

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Docket No. UT-190437**

**COMMENTS**

**of the**

**Washington Independent Telecommunications Association**

**September 9, 2019**

## I. INTRODUCTION

On August 9, 2019, the Washington Utilities and Transportation Commission ("Commission") issued a Notice of Opportunity to File Written Comments ("Notice") in Docket No. UT-190437. The Notice set the date for the comments as September 9, 2019. Comments are requested on sixteen specific policy questions regarding potential modifications to Chapter 480-123 WAC to implement the provisions of Sections 11 through 18 of Second Substitute Senate Bill 5511 (legislation the Commission refers to as the "Broadband Bill"). The Washington Independent Telecommunications Association ("WITA") welcomes the opportunity to submit these comments.

## II. THE BROADBAND BILL - BACKGROUND

Before addressing the Notice's policy questions, WITA believes it is important to examine the legislative background regarding how the Broadband Bill addresses the State Universal Communications Service Program ("UCS Program"), specifically the moderate changes to the program that it has brought within the overall context of the legislation. As the Commission is well aware, the Broadband Bill reflects the culmination of a long-sought effort by Washington policymakers to facilitate the enhancement of broadband services through several statutory and administrative public policy instruments. Put simply, the legislation's various provisions are an attempt by Washington to enable and facilitate improved conditions for advancing and sustaining broadband services across the state. In particular, the Broadband Bill:

- Inaugurates a statewide broadband office, with a director appointed by the governor,

- Requires development of a statewide plan to encourage cost-effective broadband access,
- Sets forth statewide broadband service performance goals,
- Establishes a substantial state-funded grant and loan program within the Public Works Board (with assistance from the State Broadband Office) to promote the expansion of access to broadband service in unserved areas of the state,
- Creates a statewide broadband account to receive appropriated funding from the legislature and other authorized funding resources,
- Expands authority for public utility districts and ports to support the provision of improved telecommunications and broadband service, and
- Extends the life of the UCS Program by an additional five years accompanied by incremental modifications to its purpose (incorporating broadband service as a component of the program).<sup>1</sup>

Taken together, the individual elements of the Broadband Bill reflect the State's comprehensive effort to use all available measures to assure affordable, resilient broadband service to enable economic development, public safety, health care, and education in Washington's communities.

With that comprehensive framework in mind, WITA respectfully points out that the modifications to the UCS Program (first established in 2013), should be viewed as modest adjustments to the provision of telecommunications and broadband services offered by small telecommunications carriers, within the framework of a larger, more comprehensive bill. The modifications to the statutes governing the UCS Program are but one piece of a large puzzle. Other provisions in the Broadband Bill address lack of coverage and expansion of broadband service through a variety of specified means. These provisions provide new state funding for expansion of service to unserved and underserved areas through a program to be administered by

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<sup>1</sup> Second Substitute Senate Bill 5511, Chapter 365, Laws of 2019, 66th Legislature, 2019 Regular Session.

the Public Works Board, muster state resources to facilitate statewide broadband plans and objectives, and enable other providers (public and private entities) to address broadband service conditions within and for their respective communities and constituencies.

### III. INCREMENTAL CHANGES TO THE UCS PROGRAM IN THE BROADBAND BILL

Separate and distinct from other provisions of the Broadband Bill, Sections 11 through 18 revise the statutes governing the UCS Program.<sup>2</sup> Most notably, the UCS Program is extended for an additional five years and the original statutory language for the program is amended to incorporate the support of broadband service. By extending the program, the Legislature made several important changes without disturbing materially the original circumstance, basis, and scope of entities potentially eligible for UCS Program support.

The first important change to the UCS Program is the elimination of the requirements that support be limited to communications providers whose customers are "potentially at risk of rate instability, service interruptions or cessation of service"<sup>3</sup> and the statutory language that allowed the Commission to establish a benchmark rate for residential telecommunications service. Taken together, these changes reflect a conscious decision by the Legislature to shift the focus of

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<sup>2</sup> The UCS Program was initially established to run for five years as a means to assist the state's smaller telecommunications carriers (primarily the WITA companies) to respond to and moderate the effects of federal and state mandated changes to their historic levels of intercarrier compensation. Historically, the revenues WITA companies received from intercarrier compensation were utilized by the companies to support their provision of traditional telephone services in higher cost more rural areas of the state. That aspect of continued funding has not diminished. The same factors at work that necessitated state funding in the first place, the loss of substantial financial support from varying forms of intercarrier compensation and the challenging operational and economic conditions where services are provided, remain in place today and are just as or equally applicable to the provision of broadband service as they are to the provision of telephone service.

