Customer Deposit Demands by U.S. West:

Reasonable Rationales and the Proper Assessment of Risk

PREPARED ON BEHALF OF:

The Staff of the
Washington Utilities and Transportation Commission
Docket No. UT-930482
U.S. West Communication Inc.'s Request of Temporary Waiver
of WAC 480-120-056 and 480-120-061

PREPARED BY:

Roger D. Colton
Fisher, Sheehan and Colton
Public Finance and General Economics
34 Warwick Road
Belmont, MA 02178
617-484-0597

August 1994

1.1 INTRODUCTION

Given the problems that low-income households face today with high utility bills[1] as well as with high telephone bills, it is vitally important for policymakers to ensure that undue burdens are not placed on already overburdened households. Little question exists but that low-income households simply do not have sufficient funds to pay their utility bills in Washington State.[2] This lack of funds carries over to the payment of deposits.

An onerous and unnecessary deposit jeopardizes continuing telephone service to a low-income household.[3] A 1987 Michigan study found, for example, that 60 percent of those households who lacked telephone service cited unaffordable deposits as a primary reason.[4]
Inability to obtain affordable telephone service can create life threatening situations for the poor. Frequently, the most important problem arising from the lack of access to telephone service is the denial of access to agencies and institutions that can provide help. For example, the most frequently cited danger that results from lack of telephone service involves access to timely medical attention. The elderly, in particular, suffer more acutely from problems compounded by their physical isolation. In one Connecticut study,[5] three groups were found to be "at greater-than-normal risk" because of lack of telephone service, including "persons over 60 and living alone." The study found that of 59 "no-telephone households" with elderly members, 30 were senior citizens living alone, 23 had a disability or serious medical problem, and 10 of those disabled seniors lived alone. More than half of the seniors living alone (17 of 30) lived more than three minutes away from the telephone they would need to rely upon in an emergency.

Findings from a Michigan study on telephone usage among the elderly indicate that the elderly were far more likely to consider the reason for

---

[1] *See e.g.*, R.Colton, ***Customer Service Regulations for Residential Telephone Customers in the Post-Divestiture Era: A Study of Michigan Bell Telephone Company*** (1989); *see also*, M.Sheehan, ***On the Brink of Disaster: A State-by-State Analysis of Low-Income Winter Home Heating Bills*** (1994).

[2] *See generally*, M.Sheehan, *et al.*, ***An Assessment of Low-Income Energy Needs in Washington State*** (1993).

[3] *See e.g.*, ***Memphis Light, Gas and Water Division v. Craft***, 436 U.S. 1, 18 (1978); see also, ***Palmer v. Columbia Gas Co. of Ohio***, 342 F.Supp. 241, 244 (N.D. Ohio 1972) (citations omitted); *see also*, ***Stanford v. Gas Service Company***, 346 F.Supp. 717, 721 (D.Kan. 1972). An excellent canvass of cases is found in ***Montalvo v. Consolidated Edison Company of New York***, 110 Misc. 2d 24, 441 N.Y.S.2d 768, 776 (N.Y. 1981).

[4] M.Cooper, ***Low Income Households in the Post-Divestiture Era: A Study of Telephone Subscribership and Use in Michigan*** (1986).

[5] RPM Systems, *An Exploratory Study of Low-Income Telephone Subscribers and Non-subscribers in Connecticut*. New Haven: RPM Systems, 1988.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

their telephone calls to be essential than were non-elderly callers.[6] Medical calls were cited by 22 percent (compared to 1 percent of non-elderly); social service calls were mentioned first by 10 percent (as compared to zero percent of non-elderly).

In *Butte Community Union v. Lewis,*[7] a Montana court found that lack of telephone service was a significant barrier to employment since the types of employment low-income households generally obtain involve jobs offered and accepted via telephone.

Finally, while the lack of telephone access ramifies throughout a household's social and economic wellbeing, one of the most serious impacts is on the ability of a household to retain energy service. Whether the non-access to telephone serve does, in fact, restrict access to energy assistance has never been directly studied. However, prior research provides a basis to conclude that this result will be found. A 1988 study conducted for the Maine Public Utilities Commission discovered that 80 percent of the Maine households whose energy service was disconnected during the winter months lacked telephone service.[8] The lack of telephone service was found to jeopardize continuing energy service by denying the household an opportunity to contact the utility so as to enter into payment plans, make contact with social service agencies to receive public assistance and otherwise respond to the household's inability to pay.

In addition to the serious impacts on consumers, onerous and unnecessary deposit demands are bad business from the perspective of the utility and its ratepayers as well. This recognition is based on the two fundamental principles that:

- The *sole* purpose of a deposit is to minimize the possible money loss to the utility due to nonpayment of bills.

- The collection of deposits must lead to the provision of least-cost service to ratepayers as a whole.

Unfortunately, despite their universal acceptance, these principles are often ignored when public policy concerning deposits is considered. More specifically, particular language contained in the proposed amendments to Washington Utilities and Transportation Commission (WUTC) telecommunication deposit regulations do not recognize and act upon these two principles. In light of this broad observation, the

---

[6] Cooper, Mark. *Low Income Households in the Post-Divestiture Era: A Study of Telephone Subscribership in Michigan*. Washington D.C.: Consumer Federation of America, 1986.

[7] 745 P.2d 1128, 1131 (Mont. 1987).

[8] Roger Colton, ***An Evaluation of Low-Income Utility Protections in Maine: Winter Requests for Disconnect Permission***, at 16 - 18 (July 1988).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

specific purpose of these comments is four-fold. *Part 1* of the comments below will briefly outline the function of a deposit. *Part 2* will consider whether the *de facto* reliance upon commercially available consumer credit reports, as proposed by U.S.West, is legitimate. *Part 3* considers whether the demand for a deposit when a customer's only demonstration of "risk" is a late payment is rational. *Part 4* considers whether the demand for a deposit from a customer when a roommate has an unpaid bill from a different address is reasonable or lawful.

2.1 THE FUNCTION OF A DEPOSIT

The function of cash deposits required of utility customers is generally defined within the context of bad debt.[9] That context, however, needs greater explanation. Bad debt is an expense to the utility just like any other expense. As such, it is an expense that a utility can and should seek to reduce where possible. The reduction of bad debt, however, is not an end unto itself. Also like any other expense, a utility is not justified in spending more on the means to reduce bad debt expense than the savings that are generated through such an effort. The goal of a utility, in other words, is to minimize *total* expenses to the ratepayers, not simply to minimize bad debt expenses.

The collection of a cash deposit is one means to gain protection against the potential loss of revenue through bad debt. The deposit serves the function of security to protect against the risk of default. As an expense avoidance mechanism, however, a utility's deposit scheme must be subjected to an economic analysis just like a self-insurance plan which might be pursued in lieu of the purchase of insurance policies, just like backing out oil-fired capacity with coal, just like maintaining compensating bank balances in lieu of paying bank fees, and the like. Again, the ultimate goal is the provision of least-cost service.

Aside from basic fairness, therefore, from a sound *business* perspective, deposits should result in a reduction in uncollectibles at least equal to the cost of obtaining and servicing the deposits. In order for this reduction to occur, the customers from whom deposits are demanded must represent a risk of loss to the utility.[10] If, in other words, the customer does not represent a potential situation where the utility will experience a permanent loss of arrears, any deposit collected from that customer --whatever the size-- has no relation to the risk of loss due to uncollectibles.

---

[9] For purposes of this analysis, "bad debt" will be deemed to be coterminous with uncollectibles.

[10] This risk, it should be noted, is only a significant problem to the extent that it is not "set right" after the fact. A default on payments is not, in other words, necessarily a risk of permanent loss of the entire remaining balance of payments. Either a complete, albeit late, payment or a partial payment reduces the risk of loss. A utility's deposit must be adequate, but no more than adequate, to offset the losses on that fraction of bills which are involved in default and on which losses are accrued.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

3.1 THE USE OF COMMERCIALLY AVAILABLE CONSUMER CREDIT REPORTS

In its proposed amendment to WUTC telecommunications deposit regulations, U.S. West is seeking regulatory permission to use commercially available consumer credit reports in assessing the creditworthiness of potential or existing utility customers. Presumably, since these reports could not be used directly to deny service, they will instead be used as a basis upon which to demand greater deposits from residential consumers.

