

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING TO CONSIDER  
AMENDING AND ADOPTING  
RULES IN WAC 480-123,  
UNIVERSAL SERVICE, TO  
IMPLEMENT LEGISLATION  
AMENDING AND EXTENDING THE  
STATE UNIVERSAL  
COMMUNICATIONS SERVICE  
PROGRAM

DOCKET UT-190437

**COMMENTS ON BEHALF OF THE  
OFFICE OF THE ATTORNEY GENERAL**

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## I. INTRODUCTION

1. As the initial five-year, targeted state universal communications services program was about to expire, the Washington legislature enacted Second Substitute Senate Bill 5511 (2SSB 5511), a comprehensive Broadband Internet Service Access bill (Broadband Bill). In its initial sections, the Broadband Bill sets out an ambitious agenda for achieving universal access to broadband in Washington, including availability to every residence and business of broadband at benchmark speeds of 25/3 Mbps (for downloads and uploads, respectively) by 2024, broadband of one gigabit per second speed in each direction to all anchor institutions by 2026 and, by 2028, access by every home and business to universal broadband from at least one provider at symmetrical speeds of 1.5 gigabits per second. The bill creates a state Broadband Office, to act as the “central broadband planning body for the state.” The Broadband Office is also tasked with collaborating with the Public Works Board (Board) to implement and administer a competitive grant and loan program.

2. As part of its comprehensive approach to achieving statewide broadband, the bill also extends the Universal Communications Service (UCS) program under the jurisdiction of the Utilities and Transportation Commission (“Commission” or UTC), with an expanded mandate, to include “the provision, enhancement, and maintenance of broadband services, recognizing that, historically, the incumbent public network functions to provide all communications services including, but not limited to, voice and broadband services.” Despite the expansion of its mission, funds available for the UCS program remain capped at the pre-existing level of \$5 million per year. The Commission provided input to the legislature, in anticipation of the adoption of a new broadband support initiative, through a report submitted to the legislature in

December 2018.<sup>1</sup> That report anticipated the need for a revision in the Commission’s rules, should the UCS program be extended and expanded to incorporate broadband support.<sup>2</sup>

3. In drafting rules to implement the Broadband Bill, the Commission should start from the premise that its UCS program is part of a multi-pronged strategy for achieving the bill’s overarching goals of statewide broadband deployment at benchmark speeds equal to or greater than 25/3 Mbps (download/upload) to every residence and business in the state by no later than 2024. Although each entity administers distinct funds, the Commission and Broadband Office should share information to ensure that support goes where it is most needed to achieve universal broadband coverage. Other goals reflected in the Broadband Bill, such as ensuring the affordability and quality of broadband access (Section 1 (2)), should also be priorities for the Commission.

4. Because funding is limited and efficient program management is imperative, the Commission should attempt to identify what types of broadband infrastructure investments deserve priority. Even though the UTC, the Broadband Office, and Board are aiming for a common goal, it is not necessarily appropriate for the three entities to adopt identical priorities and funding approaches. Among other things, the UCS has to be concerned about maintaining the integrity of all local communications services during the transition to broadband services.<sup>3</sup> The Commission should also consider efficiency in defining the types of applicants and projects

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<sup>1</sup> Washington Utilities and Transportation Commission, REVISING WASHINGTON’S UNIVERSAL COMMUNICATIONS SERVICES PROGRAM, PRELIMINARY REPORT (Dec. 31, 2018) (“Report”).

<sup>2</sup> Report at 8-9 (listing the anticipated scope of the rulemaking the Commission anticipated undertaking in the event of a revamping of UCS to focus on broadband).

<sup>3</sup> However, consistent with the emphasis in the Broadband Bill, we have assumed that the principal emphasis of the UCS going forward will be on supporting broadband services.

it will deem eligible for UCS funds. The more diverse the applicant pool and the types of applications the Commission makes eligible for funding, the more staff resources could be required to review and assess the relative merits of the applications. For this reason, it may make sense to figure out funding priorities in advance and tailor the revised UCS program to applications that meet those funding priorities.

