BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Eligible Telecommunications Carriers (ETC) Rulemaking, WAC 480-120-311	))	Docket No. UT-053021

COMMENTS OF THE WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

For the reasons stated in these Comments, the Washington Independent Telephone Association (WITA) respectfully requests that the Washington Utilities and Transportation Commission (Commission) not move forward to the CR 102 process with the draft rules in their current form. The draft rules present a commendable start to this process. However, they represent just a start and need substantial changes prior to moving forward to a CR 102 process. WITA will first offer a comment on the process that has been used in this rulemaking. Then, WITA will turn to the language of the rules in the draft form.

I. Comment on Process.

Rulemaking should be an open process. This particular rulemaking started by calling for industry comments and a conceptual workshop where broad ideas concerning the rulemaking were discussed. These were good steps at the beginning of an open process. However, that open process did not continue.

Instead, no further communication was heard from the Commission or Commission Staff after the workshop until the draft rules were issued on October 21, 2005. The Commission and its Staff took over three months from the date of the

workshop to issue draft rules. The Commission left the industry with just three weeks in which to try to review, understand and comment on the proposed rules. This is not an acceptable process for developing rules on an important subject.

II. Comments on the Proposed Rules.

In these Comments, WITA will address the substantive rules first and will turn to the proposed WAC 480-123-0010 Definitions as the last item for comment.

A. WAC 480-123-0020 – Contents of Petition for Eligible Telecommunications Carriers.

The Commission's proposed rules on this subject do not go into anywhere near the depth that the Federal Communications Commission (FCC) contemplated in its ETC Designation Order.[1] The Commission's draft rules are very general. In comparison, the FCC was quite specific. The Commission should give strong consideration to the FCC's more specific standards. For example, the FCC found that as a basic part of an application, the ETC applicant must submit a plan that shows how high-cost support will be used for service improvements that would not occur absent receipt of such support. As stated by the FCC:

> This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where improvements will be made; and (4) the estimated population that will be served as a result of the improvements.[2]

The FCC went on to require that this information be provided for **each** wire center in **each** service area for which the applicant expects to receive universal service support or

[1] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (Released March 17, 2005) ("ETC Designation Order").
[2] ETC Designation Order at ¶23.

an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of support it services in that area.[3]

In addition, the FCC adopted a requirement that an ETC applicant demonstrate that the applicant offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation.[4] Nothing at all about local usage requirement is mentioned in the draft rules.

The FCC also required that an ETC acknowledge that in some circumstances it must stand ready to assume the responsibility of providing equal access.[5]

The FCC required that an ETC applicant make specific commitments to provide service to requesting customers in the service area for which it is designated as an ETC. Specifically, the FCC stated that where the request comes from a potential customer within the applicant's licensed service area, but outside its existing network coverage [read this to apply to wireless applicants] the applicant should provide service within a reasonable period of time if service can be provided at a reasonable cost by:

(1) modifying or replacing the requesting customer's equipment;
(2) deploying a roof-mounted antenna or other equipment;
(3) adjusting the nearest cell tower;
(4) adjusting network or customer facilities;
(5) reselling services from another carrier's facilities to provide service; or
(6) employing, leasing or constructing an additional cell site, cell extender, repeater or other similar equipment.[6]

The proposed rule is inadequate in its failure to meet the standards established by the FCC. In a time where concern is growing over the rapid increases in the size of the

[3] Ibid.
[4] ETC Designation Order at ¶32.
[5] ETC Designation Order at ¶36.
[6] ETC Designation Order at ¶22.

fund, increases which are driven by recent wholesale designation of competitive ETCs,[7] the Commission's proposal falls far short. It may be helpful to reference Chairman Martin's concerns about fund size caused by growth of support for CETCs. Chairman Martin's comments are attached as Exhibit 1. Please see page 4 of the comments.

