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VIA ELECTRONIC MAIL

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-053021 – Supplemental Comments

Dear Ms. Washburn:

The Washington Independent Telephone Association (WITA) appreciates the opportunity to submit supplemental comments in this docket. More than that, WITA appreciates that the Commission is taking the time to seriously consider these very important issues.

In its opening comments, WITA noted that it was originally given only three weeks to provide comments. WITA did what it could to provide a full breadth of comments at that time, recognizing that in some respects the comments could have been better written and that typographical errors could have been avoided in those original comments. However, the substance of the comments covered the major points that WITA felt it was imperative to raise.

There are two points that WITA wants to highlight in these supplemental comments. The first is the significant due process question raised by the manner in which the proposed rules would deal with the removal of ETC status. If ETC status can be removed, whether a CETC or incumbent ETC, simply because during the course of the hearing the Commission determines that such removal is in the public interest, then it appears that due process considerations are in significant danger.

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For example, it is a well settled principle of law that a party must have prior notice that their conduct will run afoul of established standards before a status can be taken away. On a more prosaic note, Washington courts have found that even the notice of the violation must be at least sufficiently accurate to prevent the case from being decided on unexpected grounds if undue surprise or prejudice would result. See, e.g., Levison v. Washington Horseracing Commission, 48 Wn. App. 822, 829, 740 P.2d 898 (1987). Beyond notice, the standards for which removal of a status can be effected must provide clear warning of the offending behavior. See, also, City of Marysville v. Puget Sound Air Pollution Control Agency, 104 Wn.2d 115, 702 P. 469 (1985).

Another area of significant concern is the extent to which the mapping requirements would require disclosure of specific deployment of plant. It is one thing to talk about where a CETC plans to make investment under a seal of confidentiality. It is another thing to require all ETCs to provide maps of the specific location of the type, quantity, and nature of telecommunications plant. Issues of competitive sensitivity and national security (in some cases) can arise from such disclosure.

WITA respectfully requests the Commission give serious consideration to holding another workshop on these important issues.

Thank you for your consideration of these comments.

Sincerely,

/s/ Richard A. Finnigan

RICHARD A. FINNIGAN

RAF/km

cc: Bob Shirley (via e-mail)
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