

October 3, 2003

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

Carole Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: In the Matter of Implementation of the Federal Communication Commission's
Triennial Review Order
Docket No. UT-033025

Dear Ms. Washburn:

Pursuant to the Notice of September 30, 2003, Public Counsel files the following comments regarding discovery questions and form of protective order. These comments are primarily focused on discovery in the "9 month proceeding(s)."

Discovery Questions

Public Counsel has no objection to the use of the template discovery questions prepared by the TRIP task force and distributed by Judge Rendahl to parties via email on September 28. Use of these comprehensive questions should make the process more efficient. Parties should be permitted, however, to pose additional questions as necessary, particularly to pursue state-specific issues that might not be covered in the template, or to do follow up discovery.

Protective Order

Public Counsel has no objection to issuance of the Commission's standard protective order in this proceeding. With regard to order provisions regarding protection of Highly Confidential material, our specific concern is that Public Counsel and other non-competitor parties, and their consultants, not be precluded from any access to Highly Confidential material. WUTC "Highly Confidential" Protective Orders have contained a "Staff/Public Counsel carve-out" which does not require Public Counsel to use outside counsel, or impose special limitations on Public Counsel's experts.

Judge Rendahl has circulated two examples of protective orders, the TRIP proposed order (Texas-style), and a Qwest proposed order. Public Counsel reads both to preserve Public Counsel's ability to have access to Highly Confidential material produced in discovery. Paragraph 22 of the TRIP order allows Office of Public Utility Counsel (the Public Counsel equivalent) and the Texas Attorney General and "other persons...retained by them" to review highly confidential information "without limitation."

The Qwest proposed order also appears clearly to permit Public Counsel and a "reasonable number of outside experts to review Highly Confidential data. The exclusion for "persons engaged in strategic or competitive decision making for any party, including the sale or marketing of products or services on behalf of any party" appears workable from our perspective.

General

Because the 9 month proceeding has not yet fully commenced, Public Counsel reserves the right to make additional comment or raise objections as necessary, as the proceeding develops.

Sincerely,

Simon J. fitch
Assistant Attorney General
Public Counsel Section
206-389-2055

SJf:cjw

cc: Service List (First Class Mail)