October 20, 1999

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Commission Inquiry Into the Need for Fees for Activities Arising Under the Telecommunications Act of 1996 - Docket No. UT-990873

Dear Ms. Washburn:

These comments are filed on behalf of the Washington Independent Telephone Association (WITA) in response to the call for comments in this docket. WITA's position is simple: a rulemaking to establish fees for proceedings under the Telecommunications Act of 1996 is a bad idea.

It is a bad idea for at least three reasons. First, based on the analysis presented by Commission Staff at the most recent docket workshop, the proposal will not generate significant revenues. Therefore, it does not appear to be worth the effort.

Second, the proposal does create significant transaction costs for a specific, individual proceeding, particularly for small ILECs and CLECs. Telecom giants, such as AT&T, may not blink at paying $10,000 for an arbitration or mediation, but a small carrier (whether ILEC or CLEC) will. This proposal puts the power in the hands of the wealthy carrier. It does not matter whether the fee is ultimately paid by the non-prevailing party. The mere existence of a substantial filing fee tips the negotiation balance in favor of the wealthier carrier. The proposal looks and sounds like a barrier to entry. Further, any mechanism which has the fee paid by other than the filing party will only add an administrative burden to the process.

Third, the proposal is not good public policy. Access to justice should not be for the well-heeled. In our judicial system, the modest filing fee ($110 in superior court) does not cover the cost of the judicial proceeding. Even this modest filing fee is waived for indigent parties. The Commission's availability for mediation and arbitration should not be limited because of high filing fees.

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Finally, it is ironic that a Commission which is so strong in its efforts to promote competition would leverage what is, in effect, a monopoly position. Companies are required to file interconnection agreements by law. The Commission's proposal would extract a fee for that required filing. In addition, companies seeking arbitration or mediation apparently have no choice but to use the Commission since there is no provision authorizing private arbitrators or mediators. In many cases, a private mediator's or arbitrator's fee would be less than the $10,000 fee proposed by the Commission. However, this competition is not allowed.

In conclusion, WITA strongly opposes the Telecom Act fee proposal suggested in this docket.

Sincerely,

TERRY A. VANN
Executive Vice President

TAV/aw
cc: WITA Board Members

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