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Log file

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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September 12, 2002

The Honorable Timothy Sheldon  
Chair, Senate Economic Development and Telecommunications Committee  
Washington State Senator  
408 Legislative Building  
Post Office Box 40435  
Olympia, Washington 98504-0435

The Honorable Jeff Morris  
Chair, Technology, Telecommunications and Energy  
Washington State Representative  
Mod 1 Building – Room 103  
Post Office Box 40600  
Olympia, Washington 98504-0600

The Honorable Larry Crouse  
Ranking Minority Member, Technology, Telecommunications and Energy  
Washington State Representative  
429 John L. O'Brien Building  
Post Office Box 40600  
Olympia, Washington 98504-0600

**Re: Universal Service Authority**

Dear Senator Sheldon, Representative Morris, and Representative Crouse,

Thank you for your letter of September 4 regarding a proposed rule that explains how telephone companies can collect enough money to keep rates affordable in any high-cost areas where they provide service. We appreciate your interest in this topic, because we have consistently advocated that universal service policy should be established through the legislative process. As we lay out in this letter, however, we are concerned about the implications of the legal interpretation that appears to underlie your letter.

*RM*



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We are well aware that the Legislature has prohibited us from implementing any new universal service program, and we respect the limitations established in law. However, we must do so while also complying with the law's policy directive to advance universal service.

As you may recall, even when the bill was being considered we expressed concern that the limitations were unclear. In response to these concerns, Representative Crouse (then the committee chairman) and Representative Poulsen (then the ranking minority member) engaged in a floor colloquy stating that the bill did not limit the WUTC's authority to promote universal service through the rates each company charges for its own services:

**Representative Poulsen:** As you know, universal service is already a part of the telecommunications policy of this state. Under existing law, the Utilities and Transportation Commission can promote universal service in its regulation of rates and its adoption of rules applying to regulated services and companies. What effect, if any, do sections 1 through 3 of Engrossed Substitute Senate Bill No. 6622 as amended by the House have on the existing authority or responsibility of the Utilities and Transportation Commission?

**Representative Crouse:** Sections 1 through 3 have no effect on the existing authority or responsibility of the Utilities and Transportation Commission. Those sections direct the commission to develop a new mechanism for universal service, which cannot go into effect without further legislative action, but those sections neither increase nor reduce the commission's authority and responsibility under existing law to promote universal service in the commission's regulation of rates and adoption of rules.

The proposed rule is based on that understanding of the limitations imposed by SB 6622, i.e., that we are not to initiate a new universal service program but that we are not prohibited from setting the rates of individual companies in a way that promotes universal service. Indeed, we believe the law not only allows this but that the Legislature has given us the mandate in RCW 80.36.300 to use rate-setting authority to advance universal service.

The proposed rule is not a new universal service program and is not prohibited by SB 6622. Rather, it describes, for the benefit of regulated companies and other stakeholders, how companies can pay for basic service to customers in high-cost areas. The method described relies entirely on each company covering its own costs through charges for its own services, and it states the factors that would be considered in evaluating a proposed rate. It relies entirely on the rate-setting authority that the WUTC already had, and that was not limited, when SB 6622 was enacted.

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This rule was proposed because the state Administrative Procedure Act and Governor Locke's Executive Order 97-02 encourage state agencies to codify in rule existing informal policies or practices. Today telephone companies are collecting a substantial amount of money for service to high-cost areas with no formal explanation of how the specific amounts are calculated.

Telephone companies today collect from long-distance companies about \$110 million per year for universal service, using mechanisms of the type described by the proposed rule. If instead the customers in high-cost areas paid the actual cost of basic telephone service, local rates could be as much, for example, as \$86 per month in Brinnon, \$53 per month in Acme, and \$65 per month in Elk. In other parts of Washington, the local rate could be \$400 per month or more, according to the 1998 study that we did at the Legislature's request. Rates would increase for almost 400,000 residential customers and 35,000 business customers in rural areas and small towns. (By comparison, the current average residential phone bill is about \$30.00 per month.)

We want to emphasize that the telephone companies collect this money in the rates they charge for the services they provide. The money is not collected through a government tax and is not distributed through a government program. This method of keeping rural rates affordable has been used since the 1980s. The specific amounts were increased in 1998 to include the full cost of serving high-cost areas and to include the high-cost areas of U S WEST (now Qwest) and GTE (now Verizon).

While this method has been quite successful in keeping rural rates reasonable, it contributes to higher charges for in-state long-distance calls. All of the telephone companies choose to collect their high-cost amounts in the access charges they collect from long-distance carriers. The "explicit rate additives" are paid by long-distance companies, rather than by retail consumers, but it is reasonable to assume that the long-distance companies pass this cost through to consumers. This adds about 3 cents per minute to the long-distance rates paid by all consumers in Washington. Some very large businesses are able to avoid much of this cost by bypassing the switched long-distance network.

The proposed rule was drafted to make explicit our universal service practices, but your letter and other stakeholder comments demonstrate that so far it is generating more heat than light. The draft language was distributed to stakeholders more than a year ago, and during the rule making process it has been modified in response to stakeholder comments. In response to comments made at the August rulemaking hearing, we scheduled a workshop (now set for October 4, 2002) to discuss, in an open, collaborative fashion, the stakeholders' concerns. This discussion will take place with the understanding that the rule is not substantively necessary, as evidenced by the fact that

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every incumbent local exchange company is already engaged in the practice that the rule would authorize.

We also hope that participants in the workshop will discuss the broader implications for universal service that are raised by your legal interpretation. Almost all of our state's current universal service rates were implemented after SB 6622 was enacted, and it is difficult to see how the rates could comply with SB 6622 if a rule authorizing those rates does not. If we have gone further than SB 6622 allows, it may be necessary to shift \$110 million of explicit universal service revenues from long-distance rates to the local rates of customers who live in high-cost areas. This concern remains even if the rule were to be dropped. We would welcome your participation in this discussion, either at the workshop or in any other forum.

Thank you again for your letter and your interest in universal service issues. These are complex legal and policy questions, and we look forward to working with you to resolve them for the benefit of our state.

Sincerely,



Marilyn Showalter, Chairwoman



Richard Hemstad, Commissioner



Patrick J. Oshie, Commissioner

cc: The Honorable Gary Locke, Governor