<sup>3</sup> RCW 80.36.650(3)(b) as amended by the Broadband Bill.

program support from ensuring pricing of traditional telephone service at some measure of generally available levels, to an expansion of the types of services that should be supported.

In place of the service interruption and residential pricing provisions, the Broadband Bill adds broadband as a supported service and requires each eligible company to submit a "plan to provide, enhance or maintain broadband services in its service area."<sup>4</sup> A notable facet of this change is the fact that the Broadband Bill **adds** broadband as a supported service in addition to basic telecommunications service, not as a **replacement** for basic telecommunications service. By adding broadband service to the list of supported services for the UCS Program rather than replacing traditional telephone service, the Legislature is striking a careful balance; it embraces a prudent and incremental change to the scope of UCS Program services as opposed to a more sweeping change that could be disruptive to the entities historically and prospectively eligible for ongoing UCS Program support. The carefully crafted and incremental (not disruptive) nature of the Legislature's modifications here is a very important factor that WITA believes the Commission must keep in mind as it considers amendments to its rules for administering the UCS Program.

WITA's view is buttressed by Section 12 (1) of the Broadband Bill, where the purpose of the UCS Program is clearly delineated to provide support for both basic telecommunications service **and** broadband service:

[t]he purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission and the provision, enhancement, and maintenance of broadband services, recognizing that, historically, the incumbent public network functions to provide all

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<sup>4</sup> Broadband Bill, Section 12(3)(ii).

communications services including, but not limited to, voice and broadband services." (Emphasis supplied).

In essence, a plain language reading of the intent portion of the statute for the UCS Program, as modified, is to maintain "support" for the continuation of a multi-function telecommunications network.

Despite the Legislature's change to the scope of services where support is to be provided, it is clear that the UCS Program **is not** intended to become a grant or loan program for construction of new facilities. That function is covered by other aspects of the Broadband Bill. The UCS Program **is** a program for support of the network that is used to provide both basic telecommunications services and broadband services. This is a very important distinction that must be observed because the Commission's Notice seems to focus on broadband issues, particularly expansion, with little regard to and attention given to the continued provision of existing broadband and basic telecommunications services. Furthermore, without foundation, the Commission seems to be posing a series of policy questions that imply a predilection in favor of directing UCS Program support towards broadband expansion (construction) over the continued provision and maintenance of service (support) where it is already provided.

#### IV. CHANGES TO EXISTING RULES SHOULD BE CAREFULLY THOUGHT OUT

WITA strongly recommends that the Commission's review of its existing rules for the UCS Program should be guided by the long-standing principle set forth in the Hippocratic Oath: "First, do no harm." WITA members have invested tens of millions of dollars in establishing

networks that provide not only basic telecommunications service but broadband service as well. The telecommunications and broadband networks individual members have fashioned reflect a variety of approaches and capabilities. Some are completely fiber, while others are a hybrid of copper and fiber (predominantly fiber to the node). The exact architecture of each network is not material, but the continued ability to invest in, operate, and maintain such networks is decidedly relevant.

On a daily basis, the employees of the WITA companies install, maintain, repair, and replace elements of the networks that support the provision of telephone and broadband service. They also communicate with customers, educate consumers, maintain customer and network records, process billing and payments, troubleshoot problems, and oversee or are involved with a variety of other functions and processes necessary to ensure timely and effective provision of state-of-the-art telecommunications and broadband services. The costs associated with the people, equipment, vendors, and other inputs to delivery of telecommunications and broadband services should be properly acknowledged and supported under the UCS Program, as may be modified in this proceeding.<sup>5</sup> Although it may be intuitively appealing to consider the Legislature's extension of funding to support for broadband service as some sort of wholesale shift to funding for broadband network expansion, WITA respectfully suggests that such an approach runs counter to the modest modifications the Legislature applied to the program, modifications which retain much of the original intent language that maintains the program's role in "supporting" provision of service.

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<sup>5</sup> It is also useful to point out that these employees actively live and participate in the communities where they work. In many ways, at work and beyond, they are a vital part of the fabric of the communities where WITA companies provide telephone and broadband services. Ongoing UCS Program support is necessary to sustain the positive and impactful commitment they make on a daily basis in the communities they serve.