WITA also notes that the Commission has not, apparently, given any consideration to the detailed comments presented by WITA concerning the application of quality of service standards. As pointed out in those earlier comments, the Commission's proposed rules are not technologically neutral if burdensome quality of service rules are imposed on wireline ETCs, but not wireless ETCs. Either both technologies must meet quality of service standards, as they apply on an appropriate basis for that technology, or, neither technology should be held to specific technical standards, but only the general types of standards that the Commission apparently seeks to apply to wireless ETCs. WITA attaches its earlier comments as Exhibit 2 for the Commission's consideration.

There is another consideration that the Commission should look at. If a carrier is applying for ETC status where it is seeking support for Lifeline[8] service only, and is not seeking high-cost support funds, it may be appropriate that the applicant should be held to a lesser standard than an applicant for support from the federal high-cost fund.

B. WAC 480-123-0030 – Approval of Petitions for Eligible Telecommunications Carriers.

The Commission states that the application will be approved if it is in the public interest. However, there is no discussion of what it is that would constitute the public

[7] See, Comments of OPASTCO and Balhoff & Rowe, LLC filed September, 2005, in the FCC's Universal Service docket, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45. These Comments point out that the support for incumbent ETCs has flattened in recent times and it is the increase of support flowing to competitive ETCs that is putting increasing pressure on the size of the fund. As Balhoff & Rowe point out, CETC support has grown from about $124 million in 2003 to $708 million estimated for 2005.

[8] All references to Lifeline should be read to include the Link-up aspect of the program.

interest. This is markedly different from the detailed description by the FCC of how it will evaluate the public interest. WITA recommends that the Commission delay moving to the CR 102 stage in this rulemaking so that a more detailed process can be worked out. WITA is willing to participate in the development of that process.

C. WAC 480-123-0040 – Revocation of Eligible Telecommunications Carrier Designation.

In this proposed rule, the Commission states that it may modify, suspend or revoke the designation of an ETC if it determines that the ETC "is not operating in a manner that is consistent with the public interest." Such an open standard for affecting the status of a company that allows access to millions of dollars of support is not consistent with due process standards. There is no prior notice of the conduct that may place the status and the receipt of the funds in jeopardy. Making a determination that a specific act or conduct "is not consistent with the public interest" during a proceeding to determine whether or not the ETC status should be modified, suspended or revoked does not meet due process standards. WITA recommends that the Commission not move to a CR 102 process until more detail is provided on what standards and process will apply in this "revocation" setting. WITA is willing to participate in the development of the standards and process.

D. WAC 480-123-0050 – Annual Certification of Eligible Telecommunications Carriers.

WITA notes that this rule is dependent upon the language that is ultimately adopted for proposed WAC 480-123-0060 and 0070.

E. WAC 480-123-0060 – Annual Certifications and Reports.

1. NECA Reports – Subsection (1)(a).

In Subsection (1), the draft rule allows an alternative form for complying with the filing requirements in the rule for ETCs that receive support based on filings made with the National Exchange Carrier Association (NECA). This provision is apparently proposed as a direct result of the strong pitch made by WITA that there are very major differences between how an incumbent ETC receives federal universal service support and the basis for that support and, on the other hand, how a competitive ETC receives its support. An incumbent ETC receives federal high-cost support only for investments and expenses it has actually made, with the support received on a two year lag basis. This means that the facilities that are receiving support have already been constructed and have been in use for a period of two years. On the other hand, a competitive ETC receives support based upon the incumbent's cost structure and does not have to have facilities reflecting the amount of support it receives constructed and in operation. Thus, a retrospective look at an incumbent ETC and a prospective look at the competitive ETC recognizes the differences between how each is funded and the basis for that funding. This is a good, positive step forward.

There are, however, some ambiguities in the proposed rule language. For example, the language says that where ETCs "receive support based on filings made with the National Exchange Carrier Association (NECA) in its role as a contractor for the Universal Service Administrative Company…." Not all filings that are made with NECA that may have some use in defining high cost support are necessarily filed with NECA

"in its role as contractor for the Universal Service Administrative Company."[9] Further, the rule says that all material that is provided to NECA must be provided to the Commission. That requirement is an overkill in the amount of information that would be provided. For example, if NECA conducts an audit of a company and finds that as a result of that audit that everything is in order, why should the reams of material that constitute the NECA audit have to be submitted to the Commission?

