

June 26, 2002

Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Telecommunications – Operations, Chapter 480-120 WAC
Docket No. UT-990146

Dear Ms. Washburn:

In its May 30, 2002 Notice of Opportunity to Comment on Proposed Rules issued in Docket No. UT-990146, the Commission invited written comments on a number of proposed telecommunications rules. In response to that Notice, the Washington Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) submits the following comments concerning proposed WAC 480-120-312, entitled “Universal service cost recovery authorization.”

Universal telephone service, which is generally recognized to mean the widespread availability of basic telecommunications services at reasonably affordable rates, has long been the policy of the State of Washington. TRACER supports this policy as being essential to the economic well-being of the state. Today, universal service is ensured through a variety of explicit and implicit subsidies contained in existing rates. TRACER supports the idea of replacing the existing implicit universal service subsidies with explicit intrastate universal service support to ensure that the availability and rates for basic telecommunications services in rural and high-cost areas of the state are reasonably comparable to the availability and rates for basic services in urban and lower cost areas of the state. However, TRACER believes that any change to the existing system for supporting universal service should be designed to minimize the shifting of contributions among end-user customers so that no customer, group of customers, or class of customers bears a disproportionately adverse change in its share of universal service contribution costs.

While TRACER believes that the intent behind the proposed rule is consistent with the principles discussed above, it also believes that the proposed rule is deeply flawed in a number of respects.

Subsection (1) of proposed WAC 480-120-312 would authorize local exchange companies to “seek authorization to establish explicit rate additives or elements to recover costs for support of universal service in high-cost locations.” The proposed rule then provides that the Commission may consider a number of factors in determining high-cost locations and the amount that may be recovered. Subsection (2), which is entitled “Portability,” provides that the Commission may use an incumbent LEC’s cost of providing service in a high-cost location as proxy for the universal service costs that a competitively classified company may recover through such explicit rate additives or elements.

The proposed rule does not define what services will be supported (i.e., what services are included within the scope of “universal service”). It does not specify what rates the universal service additive or element may be added to or the basis for calculating the additive (e.g., percentage of revenue, flat-amount per-line or connection, or flat amount per customer). Neither does it require a company currently recovering the costs of universal service through other explicit or implicit subsidies buried in existing rates to offset the revenue raised through the new rate “additives” by reducing those rates that contain existing universal service subsidies. Without such an offset, the proposed rule would allow incumbent LECs to reap a windfall. Also, given the reference to “portability,” it is unclear whether the proposed rule contemplates the establishment of a universal service “fund” that would be used to transfer money from one company (and its customers) to another company (and its customers). Finally, since the rates of competitively classified companies are not subject to active regulation by the Commission, it is unclear why a competitive company would need Commission approval for any rate additives or elements such a company chooses to impose on its customers. All of these shortcomings in the proposed rule should be corrected.

More importantly, to the extent that the proposed rule purports to authorize anything other than simply identifying the portion of an existing rate that currently provides implicit support for universal service as an explicit source of such support, it would constitute a *new* state universal service program in violation of RCW 80.36.600, .610, and .620.

RCW 80.36.600(1) provides that the “commission shall plan and prepare to implement a program for the preservation and advancement of universal telecommunications service *which shall not take effect until the legislature approves the program.*” (Emphasis added). RCW 80.36.610(1) provides that “the commission’s *authority to either establish a new state program or to adopt new rules to preserve and*

Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
June 27, 2002
Page 3

advance universal service under section 254(f) of the federal act *is limited to the actions expressly authorized by RCW 80.36.600.*” (Emphasis added). That subsection also provides that “new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act to not take effect until the legislature has approved a state universal service program.” Finally, RCW 80.36.620 provides that “[a]ny rules regarding universal service adopted by the utilities and transportation commission shall comply with the purpose, as stated in RCW 80.36.600, for establishing a program for the preservation and advancement of universal telecommunications service. Services to be supported are only those basic services defined in RCW 80.36.600(7).” It is evident that the proposed rule, WAC 480-120-312, and the program it contemplates do not comply with these requirements.

For these reasons, TRACER recommends that the proposed rule be stricken. Alternatively, TRACER submits that the proposed rule should be rewritten to simply authorize a LEC to seek authorization to identify implicit support for universal service contained in existing rates as explicit universal service support. Such a revised rule might read as follows:

Local exchange companies (LECs) may seek authorization to explicitly identify implicit support for universal service that is contained in existing rates by designating a portion of such existing rates as universal service support in its bills to customers. In determining the portion of existing rates that may be explicitly identified as universal service support, the commission may consider the cost of providing basic services, as defined in RCW 80.36.600(7), in high-cost locations, the comparability of rates between rural and urban areas, per-customer revenue, the margin in existing rates above underlying cost, and such other factors as it considers necessary.

Respectfully submitted,

ATER WYNNE LLP

Arthur A. Butler
Attorneys for TRACER