## V. WITA MEMBERS ARE DOING A GOOD JOB TRANSITIONING THEIR COMMUNITIES TO AN ONLINE ENVIRONMENT

Collectively, WITA members continuously focus on providing basic telecommunications service to those that need it and the provisioning, enhancement, and maintenance of broadband service throughout their service areas. Deployment of broadband differs across the varying service territories of the individual members. At any given point in time, some providers may be more focused on maintenance of broadband service rather than enhancement, given where their networks stand. For others, enhancement and expansion may be the key focus. For many providers, it will be a balance of all three elements. In no case should the Commission's rules harm or impair any of the existing providers and their networks. The Legislature's focus on provisioning, enhancement, and maintenance of broadband service is like the proverbial three-legged stool. Take one leg away and the stool is worthless.

The fact that WITA's members have in the past and will continue in the future to make broadband an integral part of rural Washington daily life should not be overlooked. For example, St. John's all-fiber network has enabled the growth of precision agriculture for customers of the company's broadband service. A crop duster can upload precise maps from his home to make his work more efficient and save costs. (Yes, a crop duster uses the Internet.)

ToledoTel recently completed the replacement of its copper network with gigabit ready fiber optic cable. As a consequence of the company's fiber deployment and enhanced broadband service offerings, a number of beneficial community impacts have materialized. A medical clinic was facing closure because certain requirements of the Affordable Care Act that requires



health records become electronic, were challenging its ability to comply. ToledoTel's gigabit capable network saved the clinic. Similarly, the Toledo branch of the Timberland Library now has gigabit connectivity available for its users and the Toledo School District was the first rural school district in the state to be able to access a gigabit connection. Finally, the availability of enhanced broadband service is having a substantive economic effect on the local economy, including the fact that people are actively considering and moving to Toledo to work from home so they can enjoy a rural lifestyle but remain economically productive and engaged.<sup>6</sup>

Similar effects are observable in other WITA company service areas. In Eatonville, there is a high proportion of elderly residents. For people of a certain age, the Internet can be a challenging proposition. Mashell Telecom has developed a hands-on learning exercise to introduce the Internet to senior citizens. The effort has productively increased social and economic interaction on the Internet by those elder citizens.

In Whidbey Telecom's service area, a national leader in grocery design and consulting, relies on gigabit broadband in support of its business interests across the U.S. for independent supermarkets, convenience stores, and delicatessens. Similarly, a photography business relies on robust internet connectivity (Whidbey's "BiG GiG Fiber Network") to create, assemble, and enable online access to photo galleries by its clients around the country. Meanwhile, a building design firm utilizes Whidbey's BiG GiG Fiber Network to engage in real-time video and employ audio-conferencing tools to seamlessly collaborate, coordinate permits, and transfer files with engineers and architects in the field.

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<sup>6</sup> It should be noted that connection costs for new homes is not insignificant. For ToledoTel, it averages \$4,800.00 a connection. In addition, even though ToledoTel's fiber network is relatively new, there are continued costs for electronic upgrades, annual software, license fees and equipment replacement.

Collectively, these examples and many others demonstrate the need to maintain and support the provision of broadband service within communities the WITA companies serve. The immediate and ongoing access to UCS Program support to sustain existing telecommunications and broadband services is vital to the economic, social, educational, and healthcare requirements of the communities served by WITA's members.

## VI. OTHER CONSIDERATIONS

Turning now to the changes brought by the Broadband Bill to the UCS Program, the Legislature added a new requirement, the submission of a plan. The question is what does the plan need to cover? Clearly, the plan is to address broadband. However, the plan that is to be submitted by the communications provider is a plan that the provider has adopted "to provide, enhance, or maintain broadband services in its service area."<sup>7</sup> The plan is not a plan to "provide, enhance, and maintain broadband services." The Legislature used the disjunctive so that the plan could be all about maintaining broadband, enhancing broadband services, or some combination thereof. The focus of the plan is something to be developed by each communications provider reflecting the unique circumstances surrounding the provision of broadband service within their respective service areas.

There is another important consideration to keep in mind. Financially the UCS Program is a very small program providing support in the neighborhood of \$5 million dollars per year over a new five-year period (assuming future legislative appropriations). By comparison, the Federal Communications Commission's ("FCC") recently announced Rural Digital Opportunity

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<sup>7</sup> Broadband Bill, Section 12(3)(ii) (emphasis supplied).

Fund is a \$20 billion program over ten years that only covers areas served by price cap carriers.<sup>8</sup> The modest nature of the UCS Program, relative to other state and federal broadband funding programs, is clearly recognized by the Legislature given the specific qualification that the Commission's rulemaking is to be "consistent with the size of the fund."<sup>9</sup> Accordingly, as the Commission addresses adding broadband as a supported service, and considers adopting rules for broadband provider eligibility, service performance and build out requirements, support amounts for maintaining systems, and methods to effectively and efficiently distribute program support to eligible providers, it is to do so "consistent with the size of the fund." WITA respectfully suggests that a wholesale shift in the funding from supporting services to a focus more on network expansion, as appears to be contemplated in the Notice, is directly contrary to the legislative intent regarding the fund's size. The Notice omits any reference to the Legislature's caveat that the Commission's actions must be "consistent with the size of the fund" when crafting its amendments to Chapter 480-123 WAC.

