Introduction

The Washington Independent Telephone Association (WITA) applauds the Commission Staff for developing a creative approach to the issue of line extensions. The information that was presented to the industry and discussed at the March 7, 2000 workshop shows a creative and thoughtful approach to this matter.

The Supplemental Comments submitted by WITA will, however, point out that the Commission has questionable legal authority to adopt this proposed rule. WITA will suggest a solution to this obstacle.

In addition, as set out in its Comments of December 10, 1999, WITA continues to make three recommendations:

(1) The Commission should not isolate the policy of line extensions from the overall obligation to serve issue. In other words, this matter should be deferred and considered as part of the overall obligation to serve docket.

(2) The Commission should adopt a line extension policy which allows each company to craft solutions for its unique circumstances. There needs to be flexibility for each company. Each company faces a unique set of circumstances and can best craft a solution to that set of circumstances.

(3) The Commission should support universal service legislation that includes funding of extension of service to unserved areas.[1]

In these Supplemental Comments, WITA will offer suggestions for the rule language that the Commission might find helpful, if the Commission determines it should move forward with

[1] WITA recognizes that the Commission has adopted this policy in its approach to universal service legislation.

the rulemaking.

Legal Authority to Adopt the Rule: Problem and Solution

WITA has steadfastly maintained that the Commission does not possess legal authority to compel, by rulemaking, a change in the lawfully filed tariffs of a company. WITA will not belabor that argument at this time. Instead, WITA has a proposed solution that may fit this particular issue.

Adopting a rule which requires a company to amend its existing, filed tariffs is regulation by compulsion. In other words, it is regulation by the heavy stick approach. WITA believes that in this case a carrot can be offered which will be more effective. Instead of adopting a rule which mandates the change to lawfully filed tariffs, the Commission could adopt an Interpretive and Policy Statement. Within that Interpretive and Policy Statement, the Commission could set out certain standards that it believes are appropriate to meet the policy objectives of the Commission on line extensions. The Commission could articulate within that Interpretive and Policy Statement that if a company volunteers to change its tariff language on line extensions to be consistent with the Interpretive and Policy statement, then a company would be eligible for cost recovery as proposed in the Interpretive and Policy Statement. This approach would allow companies to make the choice. WITA suspects that most companies would choose to accept the carrot, since cost recovery is a major concern to all companies.

WITA would like to think that this is an original idea on its part, but it is not. This carrot approach is also used by the Rural Utility Service which offers loans on favorable terms and conditions to companies. If companies wish to accept that carrot, they must agree that for line extensions they will recover no more than a certain amount set out by formula in the Rural Utility

Service loan guidelines.[2]

Discussion of Proposed Rule

1. Section (1)(A).

In Section (1)(A), the proposed rule uses the "county urban growth area" as the magic line in defining what an extension of service constitutes. WITA agrees that a line is needed. However, as pointed out by Public Counsel at the workshop, the use of the county urban growth area is problematical. First, not all counties have established such areas. Second, many of the areas are subject to litigation at the present time. WITA suggests that the traditional "base rate areas" constitute the demarcation for purposes of this proposed rule. Most companies still have the base rate areas contained in their maps on file with the Commission. The companies are used to dealing with that concept, albeit it dates from some time ago.

On another matter, proposed Section (1)(A) excludes the customer drop from the line extension. WITA agrees with that exclusion. WITA suggests that the definition of a drop be modified slightly, since in some cases the drop does not start on the customer's property line. WITA acknowledges that in the vast majority of cases the drop does start at the property line, but the rule should not inadvertently exclude the exceptions. To this end, WITA suggests that the sentence related to drops be modified to read as follows:

> Extensions of service do not include customer drops, which are facilities such as wire, cable or fiber, from the company's distribution facilities, such as a pedestal, to the premises to be served.

2. Section (1)(B).

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[2] The existence of the RUS guidelines is another good reason not to adopt a rule, but instead adopt an Interpretive and Policy Statement. A rule that has cost recovery mechanism in it that is inconsistent with RUS guidelines would place companies that are RUS borrowers in an untenable situation - - they would either be in violation of the Commission's rule or in breach of their loan covenants.