This use of third-party, non-utility, credit information represents a failing in the determination of whether deposits should be sought by U.S. West. Indeed, to the extent that U.S. West uses third-party supplied non-utility credit information as a basis for deposit demands, it would face particular problems with justifying its customer deposits.

3.1.1 Consumer Bill Paying Habits

The use of third-party supplied credit information as a basis for making utility deposit decisions constitutes a problem when the third party information is not itself comprised of utility payment histories. Substantial research has found that consumers tend to pay their utility bills before paying nearly any other outstanding credit (other than rent or mortgage obligations). As a result, information from a credit reporting agency that indicates a lack of creditworthiness based on non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill.

A 1983 study by the Wisconsin Public Service Corporation was designed "to find out why customers pay late, why they miss payments, what percentage is unable to pay, and what percentage could pay but do not."[\11\] The Wisconsin study looked at, among others, three different groups of low-income households: (1) the poor and the helpless who blame themselves for their status; (2) the poor and the helpless who are angry with their life; and (3) the poor who are in transition.

If Group 1 had to make choices in which bills to pay first, the Wisconsin utility found, they would pay the bills in the following order:

\11\ Michael Kiefer & Ronald Grosse, "Why Utility Customers Don't Pay Their Bills," ***Public Utilities Fortnightly***, at 41 (June 21, 1984); *see also*, ***Wisconsin Public Service Corporation: Lifestyle Study: Selected Payment Patterns***, at ii (July 1983).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

1. Pay the utility bill first 79%
2. Pay the telephone bill second 74%
3. Pay the gas credit card third 68%
4. Pay the charge account last 76%

If Group 2 households had to make choices in which bills to pay first, the utility continued, they would pay bills in the following order:

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

1. Pay the utility bill first 77%
2. Pay the telephone bill second 71%
3. Pay the gas credit card third 74%
4. Pay the charge account last 81%

If Group 3 households had to make choices in which bills to pay first, the Wisconsin utility found, they would pay bills in the following order:

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

1. Pay the utility bill first 79%
2. Pay the telephone bill second 71%
3. Pay the gas credit card third 67%
4. Pay the charge account last 71%

When deciding whether it is appropriate to use commercially available consumer credit reports regarding non-utility credit as a basis for making utility deposit demands, these bill paying priorities present information to consider. For each group, nearly eight of ten low-income households said that, if a choice were forced between which bills to pay, they would pay their utility bill first.\12\ These households went on to say that payment of credit card bills would come last. As a result, it should be clear that consumer credit reports involving bills other than utility bills should be rejected as a basis for making utility credit and collection decisions. More particularly, electric, natural gas and telephone deposit demands should not be based upon nonpayment of a non-utility bill that households consistently ranked as "last" in their order of priorities.

Similar results have been reached in more recent studies in different states. A 1989 Washington Natural Gas study, for example, was based upon a survey undertaken for the Washington Utility Group.\13\ The purpose of this study was to "develop() a mutually acceptable understanding of the ability of delinquent utility customers to pay their energy bills. Is it that most can pay these bills on time, but choose not to, or is it that they truly are unable to pay* * *?"\14\

Like the households in Wisconsin, payment of utility bills was high on the list of bill payment priorities. Most households (82%) said they would pay their rent or mortgage payment first with 13 percent saying they would pay their heating bill first. Nearly six of ten persons (56%) said they would pay their heating bill as the second bill while only 21 percent said they would pay it as the third bill.\15\ An additional 10

\12\ Remember, too, these households did *not* know the survey was being sponsored by the local utility company.

\13\ This group consisted of Washington Natural Gas, Pacific Power and Light, Washington Water Power, Northwest Natural Gas, Cascade, and Puget Power.

\14\ Mildred Baker, ***Utility Collection Customers: Understanding Why They Don't Pay on Time***, at 1 (1989). Baker states that this paper only "represents the interpretations of Washington Natural Gas Company, one of the principal survey sponsors." The broader survey was titled: ***Investor Owned Utility Group Credit Customer Survey***, Market Trends Research Corp. (1989).

\15\ *Id.*, at 10.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

percent said they would pay their heating bill as the fourth bill. In general, most customers said they would pay their utility bills after their rent or house payment but before medical bills and car payments.

As can be seen, to collect a utility deposit from a household which does not pay its Sears bill has no rational *utility*-related basis. Unless nonpayment of a non-utility bill is an indicator of risk to the utility --a conclusion disproved by the existing literature-- collecting a deposit provides security against a non-existent risk.

3.1.2 Other Reasons for "Bad" Low-Income Credit Reports

In addition to placing lower priorities on non-utility bills than on utility bills, it has been found that low income consumers frequently acquire poor credit ratings by refusing to complete payments on installment purchases of defective or shoddy merchandise. According to one study, 35 percent of the debtors in default who were studied "gave reasons for their default that implicated the creditor in varying degrees."[16] According to this study, "by far the largest category of credit-related reasons consists of allegations of fraud and deception. Nineteen percent mentioned such wrongdoing by the seller as part of the reason for their default, and for 14 percent of all debtors, it was the *primary* reason." (emphasis added).[17] Among the problems experienced by low-income households included defective merchandise coupled with breach of both express and implied warranties, the delivery of wrong or "used" merchandise, the failure to deliver all merchandise ordered, and deceptive pricing practices.[18]

The study found that not only were low-income households more likely to face these types of problems,[19] but that they were more likely to pay higher prices as well.[20] Nearly 40 percent of the households who purchased from merchants serving primarily low-income households

---

[16] Caplovitz, ***Consumers in Trouble: A Study of Debtors in Default***, at 91 (MacMillan Publishing: 1974).

[17] *Id.*

[18] *Id.*, at 92.

[19] *Id.*, at 37.

[20] *Id.*, at 33. These higher prices were paid for the same merchandise as would be purchased from merchants selling to more moderate income households. *Id.*

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

were not told the true price of their purchase,[21] with the actual cost being understated by more than 25 percent in roughly one-in-five cases.[22] Moreover, the study found that low-income merchants often tend to circumvent interest rate ceilings "by having exorbitant markups on their goods."[23] "Bound by law not to charge more than 18 percent interest on a credit sale, the ghetto merchant does not hesitate to mark up his goods by one, two, or even three numbers, each number, in this quaint jargon of the trade, representing a 100 percent increase of the wholesale price."[24]

Given these problems, it would be unconscionable to permit low-income households to be denied a household necessity such as telephone service due to "bad" credit reports for non-utility payment problems.

3.2 COLLATERAL MATTERS

The denial of service --even if indirect through the demand for an unaffordable deposit-- for non-utility related reasons is a violation of long-standing utility regulatory principles proscribing the denial of service for "collateral" matters. It matters not to other ratepayers whether a household fails to pay its Sears bill, for example, if that household *will* pay its utility bill. Given the fact that nonpayment of non-utility bills has little relevance to whether utility bills will be paid, basic fairness requires that third-party credit information on non-utility transactions not serve as a basis for deposit demands.

Public utilities occasionally seek to impose conditions upon consumers requesting utility service that have nothing to do with the consumer's present utility contract or account. The decisions are generally in accord in holding that a public utility corporation cannot refuse to render the service which it is authorized by its charter to furnish because of some collateral matter not related to that service.[25] Synthesizing the various

---

[21] For example, a merchant might quote a cash price rather than the credit price.

[22] *Id.*, at 39.

[23] *Id.*, at 303.

[24] *Id.*

[25] Annotation, *Right of public utility corporation to refuse its service because of collateral matter not related to that service*, 55 ***A.L.R.*** 771 (1928); *see also*, 43 ***Am. Jur.***, *Public Utilities and Services*, §23 (1942).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

cases leads to a reasonable general definition of what matter can be found to be "collateral": a dispute which is the subject of a separate transaction, either between the utility and the consumer, or between the utility and some other person, which is distinct from, and irrelevant to, the utility's immediate duty to furnish a particular service.