5. The legislature's guidance in 2SSB 5511, Section 7 regarding the process for selecting recipients of state loans and grants can be a helpful starting point. The information required of applicants is fairly detailed (see, Section 7(5)(a)-(q)) and may be expanded at the Board's discretion. In addition to requiring a good deal of specific information about the applicant's proposed broadband service deployment or upgrades, Section 7(5) requires the applicant to demonstrate a plan for the project's long-term sustainability and a strategic plan for maintaining long-term operation of infrastructure. Applicants are also required to disclose estimated retail rates (in support of the goal that broadband service be affordable) and provide available evidence of a user adoption assistance program.<sup>4</sup> Many, if not all, of the criteria enumerated in Section 7(5) should be incorporated into the Commission's own application process, as they address costs, revenues, the capacity for system upgrades, short- and long-term accountability, competitive conditions, and other key areas of concern.

6. As a steward of limited universal service funds, the Commission should also be careful not to duplicate support that has been awarded (or anticipated to be awarded within the foreseeable future) by the Federal Communications Commission (FCC) or other federal

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<sup>4</sup> Consumers who have not previously had access to broadband can need support understanding its value and learning how to take full advantage of its capabilities. Adoption also continues to lag among older consumers and those with low incomes. For these reasons, it is important to pair deployment with programs that support adoption.

agencies<sup>5</sup> for broadband deployment. At the same time, if Washington can close broadband gaps at home more quickly and effectively through state initiatives, it should not delay assistance in anticipation of later federal assistance. Although the FCC has recently initiated consideration of an additional grant program, the Rural Digital Opportunity Fund, aimed at addressing the remaining broadband coverage gaps (primarily in rural areas with exceptionally high costs), the rules governing this program have not even been determined, and full implementation (funding, followed by actual buildouts) is likely to take at least several years following the adoption of programs procedures.<sup>6</sup>

7. The Commission should adopt the working assumption that broadband-capable telecommunications networks will also support the provision of basic voice service. Thus, the objective should be to effectively manage a transition from a network that supports only basic telecommunications services to one that supports both voice and broadband.<sup>7</sup> Consistent with

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<sup>5</sup> Press Release, Nat'l Telecomm. and Info. Admin., NTIA Releases Comprehensive Guide to Federal Broadband Funding (June 3, 2019) available at <https://www.ntia.doc.gov/press-release/2019/ntia-releases-comprehensive-guide-federal-broadband-funding>.

<sup>6</sup> Take, by way of example, the recent CAF II Phase II competition auction process: The FCC adopted rules for the CAF Phase II process and finalized decisions regarding the eligible areas in May 2016. The auction procedures were established in February 2018, the auction began in July 2018 and was concluded in August 2018, when the FCC announced 103 winning bidders for 713,176 locations in 45 states. Since then, the FCC has been vetting the winning bidders; as of July 2019, it had confirmed awards of approximately half of the funds conditionally claimed through the auction process. The FCC, on July 15, 2019, made its third round of funding under this program, authorizing over \$524 million in funding, over 10 years, to expand broadband to 205,520 unserved rural homes and businesses in 23 states. This brought cumulative awards under CAF II Phase II up to \$803 million (a bit over half of the \$1.488 billion allocated to the Phase II auction), with the remaining grants still to be finalized. Grant recipients are expected to “build out to 40% of the assigned homes and businesses in the areas won in a state within three years. Buildout must increase by 20% in each subsequent year, until complete buildout is reached at the end of the sixth year.” Public Notice, Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids, DA 19-657, July 15, 2019. This means that completed buildout is likely to occur roughly a decade after the final adoption of the program’s rules. The FCC has only just initiating a rulemaking proceeding to establish the framework for its latest initiative, the Rural Digital Opportunity Fund. *In the Matter of Rural Digital Opportunity Fund Connect America Fund*, WC Docket No. 19-126; WC Docket No. 10-90, Notice of Proposed Rulemaking (FCC 19-77, Aug. 1, 2019) available at <https://www.fcc.gov/ecfs/filing/08021650019155> (“RDO NPRM”).

