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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

VIA E-MAIL AND HAND DELIVERY

Mr. David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: UT-111634 - Rulemaking to Implement SESHB 1087, Chapter 50, Laws of 2011,
Establishing Regulatory Fees

Dear Mr. Danner:

The Commission has issued a Notice of Opportunity to File Written Comments (Notice) in the above-referenced docket. The Notice established a deadline for Comments of November 7, 2011. The Washington Independent Telecommunications Association (WITA) welcomes the opportunity to comment on this possible rulemaking.

As set out in the Notice, the Commission states that it has the authority to establish filing fees for telecommunications companies that receive certain services under the Telecommunications Act of 1996 (the Telecom Act). The fees are to recover the Commission's costs incurred in performing certain services initiated by the service provider filings. In particular, these are filings related to interconnection agreements (ICAs) and analyzing petitions requesting eligible telecommunications carrier (ETC) certifications.

On page 2 of the Notice, the Commission explains the purpose of the proposed rules as follows: "The Commission will consider establishing filing fees for providing these [Telecom Act] services to ensure that companies currently paying minimal or no regulatory fees will reimburse the Commission for the services they receive."¹ WITA supports the concept of establishing filing fees for those companies that are currently paying no regulatory fees. Those companies impose obligations on the Commission by availing themselves of the Commission's services. However, by not paying any regulatory fees, they are receiving the benefit of these services without payment of the associated cost.

WITA has some concern about the concept that those that pay minimal regulatory fees

¹ The Notice goes on to explain that the new fees "will reduce the shortfall between the revenues from regulatory fees and Commission expenses related to the agency's telecommunications activities." WITA will be interested in learning more information about the nature of this shortfall. Does the Commission have a source that WITA could access to better understand this shortfall?

would be subject to the filing fees. The concern centers on what is meant by the term "minimal." All incumbent local exchange carriers pay significant fees to the Commission. The significance is based upon the size of the fee compared to their intrastate revenues. A small incumbent local exchange carrier like St. John should not be subject to the filing fees because it pays less of a regulatory fee than a larger incumbent local exchange carrier. The percentage payment is the same and the economic effect on the company is relatively the same.

WITA will address the two primary categories of filing fees suggested in the Notice. The first category is those matters related to ICAs. The second category is related to ETC designations.

INTERCONNECTION AGREEMENTS

WITA supports the concept that those carriers that do not pay regulatory fees would need to pay filing fees when seeking an arbitration from the Commission. While the question of whether interconnected VoIP providers should be subject to regulation as telecommunications companies has not been directly presented to the Commission as of yet and the Federal Communications Commission (FCC) has not directly addressed the matter, the factual situation is that interconnected VoIP providers are not treated as regulated telecommunications companies at the present time. This means that the interconnected VoIP class of providers, as well as wireless providers, can seek arbitration and pursue related interconnection matters before the Commission without having to bear any of the costs, directly or indirectly. Instituting filing fees for such carriers would help level the playing field between entities that do not pay full regulatory fees and those carriers such as incumbent local exchange companies that do pay full regulatory fees.

WITA supports the further refinement of developing two filing fees to apply to those entities that do not pay full regulatory fees, depending upon whether an arbitration request falls under a simple arbitration category or a more complex arbitration category. Averaging the existing costs of providing arbitration services and applying one fee seems to be too broad a category. A one fee concept would unfairly penalize those companies that have come close to reaching agreement, but have only one or two remaining issues left to resolve.

WITA does not support fees for reviewing and approving fully negotiated ICAs, amendments to ICAs or adoption of existing ICAs. While for a time after the passage of the Telecom Act in 1996, these activities may have imposed substantial costs on the Commission, it appears that these activities now are fairly routine in nature and do not impose substantial costs on the Commission. If the Commission has evidence to the contrary, then fees for such activities might be appropriate, but only for those companies that do not pay full regulatory fees.

ELIGIBLE TELECOMMUNICATIONS CARRIER PROCESS

There is a substantial amount of work that goes into evaluating the initial request by an entity to be designated as an ETC. That entity should pay a filing fee if it does not already pay full regulatory fees.


At this time, WITA does not support a filing fee for the annual ETC recertification to an entity that does not pay full regulatory fees. WITA is aware that there is some Commission work on each annual request for ETC recertification. However, WITA is not sure of the full nature and scope of the Commission's activities on this subject.

Whether a filing fee for ETC recertification is imposed or not on those who do not pay regulatory fees, the annual ETC recertification does underscore the difference between entities that do not pay full regulatory fees and those entities that do pay full regulatory fees. In most years, the annual ETC recertification process is the only activity that many of WITA's members have before the Commission. Yet, those companies pay full regulatory fees while imposing very little cost on the Commission. On the other hand, entities that do not pay regulatory fees impose an unfunded cost on the Commission every time they seek a service from the Commission. Thus, the distinction has a sound basis in fact.

CONCLUSION

WITA appreciates the opportunity to file these Comments. WITA looks forward to further discussion of these issues at the workshop scheduled for November 30, 2011.

Sincerely



Betty S. Buckley
Executive Director