When a utility engages in a business other than that of providing the particular service in question, it may not intertwine the businesses and disconnect service for matters relating to the non-utility enterprise.\26\ A utility, for example, which furnishes utility service and garbage collection is engaged in two separate and distinct enterprises and may not terminate utility service to coerce payment for nonpayment of the garbage collection fees.\27\ Moreover, a municipal offering both water and electric service may not disconnect one for nonpayment of the other.

The oft-cited *Henry Ten Broek v. Swan A. Miller*\28\ provides insight into what constitutes a "collateral" matter. In *Ten Broek*, the defendant-utility was the proprietor of a summer resort which sold cottage lots and supplied owners with water and light. There was no village or town; the resort company controlled everything. The record showed "there was much bad blood" between the plaintiff-owner and the head of the company. The lot owner had decided to build a cesspool instead of a septic tank, as required by the resort company, which resulted in the company's decision to terminate utility service. The plaintiff claimed $1,000 in damages from lost rental business from two cottages. The court noted that "unfriendly feelings" had undoubtedly influenced the company's actions.

The question was whether the company was entitled to deprive the consumer of water and light because he refused to comply with septic tank rules set forth by the company. The court held that installation of a septic tank had no relation to the company's duty to provide water and light and was thus a collateral matter. If in refusing to install a septic tank, the plaintiff was violating a rule of the state health department, the court said, there existed a proper forum to hear the dispute. Using this established forum "would be a more orderly way of disposing of the

---

\26\ *See generally*, Note, "Updating a Municipal Utility's Right to Refuse Service: Sebring Utilities Commission v. Home Savings Association, 508 So.2d 26 (Fla. 2d DCA 1987)," 17 ***Stetson L.Rev.*** 807 (1988). ("This note will trace the history and application, first nationwide, then in Florida in particular, of the common law rule disallowing the tie-in of unrelated collateral services by utility companies as discrimination against utility customers.") *Id.*, at 810 - 816 (citations omitted).

\27\ Annotation, *Right of municipality to refuse services by it to resident for failure to pay for other unrelated service*, 60 ***A.L.R.3d*** 707 (1974); Annotation, 55 ***A.L.R.*** 771 (1959) (a utility's rate classification for consumers living outside the city limits is discriminatory as "entirely collateral and unconnected with the particular service rendered.")

\28\ 240 Mich. 667, 216 N.W. 385 (1927).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

dispute than [the utility seeking] to substitute itself for a court and punish [the consumer] by cutting off his water and light."[29] The court declared:

> 20 C.J. 33* * *says: "Payment of proper charges for service supplied is a reasonable condition of the right to receive it, and for nonpayment of such charges the service may be discontinued, but *service cannot be cut off to enforce payment of a disputed claim, or a claim for service rendered at some other place, or of a collateral liability not connected with the particular service.*[30]

Underlying the common law doctrinal prohibition against utilities disconnecting service because of collateral disputes is the recognition that utilities are "quasi-public" corporations empowered with monopoly status to provide essential services to citizens who are, in effect, the public franchise. Intolerable to the wisdom and sense of fairness of the common law is the tactic of coercion extant when a utility threatens to withhold the necessities of life from a consumer in order to collect on some other separate and distinct obligation. To prevent such coercion and injustice, the courts command the utility to use the judicial process, like any other corporation would have to use in order to settle a dispute, rather than punish the consumer for not automatically acceding to its unscrutinized demands.

A utility may not deny service based on a collateral matter. A different service provided by the *same* utility is considered an "unrelated service" and thus a collateral matter. The only consistent situation where two services are *not* unrelated (*i.e.*, that denial of one can permissibly serve as the basis for denying the other) is water and sewer service. Moreover, charges for a *separate business* are universally considered to be collateral matters. Given these observations, I conclude that the service provided by *different* companies in different industries is necessarily an "unrelated service," and thus a "collateral" matter, as well. Accordingly, service may not be disconnected, directly (or indirectly through imposition of a deposit), based upon that unrelated matter.

3.3 SUMMARY AND CONCLUSION

Based on the above, it is necessary to conclude that information from a credit reporting agency indicating a lack of creditworthiness based on

---

[29] *Id.*, at 386.

[30] *Id.* (emphasis added).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill. Accordingly, deposit demands based on consumer credit reports, when those credit reports do not reflect utility bill payments, are bad public policy.

Moreover, such demands are probably unlawful. Utilities are prohibited from denying service based on "collateral" matters. Since non-utility transactions provide no insight into utility bill payment practices, to deny service based on such a non-utility transaction is to run afoul of this prohibition.

4.1 DEMANDING A DEPOSIT BASED UPON PRIOR LATE PAYMENTS

Amongst the proposed Rules regarding telecommunications deposits for Washington State is a rule allowing the demand for a deposit if the household applying for service has been late on its bill payment more than once within the last six months. This Rule is unreasonable and should not be adopted. In all of the evaluation work that I have done, as well as my work in designing and implementing low-income programs, as well as my research and work on credit and collection techniques, I have found late payment to be a virtually non-existent predictor of the loss of revenue due to bad debt. I have undertaken empirical work in a variety of places, including Vermont, Maine, Connecticut, Pennsylvania, Ohio, Colorado, Massachusetts, North Carolina, Michigan, Montana and New York in this regard.

Attachment A to these comments presents data from 25 utilities in Colorado, Massachusetts, Michigan, New York, Vermont and Ohio. It presents data for gas, electric and combination (gas/electric) companies. It presents geographically disaggregated data. It presents data from small and large companies. It presents data using some 30-day arrears and some 60-day arrears. While it presents data only for energy companies, my experience leads me to conclude that the same results would obtain for telecommunications companies as well.

The data is designed to test whether a customer who pays late poses a risk to the company of ultimately losing revenue due to disconnection and bad debt. As was noted above, the *only* purpose of a deposit is to protect against revenue loss, *not* to protect against late payments.

Attachment A shows empirically that late payment is no predictor of the potential loss of revenue through disconnection and bad debt. The number of delinquent accounts that are actually eventually disconnected ranges from one percent (1%) to five percent (5%). In the case of the *best* case of prediction, therefore, use of late payment as the predictor of the potential loss of revenue would be wrong 95 out of 100 times. And even *that* rate of success was obtained in only one of 25 companies. In six (6) of the 25 companies, use of late payment as a predictor would be wrong 96 out of 100 times; in eight (8) of the 25 companies, it would be wrong 97 out of 100 times; in seven (7) of the 25

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

companies, it would be wrong 98 out of 100 times; in three (3) of the 25 companies, it would be wrong 99 out of 100 times.

Being late on one's payment more than once in a six month period may indeed represent an "unsatisfactory payment history" from several different perspectives. Such a payment history may impose working capital costs on a utility. It may cause a utility to incur credit and collection costs. But these adverse consequences are not the consequences against which a deposit is designed to protect. And, from the perspective of whether a customer is going to ultimately contribute to the permanent loss of revenue through bad debt, the only consequence that a deposit is to guard against, the mere fact that a customer has been late in his or her payment is no predictor at all.

Two observations are important about Attachment A. First, the mismatch between those *deemed* to be at risk and those *actually* presenting a risk is overwhelming. If the measurement proposed by the Rules were applied to each of the utilities in these jurisdictions, the measurement would be wrong 95 percent of the time and more. Second, the mismatch between those deemed to be at risk and those actually presenting a risk is universal. In *no* instance is delinquent payment an indicator of the risk of revenue loss to the utility. In *every* instance, the measurement included in the proposed Rules (*i.e.*, late payment) would have been wrong.

In sum, when it comes to measuring the likelihood of causing a loss to the utility --and the loss is a loss of revenue due to bad debt, nothing more-- in more than 95 out of 100 cases, there is no difference between the timely paying consumer and the consumer identified by the measure of risk in the proposed Rule. The Rule permitting the denial of service without posting a deposit, based on such a mismatch, should be disapproved.

