

Via Overnight Delivery

2 December 1999

Ms. Carole J. Washburn  
Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
Olympia, Washington 98504

RE: Telecommunications Act of 1996 Issues General - Rulemaking, Docket No.  
UT-990391

Dear Ms. Washburn:

The Telecommunications Resellers Association (TRA), on behalf of its members, and pursuant to the Commission's October 29, 1999 *Notice of Opportunity to Comment* in the above-referenced proceeding, submits this letter in lieu of comments regarding whether the Commission should promulgate rules to implement Section 252(i) of the Telecommunications Act of 1996 (47 U.S.C. §252(i), the "Act") and Federal Communications Commission (FCC) Rule 47 C.F.R. 51.809. Quite simply, TRA believes that "pick and choose" rules are necessary and should be promulgated to ensure that the Commission's policies are implemented as intended.

The Commission's Interpretive and Policy Statement, however useful in establishing Commission's policy, is nevertheless effectively unenforceable. TRA already foresees incumbent local exchange carrier challenges to competitive local exchange carrier election of existing interconnection agreement provisions. Such challenges have arisen in California, Texas, and elsewhere, even after the FCC's "pick and choose" rules were reinstated by the United States Supreme Court in *AT&T Corp. v. Iowa Utilities Board*.<sup>1</sup> Certainly, in the absence of enforceable rules, the Commission's Interpretive Policy will not carry the weight of rules in adjudicating contested issues. The need for "pick and choose" rules becomes particularly acute for smaller competitive local exchange carriers, such as many of TRA's members, who do not have leverage to negotiated with the incumbent nor the resources to sustain protracted mediation or arbitration over contested interconnection agreement provisions.

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<sup>1</sup> 67 U.S.L.W. 4104 (January 25, 1999)

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TRA commends the Commission for adopting an Interpretive and Policy Statement consistent with the pro-competitive intent of the Act and FCC's rules. Yet given the incumbent's historic recalcitrance in fulfilling its statutory and regulatory obligations to competitors, and to ensure that incumbent carriers fully act in accordance with Commission intent, TRA urges the Commission to promulgate "pick and choose" rules which mirror the Commission's Interpretive and Policy Statement.

An electronic copy of this letter has been forwarded to the Commission's Record Center email address.

Sincerely,

Telecommunications Resellers Association

/s/ Andrew O. Isar

Andrew O. Isar

Enclosures