



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle WA 98104-3188

May 7, 2014

SENT VIA E-MAIL & ABC/LEGAL MESSENGER

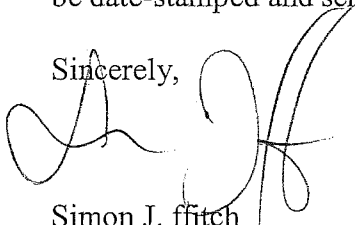
Steven V. King
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking to Consider Amending and Adopting Rules in WAC 480-120,
Telephone Companies, and WAC 480-123, Universal Service, to Implement
Legislation Establishing a State Universal Communications Service Program;
Docket UT-131239

Dear Mr. King:

Enclosed please find an original and a red-lined copy of the Revised Third Comments of Public Counsel for filing in the above-entitled docket. The revisions make changes in the initial filing, based on clarification received from staff. For confirmation of receipt, I have enclosed a copy to be date-stamped and sent back to us with the ABC Legal Messenger.

Sincerely,



Simon J. Fitch
Senior Assistant Attorney General
Public Counsel Division
(206) 389-2055

SJf:cjb
Enclosures

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

DOCKET UT-131239

Rulemaking to consider amending and adopting rules in WAC 480-120, telephone companies, and WAC 480-123, universal service, to implement legislation establishing a state universal communications service program.

REVISED THIRD COMMENTS OF PUBLIC COUNSEL

MAY 5, 2014

I. INTRODUCTION

- I. On April 4, 2014, the Commission issued a final draft of rules (CR 102) to implement Second Engrossed Second Substitute House Bill 1971 (hereafter HB 1971), and asked for comment by May 5, 2014. Public Counsel submits the following comments on the proposed rules.¹ Public Counsel's prior comments (October 10, 2013, and December 20, 2013) should be deemed incorporated herein by reference.

¹ These comments were prepared with the assistance of David C. Bergmann of Telecom Policy Consulting for Consumers, Columbus, Ohio.

II. COMMENTS

A. Public Counsel Supports The Improvements in the Final Draft Rules.

2. As a general matter, Public Counsel supports the provisions of the final draft rules, subject to the concerns noted below. The final draft contains a number of useful clarifications, including in WAC 480-123-100(1)(c) (reference to rule), 110(1)(a) (entity seeking support), 110(1)(e)(vi) (operating adjustments from federal universal service) and 110(5) (certification).

3. Public Counsel supports the Commission's decision in proposed WAC 480-123-120(2)(a) and (b) to calculate support on the basis of lost USF support, rather than lost access revenues. Public Counsel believes this is more consistent with the language and intent of the statute.

B. Remaining Concerns.

4. Public Counsel has some remaining concerns with the proposed rules.

5. Use of the Federal Urban Rate Floor (URF). In previous comments, Public Counsel noted concerns with the use of the Federal Communications Commission's (FCC's) urban rate floor as a measure for the rate benchmark.² At that time the urban rate floor was \$14.00. Since then, issue at the federal level has become more complicated. The URF originally intended to go into effect on July 1, 2014, was calculated at \$20.40.³ This is now uncertain, and it appears the FCC will, at the very least, phase-in the higher URF, and thus phase-in the rate increases ostensibly demanded by the large increase in the URF.⁴ Public Counsel continues to believe that a Washington-specific benchmark rate is preferable to the use of the Federal URF to determine

² Second Comments of Public Counsel, December 20, 2013, at 2-4.

³ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0409/DOC-326517A1.pdf.

⁴ *Id.*

“a reasonable amount customers should pay,” given the wide variety of circumstances in different states affecting the national average rate. The Commission should at the very least undertake to review this issue once the FCC has issued its decision.

6. Public Counsel also notes possible confusion or inconsistency between proposed WAC 480-123-150(4) (initiating advisory board action) and WAC 480-123-160 (resolution of disputes). The former provision allows “any person” to petition the Commission to initiate advisory board action regarding “program issues or matters.” The latter provision, however, appears to limit the right to petition the Commission more narrowly to “an affected provider” regarding “any disputed matter concerning the program.” The Commission, at its discretion, may then refer the matter to the advisory board for initial review and consideration. Under either rule, therefore, matters could ultimately be referred to the advisory board. Some clarification would be helpful on this point.

7. Finally, the advisory committee rule, WAC 480-123-150(2)(v), should refer to the “Public Counsel section of the office of the Attorney General of Washington” rather than “division,” consistent with RCW 80.04.110(1).

III. CONCLUSION

8. Public Counsel respectfully requests consideration of these comments in the final rule adoption process. Subject to the concerns noted, Public Counsel supports the rules as a reasonable implementation of the enabling legislation, and a helpful step towards preserving affordable access to communications service for consumers in Washington State.

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DOCKET UT-131239

(RED-LINED)

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MAY 5, 2014

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B. Remaining Concerns.

4. Public Counsel has some remaining concerns with the proposed rules.

5. Use of the Federal Urban Rate Floor (URF). In previous comments, Public Counsel noted concerns with the use of the Federal Communications Commission's (FCC's) urban rate floor as a measure for the rate benchmark.² At that time the urban rate floor was \$14.00. Since then, issue at the federal level has become more complicated. The URF originally intended to go into effect on July 1, 2014, was calculated at \$20.40.³ This is now uncertain, and it appears the FCC will, at the very least, phase-in the higher URF, and thus phase-in the rate increases ostensibly demanded by the large increase in the URF.⁴ ~~The increased benchmark means more companies will qualify for support, placing an increased strain on this limited fund.~~ Public

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Counsel continues to believe that a Washington-specific benchmark rate is preferable to the use of the Federal URF to determine “a reasonable amount customers should pay,” given the wide variety of circumstances in different states affecting the national average rate. The Commission should at the very least undertake to review this issue once the FCC has issued its decision.

~~6. Reporting. Public Counsel respectfully recommends two additions to the final reporting rules. First, the Commission should restore reporting of the rates being charged by the supported company, and seek that data for the beginning and end of the support period. The December 3, 2013, draft rules required reporting of rates,⁵ but the requirement appears to be omitted in the current proposed rules. Because the statute identifies the “risk of rate instability” as a key factor, rate reporting is certainly germane and of value to the Commission and other stakeholders to help evaluate the impact of the program.~~

~~7. Second, the rules should include require report on the “communications provider’s infrastructure.” Provider infrastructure is specifically mentioned in the statute, §204(1)(a). Much discussion on the universal service issue focuses on infrastructure issues, in particular, broadband deployment, and the reporting of updated information on infrastructure will help the Commission and other interested persons assess the impact of the fund, and the state of universal service in Washington at the conclusion of the program.~~

8. Public Counsel also notes possible confusion or inconsistency between proposed WAC 480-123-150(4) (initiating advisory board action) and WAC 480-123-160 (resolution of

⁵ Draft Rule 123(1)(g): “Information detailing the number of residential and business local exchange access lines the provider served as of December 31 for each of the prior two years and the monthly rate charged to each customer category.”

disputes). The former provision allows “any person” to petition the Commission to initiate advisory board action regarding “program issues or matters.” The latter provision, however, appears to limit the right to petition the Commission more narrowly to “an affected provider” regarding “any disputed matter concerning the program.” The Commission, at its discretion, may then refer the matter to the advisory board for initial review and consideration. Under either rule, therefore, matters could ultimately be referred to the advisory board. Some clarification would be helpful on this point.

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