5.1 DEMANDING A DEPOSIT BASED ON THE UNPAID BILL OF A ROOMMATE

5.1.1 Fair Credit Collection Statutes

The proposed regulation allowing U.S. West to collect a deposit based on the unpaid bills of a roommate represents an unreasonable credit collection activity as defined by Washington State's own fair debt collection practices act. The WUTC can take guidance from the state debt collection statute on what represents reasonable collection activities.

In Washington, as elsewhere, a utility, in its capacity of providing utility services, has no right to communicate the existence of a debt of any person to a third party, let alone deny service based on that extraneous debt. U.S. West, in other words, as the provider of telephone service,

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

has no legitimate interest in even *disclosing* the existence of one person's debt to anyone other than the debtor himself. As a result, it is highly inappropriate for U.S. West to become involved with the debt collection process through the denial of service, or through the demand for a deposit, from a person or customer who does not owe the debt at issue.
A review of Washington state statutes reveals that the state Fair Debt Collection Practices Act provides that no debt collector in the state may:

> Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings* * *.[\31\]

Whether or not directly applicable to U.S. West as a debt collector, this statute describes appropriate standards of conduct for those entities acting as collection agents and provides a meaningful guidepost for this commission to evaluate the effect of the proposed deposit regulation in light of the dictates that all rates and activities of the utility be "just and reasonable."

There is other support, also, for the conclusion that the disclosure of debt to third parties is not a reasonable collection activity. Even though the federal Fair Debt Collection Practices Act (FDCPA) is not directly applicable --a utility collecting its own debts is not a "debt collector" under the federal statute-- the language, reasoning and legislative history of the Act certainly give insights into whether disclosure of the consumer's debt to a third party carrier is either "just" or "reasonable."

The FDCPA prohibits a debt collector from communicating with any person other than the debtor absent the debtor's consent. Since the FDCPA is not directly applicable, however, it is the legislative history which is most important for gleaning lessons as to the reasonableness of U.S. West's proposed deposit regulation. According to the Senate Report underlying the FDCPA:

> [T]his legislation adopts an extremely important protection.* * *it prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives or employer. *Such contacts are not legitimate collection practices* and result in serious invasions of privacy* * *. (emphasis added).

In sum, had the debt being collected by U.S. West been between a debtor and a debt collector as defined by federal law (rather than between a

---

\31\ ***R.C.W.A.***, §19.16.250 (1994).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

debtor and U.S. West), to disclose the existence of the debt to anyone other than the debtor would be unlawful under that federal statute. Notwithstanding the fact that the FDCPA may not be directly applicable to the U.S. West collection endeavors, U.S. West is under an obligation to engage only in activities that are "just and reasonable." Accordingly, even though the FDCPA is not directly applicable to this situation, there is much to learn from the policies behind the Act and the means adopted to advance those policies. Efforts involving contacts with "third parties," Congress has declared, "are not legitimate collection practices."

That the federal legislation includes cotenants, or roommates, within its contemplation seems clearly consistent with its designation of "friends, neighbors, relatives." Moreover, that the legislation contemplated the inclusion of roommates is apparent from particular prohibited activities. For example, in the event a collect phone call is made by a debt collector, if the collection purpose of the call is specified to the operator, who in turn conveys the information to a third-party answering the phone, the FDCPA has been violated. In addition, a debt collector may not use a name or other information on an envelope indicating that its contents pertain to debt collection.[32]

5.1.2 Lessons from Constitutional Analysis

There can be no question but that a utility customer can *not* be held liable for the debts of a third part merely because they live together. *That* is settled law.[33] In *Re Tampa Electric Co.*,[34] the commission ordered the company to delete from its rules a provision that permitted such liability. The commission concluded that:

> The company may hold only the customer of record responsible for the customer's bill. The company can protect itself and its other rate payers from nonpayment by requiring an adequate deposit. If the deposit does not fully satisfy the arrearage, the company can sue the customer. What the company cannot do is force another person, not legally responsible for the debt, to pay the debt in order to obtain or continue receiving electric service.[35]

---

[32] *See generally*, R. Hobbs, ***Fair Debt Collection***, National Consumer Law Center Consumer, Credit and Sales Legal Practice Series, at § 2.4.2 (2d edition 1991 and 1993 cumulative supplement).

[33] ***Smith v. Tri-County Electric Membership Corporation***, 689 S.W.2d 181 (Tenn. App. 1985); ***Re Tampa Electric Co.***, 49 P.U.R.4th 547 (Fla. Public Service Commission 1982).

[34] 49 P.U.R.4th 547, 591 (La. PSC 1982).

[35] *Id.*

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Moreover, in *Baylor v. Philadelphia Electric Co.*,[\36\] the Pennsylvania Public Utility Commission held that a woman who resided with her mother could not be charged with her mother's pre-existing utility debt before initiating service. Similarly, a utility may not withhold service to a new customer until he or she pays the delinquent bill of a prior customer who formerly lived at the same residence, albeit not with the customer. This rule is universal.[\37\] Where state action is involved, attempts to impose third party liability have been held to be unconstitutional.[\38\]

For purposes of evaluating the reasonableness of this Rule, however, just as important as the constitutional holding, is the reasoning of the respective courts. The seminal case is *Davis v. Weir*,[\39\] which involved water service provided by the Atlanta (Georgia) Municipal Utility. Davis, a tenant paid for his water service through his rent, which payments were current. Davis' landlord fell behind in his water payments which the landlord disputed, and service to Davis was disconnected. Davis then sought to have the water account placed in his own name and to have service restored. The utility refused, however, unless the landlord's arrearage was paid. The court agreed with Davis' contention that the water company's practice violated both Equal Protection and Due Process. It found first that there was "no rational basis" for the water company's "discriminatory rejection of new applications for water service based on the financial obligations of third parties."[\40\] According to the Court:

> The water works divided those who *apply* for its services into two categories: applicants whose contemplated service address is encumbered with a pre-existing debt (for which they are not liable) and applicants whose residence lacks the stigma of such charges. Although there is nothing in these definitions, standing alone to distinguish either group as a better or worse credit risk, the Department only furnishes its services to the latter class.

\36\ Docket No. F-8532525 (April 17, 1986) (PA PUC).

\37\ ***Oliver v. Hyle***, 513 P.2d 806 (Ore. 1973); ***Bettini v. City of Las Cruces***, 485 P.2d 967 (N.M. 1971); ***Moore v. Metropolitan Utilities Company***, 477 P.2d 691 (Okla. 1970).

\38\ ***Davis v. Weir***, 497 F.2d 139 (5th Cir. 1974); ***Memphis Light, Gas and Water Division v. Craft***, 436 U.S. 1 (1978); ***Smith v. Tri-County Electric Membership Corporation***, 689 S.W.2d 181 (Tenn. App. 1985).

\39\ 497 F.2d 139 (5th Cir. 1974).

\40\ *Id.*, at 144.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

The court concluded:

> The fact that a *third party* may be financially responsible for water service provided under a prior contract is an irrational unreasonable and quite irrelevant basis upon which to distinguish eligible applicants for water service. *Davis v. Weir*, 359 F. Supp. at 1027 (emphasis in original). The Department's actions offend not only equal protection of the laws but also due process.[41]

Following *Davis* is the case of *Smith v. Tri-County Electric Membership Corporation*,[42] a case almost exactly on all fours. In *Smith*, the plaintiff lived with Debbie Hix, who owed the electric company on a delinquent account from a former residence. Hix requested electric service in the plaintiff's name. The utility advised her that the plaintiff or a close relative would have to sign an application for the service and Smith then went to sign up. However, the electric company had a policy of denying service to a customer when anyone owing on an old bill planned to live in the residence establishing service. Since Hix was delinquent on an old account, the utility explained that service would be denied to Smith. The utility agreed to begin service to Smith when he stated that Hix would not be living with him, but the utility warned that if it determined she was in fact living with him, service would be terminated.

