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November 16, 1999

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

Subject: Comments of Covad Communications Company
In Re Petition Of Advanced Telecom Group, Inc., et al., Docket No. UT-990355

Dear Ms. Washburn:

Covad Communications Company ("Covad") respectfully requests that the following comments on the draft Interpretive and Policy Statement in this docket be considered notwithstanding that they are filed one day late. Covad became aware of the comment filing date on November 10, 1999, the same date that the comments were due. Covad hopes that by filing these comments in the morning of the next business day after the due date that the Commission Staff will be able to consider them despite the late filing.

Covad supports the Commission's efforts to provide some guidance to the telecommunications industry regarding procedures for implementation of Section 252(i) of the Telecommunications Act of 1996. Guidance could be particularly helpful with regard to the "pick and choose" provisions of the FCC's rules that were recently upheld by the U. S. Supreme Court in AT&T v. Iowa Utilities Board, 119 S.Ct. 721 (1999). Covad has experienced first hand the lengthy often slow, time consuming, and expensive process of attempting to obtain interconnection agreements with ILECs. Properly interpreted and implemented, Section 252(i) of the Act offers the potential to greatly improve the speed and efficiency with which CLECs can obtain interconnection agreements with ILECs. This will, in turn, accelerate the development of competition in the local telecommunications markets consistent with state and federal policy.

Covad generally supports the draft Principles, particularly Principles 4, 5, and 10. Covad does have some concerns regarding the draft interpretive and policy statement in this docket. One of the advantages of an interpretive and policy statement is that it can be used as a helpful Commission guideline prior to the creation of a formal, binding rule. Thus, it may be

helpful to the CLEC industry for the Commission to promptly adopt an interpretive and policy statement, even if it may be necessary to change policy in a subsequent rulemaking or to revise or adapt the policy to meet the needs or equities of a particular case brought before the Commission before final rules can be worked out. It is Covad's understanding that the Commission intends to apply any interpretive policy statement approved in this docket in such a flexible fashion. Accordingly, Covad's comments in this docket will be limited. Covad will participate more actively in any subsequent rulemaking, such as Docket No. UT-990391.

Covad's first specific concern regarding the draft is a question about the intent behind Principle 2, which would require a carrier that requests adoption of an entire existing agreement to adopt the existing contract language verbatim. Perhaps the intent of Principle 2 is simply to state that the parties, in submitting an agreement to the Commission that is represented to be an adoption of an existing agreement in its entirety, may not make changes to such agreement. If that is the intent, the principle seems obvious and Covad does not oppose the policy. Parties should be expected to accurately represent the contents of any agreement submitted for approval. However, Principle 2 should not be used to preclude carriers from using an existing agreement as a starting point, which can be customized through further negotiations. For example Covad, a data CLEC, may wish to adopt an agreement negotiated or arbitrated by a voice CLEC but negotiate additional or revised provisions to accommodate the different requirements of a data CLEC.

Covad supports the second sentence of proposed Principle 3, but urges the Commission to eliminate the first sentence of Principle 3. The first sentence would require carriers adopting an existing agreement to take the existing agreement only in its amended form. This provision is not necessary and may be contrary to the Act. Presumably the original non-amended agreement was approved as reasonable and in compliance with requirements of the Act. Accordingly, there is no public interest or legal reason to preclude a carrier from adopting the original agreement. Secondly, a prior carrier may have requested to adopt the same existing agreement, but before it was amended. Under the second sentence of Principle 3, the prior adopted agreement would not be automatically amended by amendment agreed to by the original parties to the original agreement. The provisions of the first sentence, however, then would create a situation where the second requesting carrier (post-amendment) would be unable to obtain the same terms and conditions as the first adopting carrier. One carrier would be forced to take the amendment while the other one would not. Such discrimination is neither necessary nor consistent with the principles of the Act.

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Covad's greatest concerns are with regard to the timing of adoption and the duration of adopted terms, which are addressed in draft Principles 6 through 8. This should not be unexpected, since the timing and duration issues are the most difficult issues under Section 252(i). Covad supports the Commission's efforts to try to ensure competitive parity and a maximum of flexibility in a competitive carrier's ability to adopt contract provisions under pick and choose, as evidenced in Principles 6 through 8. Nevertheless, Covad is concerned that the draft principles may lead to creation of interconnection agreements that are extraordinarily complicated, unwieldy, and subject to continual renegotiation. In particular, Covad recommends deferring proposed Principle 8 to the rulemaking docket, No. UT-990391. Covad does not yet have a proposed solution to the problem of contracts with section-by-section expiration dates that Principle 8 would create. Experience with pick and choose will undoubtedly put the Commission and the parties in a better position to spot and resolve the issues relating to carrier's pick and choose rights under Section 252(i) of the Act. More work and thought on this issue is required and Covad submits that Docket UT-990391 is a better forum for resolving the problem.

Except as noted above, Covad generally supports the draft Principles. Implementation of Section 252(i) of the Act is not easy and Covad appreciates this and other Commission initiatives to provide the industry with greater clarity and predictability for their negotiations under the Act.

Very truly yours,

Brooks E. Harlow

cc: Mr. Clay Deanhardt

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