It should also be clear that the Interstate Common Line Support (ICLS) is not part of the state certification process. The ICLS certification process is separately stated in the FCC's rules. 47 C.F.R. §54.904. This requires a certification separate and distinct from the high-cost support certification. The certification is made at the federal level, not the state level. This makes perfect sense when consideration is given to the history of the development of the ICSL. The ICLS is the FCC's movement of carrier common line support out of the interstate access tariffs. It was done at a different time than the creation of the high-cost support fund. Its reporting is even done on a different time line. ICLS is on a July 1 to June 30 timeframe, not a calendar year basis.

A reasonable question to ask is what information does the Commission need to satisfy its role in making the ETC annual certification. The Commission is not acting in an audit capacity, therefore the types of detailed information that someone functioning in an audit capacity would require do not need to be provided to the Commission. What should be provided is sufficient information to provide confidence that the certification is accurate. WITA believes that the Commission would benefit from receiving copies of the summary reports and some of the output reports that are exchanged between a company and NECA (or USAC). Copies of these types of reports are attached to these

[9] For example, some companies file LSS (local switching support) data directly with USAC.

Comments for consideration as Exhibit 3. Another alternative would be the submission of a summary sheet prepared by the company showing prior year expenditures and support received. A sample of what the summary sheet might look like is set out as Exhibit 4.

Perhaps an example will help clarify the appropriate reports that would apply in a particular year. Assume, for purposes of this example, that we are talking about the certification that would have been filed by July 31, 2005. This would reflect high-cost support received in 2004. This means that a copy of the NECA 2003 data collection form (the 2003-1 filing) would be filed. This is based on calendar year 2002 data. In addition, the 2004 LSS forecast would be included. For a July 31, 2005 filing, it is unlikely that the 2004 NECA true up for LSS would be available.

To better define how an incumbent ETC may report to the Commission, WITA recommends that WAC 480-123-0060(1)(a) be written as follows:

> The report must provide a substantive description of investments made and expenses paid for federal support, or, for ETCs that receive support based on filings with the National Exchange Carrier Association (NECA), the report may consist of: (1) National Exchange Carrier Association universal service fund data collection form for the relevant twelve month period; and (2) NECA local switching support projection and local switching support true up report (if available) for the relevant forecast twelve-month period, in lieu of the substantive description.

2. Substantive Description of Benefits – Subsection (1)(b).

There are problems created by the way in which WAC 480-123-0060(1)(b) is drafted. The rule states that every ETC must provide "a substantive description of the benefits to consumers that resulted from the investments made and expenses paid with federal support." First as a minor item, the term "federal support" is different than the

usage in other parts of the rule where reference is made to "federal high-cost funds." Parallel construction should be used for consistency purposes.

A more important problem comes in the use of the term "substantive" which is a defined term under proposed WAC 480-123-0010. "Substantive" means "Sufficiently detailed and technically specific to permit the Commission to evaluate whether federal universal service support has had, or will have, specific benefits for customers." There is nothing to describe what constitutes "sufficiently detailed." Is it, like beauty, in the eye of the beholder? Since a report has to be filed by July 31, how is an ETC to know whether the report it files will be sufficiently detailed or not?

In addition, what is "technically specific?" In some cases, that term might be obvious if, for example, funds are used to construct a particular fiber route in a particular year. However, for many of the small incumbents, major construction is not something that is undertaken on a year after year after year basis. Construction is usually cyclical in nature. It may well be that in a year, a small company has not engaged in any major construction. Instead, the federal universal service funds it receives represent, in part, a return of the investment made in prior years and those funds are in turn used to maintain the existing facilities and operate to provide the same level of service quality, which is generally very high, that the customers have enjoyed for a number of years. How can that situation be described as a "sufficiently detailed and technically specific" description of the benefits to consumers? Is it sufficiently detailed to say that "the funds were used to allow the company to maintain the facilities through which it provides the supported services at a level consistent with the customers' expectations for high quality service and to prepare for future investments in expanded plant facilities and services"?

