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February 25, 2005

VIA HAND DELIVERY AND ELECTRONIC MAIL

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-041629 – Possible Amendment of WAC 480-120-450

Dear Ms. Washburn:

In this letter, the Washington Independent Telephone Association (“WITA”) responds to a list of questions issued in the Commission’s January 14, 2005, Notice of Opportunity to Comment.

1. What are the policy reasons for treating wireline and wireless carriers differently or alike for purposes of recovery from PSAPs of the cost of transport to the selective router (WITA page 2)?

RESPONSE:

There are a number of differences between wireline and wireless networks that support a different policy approach between the two technologies. First of all, in order to encourage the advancement of wireless technologies, the FCC created much larger local calling areas for wireless carriers. The FCC undertook the action to deliberately differentiate between wireless carriers and wireline carriers. For a wireless carrier, the local calling area is the MTA (metropolitan trading area), not the local exchange area of the wireline carrier. The MTA is a broad geographic area. To take full advantage of this FCC-granted competitive advantage, wireless

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carriers often locate their switching equipment in the heavily populated areas within the MTA. These are also the areas that coincide with the location of the selective router. Therefore, the transportation costs to the selective router are quite low compared to the transportation cost to get from the local exchange calling area of a rural telephone company to the selective router. For example, the distance for transport from Inland's Prescott or Uniontown exchange, St. John's exchange, or Pioneer's exchanges to a selective router in Spokane are quite long, compared to a wireless carrier locating their switching equipment in Spokane and transporting from there to the selective router in Spokane.

This difference in regulatory treatment was advanced by the FCC as the policy basis for differential treatment between wireless carriers and wireline carriers for E-911 cost recovery. The FCC's decision is found in its CC Docket No. 94-102, Order on Reconsideration, FCC 02-146 (Rel. July 24, 2002) ("King County"). The FCC stated:

In US Cellular, the court sanctioned the Commission's disparate treatment of wireless and wireline carriers, stating that "an important difference in the way [wireless and wireline] service is regulated," provides "more than sufficient reason" for eliminating the cost recovery prerequisite for wireless carriers, despite wireline carriers' ability to recover their costs through PSAP tariffs.¹

The FCC further noted that incumbent local exchange carriers do not have the same ability as wireless carriers to recover their transport costs from end use customers.²

These are very important policy and practical reasons for the differentiation between wireless and wireline carriers.

¹ King County at ¶14, citing United States Cellular Corporation v. Federal Communications Commission, 254 F.3d 78, 87 (D.C. Cir. 2001).

² Citation.

2. How is the recovery of E 911 implementation costs and specifically transport to the selective router, presently handled with respect to customers of competitively classified telecommunications companies?

RESPONSE:

WITA is not aware of how competitively classified telecommunications companies are recovering costs for transport to the selective router. However, WITA notes that it is unaware of any prohibition against CLECs filing either a 911 tariff or a 911 price list provision for their operations and requiring the PSAPs to order out of those tariffs or price lists. If some CLECs have chosen not to implement E-911 price lists or tariffs, that is an independent business choice made by those entities.

WITA also notes that most CLECs locate their switching equipment in densely populated areas. This is done for a very practical reason: it is where competition can most efficiently exist on a wireline-to-wireline basis.³ And, the end result is that the CLEC switching equipment is located in the same communities as the selective router. This results in transport routes that are much shorter and transport costs that are relatively inexpensive compared to those faced by rural telephone companies.

2.a. What are the policy reasons for treating ILECs and CLECs differently or alike for purposes of recovery of the cost of transporting E 911 calls to the selective router?

RESPONSE:

WITA has no objection to CLECs establishing E-911 tariffs or price lists for the purpose of PSAPs ordering services from CLECs.

³ WITA's members are facing vigorous competition from wireless carriers, VoIP providers and, increasingly, cable modem. The cost of wireline-to-wireline competition in remote, rural areas appears to be a very difficult hurdle to get over. If a provider is not already in the area, such as through the construction of cell sites in major transportation corridors for the traveling public, or providing cable TV service, there does not appear to be an economic basis for building the facilities in rural areas.

2.b. Do competitive considerations favor treating CLECs and ILECs alike with respect to recovery of E 911 service costs?

RESPONSE:

There are no competitive wireline CLECs in WITA territory. Therefore, there are no competitive issues to consider.

In other ILECs territories, this question can only be answered if the cost to the CLECs of providing the transport is known. One would also need to ask why the CLECs have made the decision not to file E-911 tariffs or price lists. Given that CLECs tend to locate their switching equipment in near proximity to the locations of the selective routers, the transport cost to CLECs may be so low as to have no appreciable effect on competitive issues.

2.c. Should CLECs be entitled to charge PSAPs for the cost of transport to the Selective Router? If so, would those charges be subject to tariff or price list regulation; what kind of regulation should they be subject to?

RESPONSE:

See discussion above.

3. Please comment on EMD's statement at page 3 that:

Technology has changed and new providers have entered the telecommunications market, each making decisions on market service territory and call transport technology. These new providers may have switches in other states and ILECs have consolidated SRs to the point that only ten SRs serve Washington State. Therefore, the PSAPs should not have to pay for any connections on the telecommunications company side of the SR.