<sup>7</sup> This is consistent with the transitional emphasis in the FCC rules. For example, under 47 CFR § 54.313 - Annual reporting requirements for high-cost recipients – the FCC requires price cap carriers to certify, as of July 1,

the legislature's guidance and federal policies, broadband projects should immediately take precedence over projects that do not have a strong broadband component.

8. Regardless of the criteria the Commission adopts for determining eligibility and calculating support amounts, accountability must receive heavy emphasis. Particularly if the Commission does not use a cost model or competitive bidding as the basis for the awards, it should require providers applying for broadband support to provide detailed cost information with their proposals (which should also be specific regarding the proposed coverage and broadband speeds to be offered, as well as the anticipated prices). Whatever approach the Commission uses to award funds, obtaining detailed and timely follow-up reporting by award recipients is necessary to ensure that they have fulfilled their commitments and to assess whether cost outlays are consistent with projections (which will also help to inform the Commission's future decisions regarding grant awards).

## II. RESPONSES TO QUESTIONS FROM THE COMMISSION'S NOTICE

1. **Broadband Bill Section 11(1) (c) defines "Broadband service" as "any service providing advanced telecommunications capability, including internet access and access to high quality voice, data, graphics, or video." This definition does not include a minimum speed. However, Section 18 requires the Commission to set support amounts for maintaining systems that meet federal or state broadband speed guidelines (25/3 Mbps). Should the definition of broadband service in the rule include a specific speed or should it allow flexibility to accommodate future changes to the definition of advanced telecommunications?**

9. While the definition of "broadband service" in the portion of the Broadband Bill specifically dedicated to the UTC's universal service fund administration does not specify a

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2016, and subsequent years, that 100 percent of the frozen-high cost support the company received in the previous year "was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor." Although, a less stringent requirement currently applies to smaller, rate of return carriers, a similar emphasis on transitioning support exclusively to broadband-capable networks also applies. *See, e.g., 47 CFR § 54.313(f).*

speed, it would be incompatible both with Section 18 and with the goals expressed in Section 5 of the bill to support service at minimum speeds less than 25/3.<sup>8</sup> The flexibility to accommodate a higher benchmark as consumer needs change in the future is inherent in the rulemaking process (that is, the rule could be amended, should a higher benchmark speed seem more appropriate at some point in the future). Alternatively, the Commission could build this flexibility into the rule. However, given the 5-year window for the USC program extension and assuming that the Commission has limited funds (approximately \$5 million per year) at its disposal, 25/3 would seem a reasonable target speed.

2. **Section 12(1) of the Broadband Bill states that the purpose of the program is to “support continued provision of basic telecommunications services under rates, terms and conditions established by the commission and the provision, enhancement, and maintenance of broadband services.”**
  - a) **Should the Commission interpret “provision” in the context of broadband, to include deployment of broadband where it currently does not exist?**
  - b) **Should the Commission interpret “enhancement” in the context of broadband to mean improvement of the reliability or speed of a current internet connection?**
  - c) **Should the Commission interpret “maintenance” in the context of broadband to mean ongoing repair and expenses related to offering broadband services as currently being provided?**

10. The USC should be used to facilitate a transition from a platform that supports only basic telecommunications services to one that supports a broadband platform that includes basic voice service capability. The Commission’s rules should be flexible enough to permit funds to be used either for deployment of new broadband or for the enhancement of existing broadband service (especially if service falls significantly short of benchmark speeds). Both are worthwhile

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<sup>8</sup> In its recent RDO NPRM, the FCC commented that it no longer deemed it appropriate to use a lower speed standard, such as 10/1, for rural areas. RDO NPRM, ¶ 24 (footnote omitted). “We propose not to include a Minimum performance tier, which required 10/1 Mbps broadband in the CAF Phase II auction. The Commission has since recognized that ‘access to 25/3 Mbps broadband service is not a luxury for urban areas, but important to [all] Americans where they live.’”

objectives, assuming that the applicant has a well-documented proposal for advancing broadband service toward universal coverage within the target area.

