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

Re: Docket No. A-050802 - Comments

Dear Ms. Washburn:

The Washington Independent Telephone Association ("WITA") respectfully submits this letter containing WITA's comments on Docket No. A-050802. In particular, these comments focus on proposed WAC 480-07-700(3).

It is WITA's position that the proposed language will have a dampening effect on the use of settlements in cases where there are more than two parties.

The draft of WAC 480-07-700(3) begins with an informal definition of what is covered by a "settlement conference." The proposed language states that a settlement conference is "any discussion or other communication, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated) between two or more parties in an adjudicative proceeding." As drafted, this language would encompass inquiries as to whether or not settlement discussions would be fruitful.

For example, in order to know whether settlement discussions are even worth undertaking, it is often necessary to approach another principal party in the proceeding and ask a question along the following lines: "If we were to suggest an outcome of X, Y and Z, would that be something of interest to your client?" If the matter is of interest, then a settlement conference can be established. If the matter is not of interest, then the parties will not waste their time by setting up a settlement conference. However, under the Commission's draft rule, even this

conversation as to whether a settlement could be pursued is a "communication" or a "discussion" that has an intent to resolve one or more disputed issues. Thus, before that question could even be asked, a settlement conference would have to be noted for all parties. As a result, the Commission's proposed rule makes settlement discussions too structured and removes some of the dynamics that make settlement possible.

WITA is not suggesting that parties should be excluded from substantive settlement discussions. WITA's suggestion is that the Commission's rule makes the settlement process too cumbersome. This will have the effect of diminishing the opportunity for settlement of some or all issues in a case.

From a technical standpoint, there is also a problem with the language contained in proposed WAC 480-07-700(3)(b) in two respects. First, the draft rule makes Public Counsel an automatic party to all settlement discussions. However, in many of the cases involving WITA's smaller members, Public Counsel has no interest in participating. Why should Public Counsel have to be invited to settlement discussions when it is not participating in a case?

The second problem with the language is that under 3(b)(v), an entity that was a party in the most recent proceeding of the same type is automatically made a party to settlement discussions, whether they have intervened or not. For WITA's members, it may be several years between proceedings. How is it practical or meaningful to have customers that intervened in a proceeding years prior to the instant proceeding in which settlement discussions are thought to be useful be given notice and asked to participate in those settlement discussions? At the very least, the person in the prior proceeding should have requested to be placed on the interested person's list before they would trigger the requirements of the draft rule to be given notice of settlement discussions. WITA recognizes that it is possible that some settlement discussions may be contemplated before the time for full intervention. However, an entity should at least have placed the parties on notice of an actual interest in the case.

WITA suggests that the settlement conference language be retained as it currently exists. Absent that, WITA requests that the draft language be clarified so that the terms "communications" and "discussions" contained in the draft rule do not include discussions meant to determine whether pursuit of settlement is or is not worthwhile. This change will save all of the parties time and expense. To this end, the second sentence of the draft language for WAC 480-07-700(3) could

be written as follows: "Settlement conferences or discussions do not include communications that are requests for information or clarification, defining whether a dispute exists, determining whether settlement discussions would be worthwhile to pursue or in aid of discovery."

Thank you for your consideration of these comments.

Sincerely,

RICHARD A. FINNIGAN

cc: Clients (via e-mail)