Subsequently, when a utility employee ascertained that Hix was living with Smith, electric service was terminated "even though plaintiff contracted for the electric service, was using the service, was not delinquent, owed the defendant no bills for prior service at any location, and had no connection with the delinquent customer when her bill were incurred."[43] The court reiterated the Davis reasoning and concluded that the collection scheme was unreasonable, arbitrary and violated both equal protection of the law and due process.[44]

5.1.3 Lessons from Contract Law

---

[41] *Id.*, at 145.

[42] 689 S.W.2d 181 (Tenn. App. 1985).

[43] *Id.*, at 185.

[44] *Id.*

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

A telephone company may not impose liability for third party bills on one of its customers unless that customer has expressly contracted to undertake such liability. The constant theme in each of the situations considering this rule is that a utility is seeking to transfer liability from one person's account to another person's account. As one legal analysis concludes, however: "without a contract between the utility and the customer it seeks to charge, liability cannot be imposed by the company except in very limited circumstances."[45] The general rule is that utilities may not terminate or deny an application[46] for service to one person based upon charges incurred on another person's account.

The doctrine is one based upon straight contract law.[47] Generally, when there is an express contract between parties, such an agreement will not support liability by parties other than those who have contracted.[48] Thus, when an applicant for utility service enters into an express contract for the service, through which the utility agrees to provide service and the applicant agrees to pay for the service provided, liability for that service cannot be transferred to a person not a party to the express contract.[49]

The basic contract doctrine is very clear. One legal encyclopedia states for example, that:

> as a general rule, there can be no implied contract where there is an express contract between the parties in reference to the same subject matter. In other words, an express contract on a given contract excludes the possibility of an implied contract of a different or contradictory nature.[50]

---

[45] "Third Party Liability for Gas, Electric, Water and Telephone Bills," ***PULP News***, at 4 (Fall 1989).

[46] This second prohibition, the prohibition of "denying" service is important. It covers the situation where there is no shutoff, but rather a person applies for, but is denied, connection to service. Moreover, it covers the situation where service is predicated on meeting some precondition such as payment of a deposit.

[47] *See generally*, Annotation, *Arrearages: charges upon property or against present owner, irrespective of person who enjoyed the service*, 19 ***A.L.R.3d*** 1227, 1231 (1968). The annotation goes on to state: "in this connection, it is irrelevant whether the supplier and collecting authority is a municipality or a public utility company, since the results, all other things being equal, are the same in either case." *Id.*

[48] *See e.g.*, ***New York Telephone Company v. Teichner***, 69 Misc.2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972); ***Vetco Concrete Co. v. Troy Lumber Co.***, 124 S.E.2d 905 (N.C. 1962).

[49] "Breach of contract cannot be made the basis of an action for damages against defendants *who did not execute it and who did nothing to assume its obligations.*" ***Gold v. Gibbons***, 3 Cal.Rptr. 117, 118 (1960). (emphasis added).

[50] 17 ***C.J.S.***, *Contracts*, §6 (1963). *See also*, 17A ***Am.Jur.2d***, *Contracts*, §14 (1990). ("As a general rule, if an express contract between the parties is established, a contract embracing the identical

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Moreover, *C.J.S.* continues:

> It is generally held that where there is an express contract the law will not imply a quasi or constructive contract. The courts will not indulge in the fiction of a quasi or constructive contract where contracts implied in fact must be established, *and will not substitute one promisor or debtor for another*.\51\

Both of these propositions, that involving implied in fact contracts and that involving implied in law contracts,\52\ will be discussed in more detail below.

5.1.3.1 Implied in Fact Contracts

The doctrine of implied-in-fact contracts does not stand as an exception to this rule.\53\ Many times, the attempted transfer of liability is based on the argument that the person resided with the person who contracted for service, and benefitted from that service, and thus has an implied-in-fact contract to pay for that service. Contract principles state, however, that for an implied-in-fact contract to arise, the court must find there was an intention to form a contract even though the intention was never put into words.\54\ If the utility has entered into an *express* contract with a different person, however, that finding cannot be made. A contract cannot be implied in fact when there is an express contract covering the same subject matter.\55\

(..continued)

subject cannot be implied; in such a case, an implied agreement cannot co-exist with the express contract.")

\51\ *Id.*, at §6. (emphasis added). *See also*, 17A ***Am.Jur.2d***, *Contracts*, §14 (1990). ("There may be a contract implied in law on a point not covered by an express contract, but there is no implied contract on a point fully covered by an express agreement.")

\52\ This doctrine is sometimes referred to a gaining recovery in *quantum meruit*.

\53\ *See e.g.*, ***G & S Business Services v. Fast Fare***, 380 S.E.2d 792 (1989).

\54\ *See e.g.*, ***Travelers Fire Ins. Co. v. Brock & Co.***, 47 Cal. App.2d 387, 392, 118 P.2d 25, 27 (1941). ("A contract implied in fact is one not expressed by the parties, but implied from facts and circumstances showing a mutual intention to contract.")

\55\ *See e.g.*, ***Pellegrino v. Almasian***, 10 A.D.2d 507, 510 (3rd Dept. N.Y. 1960); ***LaRose v. Backer***, 11 A.D.2d 314, 319 (3rd Dept. N.Y. 1960), *amended on other grounds*, 11 A.D.2d 969, *aff'd*, 11 N.Y.S.2d 760; ***New York State Telephone***, *supra*, 69 Misc.2d at 137.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

5.1.3.2 Implied in Law Contracts (Quantum Meruit)

Neither does the doctrine of quasi-contract, sometimes known as an implied-in-law contract (or *quantum meruit*), create a basis for transferring arrears.\56\ For an implied-in-law contract to exist, the REC must show an absence of *both* an express contract *and* an implied-in-fact contract.\57\ In addition, someone must have acted wrongfully towards the REC and the person to be charged must have been unjustly enriched for an implied-in-fact contract to arise.\58\ However, merely continuing to use service contracted for by another does not constitute such "wrongful" behavior. Instead, the "wrongful" behavior must involve some behavior such as deceit, oppression or extortion.\59\

There are three "familiar, essential elements of recovery under *quantum meruit*."\60\ All three elements must be met.\61\ First, there must be valuable services rendered to the person sought to be charged. Second, the services must have been accepted by the person sought to be charged, used and enjoyed by that person. Finally, and most importantly for purposes here, the acceptance must have been under such circumstances as "would reasonably inform the person sought to be charged that plaintiff, in performing such services, was expecting to be paid *by the person sought to be charged*."\62\ In short, an implied in law contract is not a "contract" at all, but rather an equitable doctrine that involves a legal fiction created so that a person who benefits from the use of a particular service is not "unjustly enriched" by such use.\63\

\56\ Such a claim cannot lie where an express contract covers the subject matter. *See e.g.*, ***Keith v. Day***, 343 S.E.2d 562 (N.C. App. 1986).

\57\ ***Robbins v. Frank Cooper Associates***, 19 A.D.2d 242, 244 (1st Dept. 1963), *rev'd on other grounds*, 14 N.Y.S.2d 913 (1964).

\58\ ***New York State Telephone***, *supra*, 69 Misc.2d at 137.

\59\ *See also*, Colton, "Heightening the Burden of Proof in Utility Shutoff Cases Involving Allegations of Fraud," 33 ***Howard Law Review*** 137 (1990).

\60\ For purposes of this discussion, seeking recovery under an implied in law contract is deemed to be identical to seeking recovery in *quantum meruit*.

\61\ ***Fontaine v. Home Box Office***, 654 F.Supp. 298, 303 (C.D.Cal. 1986) (construing California law).

\62\ 654 F.Supp. at 303. (emphasis added).

\63\ *Id.*

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

The key term in this test is "unjust" enrichment. The courts have made clear that "to recover on this theory, *it is not enough to show that goods or services were furnished to another* * * *."[64] Rather, the courts state, "it must *also* be shown that the person to whom the goods or services were furnished received a substantial benefit therefrom and that it would be unconscionable to permit him to retain the benefit without paying for its reasonable value."[65]

As a matter of law, where an express contract exists, an implied in law contract cannot be found. More particularly, if an express contract exists under which one person is the party responsible for paying for services, an implied in law contract will not serve to transfer liability to a third party. An implied in law contract will not substitute one promisor or debtor for another.[66] Under the terms of the tests as articulated above, if there is an express contract for one person to pay the telephone bill, the third element of the *Fontaine* case cannot be met: that the utility company provided the service "expecting to be paid *by the person sought to be charged*."

