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August 2, 2013

Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket UT-131239
Rulemaking to consider amending and adopting rules

Enclosed for filing are comments by AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively "AT&T") regarding the above mentioned docket. Please let me know should you have any questions.

Sincerely,

Cynthia Manheim /by JLO with permission

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General Attorney

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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**

<u>COMMENTS OF AT&T</u>

The Washington Utilities and Transportation Commission ("Commission") has the important task of implementing the state universal communications service program as set forth in Part II of House Bill ("HB") 1971 ("Universal Service Program" or "USP") that was signed into law earlier this year. To AT&T's knowledge this is the first time a state fund of this type has been funded out of a state general fund. The USP fund is also limited in duration, has a set cap for annual disbursements, and can only be distributed to certain providers. All of these attributes, taken together, make the USP unique and important questions and issues will have to be resolved by the Commission through this rulemaking process. AT&T commends the Commission for quickly initiating this rulemaking proceeding to address these important issues.

AT&T[1] appreciates the opportunity to file comments in this rulemaking proceeding. As a provider of interexchange, competitive local exchange, and wireless service (with over 40,000 lines in the state), AT&T is not eligible to draw from the USP. Nevertheless, AT&T has an interest in the basis for the distribution of the USP funds in the state.

[1] AT&T Corp., Teleport Communications America, Inc., and New Cingular Wireless PCS, LLC (collectively "AT&T").

1. Elimination of "Traditional USF" in Washington.

The Commission originally adopted the traditional universal service charge ("Traditional USF Charge") in Docket U-85-23, a docket with the primary purpose to "eliminate the present system of intrastate toll settlements in favor of a system more suited to today's increasingly competitive intrastate telecommunications industry."[2] In that docket Pacific Northwest Bell, the Washington Independent Telephone Association ("WITA") and AT&T jointly proposed an IntraLATA Telecommunications Plan ("ITP"). An element of the ITP was a Universal Service Fund. In adopting most aspects of the ITP, the Commission stated:

> The framework established here allows the companies to begin moving toward a more competitive environment where each company will have to be mindful of its own costs and efficiencies. At the same time, the framework established here recognizes past practices of the industry and the need for transitional mechanism like a universal service fund, to obviate rate shock.[3]

The Commission, however, stressed that the USF was to be transitional in nature.

> The USF, as outlined in the ITP is designed to be a transitional mechanism, not a permanent source of LEC support.

Over 25 years later, the Traditional USF that was adopted in that docket has not been eliminated. Instead, the $0.00152 is still being assessed on <u>every</u> originating and terminating intrastate switched access minute in the state. The "Traditional USF" is administered by the Washington Exchange Carrier Association ("WECA"). Traditional USF Charge is collected by all local exchange carriers ("LECs") and remitted to WECA for distribution to certain WECA companies.

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[2] Seventeenth supplement (Proposed) Order, page 6.
[3] U-85-23, Eighteenth Supplemental Order.

The FCC has implemented a number of reforms to access charges in its FCC *ICC/USF Transformation Order*; however, the Traditional USF Charge was not impacted as it is more akin to a state universal service charge, even though it is discriminatorily assessed only on long distance minutes. However, it is consistent with the intent of the legislation to support the provision of basic telecommunications service that the Traditional USF Charge be eliminated, but that WECA carriers are able to continue to receive this support through the USP if there is a continued need to do so.

As discussed by the Commission in its *Report Reviewing State Telecommunications Policies on Universal Service* (Docket UT-100562) "[a]s traditional long distance services have shifted from conventional telecommunications technologies to new platforms such as VoIP, the access charge revenues that ILECs have historically enjoyed have declined."[4] In fact, "intrastate access minutes have declined approximately 42 percent over the six year period (2004 – 2009)." (p.15). In Section 201 of HB 1971, the legislature recognized that "[s]ignificant changes are occurring in the communications marketplace, including: (a) The migration from customer reliance on access lines for voice service to the use of broadband for a number of communications applications… and that these changes "are adversely affecting the ability of some communications providers to continue to offer communications services in rural areas of the state at rates that are comparable to those prevailing in urban area." As such, assessing the Traditional USF Charge on each originating and terminating intrastate switched access minute in the state is no longer a stable mechanism to support the rural local exchange companies. In fact, carriers may not see any need to track terminating

[4] Report Reviewing State Telecommunications Policies on Universal Service, Docket UT-100562, November 29, 2010, pg. 15.

switched access minutes after transition to bill-and-keep that will be implemented by July 1, 2017 for price cap carriers and July 1, 2020 for rate of return carriers.