More work is needed on the rule to make it clear what level of reporting is expected.

3. Service Outage Report – Subsection (2).

WITA is also concerned with many aspects of the draft language in WAC 480-123-0060(2). This portion of the draft rule requires a service outage report.[10] The language used says that the report must be provided "for any service area in which an ETC is designated…." What is the definition of the designated service area for a competitive ETC? For a wireless ETC that is designated for most of its areas throughout the State of Washington, if it is construed that it has one designated area, the wireless ETC will never have to make a service outage report. On the other hand, since the wireless ETC has sought designation for the "service area" of, for example, ten incumbents, does that mean that the wireless ETC has ten designated service areas, each one corresponding to the service area of the underlying incumbent. This latter construction is more consistent with the purposes for designation of a competitive ETC in each rural incumbent service area. See, 47 U.S.C. §214(e)(2). If this is not the intended meaning of designated service area, then this proposed rule is discriminatory. If the competitive ETC "designated service area" is the entire area that it serves as an ETC, without reference to an individual underlying incumbent service area, then this rule is written to impose reporting requirements on incumbent ETCs that will never have to be undertaken by competitive ETCs. The meaning of "designated service area" must be clarified.

[10] By commenting on the content of various reports, WITA is not conceding that its members may be required to file such reports. The Commission has yet to reconcile its proposed adoption of reporting requirements with the statutory restrictions contained in RCW 80.04.530 that prohibits the Commission from adopting new reporting requirements for small, rural telephone companies (Class B telecommunications companies under the Commission's definitions).

The scope of the proposed rule goes beyond ETC purposes. There is no limitation of reporting the "outage" to outages of supported services. If, for example, the software that provides vertical services, which are not supported services, goes offline, why is this an outage that should be reported to the Commission? Nor does the rule limit itself to reporting outages of regulated services. If a voice mail platform goes out and more than ten percent of the customers receiving voice mail lose service, is this a matter that needs to be reported? Is the Commission asserting jurisdiction over services it does not regulate? The draft rule is not clear. The draft rule needs substantial work in its construction.

There are other problems about the way in which the proposed rule is written. The rule talks about outages that "potentially" affect at least ten percent of customers or "potentially" affect a PSAP. Since the outages are historical, that is that they have already occurred, the outages either affected ten percent of the end users or a PSAP or they did not. How can an outage that has occurred in the past still have the "potential" to affect a certain category of customers? It either did or it did not.

4. Service Reporting – Subsection (3).

There are drafting problems with proposed WAC 480-123-0060(3). The language of the rule uses the term "potential customers." What is a potential customer? To solve this drafting problem, WITA suggests the rule use the term "applicant" as defined in WAC 480-120-021. The draft rule also uses the words "service areas" instead of "designated service area" or "service area for which it is designated as ETC." There should be a consistent use of terms throughout the rule.

5. Customer Complaint Reporting – Subsection (4).

In its current form, draft WAC 480-123-0060(4) presents several compliance problems. This portion of the rule contemplates that an ETC will submit a report detailing the number of complaints that may have been submitted to the company, to the Commission, to the Federal Communications Commission and to the Washington State Attorney General. It is implied, although not stated, that those complaints are complaints about the ETC's service.[11]

The first problem that is presented is that the term "complaint" is not defined. What constitutes a complaint? If a customer calls with a concern about their bill and that concern is addressed in the course of a call with a company customer service representative, is that a complaint? If, for example, a customer in Verizon's territory calls and wants service from a rural telephone company, is told that the service is not available and that person subsequently calls the Commission saying that they were denied service, is that a complaint? How does a company know what to report?

