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VIA E-FILING

Mr. Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Rulemaking to Consider Possible Changes to Rules in Chapter 480-120 WAC,
Relating to Service Obligations of Telephone Companies – Docket UT-180831

Dear Mr. Johnson:

This Docket is a rulemaking to address issues surrounding carrier of last resort obligations. By Notice of Opportunity to Submit Written Comments dated October 22, 2018 ("Notice"), the Commission has asked for comments in the above referenced Docket. This letter is submitted on behalf of the Washington Independent Telecommunications Association ("WITA") and is intended to provide comments on the proposed rulemaking addressing carrier of last resort obligations.

In the Notice, the Commission poses a series of five questions, some of which have multiple subparts. Before providing comments in response to those questions, WITA has its own threshold question.

The threshold question is whether there is a substantial need for this rulemaking in the first instance. WITA is aware that the rulemaking grows out of a complaint proceeding involving CenturyLink.¹ In reviewing that complaint, it appears that it involves an unusual factual situation. The old adage is that "bad facts make for bad law." Unfortunately, that is a very true statement. Having to deal with a situation that is likely "one off" from the norm should not lead to a general rulemaking attempting to cover all situations as though those situations are similar to the unusual situation faced in the complaint.

WITA's members are not aware of an exigent need to have additional rules dealing with

¹ See, Washington Utilities and Transportation Commission v. Qwest Corporation d/b/a CenturyLink QC, Docket UT-171082, Order 03 (August 23, 2018).

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carrier of last resort or line extension issues. WITA respectfully requests that the Commission consider, as the first step, whether additional rules are needed on this subject.

Having posed the threshold question, WITA will now turn to the five questions set out in the Notice. At this stage, WITA's comments addressing the questions are preliminary observations. WITA reserves the right to modify what it provides in these comments in the event that the Commission proceeds to a formal rulemaking.

Question One

Under Question One, the Commission posed a series of questions designed to determine the extent of RCW 80.36.090 and the circumstances under which a person is "reasonably entitled" to receive service from a telecommunications provider.

On the surface, the answer is easy: RCW 80.36.090 applies equally to every telecommunications company. Then, all that is seemingly left to do is to define "reasonably entitled." The exact meaning of those words have not been parsed out in detail. However, in trying to define the term, it is quickly clear that there are overlays that make this a very complicated subject.

For example, WITA's members consist of two price-cap companies, five companies that have opted into the FCC's new A-CAM² mechanism and the remainder of the companies receive support under a more traditional high cost fund approach.³ Further, all of WITA's members have elected designation as an eligible telecommunications company (ETC) under the FCC's rules, as administered by this Commission. In addition, currently all but three of WITA's members have applied for and have been found eligible to draw from the Washington Universal Service Program as set out in RCW 80.36.650 et. seq.⁴ What this range of factors means is that the focus for determining carrier of last resort obligation is not necessarily solely on the language in RCW 80.36.090. Instead, the discussion needs to include an overall view of the varying situations that each company is under.

As to the ETC status, there is nothing in federal rule or FCC order that suggests that this status or obligation constitutes an absolute duty to serve every person who requests service. Indeed, in some respects the FCC strongly suggests that it is not the case that every person is entitled to service just because an entity providing the service is designated as an ETC. For

² Alternative-Connect America Cost Model. See, e.g., In the Matter of Connect America Fund, ETC Annual Reports and Certification, Developing a Unified Intercarrier Compensation Regime, WC Docket No. 10-90, WC Docket No. 14-58, CC Docket No. 01-92, Rate-of-Return Clarification Order, DA 16-661 (June 15, 2016).

³ This situation is even more complicated in that some of these remaining companies are moving away from high cost support to CBOL (Customer – Broadband Only Lines) support for broadband only lines which moves the loop expenses entirely into the interstate jurisdiction for that particular service.

⁴ See, Dockets UT-180642, UT-180643, UT-180645, UT-180646, UT-180649, UT-180650, UT-180651, UT-180655, UT-180656, UT-180658, UT-180659, UT-180660, UT-180665 and UT-180670.

example, the FCC has capped the per-location cost that can go into the calculation of high cost support.⁵ A discussion of this cap can be found in the FCC's Rate-of-Return Reform Order starting at Section 108 of that Order.⁶ What this cap means is that if the cost exceeds a certain level, the FCC does not want to provide support for such a high cost location. This, in turn, implies that it would logically follow that the ETC does not have to serve that location.

Set out below is a table, which is recalculated annually, for WITA's members setting out the level of the maximum cost per location that WITA members can include in their cost studies for support from the high cost fund.

2019 Capital Investment Allowance⁷

COMPANY NAME	Maximum Average Per Location Construction Project Loop Plant Investment Limitation
SKYLINE TELECOM CO.	\$11,045
HAT ISLAND TEL CO	\$3,510
HOOD CANAL TEL CO	\$9,084
INLAND TEL CO -WA	\$14,658
KALAMA TEL CO	\$11,767
MASHELL TELECOM INC	\$11,148
ST. JOHN TEL.	\$37,470
TENINO TELEPHONE CO	\$11,251
TOLEDO TELEPHONE CO	\$29,832
WESTERN WAHIAKUM	\$31,999
WHIDBEY TEL CO.	\$11,561

While this investment cap is quite generous for some very low density areas, it does mean the FCC sees that there is a limit on what an ETC should spend to provide service.

⁵ This cap does not apply to companies on the A-CAM mechanism or price cap companies.

⁶ In the Matter of Connect America Fund, ETC Annual Reports and Certification, Developing a Unified Inter-carrier Compensation Regime, WC Docket No. 10-90, WC Docket No. 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking ("Rate-of-Return Reform Order"), FCC 16-33 (Released March 30, 2016).