The legislature established the state USP to "support continued provision of basic telecommunications service." As intrastate switched access minutes continue to decline, rural ILECs need to transition relying on access charges and the Traditional USF to charges for the products/services provided to their own customers. The state USP will provide support to assist in this transition for the rural ILECs that demonstrate a need for support.

During the Workshop held at the Commission on July 15, 2013, there seemed to be general consensus that the Traditional USF Charge should be eliminated and funded, instead, through the USP. This is consistent with the work done by Staff in 2012 when considering the funding requirements for a state universal service fund. At the 2012 workshop, Staff assumed that the Traditional USF Charge would be replaced, at least in part, by an explicit state universal service fund.

The mechanism for the collection and remittance of the Traditional USF Charge is based on an agreement between WECA and the individual LECs. The WECA Agreement, which has been approved for each of the AT&T LEC affiliates operating in the state, provides, in relevant part, that the Agreement shall continue in effect unless and until the Commission enters "an order finding and ordering that the USF is no longer required to serve the public interest."[5] The Commission should make clear that the Traditional USF is no longer in the public interest and is eliminated.

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[5] See Joint Petition of the Washington Exchange Carrier Association and TCG Seattle for a Supplemental Order Approving a Modified Universal Service Fund Agreement and Eighty-Third Supplemental Order Approving a Modified Universal Service Fund Administration Agreement for TCG Seattle, U-85-23 (November 29, 1995).

2. Reduction of Originating Intrastate Access to Interstate Rates

Originating intrastate access charges should be reduced to interstate rate levels. The difference between the intrastate originating access rate and the interstate originating access rate is a measure of implicit support for local service that should be made explicit and recovered either through end user rates and/or the USP, if there is a need. As originating access minutes continue to decrease, the LECs need to find a more stable source of revenue. The USP can serve as an interim transitional source of funding, to the extent it is needed, while the LECs transition to other sources of revenue.

3. State USF Fund should not be used to "make whole" any carriers that are receiving less federal universal service support as a result of the FCC's ICC/USF Transformation Order

Any proposal put forth by the rural carriers to utilize the USP as a "make whole" for reductions in federal support as a result of the *FCC's ICC/USF Transformation Orde*r and subsequent implementing orders should be closely scrutinized. For example, if the local rates of a carrier do not meet the local rate floor established by the FCC's rules, and, therefore, the carrier forgoes some federal universal service support, that carrier should not be able to make up that lost support from the USP. As described in the FCC's ICC/USF Transformation Order, the FCC set the local rate floor to ensure subsidies were not being given to carriers with artificially low rates.

> …[the FCC] will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees...
>
> We will phase in this rate floor in three steps, beginning with an initial rate floor of $10 for the period July 1, 2012 through June 30, 2013 and $14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual

> survey of voice rates. Under this approach, the Commission will reduce, on a dollar-for-dollar basis, HCLS and CAF Phase I support to the extent that a carrier's local rates (plus state regulated fees) do not meet the urban rate floor.
>
> To the extent end-user rates do not meet the rate floor, USAC will make appropriate reductions in HCLS support… [6]

AT&T will provide comments in reply to any specific proposals put forth regarding USP distributions for purposes other than the elimination of the Traditional USF Charge and reduction of intrastate originating access to parity with interstate originating access.

4. Benchmark

HB 1971, Section 203(4)(a) requires the commission to establish a benchmark for distributions from the USP. The legislation directs that the benchmark should be "the rate the commission determines to be a reasonable amount customers should pay for basic residential service provider over the incumbent public network." When Staff conducted its analysis in 2012, it used a $23, $25, $27 and $30 benchmark to estimate the possible size of a state universal service fund. It is AT&T's understanding that the benchmark used in this calculation included the local residential rate for service, mandatory extended area service ("EAS"), federal subscriber line charge ("SLC"), access recovery charge ("ARC"), state 9-1-1 charge, and TRS charge.[7] AT&T believes this is the appropriate starting place for a discussion about the benchmark required in HB 1971. Further, as the USP is a transitional fund, the benchmark should increase over time so that the carrier and customers are prepared for the end of the USP's transitional funding.

[6] FCC ICC/USF Transformation Order, paras. 237-240

[7] The TRS charge should be eliminated from any benchmark as HB 1971 changed the funding for the TRS to the general fund.

Conclusion:

The Commission should eliminate the Traditional USF Charge and reduce originating intrastate switched access to parity with originating interstate switched access charges and use the USP, as needed, to assist in the transition for these revenues.

Submitted this 2nd day of August, 2013.

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