UT-041629 RULEMAKING
December 2004
COMMISSION STAFF
SUMMARY OF STAKEHOLDER COMMENTS

EMD (12/04/04)	The State E911 Program (EMD) asks the Commission to amend WAC 480-120-450 to standardize 911 network costs in accordance with the FCC wireless rules. Language suggested: WAC 480-120-450 to add section (1) and (3) *(1)(d) For all classes of service, transport of the 911 call to the E911 system selective router, or its functional equivalent, will be considered as part of the basic service requirement defined in WAC 480-120-021.* *(3) (a) For transmission of the call, LECs may only recover the costs associated with the transport of the call from the selective router, or its functional equivalent, to the PSAP.* EMD suggests WAC 480-120-450 be modified to make clear that the LEC obligation for the transport of 911 dialed calls is to assure that the call is transported to a demarcation point at the Selective Router (SR), or its functional equivalent. EMD states the WUTC has established access to 911 as a basic service to be supplied for voice grade customers. The FCC has also established E911 as the standard for access to emergency services regardless of the nature of the technology utilized or the regulatory classification of the company (5th Report and Order CC 92-105 Dec.11, 2001 and Order on Reconsideration CC 94-102 July 24, 2002.) PSAPs pay ILECs for connections between end offices and the SR yet PSAPs are not required to pay for connection between CLECs switches and the SR or between cellular switches and the SR. EMD cites the FCC King County order (FCC 02-146 5/14/02, attachment B) as evidence that the demarcation point referred to for cost allocation for wireless E911 implementation is the SR. The FCC determined CLECs and Cellular companies could recover costs from customers in any reasonable manner. EMD argues that ILECs may recover the cost before the SR as part of basic service cost and that rural carriers may access the USF for 911 costs reimbursement as part of the basic service requirement. PSAPs should not pay for any connection on the telecommunications side of the SR. RCW 38.52.520 authorizes the State E911 Office to coordinate and facilitate implementation and operation of 911 communications systems in WA. RCW 38.52.540 authorizes the State E911 Office to enter into statewide service agreements. EMD wishes to establish a standard demarcation point for all carriers regardless of competitive classification and to be responsible for delivery of 911 calls to the 911 system.

Spokane County (12/08/04)	Spokane County supports the proposed amendment to WAC 480-120-450 by EMD to create a uniform demarcation point in the E911 network. The demarcation point would establish parity between ILECs, CLECs and wireless carriers for E 911 responsibility for connectivity funding. The change to the WAC would stabilize 911 operational budgets. Revenues from wireline taxes are leveling out and are expected to decrease in the near future, VOIP may not offer the same level of funding of tax revenue support as wireless and wireline. A demarcation line for all 911 service providers in the network would assist counties in annual budget plans.
Qwest (12/04/04)	Qwest is not opposed to participating in an investigation into how the current system of E911 funding can be improved. Qwest does not agree a rulemaking should be commenced to amend the current rule. Qwest is concerned about proposals that seek to change existing funding without considering complex issues with a shift in cost recovery responsibility The existing compensation structure for 911 service dates back to the 1970's. Per Bell System policy of that time, the central office programming necessary to implement 911 was considered a cost of central office modifications and included as part of the general rate base. Other costs for 911, such as network trunks and features were the responsibility of the 911 customers. These service elements were filed in tariffs. 911 customers were responsible for purchasing the PSAP answering equipment from the vendor of their choice. The legislature determined to fund E 911 through an excise tax (RCW 82.14B.010) on the use of switched access lines and also authorized counties to impose a county E911 excise tax (RCW 82.14B.030 (1) and (3). Annually, the state E911 coordinator must perform an analysis to determine the amount of the surcharge and recommend the excise tax level (RCW 82.14B.030 (5) for WUTC approval. The funding system was developed over time with legislative and WUTC oversight. The current surcharges reflect an amount sufficient for E911 customers to pay Qwest's tariffed charges. Qwest's tariff is designed to allow Qwest cost recovery for capital costs and expenses incurred for E911 services, including facilities between the ILEC office and the SR. Any change in cost responsibility needs to be carefully examined, weighing costs of disrupting the status quo with potential benefits. Currently, WAC 480-120-450 (3) provides that LECs choosing to provide E911 service must file tariffs and supporting costs studies or price lists. Qwest's tariff (WN U-40) Section 9.2.1 contains charges and terms for Qwest's E911 service. Qwest believes claimed cost reduction benefits are illusory, reduction in subscriber costs would carry a reduction in subscriber funding.