11. The Commission should prioritize proposals that do not anticipate requiring an ongoing subsidy for maintenance and repair. Given the limited amount of funding available as well as the finite duration of the universal service program under current law, it is preferable that the provider apply for a fixed amount to cover deployment (or upgrade) for pre-specified coverage, without an expectation that there would be a continuing subsidy. Instead, given the USC's limited funds, recipients should rely on revenues from sales of broadband (and related services) to customers to support recurring expenses. However, the Commission's rules should not foreclose consideration of requests for maintenance of broadband-capable infrastructure, especially in the state's most rural areas where it may be difficult for providers to generate sufficient revenues from broadband service to fully cover operating expenses.

**3. On August 1, 2019, the Federal Communications Commission (FCC) conducted an Open Meeting in which it considered a Report and Order that establishes Digital Opportunity Data Collection. Under that Order, geospatial broadband coverage data will be collected from fixed providers and will ultimately be used in a two-phase reverse auction that will target \$20.4 billion to bring high-speed broadband to unserved areas (those lacking 25 megabits per second down and 3 megabits per second up, or 25/3 Mbps). Should the Commission rules be structured to include new data, ideas, or concepts identified through this, or other, data collection processes? If so, how?**

12. It is critically important that limited funds to support the completion of universal broadband coverage be expended efficiently. In particular, the Commission should not inadvertently fund coverage where other existing coverage already exists (subsidized or unsubsidized) at benchmark speeds. The FCC, among others, has recognized that the information reported on its Form 477 overstates broadband coverage because "providers report whether or



not fixed broadband service is available in at least some part of each census block, but not whether there is availability at all areas within a block.”<sup>9</sup> To identify the remaining gaps in coverage, a more granular approach to identifying gaps should be adopted. The recent FCC data collection initiative implements a requirement for the filing of more granular maps of broadband availability, which is a significant improvement over the information available through the Form 477 data. However, as the FCC itself acknowledges, this more granular mapping falls short of the eventual goal of location-specific data.<sup>10</sup>

13. The Commission should obtain location-specific information wherever possible.<sup>11</sup> The onus should fall on providers – particularly when they are seeking monetary support for broadband expansion – to give an accurate account of where they provide broadband (and at what speeds) in their networks. On the one hand, it would seem that identifying where broadband is available would be easier in low-density areas, but some have argued that the costs and complexity of location-specific reporting will impose costs and complexity that will be particularly burdensome to small providers.<sup>12</sup> The Commission should explore this question further. At a minimum, applications that include location-specific data should take precedence

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<sup>9</sup> *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195; WC Docket No. 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, ¶ 6 (rel. Aug. 6, 2019) available at <https://www.fcc.gov/ecfs/filing/080629599705> (“Data Collection NPRM”). In a partial dissent, Commissioner Starks points out two other aspects of the Form 477 that overstate coverage (“Secondly, the current Form 477 reporting directions allow providers to report not only areas where they actually serve, but also areas where they “could serve.” Lastly, mobile broadband service providers must report their minimum advertised speeds instead of the actual speeds they are providing and that consumers are likely to experience.”) Commissioner Stark also criticizes the ongoing delays in abandoning the Form 477 as a primary tool in the FCC’s broadband universal service programs.

<sup>10</sup> Moreover, for the present the FCC will continue to collect and rely on data from Form 477, despite its acknowledged shortcomings.

<sup>11</sup> It may be fruitful for the Commission to seek the mapping (geographic information system (GIS)) expertise of other state agencies. See, e.g., Christina Kellum, *Geographic Information Systems (GIS)*, Washington Dept. of Ecology, <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS> (last visited Sept. 9, 2019).

<sup>12</sup> See, Data Collection NPRM, ¶ 31 (citing Comments of American Cable Association (ACA)).

over those with less precise information (all else being equal). Certainly, the Commission will achieve its universal service objectives more efficiently if it is able to obtain more granular detail about gaps in broadband service.

