northwest Pipeline and USWC/PNB pray for  
7 the following relief:  
8

9 1. For a judgment setting the taxable true cash  
10 values of the Property for the assessment dates January 1,  
11 1989, January 1, 1990; and January 1, 1991 in such amounts as  
12 may be established at trial, and ordering that any tax  
13 collected on values in excess of these amounts must be refunded  
14 to Northwest Pipeline and USWC/PNB, as appropriate, with  
15 interest at the applicable statutory rates;

16 2. For a judgment enjoining the Department from  
17 using any valuation, assessment or allocation methodologies for  
18 assessment years commencing on or after January 1, 1992 that  
19 are determined by the Court to be unconstitutional, unlawful or  
20 that result in arbitrary and excessive valuations of the  
21 Property;

22 3. For an award of the costs and expenses incurred  
23 by Plaintiffs in this action;

24 4. For an award of the reasonable attorneys' fees  
25 incurred by Plaintiffs in this action; and

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5. For such other and further relief as the Court  
deems appropriate under the circumstances.

DATED this 31 day of January, 1992.

LUKINS & ANNIS, P.S.

By: \_\_\_\_\_

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