⁷ This calculation is based on 2017 Year End Data.

For A-CAM companies, there is also a per location limitation that is included in the A-CAM mechanism.⁸ Recognizing that the A-CAM mechanism is primarily focused on extending broadband service, it is still interesting that the FCC has said that there are some locations that are too expensive to serve as a supported location.

In addition, the way the A-CAM mechanism works is that a company has a certain number of locations where it has to extend broadband service at 25/3, a certain number of locations where it has provide service at 10/1 and a certain number that must be served at 4/1. After that there is an obligation to provide service upon "reasonable request" at a 4/1 level for a specified number of locations. The ETC obligation under A-CAM ends at that level. The FCC has not defined what constitutes a "reasonable request." However, it is logical to assume that if the cost of the location exceeds the FCC's benchmark, the request would not be viewed as a reasonable request.

The A-CAM company obligation is somewhat similar, although not identical, to the obligation price cap companies undertake when they agree to receive CAF II funding. There are a certain number of locations that have to be served at certain levels and there is a per location cap on what can be included in the analysis.

It is also important to consider the role of the State Universal Service Program ("State Program"). Those companies that receive support under the State Program use those funds, along with other moneys, to ensure that basic telecommunications services are provided at a reasonable price to the customers. See, RCW 80.36.650(3) which describes one of the purposes of the State Program as preventing rate instability and RCW 80.36.650(4) which talks about reasonable rates. Besides promoting rate stability, funds from the State Program are used by some recipients, in conjunction with disbursements from other programs, to enhance service to customers.

For the moment, WITA's members seek to provide service to anyone within the company's service area that requests service. WITA's members hope that will be true in the future, although economic realities may taint that picture at some point in time. Given the caps that are on the federal mechanisms and given the uncertain future of the State Program,⁹ it is not clear what the future will hold for the ability of companies to provide service to all persons who request service.

What all of the foregoing discussion is meant to convey is that this is a very complicated area. It is an area in which it would be very difficult for the Commission to craft a rule that would apply to every company in every situation. WITA asks that the Commission continue to deal with these carriers of last resort issues on a case by case basis, rather than establishing a rule

⁸ See, e.g., the discussion of A-CAM in the Rate-of-Return Reform Order beginning at Paragraph 36.

⁹ The State Program funding expires with the 2018-2019 funding period. It is expected that legislation to extend the State Program will be introduced during the 2019 legislative session.

that may unduly complicate matters.

Question Two

Question Two asks what constitutes a carrier of last resort and whether the Commission should designate "a carrier of last resort in each LEC's service territory."¹⁰ To WITA's view, a carrier of last resort is a carrier who is there to provide service if there is no other option. The extent or nature of a carrier of last resort's obligations should be read in the context of "reasonable entitlement" language contained in RCW 80.36.090, and in the context of the availability of federal and state support programs that enable the provision of such service. See the discussion of this situation under Question One.

WITA does not believe that the Commission needs to designate a carrier of last resort in each service territory or establish criteria or other factors to make such a designation.

Question Three

This question asks whether there are any populated areas in Washington in which a local exchange company is the only source of reliable basic local telecommunications service. The answer to this question is yes. There are areas within some of the exchanges served by WITA members where cellular service is either not available or of insufficient signal strength to be viewed as reliable basic telecommunications service. Nor does it appear that under current technology the satellite services that are available would meet that need in every part of the state. Even if there are not ongoing latency problems with satellite service, line-of-site issues and bad weather issues raise the question on the extent to which satellite service is a reliable basic telecommunications service.

WITA wants to be clear that there are not huge areas. However, there are still some areas today where WITA members are the only available option.¹¹

Question Four

In Question Four, the Commission asks a series of questions about the existing line extension rule set out in WAC 480-120-071. In essence, the Commission is asking whether the existing rule works or whether it should be amended in some fashion.

WITA's members do not see a need to revise WAC 480-120-071. The thousand foot service extension has been long accepted and the companies have planned based on that standard.

¹⁰ Presumably, the Commission's reference is to incumbent local exchange carriers (ILEC) service territory. Competitive local exchange carriers do not have a designated service territory.

¹¹ WITA does not purport that this statement is a general statement applicable to all providers. WITA does not have the information in sufficient detail of the areas served by CenturyLink and Frontier to make a broader comment.

In addition, the balance in the rule between providing a line extension to individual home owners and those where service is being installed as part of a larger development is a good balance that has worked in the past and should continue in the future.

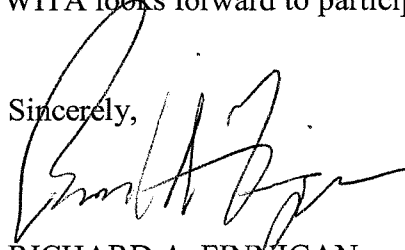
The Commission also asks whether additional record keeping should be required related to WAC 480-120-071, and, in particular, related to denials of request for residential basic service. WITA does not see a need for additional record keeping. In an era of increasing customer choice and competitive entry, the Commission should not impose increased record keeping, and the attendant costs, on one segment of the industry (wireline LECs) that it does not have the authority to impose on other segments (wireless carriers and VoIP providers) unless it is found to be absolutely necessary to do so. WITA does not believe that is the case in this instance.

Question Five

Under Question Five, the Commission is asking whether there are any other rules that need to be modified or repealed related to obligation to provide service. WITA is not aware of any other rules on this subject that are in need of modification or repeal.

Thank you for the opportunity to comment. WITA looks forward to participating in the workshop on January 7, 2019.

Sincerely,



RICHARD A. FINNIGAN

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cc: Client (via e-mail)