There is a second set of problems concerning the knowledge of the company itself. How does a company become aware that there was a complaint filed with the Washington State Attorney General? Is it only those complaints that the Washington State Attorney General contacts the company about? Otherwise, how does the company know? Again, what constitutes a complaint? Does this include any office of the Attorney General or, is it intended that this reference is to the Consumer Protection Division of the Attorney General's Office?

[11] This would then exclude complaints filed with the company about other carriers, such as slamming complaints.

The rule says that the complaints are to be reported in at least four categories. What categories should be used other than the four listed ones? Does everything else go into a "all other" category?

Rather than trying to adopt reporting requirements which, as described above, are ambiguous, WITA suggests that a certification process be used. WITA outlined this certification process in its initial comments. See, Exhibit 1. In this case, certification of the company's compliance with the Commission's quality of service rule should suffice.

6. Service Quality Standards – Subsection (5).

WITA believes that the provisions of proposed WAC 480-123-0060(5) are discriminatory. Small wireline companies have to meet very specific service standards that are set out in the Commission's rules. On the other hand, by these draft rules, wireless ETCs would only have to meet what are basically general statements of the Cellular Telecommunications and Internet Associations Consumer Code for Wireless Service. A copy of the Consumer Code for Wireless Service is attached as Exhibit 5. As the Commission can see, these requirements do not come close to matching the quality of service requirements imposed on wireline providers. For example, compare the requirement to respond to state agencies concerning a consumer complaint. The wireless standard is thirty days. Compare that to the two days set forth in the Commission's rules for wireline companies. The Commission is creating a competitive advantage for wireless ETCs over wireline ETCs. This means that the wireline ETCs are held to a much more difficult standard than wireless ETCs are for the same reporting requirement.

In its earlier Comments, WITA pointed out that there are a number of the Commission's quality of service rules that wireless ETCs should be expected to meet. It

is discriminatory not to recognize the applicability of those standards to all ETCs. The alternative would be to remove those standards as standards that the wireline ETCs must meet. Without that even-handed treatment, the Commission is not being technologically neutral in the handling of ETCs. In fact, the Commission will be favoring wireless ETCs.

7. Advertising – Subsection (7).

There are many problems inherent in the provisions of WAC 480-123-0060(7) as it is currently drafted. Under Subsection (a)(i), an ETC is required to send all customers at least one annual bill insert explaining "its services and charges available to low-income customers." The rule should probably refer to "lifeline services and charges available to qualifying low-income customers." Otherwise, the requirement would be impossible to meet, at least for wireline ETCs, as they would have to describe every service that is contained within their tariffed offerings.

Proposed Subsection (7)(a)(iv) is not only expensive to follow, it is also vague and potentially discriminatory. The rule states that an ETC must advertise its services and charges available to low-income consumers by placing a display ad in "a daily newspaper" on four or more occasions in each calendar quarter. It does not state that the daily newspaper has to be in the area for which the ETC is designated to provide service as an ETC. So, on the one hand, a wireless ETC such as Cingular that is designated for many areas of the state, could choose to provide an advertisement in Yakima and that one advertisement would satisfy its advertising requirements for all of its service areas throughout the state as the rule is currently written. On the other hand, Wahkiakum West, which does not have a daily newspaper in its service area, would be required to

purchase a relatively expensive ad in the Portland Oregonian, for example, where its customers would never see the ad.

Why does the rule preclude the use of weekly newspapers? In many cases, these are newspapers that are targeted in the appropriate geographic area and might even be read by the target audience.

WITA recognizes that there is an alternative that can be used in that the ad can be run on a local radio station or television station. However, many rural companies do not have a local radio station or television station. For example, there is no local radio station in St. John. There is no local radio station in Pioneer. There is no local radio station in Wahkiakum's service area.