Moreover, the courts have articulated a number of factors to consider regarding whether it would be "unconscionable to permit him to retain the benefit without paying for its reasonable value" as per the *Newman Company* decision. For example, in the instance of the rendition of services, a third person is less likely to be charged in *quantum meruit* since the person sought to be charged does not have the opportunity to choose to return the services as an alternative to payment.[67] Second, it would be inequitable to impute the charges to a third party since the third party did not control the usage nor have any power to restrict or interrupt the rendition of the service.[68] The *Griffith Company* case represents the situation similar to that faced by a utility company. In *Griffith Company*, no unjust enrichment was found to have occurred because it was not the defendant who had requested the services to be provided and it was not the defendant who was in a position to halt the provision of such services.

---

[64] ***Harold A. Newman Co. v. Nero***, 31 Cal.App.3d 490, 107 Cal. Rptr. 464, 468 (5th Dist. 1973).

[65] *Id.*, at 468.

[66] *See e.g.*, ***Moll v. Wayne County***, 332 Mich. 274, 50 N.W.2d 881 (1952); ***City of Detroit v. City of Highland Park***, 326 Mich. 78, 39 N.W.2d 325 (1949).

[67] ***Wal-Noon Corp. v. Hill***, 45 Cal.App.3d 605, 613, 113 Cal.Rptr. 646 (Cal.App. 1975) (distinguishing the payment of money or the delivery of goods).

[68] *See*, ***Griffith Company v. Hofues***, 201 Cal. App.2d 502, 19 Cal. Rptr. 900, 904 (5th Dist. 1962) (at time services were being rendered, defendant in no position to stop it); *accord*, ***City of Detroit***, *supra*, 39 N.W.2d at 334 (in denying recovery under implied in law contract, or *quantum meruit*, the courts must consider the fact that "it would be impractical if not impossible for defendant to refuse to accept the services* * *.")

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

A related and persuasive line of reasoning was followed in the Michigan case of *Cascaden v. Magryta*.[69] In that case, certain contractors made repairs to a fire-damaged home at the request of the insurance company adjusters. When the insurance company subsequently denied payment for the work, the contractors sought recovery from the owner of the property based on theories of both implied in fact contract and implied in law contract. The court denied the implied in fact recovery, noting:

> * * *the work was not done and the materials not furnished under circumstances authorizing plaintiffs to entertain an expectation of payment from defendants. The plaintiffs expected the insurance company to make payment out of the insurance, and only after denial of liability by the adjuster did they seek to fasten liability upon defendants, under an implied contract.[70]

Moreover, the court denied recovery under an implied in law contract, stating: "the defendants could not, while the insurance company was exercising the option right to repair, do otherwise than to submit. Out of such submission, no implied contract to pay plaintiffs could arise."[71]

In short, "the utility may not transfer charges to a person's account simply because the person resided where the service was furnished. If the person has not contracted for the service or has not been unjustly enriched by receiving the service, the transfer of arrears to the person's account is not permitted."[72] It matters not that the third person who is not a party to the contract is a spouse. Where there is an express contract, the third person cannot be held liable.[73]

In sum, the fact that there is an express contract for the utility to provide service, and for the contracting party to pay for the service provided,

---

[69] 247 Mich. 267, 225 N.W. 511 (1929).

[70] *Id.*, at 512.

[71] *Id.*

[72] ***PULP News***, *supra*, at 4 - 5.

[73] *See*, ***Presbyterian Hospital v. McCartha***, 66 N.C. App. 177, 310 S.E.2d 410 (1984).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

prevents the imposition of third party liability in all but the most limited of circumstances.\74\ When an express contract exists, a third person not a party to that contract cannot be held liable for payment of arrears under either an implied-in-fact contract theory or an implied-in-law (or *quantum meruit*) contract theory.

5.1.4 Summary and Conclusions

By its own operation, the mere demand for a deposit from one customer due to the unpaid bills of a roommate will notify the customer of the *existence* of the unpaid arrears of the debtor. Moreover, to the extent that the size of the deposit demand is based on the size of the arrears, U.S. West will be disclosing not only the existence of the debt, but the size of the debt as well. The unreasonable nature of such disclosure, as well as the unreasonable nature of trying to collect from a third party, is established by reference to state and federal law.

6.1 SHOULD THE U.S. WEST DEPOSIT RULES BE ADOPTED

Should the WUTC adopt the proposal to allow U.S. West to impose demand cash deposits under the circumstances included in the proposed Rules, the WUTC should impose a sunset provision on the regulation. At the end of 24 months, unless U.S. West can demonstrate that the deposits have been effective in reducing bad debt, the deposit permission should be dropped.

The means for a utility to make such a demonstration are reasonably available. Perhaps the best mechanism would involve the company preparing and submitting a "payment pattern" analysis for one group of households subject to the deposit demands and another who are not.

A payment pattern analysis provides useful insight into the effectiveness --and cost-effectiveness-- of utility credit and collection practices such as deposits. Payment pattern analysis looks at the "collection experience" of a business enterprise that sells to its customers on credit ("credit sales"). The originators of the payment pattern analysis define "collection experience" simply as "the rate at which remittances for credit sales are received over time; that is, the chronological pattern according to which the receivables created during a given interval are converted into cash."\75\

\74\ These circumstances include when there has been some wrongdoing such as deceit, oppression or extortion.

\75\ Wilbur Lewellen and Robert Johnson, "Better way to monitor accounts receivable," ***Harvard Business Review***, (May-June 1972): 101.

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Taking a month to be the standard unit of account, Lewellen and Johnson state:

> the issue is the liquidation rate for each month's new credit sales. A *constant* collection experience* * *denotes a situation wherein the fractions of credit sales still uncollected as time passes follow a stable and predictable pattern from month to month.[\76\]

The concept of collection experience, Lewellen and Johnson conclude, "refers to nothing more than this standard notion of the rate of accounts conversion into cash."[\77\] Other analysts agree. One refers to a "payment pattern" as "the time distribution of cash flows that arise from credit sales at a point in time."[\78\] Stone states that "a monthly payment pattern can be characterized by the proportion of credit sales in a given month that become cashflows in that month and a series of subsequent months."[\79\]

A payment pattern analysis creates a receivables status report that follows from this definition of the term "collection experience." Such a report provides:

> balances outstanding as a percentage of the respective *original* sales that gave rise to those balance. In this fashion, customer payment rates are automatically traced to their source, and the appraisal of collection success is rendered independent of sales patterns and of the impact of changes in relative account composition.[\80\]

The use of payment pattern analysis allows the credit manager to perform a number of functions that are not possible using other traditional credit and collection measurement techniques. The manager can, for example, distinguish between seasonal payment patterns, and

---

\76\ *Id.* (emphasis in original).

\77\ *Id.*

\78\ Bernell K. Stone, "The Payments-Pattern Approach to the Forecasting and Control of Accounts Receivable," ***Financial Management***, (Autumn 1976): 65.

\79\ *Id.*

\80\ *Id.* (emphasis in original).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

disaggregate the impacts of changes in payment behavior from the seasonal changes in sales. Such a distinction can be ascertained merely by comparing the different rates of conversion into cash as betwixt different months of the year. If, in Attachment A, for example, the January "same month" data was 50 percent while the July "same month" data was 86 percent, the credit manager would determine a seasonal variation in payment patterns. Use of payment pattern analysis, Stone says, will allow accurate monitoring of credit policy decisions such as relaxing or tightening credit granting decisions, changing discount terms, or eliminating discounts altogether. In short, Stone asserts:

> Meaningful measures of the performance of a company's collection effort must be based on measures of behavior that do not depend on factors beyond the control of those responsible for collections, *e.g.*, the sales pattern, the level of interest rates, and the quality of the accounts, the latter being determined by the company's credit granting decisions.