## VII. RESPONSES TO THE SPECIFIC QUESTIONS PROPOUNDED BY THE COMMISSION

In this section of the comments, WITA addresses the sixteen specific policy questions raised in the Notice.

1. Broadband Bill Section 11(1) (c) defines "Broadband Service" as "any service providing advanced telecommunications capability, including internet access and access to high quality voice, data, graphics, or video." This definition does not include a minimum speed. However, Section 18 requires the Commission to set support amounts for maintaining systems that meet federal or state broadband speed guidelines (25/3 Mbps).

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<sup>8</sup> See, FCC Order No. 19-77.

<sup>9</sup> Broadband Bill, Section 18(2).

Should the definition of broadband service in the rule include a specific speed or should it allow flexibility to accommodate future changes to the definition of advanced telecommunications?

RESPONSE: WITA strongly supports a flexible definition of broadband service for a variety of reasons and takes issue with the question's premise that the current federal or state broadband speed guideline is 25/3 Mbps. That premise is simply not correct.

The 25/3 Mbps broadband speed target is but one component of the FCC's guidelines associated with Connect America Funding (CAF). The 25/3 Mbps guideline is not a hard and fast guideline, nor is it the only guideline. For example, for rate of return carriers that have selected A-CAM as the basis of their CAF support each carrier has a specific number of locations where it is expected to provide 25/3, a specific number of locations that are expected to be at 10/1, and a specific number of locations that are 4/1 Mbps.<sup>10</sup> In some cases, there are more locations to provision at 10/1 than 25/3 Mbps. The number of locations that must be met at any particular speed is based upon density criteria and cost to provide service to various locations. Rate of return carriers that have not selected A-CAM support are required to progress towards 25/3 over a five-year period to a certain number of locations. That is a requirement that must be reached over a defined period of time for some locations, but certainly not today and not for all locations.

Similarly, for price cap carriers receiving CAF support, the current FCC requirement is 10/1 Mbps deployment for areas where program support is directed. Funding recipients will be

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<sup>10</sup> Further, some locations are subject to a reasonable request standard due to the very high cost to provide broadband service at those locations.

moving to a 25/3 Mbps standard under the Rural Digital Opportunity Fund, but it will be over ten years with support provided at more than \$20 billion over those ten years.

WITA members are doing a good job. Each company is meeting or is ahead of schedule in achieving the service performance and deployment goals the FCC has established for the type of federal support that the company receives. The important consideration is that for large and small carriers, the FCC's broadband speed goals are premised upon density and cost considerations facing the recipients of the support. WITA respectfully suggests that any state definition as contemplated in the question should be complimentary, not more rigorous than the federal definition, to the extent any specific target or targets may be deemed necessary or embraced. As the FCC's approach demonstrates, there must be flexibility involved with setting broadband performance objectives because of the complexities that rural companies face, lack of density and higher costs.

2. Section 12(1) of the Broadband Bill states that the purpose of the program is to "support continued provision of basic telecommunications services under rates, terms and conditions established by the commission and the provision, enhancement, and maintenance of broadband services."
  - a) Should the Commission interpret "provision" in the context of broadband, to include deployment of broadband where it currently does not exist?
  - b) Should the Commission interpret "enhancement" in the context of broadband to mean improvement of the reliability or speed of a current internet connection?
  - c) Should the Commission interpret "maintenance" in the context of broadband to mean ongoing repair and expenses related to offering broadband services as currently being provided?

RESPONSE: In response to subpart a) of this question, WITA respectfully suggests that "provision" simply means to provide broadband service. There is no suggestion that this means

installing broadband where it does not exist. The common definition of the word "provision" is "the act or process of providing" or "the fact or state of being prepared beforehand."<sup>11</sup> The term should not be construed to mean the deployment of broadband where it currently does not exist. As discussed previously, the statutory changes to the UCS Program do not reflect a comprehensive shift to a grant program to be used solely for construction purposes; it is much broader than that.