WITA has done a review of the cost to publish a one-sixteenth page advertisement as stated in the draft rule in various newspapers throughout the state. The results of that review are set forth below:

Newspaper	Rate	Publishing Frequency Per Rule	Annual Cost
Seattle Times	Mon-Sat $1,620.80 Sunday $2,053.20	16	$25,932.80 $32,851.20
Tacoma News Tribune	Mon-Fri $1,071.92 Sat-Sun $1,247.60	16	$17,150.72 $19,961.60
Spokane Spokesman Review	M, T, Th, F $599.52 Wed $747.28 Sat $693.92 Sun $771.68	16	$9,592.32 $11,956.48 $11,102.72 $12,346.88
Vancouver Columbian	Mon-Sat $391.04 Sun $459.20	16	$6,256.64 $7,347.20
Everett Herald	Mon-Th $345.68 Fri-Sat $356.08 Sun $398.96	16	$5,530.88 $5,697.28 $6,383.36
The Olympian	Mon-Sat $312.00 Sun $376.00	16	$4,992.00 $6,016.00
Longview Daily News	Mon-Sat $324.90 Sun $335.10	16	$5,198.40 $5,361.60

Yakima Herald-Republic	Any day $302.16	16	$4,834.56
Walla Walla Union-Bulletin	Sun-Fri $137.60	16	$2,201.60
Centralia – The Chronicle[12]	Mon-Sat $151.84	16	$2,429.44
Ellensburg Daily Record[12]	Mon-Sat $84.40	16	$1,350.40

The result is that the proposed rule imposes an expensive requirement, on a relative basis, for a small wireline ETC that serves a very few customers and, on the other hand, gives a competitive ETC that serves large geographic portions of the state as an ETC a relatively easy way out. More to the point, in neither case does the requirement meet its intended objective of providing low-income customers with information that they need about the services they can receive from their local ETC.

The requirements that are set out in the draft rule for advertising go far beyond anything that other states have done, at least so far as WITA is aware. Set out below are the requirements that other states have in their rules, based upon a survey of some, but not all, of the states.

State	Requirement	Frequency
AL	Newspaper Ad + posting in facilities open to the public	Semi-Annual
AR	Bill Insert or Directory req'd	Annual
AZ	Bill Insert	Annual
CA	Bill Insert & self mailers	Annual
CO	None	None
FL	Bill Insert, General Requirement to work with local agencies	Annual
GA	None, but general encouragement of outreach	None
ID	Bill Insert	Annual
IN	website + disconnect notice language	On-going
KY	None	None

[12] Since these papers are not published on Sunday (or Saturday in the case of the Walla Walla Union-Bulletin), it is questionable whether they meet the requirement contained in the draft rule to publish in a "daily" newspaper.

ME	Bill Insert	Annual
MI	None	None
MN	Bill Insert	Annual
MO	Bill Insert or Directory req'd	Annual
MS	None	None
NC	Bill Insert	Annual
NH	Pamphlet (Bill Insert)	Annual
NY	None	None
OH	None	None
OK	Bill Insert or Directory req'd	Annual
OR	None	None
PA	Bill Insert or Bill Message	Semi-Annual
SC	None	None
VA	None	None
VT	Bill Insert	Annual
WA	Newspaper Ad	Annual
WI	None	None

The purpose in getting information out to the community is to try to take steps that customers that were otherwise eligible for Lifeline services become aware of the availability of those services. It is highly unlikely that placing a display ad in a daily newspaper is going to make those potential Lifeline customers aware of the services. A more effective program would be a combination of advertising, once a year, in a newspaper, and making the information that is included in the newspaper also available to social service agencies that may be located within the service area. For example, if there is a state, county or local senior service center in the area, then providing copies of flyers to that senior service agency is probably going to be more effective than any advertising in a newspaper. Further, the newspaper should be the local newspaper, whether it is weekly or daily. A local newspaper is much more likely to reach the target audience. In addition, local newspapers are much more reasonable. For example, the Eatonville Dispatch would charge $88.00 for the ad that meets the rule's requirements. The Shelton-Mason County Journal charges $73.80.