Underlying basic payment proportions represents such a measure, he concludes.

Pursuing a payment pattern analysis recognizes the reality that U.S. West is asserting in its request to charge deposits: *i.e.*, that charging a rate and collecting a rate are two separate actions. Simply because a utility charges a particular rate does not mean that the utility will ever collect that money from a customer. U.S. West, however, proposes no means of testing the efficacy of its response to that problem.

A payment pattern analysis can do exactly that. Such an analysis reveals the rate at which *billed* revenue is turned into *collected* revenue over time. Payment pattern analysis allows a utility to track how quickly billed revenues are converted into cash for any particular period. If U.S. West is correct in its assertion that the proposed ability to collect deposits will protect against the ultimate loss of revenue through non-payments, the reduced nonpayments should show up in a payment pattern analysis.

The payment pattern analysis is reasonably easy to prepare. An illustrative payment pattern analysis is presented in Attachment A below..

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

PUB SVC CO OF COLORADO: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
Quarter 1	329,571	9,587	0.029
Quarter 2	335,229	12,239	0.037
Quarter 3	267,444	12,467	0.047
Quarter 4	247,344	7,651	0.031
TOTAL	1,179,588	41,944	0.036

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

CENTEL Electric: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
Quarter 1	24,984	476	0.019
Quarter 2	26,244	504	0.019
Quarter 3	25,851	466	0.018
Quarter 4	25,449	528	0.021
TOTAL	102,528	1,974	0.019

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Boston Gas: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	56,088	737	0.013
FEBRUARY	57,791	716	0.012
MARCH	53,618	1,120	0.021
APRIL	53,177	1,935	0.036
MAY	51,993	2,667	0.051
JUNE	49,984	3,567	0.071
JULY	46,945	3,102	0.066
AUGUST	47,616	3,506	0.074
SEPTEMBER	45,090	2,093	0.046
OCTOBER	46,327	2,221	0.048
NOVEMBER	46,012	1,288	0.028
DECEMBER	60,087	803	0.013
TOTAL	614,728	23,755	0.039

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Boston Edison: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	45,316	139	0.003
FEBRUARY	47,184	99	0.002
MARCH	46,365	108	0.002
APRIL	45,240	1,454	0.032
MAY	n/a	n/a	n/a
JUNE	n/a	n/a	n/a
JULY	41,220	1,249	0.030
AUGUST	44,136	1,769	0.040
SEPTEMBER	42,332	1,185	0.028
OCTOBER	41,226	1,977	0.048
NOVEMBER	44,998	727	0.016
DECEMBER	43,352	97	0.002
TOTAL	441,369	8,804	0.020

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Mass Electric Co.: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	79,153	318	0.004
FEBRUARY	89,914	251	0.003
MARCH	76,331	359	0.005
APRIL	81,164	1,392	0.017
MAY	79,349	2,194	0.028
JUNE	74,709	3,135	0.042
JULY	76,932	2,708	0.035
AUGUST	79,697	3,675	0.046
SEPTEMBER	82,530	3,419	0.041
OCTOBER	78,031	4,093	0.053
NOVEMBER	73,434	1,873	0.026
DECEMBER	79,413	229	0.003
TOTAL	950,657	23,646	0.025

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

West'n Mass Electric Co.: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	25,338	0	0.000
FEBRUARY	17,894	0	0.000
MARCH	22,723	8	0.000
APRIL	21,801	381	0.018
MAY	18,041	693	0.038
JUNE	22,598	717	0.032
JULY	24,567	520	0.021
AUGUST	20,545	753	0.037
SEPTEMBER	21,686	746	0.034
OCTOBER	15,092	1,017	0.067
NOVEMBER	23,046	366	0.016
DECEMBER	24,096	0	0.000
TOTAL	257,427	5,201	0.020

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Mich. Consolidated Gas: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	103,870	48	0.001
FEBRUARY	129,062	46	0.000
MARCH	112,904	120	0.001
APRIL	95,585	5,429	0.057
MAY	91,148	5,559	0.061
JUNE	82,878	4,945	0.060
JULY	70,608	3,963	0.056
AUGUST	75,592	3,413	0.045
SEPTEMBER	79,650	2,768	0.035
OCTOBER	74,285	1,602	0.022
NOVEMBER	89,361	346	0.004
DECEMBER	104,606	28	0.000
TOTAL	1,109,549	28,267	0.026

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Detroit Edison: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	112,295	2,948	0.026
FEBRUARY	116,413	3,854	0.033
MARCH	127,895	4,480	0.035
APRIL	120,793	6,837	0.057
MAY	115,288	6,604	0.057
JUNE	118,566	5,826	0.049
JULY	116,197	2,570	0.022
AUGUST	122,026	5,502	0.045
SEPTEMBER	133,713	5,499	0.041
OCTOBER	129,274	5,623	0.044
NOVEMBER	129,786	4,311	0.033
DECEMBER	126,008	2,047	0.016
TOTAL	1,468,254	56,101	0.038

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Consumers Power: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	142,675	1,774	0.012
FEBRUARY	152,673	2,432	0.016
MARCH	169,071	3,291	0.020
APRIL	159,679	4,506	0.028
MAY	171,318	5,298	0.031
JUNE	141,052	4,545	0.032
JULY	112,582	3,657	0.033
AUGUST	127,676	3,423	0.027
SEPTEMBER	135,490	4,037	0.030
OCTOBER	100,756	4,037	0.040
NOVEMBER	103,562	2,956	0.029
DECEMBER	131,239	2,558	0.020
TOTAL	1,647,773	42,514	0.026

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Montana Dakota: 1991	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	11,009	4	0.000
FEBRUARY	22,510	9	0.000
MARCH	30,719	13	0.000
APRIL	27,702	377	0.014
MAY	23,204	178	0.008
JUNE	31,322	175	0.006
JULY	30,906	168	0.005
AUGUST	18,292	128	0.007
SEPTEMBER	14,491	63	0.004
OCTOBER	15,467	49	0.003
NOVEMBER	16,622	2	0.000
DECEMBER	13,259	0	0.000
TOTAL	255,503	1,166	0.005

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

Commonwealth Edison: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	207,142	7,925	0.038
FEBRUARY	230,320	7,696	0.033
MARCH	203,697	8,000	0.039
APRIL	183,672	9,570	0.052
MAY	181,208	8,034	0.044
JUNE	192,133	8,147	0.042
JULY	190,668	8,180	0.043
AUGUST	183,009	7,502	0.041
SEPTEMBER	199,895	8,356	0.042
OCTOBER	195,561	9,191	0.047
NOVEMBER	215,929	6,997	0.032
DECEMBER	233,945	3,875	0.017
TOTAL	2,417,179	93,473	0.039

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

LONG ISLAND LTG CO.: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	101,788	805	0.008
FEBRUARY	106,491	1,038	0.010
MARCH	111,129	1,209	0.011
APRIL	106,789	2,319	0.022
MAY	107,855	2,994	0.028
JUNE	112,006	3,007	0.027
JULY	106,252	3,005	0.028
AUGUST	104,177	2,076	0.020
SEPTEMBER	106,622	2,509	0.024
OCTOBER	101,069	2,766	0.027
NOVEMBER	107,985	868	0.008
DECEMBER	110,454	693	0.006
TOTAL	1,282,617	23,289	0.018

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

NYSEG: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	44,807	506	0.011
FEBRUARY	48,442	670	0.014
MARCH	46,733	624	0.013
APRIL	43,477	2,023	0.047
MAY	53,861	2,602	0.048
JUNE	45,475	2,760	0.061
JULY	47,285	2,492	0.053
AUGUST	46,606	2,322	0.050
SEPTEMBER	48,966	1,971	0.040
OCTOBER	41,639	2,341	0.056
NOVEMBER	49,979	544	0.011
DECEMBER	40,132	319	0.008
TOTAL	557,402	19,174	0.034