As set forth in the introductory portion of WITA's comments, the provision of broadband service is a very important public policy goal. It is bringing broadband access to customers in an environment that is increasingly centered on the use of the Internet for economic and social interaction. However, there are a myriad of issues that have to be met to accomplish that goal. This is no "one size fits all" solution. Network architectures vary. Construction issues vary. Densities vary. The Commission should not fall into a trap of focusing only on expanding service because the issues are substantially more complex.<sup>12</sup>

For the most part, WITA agrees with the Commission's interpretation of "enhancement" and "maintenance" as long as the Commission's interpretation of the term "maintenance" includes consideration of retiring indebtedness which has been incurred by the companies to be able to provide broadband service in the first place.<sup>13</sup> Over the past decade or more, WITA companies have been aggressively borrowing, investing in, and deploying network facilities to

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<sup>11</sup> Merriam-Webster online dictionary. See, [www.merriam-webster.com/dictionary/provision](http://www.merriam-webster.com/dictionary/provision).

<sup>12</sup> One complicating factor is that 3 megabits upload speed is very expensive to provision. While moving from 4/1 to 10/1 Mbps may be relatively feasible, getting to 3 Mbps upload may not be reasonable at some locations.

<sup>13</sup> WITA notes that in this portion of the Broadband Bill, the Legislature used "provision, enhancement, and maintenance," which it should. The support is available for each element of the service. This is contrasted with the use of the disjunctive "or" in describing what a communications provider's broadband plan should cover, which again is appropriate in that context.

enable and enhance conditions for broadband service in their service areas. In varying degree, the companies have undertaken substantial projects pushing fiber deeper into their network or, in some cases, fiber to the premise projects, did so by incurring very high levels of debt to enhance their networks.<sup>14</sup> Satisfying debt obligations is a very real aspect of “maintenance” or “enhancement” of the existing network despite the fact that such projects and their associated indebtedness precede the Broadband Bill’s incremental shift in focus to supporting broadband service. Retiring existing indebtedness incurred for network upgrades and expansion is a critical component of maintaining those networks in operation and providing service to customers.

3. On August 1, 2019, the Federal Communications Commission (FCC) conducted an Open Meeting in which it considered a Report and Order that establishes Digital Opportunity Data Collection. Under that Order, geospatial broadband coverage data will be collected from fixed providers and will ultimately be used in a two-phase reverse auction that will target \$20.4 billion to bring high-speed broadband to unserved areas (those lacking 25 megabits per second down and 3 megabits per second up, or 25/3 Mbps). Should the Commission rules be structured to include new data, ideas, or concepts identified through this, or other, data collection process? If so, how?

RESPONSE: In FCC 19-79, the FCC created the Digital Opportunity Data Collection program. This program requires facility-based providers to report data to the Universal Service Administrative Company (USAC) concerning the deployment of fixed broadband connections for use in the administration of the Universal Service Program and related matters.<sup>15</sup> The reporting is to begin six months after the Office of Economics and Analysis issues a public notice of the availability of the new USAC portal for reporting. Reporting continues with updates every six months after certain enumerated events. See, 47 U.S.C. 54.1401.

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<sup>14</sup> For example, Toledo's fiber to the premise project brought with it a loan obligation to the Rural Utilities Service ("RUS") in the neighborhood of \$18 million. Mashell Telecom's fiber to the premise project to a portion of its service area brings with it a debt obligation to the RUS in the neighborhood of \$17 million. St. John's project ended up requiring a \$10 million RUS loan.

<sup>15</sup> See, 47 U.S.C 54.1400 et. seq. as set forth in Appendix A to FCC Order No. 19-79.

The primary purpose of the Digital Opportunity Data Collection will be to establish company compliance with the FCC broadband goals. Contrary to what Question 3 of the Notice suggests, while it may be useful in the auction process established in FCC 19-77 (the Rural Digital Opportunity Fund for price cap service areas), that is unlikely to be its end goal. That said, WITA has no objection to its members providing copies of what each member files with USAC to the Commission, assuming the Commission can accept the data in the same format as it is filed with USAC.

To the extent the question suggests the Commission adopt data collection rules that are anticipatory or speculative at this time based on potential developments at the federal level, WITA objects. The notion that data collection rules could or would be amended at some point in the future for requirements that are currently unknown today is not proper rulemaking. Furthermore, if this question is teeing up data collection now for potential consideration of reverse auctions WITA also objects. The Commission lacks the statutory authority to conduct reverse auctions.

It is important to remember that the Broadband Bill requires the Commission to adopt rules that are "consistent with the size of the fund."<sup>16</sup> The Commission should not be considering or adopting standards that risk imposition of substantial additional costs on the communications providers without a direct and demonstrated need for such information.<sup>17</sup>

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<sup>16</sup> Broadband Bill Section 18(2).

