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August 11, 1999

Carole J. Washburn
Secretary
Washington Utilities and Transportation Commission
1300 Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Subject: Comments of Covad Communications Company re:
Telecommunications Act Fee Rulemaking
Docket No. UT-0990873

Dear Ms. Washburn:

I. Introduction

Covad Communications Company ("Covad") provisions and sells Digital Subscriber Line ("DSL") services that directly compete with service offerings of U S West and GTE Northwest. Covad is a facilities-based carrier that collocates its equipment in incumbent local exchange carrier ("ILEC") central offices. To provide DSL services, Covad must enter into agreements with the ILECs to lease unbundled network elements and interconnect with the public switched telephone network ("PSTN").

Congress enacted the Telecommunications Act of 1996 (the "1996 Act") to encourage local competition and the development of new advanced technologies, and Covad appreciates the efforts of the Commission to promote competition in Washington by enforcing and implementing the 1996 Act. Because it is not privy to the financial impact that the Commission's enforcement and implementation efforts have had on the Commission to date, Covad does not know if new fees are necessary to fund the Commission's specific efforts in this area. As a policy matter, however, Covad does not oppose reasonable fees that are necessary to insure that the pro-competitive mandates of the 1996 Act continue to be implemented and enforced.

If the Commission concludes that it is necessary to adopt new fees under RCW 80.36.610, Covad suggests that the Commission be mindful of the goals of the 1996 Act

and not impose fees that could produce anticompetitive effects or raise barriers to entry.

II. The Commission Should First Look to Additional State Revenues Created by Increased Telecommunications Competition as a Source of Additional Funding

The role of the Commission as arbitrator and mediator in interconnection negotiations is critical to the establishment of local competition. Covad understands that the demands on Commission resources as a result of these added responsibilities may require additional revenues if the Commission is to carry out such responsibilities in a timely, efficient manner that permits the competitive local exchange carriers ("CLECs") to bring new service offerings to Washington consumers. As a preliminary matter to determining whether such fees are necessary, the Commission should explore whether additional state revenues generated from increased competition and telecommunications use in Washington could be used to fund a substantial part of the Commission's 1996 Act activities. The proper application of any such additional revenues might mean that no new fees are needed, or that any new fees need not cover the entire cost of 1996 Act proceedings. Proper revenue allocation thus could reduce the possibility that new fees might impose an excessive burden on new entrants.

III. The Commission Should Consider Several Factors in Determining Whether Any New Fees Create a Barrier to Entry

The Commission should be wary that any new fees it adopts are not set at a level that discourages new entrants from availing themselves of their rights to arbitration and mediation by the Commission. As the 1996 Act states:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

47 U.S.C. § 253(a). In weighing the question of whether new fees create a barrier to entry, Covad believes the Commission should consider at least the following factors.

It is generally to the benefit of the ILEC and the detriment of the CLEC to force interconnection agreement arbitrations. While CLECs tend to get better results from arbitrations than they can achieve in negotiations, arbitrations delay market entry and CLECs arbitrate only as a last resort. The Commission should consider that unnecessary or excessive fees for arbitration could provide an incentive for an ILEC to be more unyielding in order to impose significant costs on their less wealthy adversaries and discourage companies from seeking entry.

Carole J. Washburn
August 11, 1999

- 3 -

This incentive could be particularly harmful if ILECs adopt such strategies toward new, small CLEC entrants.

The Commission also should consider the bargaining strength of the parties and their relative economic positions (i.e., revenues) in setting fees and determining how those fees might be apportioned between the parties to any dispute. Otherwise, ILECs, which may have incentives to force CLECs into arbitration proceedings in order to delay market entry, will have another forceful economic weapon to use in slowing the growth of local competition. The Commission should not give ILECs a prime opportunity to engage in anticompetitive tactics, but should consider the need of smaller companies to have a level playing field.

In short, the Commission should take care not to set a fee structure that is oppressive to new entrants. Covad is a small company in comparison to the ILECs, and it has already experienced the enormous cost of being compelled to arbitrate, mediate and litigate against ILECs. All CLECs are aware of those costs and do not take the decision to initiate Commission actions lightly. New fees, if necessary, should not provide an additional deterrent to CLECs seeking enforcement of the pro-competitive provisions of the 1996 Act.

IV. Conclusion

Covad applauds the Commission and Commission staff for their continued vigilance in enforcing and implementing the 1996 Act. Covad recognizes that those efforts must be funded, and Covad supports all reasonable methods of financially enabling the Commission to continue its 1996 Act work. In determining whether and what new fees are appropriate in Washington, however, Covad urges the Commission to carefully consider the pro-competitive mandates in the 1996 Act and the issues raised in these comments.

Respectfully submitted,

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Carole J. Washburn
August 11, 1999

- 4 -

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