Law Office of
Richard A. Finnigan

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 753-6862

Kathy McCrary, Paralegal
(360) 753-7012
kathym@localaccess.com

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VIA E-FILING

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-050802 – Notice of Opportunity to Submit Comments

Dear Ms. Washburn:

This letter is written on behalf of the Washington Independent Telephone Association (WITA) in response to the Commission's Notice of Opportunity to Submit Comments in the Procedural Rulemaking, Docket No. A-050802. WITA will address selected topics from the list of fifteen specific questions that the Commission asked for comment on.

1. Please comment whether the commission should consider adopting the amendments to WAC 480-07-730 and WAC 480-07-740 proposed by Public Counsel and others. The rule proposals are posted to the commission's website: http://www.wutc.wa.gov/050802.

Comment:

It is WITA's position that the amendments proposed by Public Counsel and others should not be adopted. The amendments that are proposed by Public Counsel and others are too restrictive and would result in an environment that would discourage settlements.

2. Please evaluate the settlement process followed in the Avista proceeding (Docket Nos. UT-050482 & UG-050483) and recent Verizon proceedings (Docket Nos. UT-050814 & UT-040788).

Comment:

WITA did not participate in these dockets and is not able to comment on the settlement process.

3. Based on your actual experience, please compare and contrast Oregon's rules and practice governing voluntary settlements (OAR 860-014-0085) with the commission's rules and practice. Please identify by company, docket number, and date, any individual proceedings in Oregon in which you have been a participant in the settlement process during the past two or three years.

Comment:

Oregon's rules and practice which govern voluntary settlements as set forth in OAR 860-014-0085 have a slightly higher degree of process orientation than the Commission's existing rules and practice. Specifically, the Oregon rules contemplate use of a formal settlement conference if there is to be a settlement involving Commission Staff. From a practical standpoint, the process begins much the same as it now begins in Washington.

That is, there is a preliminary discussion between Commission Staff and one or more of the parties as to what may or may not work for settlement. It is not necessarily a discussion among all parties on an initial basis. Once the preliminary discussions identify what may satisfy the interests of the parties in a settlement, then a settlement conference is called where all parties can participate in determining whether or not a settlement might be appropriate. Settlements are reduced to writing and all parties are allowed to comment among the parties as to the settlement language. There may be back and forth communication between less than all of the parties concerning specific details of a settlement agreement. Any party that is not satisfied with the settlement can comment on the settlement document once it is formally filed in the docket. The procedures to be followed from that point in time are largely within the discretion of the administrative law judge. Without going back to review all of the Oregon dockets, the undersigned was involved in the process described above in Docket No. UM 1017 in Oregon, a major docket that resulted in a settlement in February of 2003 (see, Order No. 03-082).

5. Please describe how the nature of the commission's proceedings differs materially from other civil litigation insofar as settlements and the settlement process is concerned, and how any differences should be reflected in the settlement rules or practice.

Comment:

There is a difference in the way in which settlements occur in the Commission's proceedings and how they occur in civil litigation. From the outset, it is important to remember that what the Commission is often doing is a legislative act that is performed in a quasi-judicial setting (i.e., the setting of rates) compared to a pure judicial proceeding in civil court litigation. It may be a bit odd to think of it in these terms, but the establishments of rates that are "fair, just, reasonable and sufficient" or the determination of another issue as to the "public interest" has a different flavor to it than a court's role to attempt to see that justice is served.

In civil litigation, the parties to the action, generally speaking, are those that have a direct interest in a particular event (i.e., those involved in an automobile accident). If there is a settlement with one accident victim, it may be necessary to go to litigation to resolve the interests of another accident victim that is not willing to settle. There are particular facts that apply to each of the litigants and while there may be some common facts, it is not necessarily the case that a general set of facts applies to all litigants. For example, the nature and severity of injuries may vary considerably among those involved in an automobile accident.

In a ratemaking setting, the facts are fairly general as it applies to any particular rate payer or class of rate payers. Under those circumstances, it would not be appropriate to build into stone a process by which a single rate payer or class of rate payers can require the litigation of the general set of facts that apply to all involved. It would seem that the public interest requires a balancing of those interests: the particular interests of some versus efficient resolution of interests affecting all. That balance is best served by preserving flexibility for determining where and when further litigation over a settlement among some of the parties is appropriate.

6. Would it be improper under the proposed amendment to WAC 480-07-730 for a settlement judge to caucus with one or more, but not all, parties to resolve issues between two or more parties? Should rules restrict parties' ability to caucus with one or more other parties, but not all, during a scheduled settlement conference?

Comment:

The proposed amendment to WAC 480-07-730 certainly can be read in a way that would prohibit caucusing with one or more, but not all, parties. WITA's position is that the rule should not restrict the parties' ability to caucus with one or more parties, including, but not limited to, involvement of the settlement judge.

7. Concerning the proposed amendments to WAC 480-07-740, do the requirements in RCW 34.05.461(3) meet the concerns of the proponents for an order addressing all material issues of fact or law? If not, please discuss why the statute does not address the concerns.

Comment:

No comment at this time.

8. Is discovery under the proposed amendment to WAC 480-07-740 intended to be an absolute right? Would an absolute right allow abuse of the process and irrelevant discovery? Why should parties opposing a settlement have discovery rights greater than those afforded under the discovery rules during other stages of a proceeding (*i.e.*, why should the commission's discretion to control discovery, considering the needs of the case be constrained, when a settlement is filed)?

Comment:

It is WITA's position that the Commission should have the discretion to determine whether or not discovery should occur in particular cases when a settlement is filed.

Questions 9-13 dealing with confidential information.

Comment:

WITA is not going to have specific responses to these questions at this time. As a general matter, WITA supports addressing the rules related to the handling of confidential data to lessen the administrative burdens that the current rules now impose.

Sincerely,

/s/ Richard A. Finnigan

RICHARD A. FINNIGAN

RAF/km

cc: Clients (via e-mail)