



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE WASHINGTON, D.C. SHANGHAI, CHINA

GREGORY J. KOPTA
Direct (206) 628-7692
gregkopta@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

January 17, 2006

By E-Mail and Federal Express

Ms. Carole J. Washburn
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504

Re: Procedural Rules Rulemaking, Docket No. A-050802

Dear Ms. Washburn:

Pursuant to the Notice of Opportunity to Submit Comments in the above-referenced docket, XO Communications Services, Inc. ("XO") provides the following comments. XO generally supports adopting the amendments to WAC 480-07-730 proposed by Public Counsel and others. While the precise language may need further development, particularly to address issues outside the context of telecommunications cases, the Commission should revise the rule, at a minimum, to ensure that a settlement of less than all parties to a proceeding does not deprive nonsettling parties of the opportunity to present their issues to the Commission for resolution.

Commission consideration of non-unanimous settlement agreements has been hotly debated recently. Staff explained in the most recent workshop in this docket that Staff takes the position that it is simply a party like any other party and may enter into a settlement agreement with less than all parties if such an agreement adequately addresses Staff's concerns. Staff's actions, however, have not always conformed to this position.

In the Verizon-MCI merger proceeding, Docket No. UT-050814, the settlement agreement between Staff and the Companies was conditioned on Commission acceptance of the agreement as the sole resolution of the entire case, including the issues raised and conditions proposed by nonsettling parties. Staff thus was acting as more than just another party by presenting its issues as the only issues that were worthy of determination. Staff placed the Commission in the position of resolving the proceeding either by adopting Staff's settlement agreement, regardless

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of its exclusion of other parties and their issues, or by rejecting the settlement agreement and conducting a fully litigated proceeding to address the issues raised by all parties.

No party should be permitted to present the Commission with such an alternative. If less than all parties choose to settle their issues, they certainly should be allowed to do so. But settling parties should not purport to settle an entire case at the expense of nonsettling parties. Staff, in particular, should have an obligation to look beyond its individual interests and, at a minimum, not condition settlement of Staff's issues on the Commission refusing to accommodate the interests of other parties. The Commission ultimately required the settling parties to agree to modifications of their agreement by presenting them with the alternative of a fully litigated proceeding, but such a procedural mechanism should not have been necessary, at least with respect to the modifications necessary to incorporate concerns raised by a nonsettling party.

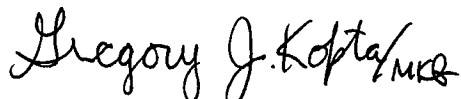
The Verizon rate case, Docket No. UT-040788, is a positive example of a proceeding in which Staff took on a larger role than that of an individual party in the settlement process. Staff ensured that all parties were given notice and the opportunity to participate in the settlement discussions and worked with the Company to accommodate other parties' concerns in the interest of settling the disputed issues raised by all parties to the proceeding. The unanimous settlement the Commission ultimately approved very likely would not have been achieved without Staff's efforts.

If the Commission wants to do all it can to encourage settlement, it should have Staff take on this same role in all cases. Staff has much more influence than any other party, and a company is much more likely to settle an entire case if Staff insists that every effort be made to include all parties in the settlement agreement. That is not to say that a party should be empowered to prevent a settlement by refusing to compromise its position. If Staff participates in a non-unanimous settlement, however, the Commission should require Staff to provide a detailed explanation of the efforts it made to include non-settling parties. At a bare minimum, the Commission should prohibit Staff or any other party from attempting to preclude Commission consideration of non-settling parties' interests and issues by conditioning a settlement agreement on the Commission accepting that agreement as the sole resolution of the entire case.

XO appreciates the opportunity to comment on these issues. Please contact me if you have any questions about these comments or need additional information on XO's position.

Very truly yours,

Davis Wright Tremaine LLP



Gregory J. Kopta