Verizon *(12-04-04)*	Verizon opposes the EMD request to establish a uniform demarcation point in the E911 network for carrier cost recovery. Reasons: EMD claims the King County Order clarified the USF obligation to provide 911 and requires wireline carriers to bear E911 transport costs. This is not correct. The King County FCC decision does not apply to wireline carriers and the decision recognized that ILECs could have different demarcation points because they do not have the same ability as wireless carriers to recover their transport costs from end users. (King County Order para 14 and 15.) The King County order supports the current practice of requiring PSAPs to bear 911 transport costs. Verizon E911 transport charges are set forth in its tariff as the result of implementing legislative policy in WA that recognized that LECs are entitled to be paid for providing these services and the states E911 funding systems have long been designed to accommodate this fact. EMD has not alleged that Verizon's tariff is unreasonable or that the transport charges unjust. There is no basis for amending the tariff. If LECs are required to absorb the cost of this transport, they would lose revenue and incur new costs by having to pay other carriers to transport traffic to SR outside the companies' service territories. Verizon states a rulemaking is not a proper process for changing tariffed rates [WITA v WUTC, 64, P.3d 606 (Wash. Sup. Ct . 2003)]. Staff comment: Staff does not agree that *WITA v. WUTC* stands as an obstacle to EMD's proposal. To the contrary, in upholding the Commission's terminating access rule, *WITA v. WUTC* appears to endorse the use of rulemaking processes for implementing changes in cost recovery methodology for particular services.
WITA *(12-04-04)*	WITA supports Verizon and Qwest comments opposing the rulemaking proposal. WITA understands the issue of the rulemaking is whether the WUTC should revisit the allocation of E911 implementation and operating costs between LECs and PSAPs. If the demarcation point for E911 service is the selective router then LECs will have to pay the costs of transporting 911 calls from the customers to the SR. The selective router is not located within the serving territory of many WITA members. The small companies would need to purchase dedicated facilities from their boundary to the SR. Small companies have no control over the selection of the SR location which is determined by the PSAP and the company the PSAP chooses to obtain SR services. Questions raised- Why is it appropriate for a small company's customers to cover the cost of obtaining facilities to get to the SR as they already pay a monthly surcharge? What are potential liabilities and risk for leased facilities outside the small company's control?

	When E911 tariffs were created the WUTC took extensive reviewed and found the costs of getting to the SR were appropriately borne by the E911 community. It is incorrect to assume the FCC expects ILECs to be treated the same as wireless carriers. Wireless providers have much larger calling areas which provide an advantage and differing obligations. One is to find ways to transport 911 calls to the SR, an obligation ILECs do not need to assume. There are different obligations for different technologies. It is also not clear that costs of trunks connecting end offices to SR would be recoverable from the federal USF.
CenturyTel (12/04/04)	Century Tel opposes a rule change and suggests the Commission should decline to amend the WAC as EMD proposes. Century Tel states EMD's reliance on the FCC King County decision for its proposal to revise the rule is misplaced. The FCC noted states have made the PSAP responsible for transmission costs from LECs to the Selective Router. EMD asserts the demarcation must be the same for all carriers yet the FCC rejected such arguments and recognized differences in regulatory schemes and network design. CenturyTel advocates a public policy stance of explicit funding as established by the legislature. The company argues if the demarcation point changes, there would be cross-subsidization and hidden implicit support of 911.