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

NIAGARA MOHAWK:1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	109,336	911	0.008
FEBRUARY	109,793	1,261	0.012
MARCH	107,100	1,156	0.011
APRIL	116,505	4,244	0.036
MAY	128,797	6,332	0.049
JUNE	137,430	6,873	0.050
JULY	140,580	6,132	0.044
AUGUST	130,042	5,614	0.043
SEPTEMBER	115,058	5,424	0.047
OCTOBER	98,097	4,709	0.048
NOVEMBER	96,180	755	0.008
DECEMBER	98,640	581	0.006
TOTAL	1,387,558	43,992	0.032

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

ORANGE & ROCKLAND: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	19,682	115	0.006
FEBRUARY	19,751	182	0.009
MARCH	19,457	191	0.010
APRIL	18,794	834	0.044
MAY	18,279	804	0.044
JUNE	19,267	740	0.038
JULY	19,126	676	0.035
AUGUST	19,135	796	0.042
SEPTEMBER	18,132	650	0.036
OCTOBER	19,328	371	0.019
NOVEMBER	18,961	95	0.005
DECEMBER	20,658	110	0.005
TOTAL	230,570	5,564	0.024

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

ROCHESTER G & E: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	29,553	527	0.018
FEBRUARY	30,653	660	0.022
MARCH	34,793	44	0.001
APRIL	30,861	966	0.031
MAY	29,274	2,066	0.071
JUNE	27,966	1,768	0.063
JULY	28,897	1,550	0.054
AUGUST	29,239	1,530	0.052
SEPTEMBER	27,982	1,475	0.053
OCTOBER	27,772	1,554	0.056
NOVEMBER	28,681	525	0.018
DECEMBER	31,999	303	0.010
TOTAL	357,670	12,968	0.036

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

NAT'L FUEL GAS: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	30,304	257	0.009
FEBRUARY	30,116	353	0.012
MARCH	32,273	750	0.023
APRIL	35,822	3,558	0.099
MAY	37,024	3,994	0.108
JUNE	38,118	3,645	0.096
JULY	38,476	3,225	0.084
AUGUST	36,944	2,475	0.067
SEPTEMBER	36,009	1,860	0.052
OCTOBER	35,242	1,017	0.029
NOVEMBER	30,314	168	0.006
DECEMBER	29,920	200	0.007
TOTAL	410,562	21,502	0.052

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

CENTRAL VT. PUB SVC: 1991	NO. DISCONNECT NOTICES	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	17,646	53	0.003
FEBRUARY	25,129	56	0.002
MARCH	17,839	140	0.008
APRIL	18,032	488	0.027
MAY	15,404	370	0.024
JUNE	13,168	321	0.024
JULY	14,170	310	0.022
AUGUST	14,323	254	0.018
SEPTEMBER	14,246	287	0.020
OCTOBER	13,307	243	0.018
NOVEMBER	15,969	63	0.004
DECEMBER	20,597	20	0.001
TOTAL	199,830	2,605	0.013

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

VERMONT GAS SYSTEMS: 1991	NO. DISCONNECT NOTICES	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	2,848	4	0.001
FEBRUARY	3,422	9	0.003
MARCH	3,830	11	0.003
APRIL	3,505	93	0.027
MAY	3,225	96	0.030
JUNE	1,964	92	0.047
JULY	1,413	86	0.061
AUGUST	1,067	32	0.030
SEPTEMBER	948	27	0.029
OCTOBER	1,041	14	0.013
NOVEMBER	1,568	2	0.001
DECEMBER	2,469	7	0.003
TOTAL	27,300	473	0.017

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

COLUMBIA GAS: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	81,388	207	0.003
FEBRUARY	87,899	222	0.003
MARCH	92,835	1,326	0.014
APRIL	101,142	7,374	0.073
MAY	118,753	7,266	0.061
JUNE	87,973	6,246	0.071
JULY	82,102	5,421	0.066
AUGUST	65,697	4,336	0.066
SEPTEMBER	64,670	5,334	0.083
OCTOBER	65,221	2,563	0.039
NOVEMBER	62,063	85	0.001
DECEMBER	71,739	29	0.000
TOTAL	981,482	40,409	0.041

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

CINCY GAS & ELEC: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	71,139	448	0.006
FEBRUARY	76,371	202	0.003
MARCH	76,675	350	0.005
APRIL	73,175	665	0.009
MAY	72,176	1,674	0.023
JUNE	71,550	1,344	0.019
JULY	68,948	199	0.003
AUGUST	69,635	1,314	0.019
SEPTEMBER	71,307	929	0.013
OCTOBER	72,302	1,153	0.016
NOVEMBER	74,248	546	0.007
DECEMBER	74,242	53	0.001
TOTAL	871,768	8,877	0.010

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

CLEVE. ELEC. ILLUM.: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	82,209	1,765	0.022
FEBRUARY	81,871	1,983	0.024
MARCH	85,268	2,033	0.024
APRIL	88,789	2,449	0.028
MAY	89,750	1,598	0.018
JUNE	87,760	2,859	0.033
JULY	76,961	2,109	0.027
AUGUST	80,673	3,904	0.048
SEPTEMBER	68,076	3,199	0.047
OCTOBER	77,238	4,778	0.062
NOVEMBER	60,972	869	0.014
DECEMBER	62,802	455	0.007
TOTAL	942,369	28,001	0.030

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

MONONGAHELA PWR: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	1,293	0	0.000
FEBRUARY	1,431	0	0.000
MARCH	1,432	1	0.001
APRIL	1,484	37	0.025
MAY	1,410	91	0.065
JUNE	1,441	57	0.040
JULY	1,327	64	0.048
AUGUST	1,234	74	0.060
SEPTEMBER	1,243	53	0.043
OCTOBER	1,270	75	0.059
NOVEMBER	1,353	1	0.001
DECEMBER	1,467	0	0.000
TOTAL	16,385	453	0.028

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

EAST OHIO GAS: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	175,913	2,032	0.012
FEBRUARY	212,454	2,143	0.010
MARCH	239,135	3,762	0.016
APRIL	257,921	9,156	0.036
MAY	276,350	9,445	0.034
JUNE	283,294	8,391	0.030
JULY	261,756	7,371	0.028
AUGUST	251,402	7,081	0.028
SEPTEMBER	236,322	6,464	0.027
OCTOBER	222,695	4,409	0.020
NOVEMBER	211,873	1,308	0.006
DECEMBER	182,094	1,028	0.006
TOTAL	2,811,209	62,590	0.022

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

OHIO POWER: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	33,405	248	0.007
FEBRUARY	37,547	295	0.008
MARCH	35,766	376	0.011
APRIL	34,074	1,666	0.049
MAY	32,714	2,582	0.079
JUNE	31,838	1,806	0.057
JULY	33,259	1,772	0.053
AUGUST	33,232	1,652	0.050
SEPTEMBER	34,438	1,626	0.047
OCTOBER	33,726	1,457	0.043
NOVEMBER	35,516	302	0.009
DECEMBER	33,446	140	0.004
TOTAL	408,961	13,922	0.034

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597

ATTACHMENT A

STATUS REPORT ON RECEIVABLES OUTSTANDING
AS A PERCENT OF ORIGINAL SALES

	MONTH											
	J	**F**	**M**	**A**	**M**	**J**	**J**	**A**	**S**	**O**	**N**	**D**
Percentages outstanding for 1970 from sales of:												
Same month	90%	89%	91%	95%	97%	93%	86%	92%	91%	90%	91%	90%
One month before	60	62	59	68	73	69	59	54	62	63	61	60
Two months before	20	19	18	35	37	33	23	20	17	21	22	20

NOTE

To ascertain the payment figures for one month's original sales, see the numbers in a descending left-to-right diagonal pattern. Thus, the sequence 86%-54%-17%, singled out for July-August-September of 1970, refers to balances originating in July's sales as they remain outstanding as of the end of three consecutive months.

SOURCE:

Wilber Lewellen and Robert Johnson, "Better way to monitor accounts receivable," ***Harvard Business Review***, at 101, 107 (May-June 1972).

Fisher, Sheehan & Colton
Public Finance & General Economics
34 Warwick Rd., Belmont, MA 02178
617-484-0597