Under Section (1)(B), the proposed rule encourages cooperation between wireline companies and radio communication service companies (wireless) in making line extensions . An issue that was raised in the Notice and in the discussion at the workshop was whether wireless service is reasonably comparable and is offered at reasonably comparable prices to services provided through wireline distribution facilities. It is WITA's position that, at the present time, mobile or cellular wireless services are not reasonably comparable nor are they at reasonably
comparable prices to the services provided by WITA's members.[3] The customers who were in attendance at the workshop underscored this issue pointing out that such wireless service is either unavailable or unacceptable because of its poor signal frequency.

This is an issue that WITA thinks the Commission should have given serious consideration to prior to designating a wireless company as an eligible telecommunications carrier. Since customers seeking service are complaining that wireless service is not readily available, this raises a substantial question as to whether the service meets the requirements for designation as an eligible telecommunications carrier.

The mechanism suggested in this Section is creative. However, for the next few years it is unlikely to be a workable alternative.

3. Section (1)(C).

In its Comments, Sprint suggested adding a Section (1)(C) to define a qualification that line extensions need not be provided to temporary service locations. WITA agrees with this comment. WITA suggests that language currently contained in YCOM Network's filed tariff is a good example of

[3] WITA does want to point out that its members do use wireless technology in some cases to provide service. That wireless technology is a fixed wireless application. As a fixed wireless application it is more likely to provide comparable services to wireline service than a mobile wireless application – for example, it is more likely to provide E-911 service.

language that could be used for this purpose.

4. Section (2)(A).

Turning to Section (2)(A), Sprint again had a very constructive suggestion. Sprint suggested adding a sentence to clarify that the full cost of the drop may be recovered by the company from the applicant. WITA agrees with that proposal.

5. Section (2)(B).

A key issue for consideration in this Section is the definition of "direct cost." At the workshop, Commission Staff clarified that in their view the term "direct cost" includes overheads. WITA is concerned that the term "direct cost" can be construed in a number of ways, including excluding indirect costs incurred by a company. Therefore, WITA suggests that the adjective "direct" be deleted and that the last sentence of (2)(B)(iii) be rewritten as follows:

> The cost of a line extension, for purposes of this rule, is the direct and indirect costs of the material and labor to plan and construct the facilities, including, but not limited to, permitting fees, rights-of-way fees, and payments to subcontractors. Such cost does not include the cost of reinforcement, network upgrade, or similar costs.

In setting out this revised language, WITA must also note that it disagrees with the concept that the cost of reinforcement should be excluded from cost recovery for the line extension.

The same definition should be carried over into Section (3) of the rule. Perhaps the easier revision is to delete the second sentence of Section (3). The definition contained in Section (2)(B)(iii) applies throughout the entire rule.

6. Section (3).

In Section (3), cost recovery is defined to exclude costs covered by payments from Federal Universal Service Funds. WITA points out that at the time a line extension is made, there is no recovery for that expenditure of funds from the Federal Universal Service Fund. Further, given the accounting treatment for the cost recovery under a special additive to access charges, no USF reimbursement for the construction costs of the line extension would be available in the future. Therefore, WITA believes that reference to Federal Universal Service Funds in the cost recovery mechanism induces an element of confusion that is unnecessary.[4]

This surfaces another issue. Whatever accounting is required to track the revenues received to reimburse the company for the expenditures it has made under a line extension proposal, the accounting should be as simple as possible to avoid imposing additional costs on the companies. Tracking of expenditures and revenues received to reimburse those expenditures is necessary. But the system of accounting should not be made overly complex.

WITA supports the suggestions made by Sprint for the language in the last paragraph of Section (3). WITA further suggests that this paragraph be modified by deleting the words "and in the public interest." If the Commission believes that the line extension program that it wants to place in rule is in the public interest, it evidences that belief by the adoption of the rule. Therefore, if

the tariff submitted by the company is consistent with the rule, it is by virtue of that consistency

[4] WITA is also concerned about the reference to the concept of "rural utility service grants." WITA is not aware of any such grants that are available for line extension purposes.

already in the public interest. A further public interest test is not required.

