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February 20, 2008

VIA E-MAIL AND HAND DELIVERY

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

Re: Docket No. A-072162 – Comments of the Washington Independent
Telephone Association

Dear Ms. Washburn:

The Washington Independent Telephone Association (“WITA”) hereby submits its comments in response to the Washington Utilities and Transportation Commission’s (“Commission”) issuance of the Notice of Opportunity to File Written Comments in Docket A-072162 relating to Procedural Rules. As a general matter, it is WITA’s position that the proposed changes make sense and should be adopted. WITA does note that the references to the Public Records Act as Chapter 42.17 RCW (see, e.g., WAC 480-07-140(1)(e) and elsewhere in the draft) is incorrect. The correct reference to the Public Records Act is Chapter 42.56 RCW.

WITA does have concerns about some of the suggestions offered by Public Counsel and these Comments will address Public Counsel’s suggestions.

First, WITA congratulates Public Counsel for providing their initial comments so early in the process. Having Public Counsel’s comments early on facilitates the ability to address Public Counsel’s concerns.

WAC 480-07-110(2)

Public Counsel is proposing that language be adopted to WAC 480-07-110(2)(c). Specifically, Public Counsel proposes the addition of the following language:

The commission will consider whether the request for an exemption or modification: (1) undermines the original purpose or intent of the rule; (2) creates hardship for those customers who are beneficiaries of the rule; (3) restates arguments or objections that the requesting party made during the rulemaking adopting the challenged rule; or (4) results in undue discriminatory treatment of similarly situated customers.

WITA opposes the inclusion of the language proposed by Public Counsel. Proposed condition (1) is redundant to the language that appears in the existing formulation of WAC 480-07-110(2)(c). Points (2) and (4) would simply be part of the public interest analysis and need not be established as specific conditions. Finally, WITA believes that item (3) suggested by Public Counsel is an unwarranted restriction on a party's ability to raise issues of concern to the Commission. Just because a party identified a potential issue in comments during the rulemaking proceeding should not be used as a basis for rejecting a request for exemption or modification if the request is premised in part on similar concerns. The fact that the Commission may have not accepted a particular position in the scope of adopting a general rule does not mean that under appropriate circumstances an exemption from or modification of the rule is not warranted for the same reasons that were raised by the requesting party. The Commission may well have decided that individual circumstances might warrant an exemption or modification, but that those circumstances did not warrant building in an automatic exception into the general rule. WITA asks that the Commission not adopt this suggestion by Public Counsel.

Public Counsel also requests that it receive notice of all requests for exemption or modification. To this end, Public Counsel proposes adding, "At the time of the filing, the person requesting the exemption or modification must serve a copy of the petition on Public Counsel." to WAC 480-07-110(2)(a). WITA does not have objection to the concept of Public Counsel receiving notice under certain circumstances. However, a requirement that every request for exemption or modification, no matter how minor, is a procedural overkill. WITA suggests that

Public Counsel work with the affected industries to determine a threshold standard for implementing the notice requirement.

WAC 480-07-140

Public Counsel proposes that WAC 480-07-140 and related rules be amended to allow the submission of electronic documents on the filing deadline with a paper copy to be filed a day later. Public Counsel does not submit specific language to implement this proposal. WITA agrees with Public Counsel that the proposal suggested by Public Counsel would streamline filing procedures and eliminate confusion over electronic versus paper filing deadlines. Therefore, to the extent that it is statutorily possible to implement Public Counsel's request (and there may be some proceedings where that is not possible), WITA supports the concept.

WAC 480-07-160(4)

Unfortunately, Public Counsel's next suggestion is not so well taken. Public Counsel proposes adding to WAC 480-07-160(4) dealing with the submission of confidential material the following language: "If the commission determines that a provider has made an improper or bad faith designation of material as confidential, the commission may impose sanctions, including, but not limited to, monetary penalties." Public Counsel has not demonstrated that there is a current practice of abusing confidential designation. While companies may be conservative in including material that is designated as confidential, there is a good reason to do so. The reason that perhaps slightly more material is designated as confidential than might be considered truly confidential is that the failure to make the designation results in the material being open to the public. Even with that danger, WITA believes that the companies have, as a general rule, been judicious in the exercise of the designation of confidential information.

Further, WITA does not believe that the Commission possesses statutory authority to impose monetary penalties. Public Counsel has not provided any analysis as to the source of the Commission's authority to take the action that Public Counsel suggests.

For the foregoing reasons, WITA asks that the Commission not adopt Public Counsel's suggestion.

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WAC 480-07-395

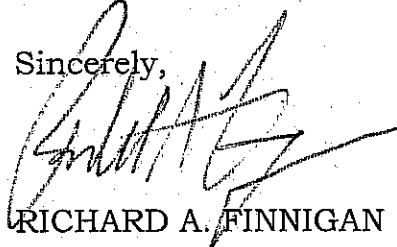
Public Counsel suggests that the Commission might want to revisit WAC 480-07-395 on page limits for briefs. However, Public Counsel provides no analysis to support this suggestion. Therefore, WITA is unable to comment on this suggestion.

WAC 480-07-510(3)

The final suggestion by Public Counsel in its Initial Comments is that electronically filed work papers not contain locked, password protected or hidden cells. So long as the use of confidential designations is not severely limited, WITA has no objection to Public Counsel's proposal to modify WAC 480-07-510(3)(b) to prohibit including locked, password protected or hidden cells in electronically filed work papers.

Thank you for the opportunity to comment.

Sincerely,



RICHARD A. FINNIGAN

RAF/km

cc: Client