WITA also notes that two other aspects of the rule are discriminatory against wireline ETCs. Subsections (7)(a)(ii) and (iii) apply only to wireline ETCs and impose costs on those ETCs that are not imposed on wireless ETCs. Wireline ETCs are the only ones required by the Commission to have either a local office or payment agencies. Wireline incumbent ETCs are the only ones that have directories published on their behalf.

This rule needs substantial revision.

F. WAC 480-123-0070 – Annual Plan for Universal Support Expenditures.

1. Reporting Requirements.

Earlier, WITA noted that the Commission appeared to take into account the differences between how an incumbent ETC is funded and the basis for its funding compared to a competitive ETC. However, this draft rule ignores that distinction.

This rule requires a report on how federal support that is received during the period of October 1 of the current year through the following September will be expensed. For incumbent ETCs, the money that is received based on the expenses and investment made by the incumbent ETC two years prior to the time that the support is received. In other words, the investment and expenditures have already benefited the customers. It is not a question of how those expenditures "will benefit" the customers.

On the other hand, the competitive ETC is receiving support based upon the incumbent's costs. It receives support in the current year, not for its own prior investments, but based upon the incumbent's prior investments. Thus, it is a legitimate question to ask what the competitive ETC will do to make investments and expenditures that "will benefit" customers.

2. Mapping Requirements.

WITA also objects to WAC 480-123-0070(3) which requires a submission in 2007, and once every three years thereafter, of a map in .shp format that shows the general location of customers, plant and equipment. This is an impossible requirement.

First, the objection is based on experience. WITA's members had to submit .shp maps as part of the initial ETC designation process. Those maps did not have to include the "general location of customers, plant and equipment" as contemplated by the draft rule. Those original maps were extremely expensive to produce, costing in the neighborhood of $4,000.00 to $5,000.00 per company. This did not include the substantial costs of review by the company's attorney for accuracy.[13] This amount did not include the time spent by each company's own employees: time which is taken away from serving customers. Second, to try to now include the location of customers, and, in particular, plant and equipment,[14] on those maps will make it extraordinarily expensive and probably impossible to provide.

Some companies do have CAD maps in electronic format. However, it is not a simple process to convert a CAD map to a .shp map. A .shp map requires GIS-specific information. The information has to be coded in state plane coordinates. Trying to convert existing CAD maps to the .shp format would be extremely expensive and time consuming. Further, some of the smaller companies rely on existing engineering maps

[13] The maps focused in large part on describing the legal boundaries of the service area of the company. The maps and legal descriptions prepared by the mapping firm contained numerous and repeated errors. This required detailed, minute review and the process had to be repeated several times. Just imagine the expense for review of location of customers, plant and equipment.

[14] The draft rule does not define the detail in which the plant and equipment are to be mapped. Obviously, the more detail, the more expense.

(construction as-builts and such) as opposed to an electronic CAD format. Trying to convert these maps into an electronic format would be an overwhelming task.

The question has to be asked, what is the purpose of these maps? WITA notes that the existing .shp maps have been little used after their filing with the Commission. The reason that WITA is aware of that lack of usage is that WITA's members filed their maps under a claim of copyright. Thus, any distribution of the maps outside the Commission would have to be with the permission of WITA's members. Insofar as WITA's members are aware, only one request has been made for those maps. That request was made by another company's engineering department on a basis that boiled down to it would be "a cool thing to have." The request was subsequently withdrawn.

Creation of these maps, as contemplated by the draft rule, raises serious questions of national and local security. In a new environment where concerns over the security of critical infrastructure should be kept forefront, adopting a requirement to create potentially publicly available maps showing the location and type of telecommunications infrastructure flies in the face of that concern. WITA is not trying to overstate this issue. However, consider some of the facilities that telecommunications companies serve. Should maps be available that show the location and type of telecommunications infrastructure that serves Banger, Fort Lewis and other military locations? Should maps showing the types and location of telecommunication equipment serving the Hanford Reservation be available? In terms of being able to respond to natural emergencies, should maps showing the nature and location of equipment for Camp Murray be available?