<sup>17</sup> This question appears to conflate the FCC's order creating the Rural Digital Opportunity Fund (FCC Order No. 19-77) with the FCC's order creating the Digital Opportunity Data Collection program (FCC Order No. 19-79).



4. Under the current rules, a company's rate of return and return on equity are analyzed (among other factors) to determine if a company is eligible to receive support from the fund. Should this continue to be a factor in determining eligibility? What other information should be a factor in the Commission's determination of provider eligibility?

RESPONSE: WITA strongly believes the Commission's use of individual company's achieved rates of return and return on equity as threshold tests in determining eligibility for UCS Program support is antiquated and should be abandoned. As discussed previously, the Legislature has now extended UCS Program support to include broadband service, a service provided by WITA's members that has never been subject to rate regulation in any form and certainly has never been subjected to any type of rate of return or return on equity examination. There is simply no need to try to shoehorn a vestigial aspect of legacy regulation to determine prospective funding eligibility. WITA understands the Commission needs to adopt reasonable eligibility requirements as part of its continuing oversight of the UCS Program, but respectfully suggests that use of rate of return and return on equity assessments have served their purpose and should be retired.

5. The Broadband Bill requires a company seeking support to adopt a plan to provide, enhance, or maintain broadband services in its service area. Please comment on Commission Staff's preliminary recommendation that the broadband plan should include, at a minimum, the information listed below.
  - A five-year investments plan;
  - Locations where, using geospatial coverage data, the company proposes to undertake or is currently undertaking specific work to provide, enhance, or maintain broadband services at speeds that meet state or federal requirements;
  - High-quality fixed broadband coverage polygons depicting the areas where the company has a broadband-capable network and makes fixed broadband service available to end-user locations. The plan must include the maximum download and upload speeds actually made available in each area and the technology used to provide the service. The plan also should differentiate between residential-only, business-only, or residential and business broadband services. The company must

- submit a broadband coverage polygon for each combination of download speed, upload speed, and technology.
- The company's Form 477 Subscription Data at the census tract level. Data should be provided in the same form as it is provided to the FCC.

RESPONSE: To the extent the Commission desires to piggyback on the requirements of the FCC, WITA has no particular objection to the provision of the same information at both the federal and state level, if it is provided in the same format. WITA notes that the FCC is considering modifying or even eliminating Form 477.<sup>18</sup> The Commission's rules should be flexible enough to reflect that if the FCC's Form 477 is revised or eliminated, data no longer filed at the federal level should no longer be required to be reported at the state level.

WITA also believes that a five-year investment plan called for under the first bullet point of the question is unnecessary and does not provide any real guidance. Planning for capital expenditures really does not extend much beyond an eighteen-month horizon. A five-year plan is illusory and misleading. Indeed, the FCC has dropped its requirement for five-year investment plans. Companies really plan on an eighteen-month horizon, perhaps with some ultimate goals for action later down the line, but with no specific five-year investment plan. Even short-term plans are subject to material variation depending upon weather, construction problems and other factors which arise from year to year. At best, the Commission should ask for the capital expenditures that are expected to be undertaken for the coming year.

The second bullet point asks about filing geospatial coverage data for areas where the company "proposes to undertake or is currently undertaking specific work. . ." That is not an appropriate standard. The filing of geospatial coverage data, to the extent it is asking for what is

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<sup>18</sup> See, the Notice of Proposed Rulemaking contained in FCC 19-79.

filed with USAC, is for construction that has occurred, not what will occur. Asking to provide geospatial coverage data of what a company is proposing to undertake is asking for information that is just a guess at the future, and will be misleading and confusing

The third bullet point talks about coverage polygons. What is the Commission going to do with coverage polygons? To the extent this information is included in what is filed with USAC, it can be filed with the Commission as long as the Commission accepts it in the same format it is filed with USAC. Beyond that, trying to specify standards that are not included in the filings with USAC is both unnecessary and exceedingly costly.

Finally, with respect to broadband coverage polygons, WITA recognizes that the concept of differentiating between residential only, business only, or residential and business broadband services is built into what the FCC currently has in place. However, this approach is nonsensical. Like all other carriers, the telecommunications and broadband network that WITA members actively deploy is not differentiated between residential and business services. There is simply no need to develop a distinction for purposes of reporting on deployment.

6. Once location-specific data are available, a portion of program support could be distributed based on a company's ability to deploy to locations where the company does not provide 25/3 Mbps broadband service.
  - a) What portion of program support, if any, should the Commission direct solely at deploying 25/3 Mbps broadband service?
  - b) Should the Commission focus support on areas that are either "unserved" or "underserved"?
    - Should "underserved" be defined in this context as a location with an available speed less than 25/3 Mbps (or another speed, as determined by the Commission), but faster than 10/1 Mbps (or another speed, as determined by the Commission)?

