

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

WASHINGTON INDEPENDENT
TELEPHONE ASSOCIATION and LEWIS
RIVER TELEPHONE COMPANY, d/b/a TDS
TELECOM

For a Declaratory Ruling

Docket No. UT-083056

COMMENTS OF THE BROADBAND
COMMUNICATIONS ASSOCIATION
OF WASHINGTON

The Broadband Communications Association of Washington ("BCAW") files these comments in opposition to the petition for declaratory order ("Petition") filed by the Washington Independent Telephone Association ("WITA") and Lewis River Telephone Company ("TDS," referred to with WITA as the "Petitioners"). Washington law prevents the Commission from entering a declaratory order because Comcast, a necessary party, objects. Any issues raised by the Petitioners that require resolution should be settled in the existing interconnection arbitration docket involving Comcast and TDS.

A. The Commission Should Not Enter A Declaratory Ruling If A Necessary Party Objects

The Prehearing Conference Order ("Order") seeks comment on "the threshold issues in RCW 34.05.240(7) of whether there are any necessary parties to the proceeding, whether they object in writing to deciding the issues in a declaratory order proceeding and

whether entering a declaratory order would substantially prejudice the rights of a necessary party." This issue must be resolved now because RCW 34.05.240(7) directs the Commission to dismiss the Petition if a necessary party objects:

An agency *may not* enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding (emphasis added).

WAC 480-07-930(3) similarly states that the Commission will dismiss the Petition if "any person" asserts that their rights "might be substantially prejudiced:"

The commission *will not* enter a declaratory order under RCW 34.05.240 if *any person* asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights *might be substantially prejudiced* by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

Here, Comcast objects to a declaratory order because its rights *would* (not just "might," as WAC 480-07-930(3) states) be substantially prejudiced by entry of a declaratory order. *See Answer of Comcast Phone Of Washington, LLC*, UT-083056 (November 17, 2008); *See Affidavit of Beth Choroser* (Nov. 17, 2008). Examples of how Comcast would be substantially prejudiced include the fact that the proposed declaratory order would interfere with Comcast's ability to negotiate interconnection agreements with ILECs, to exchange traffic with ILECs, to access numbering resources, number portability, and E911 services, and to serve its customers. *Id.*

It is beyond reasonable dispute that Comcast is a necessary party. "Under CR 19(a), a necessary party is one who has sufficient interest in the litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved." *In re Petition of*

WITA for a Declaratory Order on the Use of Virtual NPA/NXX Calling Patterns, Docket No. UT-020667, Order Declining To Enter Declaratory Order (Aug. 19, 2002)("VNXX Order"). Beth Choroser's declaration explains how Comcast's interests would be affected. *See Affidavit of Beth Choroser* (Nov. 17, 2008).

Comcast's objection is all that is required for dismissal of the petition, because both RCW 34.05.240(7) and WAC 480-07-930(3) prohibit entry of a declaratory ruling where a single necessary party objects. It is not necessary that multiple parties object. For this reason, the Commission in 2002 dismissed WITA's petition for a declaratory ruling on VNXX issues in response to a claim by a single party, Level 3, that it would suffer substantial prejudice:

Level 3 has stated its role as a necessary party whose rights would be substantially prejudiced by entry of a declaratory order on these facts, and has indicated it will not consent in writing to determination of this matter by declaratory order. Therefore, in accordance with RCW 34.05.240(7), the Commission declines to enter a declaratory order as requested by WITA.

See VNXX Order at p. 6. Accordingly, the Commission should dismiss the Petitioners' petition.

B. Any Relevant Issues Raised By the Petitioners Should Be Settled In The Existing Interconnection Arbitration Docket Involving Comcast And TDS.

Another reason for dismissal is that the Commission is already addressing the Petitioners' concerns in the existing Comcast/TDS interconnection docket. *See Docket No. UT-083055*. Commission rules state that "[t]he commission will dismiss a petition for declaratory order when issues in the petition are at issue in a pending adjudication." WAC 480-07-930(1)(b).

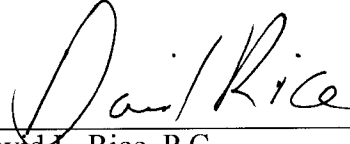
It is not necessary or appropriate for the Commission to resolve broader regulatory or jurisdictional issues involving VoIP now, as the Petitioners request, because the Commission can resolve the interconnection docket without doing so. Moreover the FCC is

already conducting proceedings involving VoIP regulation. Unnecessary action by this Commission would create the risk of inconsistent state and federal decisions. In addition, a new, broad-reaching VoIP docket would be lengthy and contentious. There is no reason to start such a burdensome process when the option exists to address the Petitioners' concerns in the existing Comcast/TDS interconnection docket.

For these reasons, the BCAW requests the Commission to dismiss the Petitioners's petition for a declaratory ruling.

Respectfully submitted this 17th day of December, 2008.

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CERTIFICATE OF SERVICE
UT-083056

I certify that on this 12th day of December, 2008, I have this day served the attached COMMENTS OF THE BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON by electronic mail and first class U.S. mail postage prepaid to the following:

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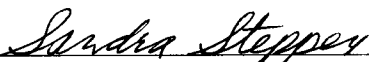
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