It is important to note that a company is unlikely to proceed with detailed engineering for construction of a major line extension without advance certainty of cost recovery. The concept of filing a tariff request after the company has obtained all permits necessary for construction for the line extension requires the company to potentially risk a substantial amount of money in pre-construction costs. A company may be unwilling to do so unless it has at least preliminary support for cost recovery.

Finally, two additional comments are appropriate in addressing the cost recovery issues. First, for a small company, a major line extension project may result in a very large addition to its terminating rate. In some circumstances, it may be more appropriate to use the WECA pool terminating rate as the source for the additional recovery. A relatively small increment on the WECA rate could produce the recovery needed by a small company. The second comment is that the rule may need to take into account accumulating a series of line extensions to allow for ease of administration. For example, a company such as CenturyTel or Sprint may have several line extensions occurring throughout the year. Using past history to forecast what those extensions would be in a coming year would allow the company to make one filing. This would cut down on administrative costs and make the system more efficient. If a forecast methodology is used, then a true-up to reflect actual costs could be incorporated as well.

7. Section (4).

This Section can be read as allowing the company in whose territory the unserved person resides to be able to force an adjoining company to serve that customer. The Commission does not have statutory authority to create a system in which one company may compel another company to serve a customer it may not want to serve when that customer resides outside of the

filed service area of the second company. WITA strongly recommends that this Section be rewritten so that it is clear that the second company (i.e.; the company whose serving area does not encompass the customer involved) has the ability to elect to provide the service, but is not obligated to provide the service.

8. Section (5).

As expressed at the workshop, WITA has substantial concerns with Section (5). Current practices related to service to developers seem to be working without major problems. WITA does not see need for a rule on this subject. Companies have varying approaches incorporated into their tariffs. That variety of approaches should be allowed to continue.

In addition, as competition grows in the residential market, competing companies will want to determine how to focus on providing service to developers. For example, one company may want to provide all of the infrastructure to a developer without cost to the developer as a means of gaining entry to that development. A rule that would mandate that the developer pays for such cost up front and receives a "late-comers" agreement appears on its face to be anti-competitive. The marketplace should be allowed to function in the relationship between developers installing subdivisions and competing local phone companies.

There are numerous administrative problems with "late comers" agreements. Developers come and go. They do not always remember to let the telephone company know where they have moved. Then they can reappear later demanding reimbursement. If a company is going to set up a "late comers" system, it should be the company's choice to do so and thus incur the attendant additional costs of tracking and administering a "late comers" agreement system. The Commission should not be in the position of imposing what can be substantial additional costs on companies.

9. Sunset.

At this point in time it is completely unknown what demand there is for additional line extensions. If there is an unanticipated wellspring of demand, it well may have an unforeseen and undesirable upward pressure on access rates. WITA suggests that the Commission proceed with a sense of caution. One way to proceed with caution would be to implement a sunset for the rule. In order to be able to react to the demand as it surfaces, a one or two year sunset on the rule may be very helpful.

Conclusion

WITA wants to again express its thanks to the Commission Staff for its willingness to listen to industry comments and come up with a very creative approach. It is WITA's position that although there may be a legal obstacle to adopting a rule on line extensions, a carrot approach can achieve the same objective. If action is needed now, WITA encourages the Commission to move forward with an Interpretive and Policy Statement that rewards companies for moving to a system that the Commission envisions, instead of trying to shoehorn companies into a particular mandate for a tariff.

WITA remains concerned that this issue should be best considered as part of the overall obligation to serve docket. However, WITA can fully understand a need to address such complex issues in smaller segments. The Commission needs, however, to be sure to keep in mind where its overall objective lies in the obligation to serve docket in considering this line extension proposal. This is yet another reason an Interpretive and Policy Statement is superior to a rule. There is more flexibility in later adapting the Interpretive and Policy Statement on line

extensions to the Commission's ultimate outcome on obligation to serve, than would be available by cementing the concept into a rule at this time.