On even a more mundane level, questions of local security are raised. For example, one company has had the experience where a person got access to a schematic showing the telecommunications service to a local store. That person used the schematic to determine precisely where to disable the alarm service and was able to then enter and rob the store. While the person was eventually caught, it is a matter of no small concern in considering whether to make sensitive information potentially available to the public.

Further, requiring an ETC to disclose the physical location of its plant and equipment is anti-competitive. Again this is a requirement that favors the wireless provider. The wireline provider has an extensive network that must be deployed. The wireless provider operates off of one or more cell sites that serves a large geographic area. There is no requirement in the rule that the wireless provider provide a contour map that shows the signal strength of its signals within the contours of its cell tower reach. Thus, on the one hand the wireline ETC would have to show everywhere it physically serves through a provision of its plant and equipment in its mapping exercise and a wireless provider would just have an area that they generally serve without having to disclose their actual ability to serve any particular location. Such a requirement is anti-competitive and discriminatory.

The mapping requirement takes the Commission beyond the boundaries of the certification/recertification process. There is nothing in this process that suggests the type of mapping requirement contemplated by the draft rule is appropriate or relevant. The mapping requirement raises competitive issues, security issues and many other serious concerns. The Commission has made no showing that the expense of the mapping requirement has any bearing on providing the Commission information that is

needed for the certification process. There has been no balancing of cost and benefit. This mapping requirement should not be adopted.

G. WAC 480-123-0010 – Definitions.

The definitions include the term "facilities." That term is used approximately four times in the course of the proposed rules. WITA is not certain why a definition is needed. Further, the definition leaves out some categories of acceptable plant expenditures that would be used in the course of providing the supported services. This is because the definition of "facilities" in the proposed rule is written in terms of physical components "that are used in the transmission of or routing of the services that are supported by federal universal service mechanisms." This definition ignores the fact that employees need a place to work. The cost of an office building for the employees to be able to provide the services that the customers seek which are supported by universal service mechanisms is a legitimate expenditure. Yet the definition leaves it out. In addition, huts that are constructed in the field to protect sensitive equipment from weather are not used in the transmission of or routing of services, but they are legitimate items that need to be included. WITA suggests that the definition be deleted.

The definition of "service outage" appears to be written with wireless service in mind since it is written in terms of degradation in the ability of an end user to establish and maintain communication. WITA suggests that this is an area where the difference between wireline and wireless technologies requires two different definitions. The Commission already has a definition for service outage for wireline purposes set forth in WAC 480-120-440. If a definition of "service outage" is needed, WITA suggests that the rule be re-written as follows:

> "Service outage" for a wireless ETC means a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communication provider's network.
>
> "Service outage" for a wireline ETC means an out-of-service interruption which is a condition that prevents the use of the telephone exchange line for purposes of originating or receiving a call and does not include trouble reported for non-regulated services such as voice messaging, inside wire, or customer premises equipment.

WITA has previously expressed its concerns over the definition of "substantive." While the rule provides some examples of what may be expected, the rule is still far too subjective as to what constitutes "sufficiently detailed" and "technically specific" to allow an ETC to have any idea how it should prepare its annual report by July 31 of each year. This is an extremely important issue. More work is needed to define what is expected in the annual recertification report.

CONCLUSION

In these Comments, WITA has raised very substantial concerns about the draft rules. In addition to the concerns that have been raised to date, WITA has not even begun to go into the issues related to confidentiality that the draft rules, in their current form, raise. There is simply not sufficient time to do so, given the comment deadline.

The issues that have been raised by WITA demonstrate that the rules are nowhere near the form required to move forward to a CR 102 process. WITA respectfully requests that the Commission convene another workshop to review the draft rules and to find ways to make the rules sharper, more focused and more refined in their approach to

the ETC designation and certification process.

Respectfully submitted this 14th day of November, 2005

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