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September 20, 2002

Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia WA 98504-7250

Re: WITA Petition for Declaratory Order, Docket No. UT-020667

Dear Ms. Washburn:

Pursuant to the direction in paragraphs 20 and 33 of the Order Declining to Enter Declaratory Order in the above-referenced proceeding, the Joint CLECs<sup>1</sup> provide the following individual statement of position. Counsel for the Joint CLECs has consulted with counsel for other parties, including the Washington Independent Telephone Association (“WITA”), and the Joint CLECs do not propose any specific procedure for addressing the issues raised in WITA’s petition.

An appropriate proceeding should provide all affected and interested parties with the opportunity for meaningful participation. The Joint CLECs, however, are not aware of any authority that specifically authorizes the Commission to conduct what amounts to an industry-wide investigation. A complaint proceeding would not be appropriate to address issues facing the entire telecommunications industry and would raise its own procedural issues, including which carrier(s) are proper defendants and the extent to which other parties would be permitted to intervene and participate. A rulemaking similarly would place procedural constraints on the ability of the Commission and participants to develop an appropriate record on which to base any Commission consideration of the issues in WITA’s petition.

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<sup>1</sup> The Joint CLECs include AT&T Communications of the Pacific Northwest, Inc., TCG Oregon and TCG Seattle, AT&T Wireless Services, Inc., Focal Communications Corporation of Washington, Fox Communications Corp., International Telecom, Inc., Pac-West Telecomm, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc.

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The Joint CLECs understand that some or all of the issues raised in WITA's petition are included in an arbitration petition filed by Level 3 Communications against Century Telephone Company pursuant to Section 252 of the federal Telecommunications Act of 1996 ("Act"). Again, consideration of industry-wide issues in the context of an arbitration between only two carriers does not provide a meaningful opportunity for other interested parties to participate, nor does it enable the Commission to consider the interests of all affected parties. The Commission previously has addressed costing and pricing issues of general concern arising in individual arbitrations in generic proceedings in which all interested carriers may participate. *E.g., In re Pricing Proceeding*, Docket Nos. UT-960369, *et al.* To the same extent that the Commission is authorized to conduct generic costing and pricing proceedings, the Commission may be able to conduct other issues of general concern arising out of arbitrations under the Act, including the issues raised in WITA's petition. *See* RCW 80.36.610(1).

The Commission, however, should carefully consider whether it should initiate any proceeding at this time. The FCC is considering many of these issues in CC Docket No. 01-92, DA 02-1740, in which Sprint Corporation filed a petition on behalf of its wireless division requesting that the FCC confirm that (1) an incumbent local exchange carrier ("ILEC") may not refuse to load telephone numbering resources of an interconnecting carrier, and (2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier. In opposing the petition, BellSouth Corp. raised many of the same issues that WITA raised in its petition. The comment period ended last month, and a decision is pending. The Commission, therefore, may want to await guidance from (or consult with) the FCC before considering these issues.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

cc: Service List