- Should "unserved" in this context be defined as a location with an available speed equal to or less than 10/1 Mbps (or another speed, as determined by the Commission)?

RESPONSE: WITA's position is that the rules should not direct funding toward specific deployment speeds. No portion of the program support should be specifically directed at deploying service to locations that do not have a 25/3 Mbps level of service. However, applications for support could include capital investment proposals, if any, planned by the communications provider.

As noted in the Introduction, WITA's members are actively complying with the FCC's various CAF funding requirements by meeting deployment obligations at a certain number of locations (4/1, 10/1, and 25/3 Mbps at specified targets and locations within each member's service area based on density). WITA believes the \$5 million per year available through the UCS Program is simply too modest to think about additional deployments at any particular service level.

7. Broadband Bill, Section 12(3)(b) enables companies other than incumbent local exchange carriers (ILECs) to receive support from the fund under specified circumstances. What data/information should the Commission require of a non-ILEC communication provider to demonstrate that it is able to provide the same or comparable services at the same or similar service at a lower price than the existing ILEC?
  - a) How quickly should the Commission require a non-ILEC company to provide the applicable service?
  - b) Should the Commission enable a company to "submit" to Commission regulation of its service as if it were an ILEC?
  - c) How should the Commission regulate applicable service provided by a non-ILEC?

RESPONSE: The Commission should require non-ILECs to provide at least the same level of data that the ILEC provides. If the Commission is requiring geocoded data from the ILEC, the non-ILEC should provide geocoded data to demonstrate that it has the capability to provide the

services. The non-ILEC should also provide sufficient data and bear the burden to show that it is offering the same or comparable services as the ILEC, which is a statutory condition for accessing UCS Program support. The non-ILEC should provide data to show that it is offering the same or similar service quality standards and that its pricing is truly lower than that offered by the ILEC.

As to subpart a), there is no time element in the statute. The legislation does not say that the provider has to demonstrate that it "is able to provide the same or comparable services six months from approval." To be eligible, the non-ILEC has to be able to provide the services at the time it makes an application. There is no delayed compliance envisioned or allowed by statute.

As to subpart b), WITA is somewhat confused by this question. WITA does not understand what the Commission is asking when it uses the term "enable." The statute simply states that the provider must "submit to the commission's regulation of its services as if it were the incumbent local exchange company serving the exchange or exchanges for which it seeks distribution from the account."<sup>19</sup>

As to subpart c), the legislation is very clear. The non ILEC must submit to the Commission's regulation as if it were an ILEC. That means, at the very least, the non-ILEC has to file a tariff and it has to comply with all requirements of Chapter 480-120 WAC.

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<sup>19</sup> Broadband Bill, Section 12(3)(b).

8. The current distribution amount a company receives is the sum of the amount a provider received in 2012 from the former traditional Universal Service Fund established in Docket U-85-23, *et al.* and the cumulative reduction in support from the FCC's Connect America Fund. Should these two historical components continue to be used in calculating the future distribution amount an eligible company receives?

RESPONSE: Yes. One of the directives contained in Section 18 of Broadband Bill is that the Commission is to come up with rules that establish "methods to effectively and efficiently distribute program support to eligible providers." That is precisely what these two mechanisms do. These mechanisms are known and readily available. These mechanisms are measurable and predictable. These mechanisms have served the UCS Program well over the past five years.

These mechanisms were sources from which companies derived support for the construction and maintenance of the networks that provide telecommunications services and broadband services. Replacing these funding sources that have either gone away or are progressively going away, provides a mechanism to support each company's network that is at the heart of the UCS Program.

9. Should the distribution criteria have a multi-pronged approach? That is, should there be two components: one for maintaining broadband and another for deployment of broadband to new locations? If so, should there be a transition period?

RESPONSE: No. As discussed extensively in the Introduction, WITA does not support and strongly opposes any effort to bifurcate UCS Program support into separate portions for maintenance and costs of deployment to new locations. Splitting the program into two parts may well have unintentional consequences that could endanger the provision of broadband service and violate the concept of "do no harm."

10. What build-out requirements should the Commission adopt? How should build-out requirements be established? Because companies will be receiving additional funding, should companies have build-out requirements above and beyond these current federal build-out requirements? Should build-out requirements be uniform or company specific?

RESPONSE: Given the size of UCS Program funding relative to federal funding and actual service revenues, WITA strongly recommends that any state build-out requirements match those established by the FCC, which are set out above. There are not sufficient funds to adopt deployment goals that extend beyond federal levels.

