



May 5, 2014

VIA ELECTRONIC FILING

Mr. Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, Washington 98504-7250

Re: Docket UT-131239 – Universal Communications Service Program Rulemaking

Dear Mr. King:

The Washington Independent Telecommunications Association (WITA) welcomes the opportunity to submit these comments concerning the proposed rules to implement a state universal communications service program. WITA appreciates the substantial progress that has been made on the draft rules to date. The Commission has given careful consideration to many of the thoughts raised by WITA in past comments on this subject and WITA appreciates that accommodation.

As a result, there are a limited number of issues that WITA will address in these comments. In WITA's view, the suggested changes that follow are refinements, not a major rewrite, of the proposed rules. The issues include timing matters, redundant or duplicative reporting and the urban rate floor/benchmark.

On the issue of timing, draft rule WAC 480-123-120 makes the following statement: "The commission will authorize distributions from the program on a calendar year basis." The problem related to timing comes up with the use of the term "calendar year" as the basis for distribution. Under the current legislation, it appears that the universal communications service program as created by the Legislature is on a fiscal year basis running from July 1 through June 30 for five years.¹ By calling out in the Commission's rules that distributions are on a calendar year basis, the draft rules create an internal conflict that would allow those who are disenchanting with the program to challenge the fifth year distributions with the following argument: (1) the distributions cannot extend beyond June 30 of the fifth year; (2) a calendar year basis necessarily runs beyond June 30; and (3) therefore, the fifth year distributions must be reduced by fifty

¹ The reference to calendar year also occurs in draft WAC 480-123-110(4). This should also be changed to fiscal year.



percent. To be conservative, WITA suggests that the rule language reflect a fiscal year basis rather than a calendar year basis.

Still focusing on proposed WAC 480-123-120, the Washington Exchange Carrier Association (“WECA”) points out in its comments in Docket UT-971140 that terminating the traditional USF rate element as of June 30, 2014, and making the distribution from the new universal communications service program in January of 2015, creates a cash-flow problem. That problem can be addressed by modifying the language of proposed WAC 480-123-120 to allow a one-time payment related to the termination of the traditional universal service fund access rate element earlier than January of 2015, specifically in late October, 2014. Sample language is provided after discussing one more issue concerning WAC 480-123-120.

The next item concerning this proposed rule is the language in proposed WAC 480-123-120 that reads “Each eligible provider will receive a single distribution for the year after January 1 of that year.” (Emphasis supplied). The use of that language technically means that the distribution could be made as late as December 31 of the year. WITA suggests that a better delineation of the date of distribution be made is beneficial. Perhaps something along the lines of “Each eligible provider will receive a single distribution for the fiscal year between January 1 and January 15 of that year” may suffice.² It is import for companies to have certainty as to when the distributions will be made. Since the funds are already available to the Commission, there does not appear to be any reason not to be more specific.

Taking these three items into account, the first paragraph to draft WAC 480-123-120 could read as follows:

The Commission will authorize distributions from the program on a fiscal year basis. Each eligible provider will receive a single distribution for the year between January 1 and January 15 of that year; provided, that, there will be a one-time distribution related to the termination of the traditional universal service fund access rate element approved in Docket UT-971140 between October 15 and October 31, 2014, to address cash flow issues created by the termination of the traditional universal service fund access rate element on June 30, 2014.

Another issue is the incorporation of the urban rate floor in WAC 480-123-100(1)(d) as threshold requirement. WITA recognizes that it had suggested in prior comments that the urban rate floor be used as the benchmark. However, given what has recently happened at the Federal

² Please note the addition of “fiscal year” to define the time period to which to program distribution applies.

Communications Commission (FCC) with the urban rate floor, WITA now questions whether the urban rate floor as a floating target is the appropriate benchmark.

The FCC initially established the urban rate floor for 2014 as \$20.46. While the FCC has apparently reconsidered this step,³ \$20.46 as a benchmark does not make sense. It is just too high. In addition, WITA has severe reservations about the accuracy of that number. There is scant information available on how the rate was calculated. In reviewing the survey used by the FCC, it does not appear that demand quantities were taken into account. Thus, the FCC apparently used some sort of averaging of bare rates without consideration of the demand which would go into a weighted average.

The FCC has recently released a description of its methodology and a list of rates from its survey. However, it is not clear which rates on the list of data were used. Thus, it is impossible to verify, at this point in time, the FCC results. For example, many of the rates on the FCC's released list include unlimited long distance. Use of such rates would be inappropriate.

As a result of the issues surrounding the current FCC publications related to the urban rate floor, WITA suggests that the benchmark be the urban rate floor in effect in 2013, or, as an alternative, the average of the stand-alone residential rate paid by the customers of the two largest incumbent local exchange carriers in the state of Washington calculated as a weighted average. A second alternative would be to use the urban rate floor rate that is used for the measurement date for January 2, 2015, which is now expected to be \$16. WITA believes that any one of these three surrogates for a benchmark is superior to the 2014 urban rate floor announced by the FCC given the lack of transparency in the FCC's calculation of the rate.

