

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	DOCKET NO. UT-971140
	)	
v.	)	
	)	
WASHINGTON EXCHANGE	)	
CARRIERS ASSOCIATION, <u>et al.</u> ,	)	THIRD <sup>1</sup> SUPPLEMENTAL ORDER
	)	DENYING REQUEST FOR
Respondent.	)	MODIFICATION OF PREHEARING
.....	)	CONFERENCE ORDER

**BACKGROUND**

**SUMMARY:** The Commission convened a prehearing conference in this matter on Monday, December 15, 1997, at Olympia, Washington, before Administrative Law Judge Terrence Stapleton of the Washington Utilities and Transportation Commission (Commission). The Second Supplemental Order on Prehearing Conference (Order) was entered December 24, 1997. On January 2, 1998, those Washington Independent Telephone Association (WITA) member companies represented in their individual capacity by Robert S. Snyder (RSS-Companies) filed an Objection of RSS-Companies to [Second] Supplemental Order on Prehearing Conference; on January 5, 1998, the WITA member companies represented in their individual capacity by Richard A. Finnigan joined in that objection.

By letter of January 6, 1998, the Commission offered parties to this proceeding the opportunity to file answers to the RSS-Companies' objection if received not later than January 13, 1998. Commission Staff filed an answer January 12, 1998. No other party filed an answer.

**COMMISSION:** The Commission denies the request to modify the Second Supplemental Order on Prehearing Conference.

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<sup>1</sup>An inadvertent misnumbering of Orders has occurred in this proceeding -- two "First" Supplemental Orders have been entered. The second of these, First Supplemental Order on Prehearing Conference, entered December 24, 1997, should have been denominated the Second Supplemental Order.

**MEMORANDUM**

The RSS-Companies object to the following language of the Second Supplemental Order:

With regard to the filing of rebuttal testimony, the individually-named independent telephone companies are limited **explicitly** to addressing issues posited by the direct testimony of Commission Staff and intervenors, and **exclusively** to those issues which uniquely and directly affect that company alone in its individual capacity.

Specifically, the RSS-Companies raise two objections to this language: (1) filing of their rebuttal testimony is limited to issues which affect them "uniquely;" and (2) it limits their rebuttal to issues posited by certain parties. These objections are raised in the context of the following language in the Commission's Notice of Prehearing Conference:

These issues include consideration of alternative rate design or structure.

The RSS-Companies believe that the contested language of the Order could be interpreted to deny their right to address "rate design and structure" issues posited by Commission Staff and Intervenors if it does not affect them "uniquely."

The RSS-Companies misapprehend the Order; the contested language addresses the concern acknowledged in their "objection" -- "[i]n the event that testimony offered by the individually-named independent telephone companies were to be unduly cumulative of other testimony, the presiding officer could address the situation appropriately at that time." The presiding officer sought to preemptively address the potential for "unduly cumulative" testimony as *quid pro quo* for allowing participation in their own name of the individual companies.

The Order does no more than appropriately state the basis for the filing of rebuttal testimony by the individually-named members of the Washington Exchange Carriers Association (WECA). If the direct testimony of Commission Staff and Intervenors includes an issue of "rate design or structure" or another issue which **directly** affects any individual company, that company may file rebuttal testimony on that issue **only and only to the extent that** the individual company is **uniquely** affected by that direct testimony. By directly, the Commission portends an effect which is obvious, individual, and immediate, and, by uniquely, the Commission contemplates a result which is distinctive, particular, and specific.

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Commission Staff views the language of the Order as intended "to prevent the individual companies from raising new issues relating to the overall WECA filing on rebuttal, as opposed to responding to issues raised by the reply testimony."

Such a situation would leave Staff and Intervenors with no opportunity to conduct discovery on the testimony or to respond to new issues without amending the procedural schedule. We agree, and note that, unlike the contested language of the Order, this would be an inappropriate use of rebuttal testimony.

As to the second issue raised in the RSS-Companies' objection, rebuttal testimony is always appropriate as to the direct testimony of any party to a proceeding. With regard to the RSS-Companies' concern regarding any testimony that might be filed by the Public Counsel Section of the Office of the Attorney General, we note that Public Counsel did not appear at hearing nor serve upon the Commission notice of its intention to participate in this proceeding. We note that this issue now has been resolved by the Public Counsel's January 26, 1998 letter indicating that he will not participate in this proceeding, and asking to be removed from the service list for this matter.

Based upon the foregoing discussion, the Commission will deny the relief requested in the RSS-Companies' objection to the Order.

### ORDER

The Objection of RSS-Companies to Second Supplemental Order on Prehearing Conference requesting modification of that Order is denied.

DATED at Olympia, Washington, and effective this 30<sup>th</sup> day of January 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
RICHARD HEMSTAD, Commissioner

  
WILLIAM R. GILLIS, Commissioner