WITA also objects to the premise of the question that UCS Program support is "additional funding." As explained previously, UCS Program support has been and continues to be a replacement of previously existing intercarrier compensation revenues that were adversely affected by past state and federal policy decisions. This is not and never has been new or incremental revenue.

11. WAC 480-120-110 outlines the information that must be included in a company's petition. Should the Commission revise that rule to modify the requirement to provide any of that information? If so, what information should the commission remove or add, and why?

RESPONSE: One of the requirements in WAC 480-123-110(1) that clearly needs to be deleted is subsection (d). The Legislature eliminated the requirement that there be a demonstration that the communications provider's customers are at risk of rate instability or service interruptions or cessation in the absence of support from the program. This requirement should be dropped.

Consistent with WITA's response to Question 4, the detailed financial information under WAC 480-123-110(1)(e) is not needed to the extent that it calls for material focused on the historical rate of return or return on equity. WITA suggests that the current Exhibit 4 be eliminated. An income statement and balance sheet (which are included in the Annual Report) are appropriate. A statement of capital expenditures made over a relevant period of time is appropriate.

The Commission does need to add a requirement for an eligible communications provider to submit the company's broadband plan. That is now set forth in the revised legislation. The Commission could also ask about the number of broadband customers that are served and at what speeds both as to capacity and as to actual service subscription.

12. WAC 480-123-130 outlines a provider's reporting requirements. Should the Commission revise this rule to modify any of these requirements? If so, which requirements should the Commission remove or add, and why?

RESPONSE: It appears to make sense to retain most of the existing reporting requirements.

However, WAC 480-123-130(1)(f) can be dropped. This item does not appear to be needed under the revised legislation. The number of broadband subscribers could be added to the report.

13. Available data on broadband deployment are currently limited to what companies report on the FCC's Form 477 data. Should the Commission require this data set to be expanded to include other information that the FCC or other third parties have, or will have in the future? If not, why not?

RESPONSE: If the geospatial data that is reported to USAC under the Digital Opportunity Data collection rules are reported to the Commission, WITA believes that should be satisfactory. In



addition, requiring the reporting of some unknown, speculative data set that might exist in the future violates rulemaking principles.

14. Should the Commission require companies to provide geocoded data as part of their compliance report to show how and where they propose to invest to enhance, maintain, or provide broadband service? If not, why not? Should the Commission require companies to provide any additional or other information to enable the Commission and the legislature to understand how companies are using program support?

RESPONSE: To the extent that companies submit geocoded data to the FCC, that data can be reported to the Commission. The Commission should not impose additional costs on recipients of the support program. Annual reporting under WAC 480-123-130(1)(b) will provide the Commission and Legislature with adequate information to understand how companies are using program support.

15. Once a company receives program support, should the Commission require the company to continue voice and broadband reporting throughout the program's operation, even if the company does not receive support in subsequent years, to ensure the Commission can timely identify served, unserved and underserved locations.

RESPONSE: For the Commission to require a company to continue reporting information where it does not receive support would place the Commission in violation of RCW 80.04.530(2). That statute states that any local exchange company that is exempt under this statute "shall not be required to file reports or data with the Commission. . ." While the Commission can tie certain levels of reporting to the receipt of support, it cannot and should not impose new reporting requirements unrelated to continued receipt of support.

16. The Advisory Board constituted under the current rules includes representatives from different types of stakeholders, including, but not limited to communications providers and consumers. What other stakeholders should serve on the Board under revised rules.

RESPONSE: WITA has no comments at this time.

## VIII. CONCLUSION

WITA appreciates the opportunity to provide initial comments on the policy questions posed in the Commission's Notice. Over its life, the UCS Program has provided necessary support for the continued provision of affordable telecommunications services while assisting WITA companies to provide advanced broadband facilities and services within their respective service areas. As discussed herein, WITA respectfully requests that the Commission amend its rules for the UCS Program, in a way which properly reflects the important, but modest, changes required for the program in the Broadband Bill, mainly extension, not the replacement, of the program and its funding to support telecommunications and broadband service. In WITA's view, any modifications to existing Commission rules should reflect the FCC's flexible service performance and availability standards, should acknowledge that the UCS Program is a support program for both basic telecommunications service and broadband services, and should not favor construction over maintenance or support of broadband service. WITA looks forward to working with the Commission to develop and implement appropriate rules consistent with the Broadband Bill.

WASHINGTON INDEPENDENT  
TELECOMMUNICATIONS ASSOCIATION

By: 

Betty S. Buckley, Executive Director