On a related note, WITA also has a concern about using the benchmark as an eligibility threshold. WITA's prior comments, which are reiterated here, were to the point that a company should have the choice of moving to the benchmark or not without the benchmark being a threshold for eligibility to draw from the fund. If a company does not move to the benchmark, then an amount would be calculated as to what it would have received from its customers had it moved to the benchmark and that amount is subtracted from what it is otherwise eligible to draw from the program. WITA believes that this use of the benchmark is a more equitable approach and allows the companies the greatest flexibility to deal with issues in each company's service area.

There is also the question of when companies will know what they will be receiving from the program. This is important so companies can properly post accruals for their financial statements. It is not necessary to have language in the rules, but perhaps the Commission can state in its adoption order that the carriers will be notified of their approved distribution by December 1 of the fiscal year in which the distribution will occur.

³ Exactly what steps the FCC has taken are not yet known in detail at this time.

WITA is concerned that there is duplicative reporting contained in the Commission's proposed universal service program rules. In proposed WAC 480-123-110(1)(e), it appears that subparts (i), (ii), (v) and subsection (f) are each asking essentially for the same information. An income statement and balance sheet are included in RUS Form 479. FCC Form 481 includes either the income statement and balance sheet from RUS Form 479, or an income statement and balance sheet in the same format as RUS Form 479, or an income statement and balance sheet based on audited results. In addition, the audited financial statements or reviewed financial statements, depending on the company situation, are used to prepare Form 479 and Form 481. Obviously, all this reporting gets somewhat circular. In any case, it is duplicative paperwork to submit the same material multiple times.

To address the goal of reducing redundant filings, WITA suggests that draft WAC 480-123-110(3) be expanded to include a reference to copies of FCC reports that are filed with the Commission. For example, FCC Form 481 will be filed annually with the Commission under the FCC's rules. As currently written, WAC 480-123-110(3) references only material filed with a company's application for certification. That reference should be expanded to include any information already on file with the Commission.

The reference can be accomplished by making the following change to draft WAC 480-123-110(3):

(3) Information already on file with the commission. To the extent that the provider has filed any of the information required under this rule (~~(in conjunction with its application for certification as an eligible telecommunications carrier)~~), the provider need not include that same information in its petition so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

There appears to be a small typographical error in draft WAC 480-123-100(1)(b) and a small addition needs to be made to that language. That language now reads "the provider is an incumbent local exchange carrier as defined in 47 U.S.C. Sec. 253(h)." The reference should be to Section 251 rather than Section 253. In addition, since Section 251(h) is tied to the date the Telecommunications Act of 1996 was passed, using that language would exclude a provider that became an incumbent local exchange carrier after the date of enactment of the Telecommunications Act of 1996. Therefore, WITA suggests that draft WAC 480-123-100(1)(b) be rewritten to read as follows: "The provider is an incumbent local exchange carrier as defined in 47 U.S.C. Sec. 251(h) or has been designated as an incumbent local exchange carrier by the Federal Communications Commission."

If the Commission takes action to terminate the traditional universal service access rate element on June 30, 2014, there is still additional work that must be done by WECA after that date, in order to terminate the pool activities. Current contracts as approved by the Commission related to WECA's administration of the pool contain procedures that must be followed to

true-up the activities related to the traditional universal service fund access rate element, including the conducting of audits and other actions. While not huge, the cost associated with these matters are significant. Therefore, WITA suggests that proposed WAC 480-123-120(2) be expanded to add a subsection (c) that would read as follows:


(c) The administrative costs related to the termination of pooling activities authorized in Docket UT-971140 under a budget approved by the Commission.

As a final matter, WITA was struck by the two references to providing a report on the company's business plan to implement operational efficiency and to transition from the provision of legacy voice service to broadband service. Those references occur in proposed WAC 480-123-120(1) and proposed WAC 480-123-130(1)(f). WITA is compelled to point out to the Commission that the provision of broadband service in rural areas is a very expensive, capital intensive proposition. It requires constant upgrades to equipment. It requires the acquisition of ever increasing amounts of bandwidth at what can be very expensive prices. The transition to broadband will not be an inexpensive proposition. To the extent that the word "efficiency" is meant to imply operating at a lower cost, the Commission is building into the rule an unrealistic expectation. It actually may be more expensive in rural areas to operate a broadband network than to operate the legacy voice network.

On this point of providing a written report on the transition to broadband, WITA notes that the Commission will be getting annually each company's five-year plan set out in the FCC Form 481 filing. That five-year plan contains substantial information about deployment of broadband. As a result, the additional narrative is not needed. The FCC Form 481 should supply sufficient information.

Thank you for the opportunity to submit these comments. WITA looks forward to further discussion at the rulemaking hearing on May 15.

WASHINGTON INDEPENDENT
TELECOMMUNICATIONS ASSOCIATION

By: 
Betty S. Buckley, Executive Director