BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Rulemaking to Consider Possible Corrections and Changes in Rules in Chapter 480-07 WAC, Relating to Procedural Rules.	)))))))	Docket No. A-050802 Comments of Embarq

COMMENTS OF EMBARQ

1 Embarq Corporation ("Embarq") submits these comments in response to the Commission's Notice of Opportunity to Comment on Supplemental Proposal, dated May 11, 2006.

2 Embarq supports the proposed amendment to WAC 480-07-700 (3)(a), which codifies the Commission's existing practice of establishing an initial settlement conference as part of the procedural schedule. Embarq, however, urges the Commission not to adopt the new proposed WAC 480-07-700(3)(b) because it unnecessarily restricts parties' ability to discuss settlement in the early stages of an adjudicative proceeding. Under the proposed rule any party that initiates any discussion, prior to the prehearing conference, which is intended to resolve actual or anticipated disputed issues, must provide fourteen-day notice to any person that has intervened or might intervene.[1] The conference must be open to all parties.

3 Embarq contends that this rule would reduce parties' ability to settle issues, contrary to the policies set forth in the Administrative Procedures Act, the Commission's rules, and general

[1] Specifically, the proposed rules would require notice to "any entity that was party to the most recent proceeding of the same type, involving the same filing entity and respondent, if any."

principles of negotiation. The proposed rule would increase the burden on the Commission to resolve more issues, increase the costs and time involved in litigation, and result in more issues and more cases being resolved later in the adjudicative process than would be possible with the current, more flexible negotiation model.

4 It goes without saying that the adjudicative process is rarely, if ever, the best way to resolve disputes. The process is costly, time-consuming and can be unpredictable. Thus, it is essential that the rules defining the process by which adjudicated disputes are resolved provide to the parties every opportunity to explore settlement of issues and recognize the benefit of any agreement that can be reached. Toward that end, the rules that the Commission adopts in this proceeding should encourage settlement of issues without regard to which parties are involved in the negotiations or when those parties choose to negotiate.

5 The proposed rule would undermine the stated policy of the Commission which "supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order." *WAC 480-07-700*. The rule further states that "Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings." (emphasis provided). Likewise the Washington Administrative Procedures Act ("APA") encourages "informal settlements that may make unnecessary more elaborate proceedings" without dictating who may negotiate and when. *RCW 34.05.060.* Robust negotiation cannot occur when the parties who wish to negotiate are told when and with whom they may negotiate. Moreover, if the rule limits the parties' ability to eliminate issues early in the process, then it does not fully effectuate the expressed strong preference of the legislature to

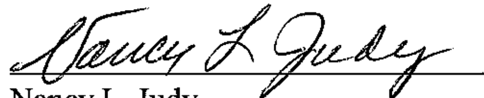
reduce the complexity of proceedings.

6 Embarq believes that the current settlement process works well and that the flexibility to have informal discussions does not in any way prejudice the due process rights of any party. If, for instance, staff filed a complaint against a company and then resolved all or some of the issues with the company prior to a prehearing conference, other interested parties would retain their opportunity to put forth their cases on any issue that remains disputed. Even if the complaint was withdrawn prior to the prehearing conference, other parties would retain the right to make the same or a similar complaint.

7 For the foregoing reasons, Embarq requests that the Commission decline to adopt the new proposed WAC 480-07-700(3)(b).

Respectfully submitted this 19th day of June, 2006.

EMBARQ CORPORATION



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