BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	
Implementation of Regulatory Fees	)	Docket No. UT-990873
	)	

Initial Comments of the
Telecommunications Resellers Association

The Telecommunications Resellers Association ("TRA")[1] on behalf of its members, and pursuant to the Washington Utilities and Transportation Commission's ("Commission's") September 29, 1999 *Notice of Additional Rulemaking Workshop* ("Notice") in the above-captioned proceeding, briefly comments on the proposed fees for Telecommunications Act activities in lieu of its participation in the upcoming October 11, 1999 rulemaking workshop.

I. THE COMMISSION'S INTENT TO NOT IMPOSE FEES ON INDUSTRY-WIDE PROCEEDINGS AND INQUIRIES IS APPROPRIATE, CONSISTENT WITH PAST PRACTICE, AND WILL ENSURE THAT PARTICIPATION BY ALL INTERESTED PARTIES IS MAINTAINED.

TRA commends the Commission for its decision to not impose fees on generic industry-wide proceedings and inquiries. Such proceedings warrant involvement by all affected industry members, including smaller companies, who should continue to have the opportunity to help shape policy directly or through industry organizations such as TRA. The Commission should have the benefit of argument by *all* affected parties in establishing industry policy and rules. Nothing will chill the involvement of smaller entities more quickly than the imposition of any "participation" fees in such proceedings. Smaller

[1] A national industry association, TRA represents nearly 800 entities engaged in, or providing products and services in support of, the provision of telecommunications services, primarily on a resold basis. TRA was created, and carriers a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

companies are already challenged by competing demands on limited resources to participate in regulatory proceedings. The imposition of fees would effectively preclude participation by smaller firms, fully enabling large companies with regulatory budgets that support active involvement in regulatory proceedings to drive regulatory policy and rulemaking, to the potential determent of smaller entities.

The Commission has historically promoted the involvement of diverse public and industry interests in all proceedings. Its decision to forego imposition of fees for participation in broad industry proceedings is entirely consistent with its long-standing policy of giving all interested parties an opportunity to be heard and should be maintained if Commission policy and regulation is to remain representative of all stakeholder interests.

II. ANY MEDIATION, ARBITRATION, AND EXPEDITED ENFORCMENT FEE SHOULD BE BASED ON THE FACTORS ASSOCIATED WITH EACH SITUATION.

TRA also commends the Commission for its sensitivity to the potential impact that its proposed fees may have in creating barriers for dispute resolution.[2] One such potential barrier is the proposed $10,000.00 mediation, arbitration, and expedited enforcement fee. Imposition of dispute resolution and expedited enforcement fees raise significant concern over the ability of smaller companies to reasonably resolve serious disputes or seek remedies for non-performance, particularly with, or by, incumbent carriers. Smaller companies, when faced with the prospect of assuming significant fees to engage the Commission dispute resolution or enforcement action, may elect to forego entry in Washington's local markets altogether if unable to resolve issues directly with the incumbent. A $10,000.00 fee may easily constitute more than many small prospective

[2] "The Commission has also concluded that fees for arbitrations and other dispute resolution activities must not be set so high that they become a barrier to resolving disputes." Notice at 2.

providers' Washington state annual revenues for the first year or more, forcing smaller companies to reconsider their decision to serve Washington.

Moreover, the fee may unintentionally provide ILECs with an incentive to discriminate against smaller competitors with impunity. ILECs would be able to impose "take it or leave it" interconnection or service conditions with the full confidence that smaller carriers would have no choice but to succumb to those conditions or exit the market due to the significant cost associated with seeking Commission dispute resolution or enforcement.

TRA does not dispute that the Commission assumes costs for its involvement in dispute resolution or enforcement, nor is TRA suggesting that affected parties should necessarily be absolved of any expense. Dispute resolution or expedited enforcement fees, however, should not be established in a seemingly arbitrary manner, or flat amount, but should be based rather on a number of factors unique to each situation. For example, the fee assessed on each party could be based on the documented evidence of an ILEC's unwillingness to negotiate in good faith or to impose unreasonable restrictions or requirements. If the Commission determines that an ILEC has acted in a discriminatory or anti-competitive manner, the full fee for dispute resolution should be imposed on the incumbent. This would be akin to imposing damages and would create a financial disincentive for the ILEC to misbehave or use the dispute resolution process to intimidate smaller companies. Similarly, the entire amount of any interconnection enforcement action undertaken by the Commission against another carrier at the request of a competitor should be borne by the carrier if the Commission upholds the competitor's claims.

The fee may also be determined upon the relative magnitude and complexity of the issues to be addressed. Issue complexity will have the most direct impact on the Commission's actual costs and should be a major consideration in allocating fees. Otherwise no financial distinction is created between minor squabbles, and issues requiring a protracted investigation and resolution. The Commission might also consider establishing some minimum fee conditioned on the remainder being assessed to the parties in accordance with the individual factors affecting the Commission action and the results of the Commission's final adjudication.

III. CONCLUSION

As the Commission considers implementing fees, it should ensure that any new fees to do inadvertently preclude new, smaller entrants from active involvement in the regulatory process, either through the development of public policy or when attempting to resolve operational disputes. As currently proposed, an arbitrary $10,000.00 mediation, arbitration, and expedited enforcement fee will undermine the ability of smaller carriers to seek regulatory remedies for operational disputes, eliminating what little leverage smaller companies may have against ILECs through Commission involvement. If the Commission is to institute mediation, arbitration, and expedited enforcement fees, it should be mindful of the impact that such fees with have on the competitive balance between powerful incumbents and smaller companies, and the ability of smaller companies to assume such fees as a cost of doing business in Washington. These fees should not chill market entry. Alternatively, fee assessments should be based on a number of factors including the actions of the parties involved, guilt, and issue complexity.

TRA looks forward to working with the Commission in supporting the development of an equitable fee structure that will not lock out smaller companies from the regulatory or competitive process in Washington.

Respectfully submitted,

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