RESPONSE:

The statement by EMD is premised on a fallacy. The fallacy is that the decision to consolidate the selective routers is made by the ILECs.

First, none of the WITA companies have selective routers in their service

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territories. Additionally, WITA is not aware that any of WITA's companies have been involved in any decision to locate or consolidate selective routers.

Second, attached is a notice from Qwest concerning the latest consolidation of selective routers. It is clear from this notice that the consolidation is being done at the request of the State of Washington E-911 Office and the affected Public Safety Answering Points or PSAPs. If the decision to consolidate selective routers is at the request of the 911 providers, it is an absolute misstatement to say that it is the ILECs that have consolidated the selective routers. Further, this consolidation, apparently done at the request of EMD, is forcing rural telephone companies to route 911 calls over long distances. This is apparently done for the convenience of the 911 community.

An illustration may be helpful. In the case of Tenino, 911 calls do not go directly to a Thurston County PSAP. Instead, today, those calls are routed, at the request of the PSAP, to a selective router in Tacoma and then are routed back down to Thurston County. Tenino had no choice in this selection. The selection was made by Thurston County PSAP working in conjunction with other 911 providers. After the consolidation of the selective routers referred to in the attached document, those calls will be transported to Seattle, rather than Tacoma, and then back down to Thurston County, further exacerbating the transportation costs of routing 911 calls. Again, this is at the request of EMD and, apparently, the Thurston County PSAP. Tenino had nothing to do with it.

Thus, contrary to EMD's statement, WITA member companies have nothing to do with the choice of selective routers.

Second, it is apparent that the decision to consolidate selective routers is done at the request of EMD and the PSAPs, and is not within the discretion of the ILECs.

This statement by EMD also raises the hypothetical that some providers may have switches that are located outside the state. That statement is highly ironic given the attached letter concerning the consolidation of selective routers. Based on that letter, the Vancouver selective router will be consolidated into a Portland selective router at the request of EMD. This means that transport from, for example, Lewis River Telephone Company, will no longer go to Vancouver. It will instead have its 911 calls routed outside of the state to a selective router in Portland and then back to a PSAP in Clark County. EMD should not be heard to

complain about out-of-state transport when it is establishing such out-of-state transport for its own convenience.

4. In reference to the statement in EMD's comments on page 2 that

The WUTC has established access to emergency services (E911) as a basic service to be supplied for voice grade telecommunications customers.

4.a. Could ILECs recover the cost of transport to the selective router (SR) as part of basic service costs in the general rate base?

RESPONSE:

Absent the existing legislative decision that, on a public policy basis, this service should be tax supported, and assuming traditional rate-of-return, rate-base regulation where local rates are set as a residual, the answer is "yes." However, WITA is quite confused as to why this issue is even being discussed. The Legislature has, as a matter of public policy, established a system of taxation under which the costs of providing 911 service are supported by a tax on all telecommunications customers. Essentially, EMD is asking that an additional burden be shifted to those customers in the form of a hidden tax. Instead of creating a hidden tax, perhaps the 911 community should undergo a performance audit to determine the effectiveness with which it expends its current tax dollars. Certainly, the 911 community should demonstrate that it is spending those dollars efficiently before it seeks to shift an additional burden onto rural consumers.

4.b. Assuming that the cost of transport to the selective router was no longer recoverable through PSAP tariffs, could rural carriers obtain reimbursement from Universal Service Funds for transport to the selective router as part of the Basic Services requirement? (State Universal Service Fund)

RESPONSE:

No. There is no state USF fund that would allow recovery of this category of costs. The access elements that were created under U-85-23 and the Commission's terminating access rule relate to switched access and would not allow recovery of the costs of dedicated transport.

5. In reference to the statement in EMD's comments on page 2:

The Federal Communications Commission has also established E911 as the standard for access to emergency services (Attachments A&C). These standards apply to carriers offering local services regardless of the nature of the technology utilized or the regulatory classification of the company.

What cost reimbursement is there for access to emergency 911 services as part of the FCC's basic service requirements as part of the high cost support under the federal Universal Service Fund?

RESPONSE:

Review of this question is still ongoing. However, under existing rules for calculation of federal USF support, it does not appear that this expense can be included for federal Universal Service Fund cost recovery.

6. For your company (or companies), how much of the cost of E 911 service is attributable to transport from the end office to the selective router (either in terms of total dollars in Washington, or as a percentage of costs that you currently recovery through rates and charges paid by PSAPs)?

RESPONSE:

Information is still being gathered on this inquiry. However, from information already assembled from the companies, we can estimate the possible effect of switching the responsibility for transport to the selective routers to the ILEC. This data has not been compiled for all companies. However, it appears that the most expensive shift would occur with Inland Telephone Company (as calculated on a per-customer basis). Because of the geographically diverse nature of their four exchanges, and the fact that in some cases the E-911 providers have ordered redundant routing, shifting the cost to the Inland rate payers would result in an increase of \$1.60 per month per customer. While other cases may not be as large as this, it does appear that the increase in cost to the local customer is not insignificant.

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7. Please address the comments filed by others in the docket.

RESPONSE:

No comments at this time.

Sincerely,

RICHARD A. FINNIGAN

RAF/km
Enclosure

cc: Clients (via e-mail)