14. Consumer input – what the FCC refers to as “crowd-sourcing” – is another useful tool for verifying the accuracy of provider-reported information on broadband availability, but also in assessing local demand for broadband service. Thus, the Commission might also consider having applicants demonstrate community interest in broadband, both to provide evidence of need and as a way of assessing the potential revenue stream.

15. As with all other aspects of their filings, providers should be held accountable for the accuracy of their representations about proposed and actual coverage. The Commission should also require providers participating in the UCS to update information about coverage and other funding sources on a regular, ongoing basis, not just at the time of application. Coverage and funding is a moving target, as the FCC completes the award process under Connect America Fund II, Phase II and then rolls out the successive phases of its Connect America program and the newly announced Rural Digital Opportunity Fund. Thus, for example, while a current snapshot may indicate that a particular area lacks coverage, a provider may be part way through the process for obtaining funding<sup>13</sup> to serve that area. At a minimum, any applicant for support from the state UCS should be required to disclose (and supply updates regarding) any application that it has filed with the FCC for funding and the status of its funding request(s).

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<sup>13</sup> Under the FCC’s procedures for the CAF II Phase II auction, providers had to be prequalified to participate as bidders. Then, after having their proposal selected as a winning bid, they had to submit a more detailed application, which had to be reviewed before an award was finalized. *See, Wireline Competition, FCC Connect America Fund Phase II Auction (Auction 903)*, Fed. Comm’n Comm’n (Aug. 26, 2019) <https://www.fcc.gov/auction/903#two>.

4. **Under the current rules, a company’s rate of return and return on equity are analyzed (among other factors) to determine if a company is eligible to receive support from the fund. Should this continue to be a factor in determining eligibility? What other information should be a factor in the Commission’s determination of provider eligibility?**

16. Information about a company’s rate of return and return on equity (along with other financial information) may have been useful with regard to deciding whether a provider needed a subsidy to continue providing its existing basic voice service. However, the focus in expanding broadband availability should be primarily on the costs and anticipated revenues for providing broadband service to the unserved area. Information about the overall financial condition of the provider can be relevant to assessing its stability, but does not directly explain why it has not, to date, expanded broadband service to an unserved area.

17. There are other reasons why the Commission should emphasize factors other than rate of return and return on equity in establishing eligibility. Although the Commission’s authority to apply rate of return regulation to incumbent local exchange carriers (ILECs) providing basic voice communications service is well established, attempts to extend this type of regulation to broadband services could face a serious challenge. A recent FCC decision aggressively seeks to foreclose any state regulation of broadband services, while at the same time declining to regulate under federal law.<sup>14</sup> Moreover, while such information is already being produced by rural ILECs

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<sup>14</sup> See, *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, ¶¶ 194-196 (FCC 17-166, rel. Jan. 4, 2018) available at <https://www.fcc.gov/ecfs/filing/0104079319406> (“We conclude that regulation of broadband Internet access service should be governed principally by a uniform set of federal regulations, rather than by a patchwork that includes separate state and local requirements. ... Allowing state and local governments to adopt their own separate requirements, which could impose far greater burdens than the federal regulatory regime, could significantly disrupt the balance we strike here. [para. 194] ... Among other things, we thereby preempt any so-called “economic” or “public utility-type” regulations, including common-carriage requirements akin to those found in Title II of the Act and its implementing rules.” [para. 195]). The logic of this Order, preempting state regulation of matters the FCC itself declines to regulate, has drawn criticism from consumer advocates such as Public Knowledge. See, Shiva Stella, *Public Knowledge Responds to FCC Vote to Preempt Local Regulation of Broadband*, Public Knowledge (Aug. 1, 2019)

subject to state regulation, it will be less readily available to wireless providers<sup>15</sup> and non-ILECs that might conceivably seek to establish eligibility.

18. The most important criteria for assessing provider eligibility relate to the reliability of its commitment to extend broadband to unserved areas (or improve below-benchmark service), as evidenced by its financial stability and an established track record of good customer service and service quality, reasonable rates, terms, and conditions for service, and compliance with the Commission's requirements for accounting and reporting. With eligibility established, a provider should still have to offer any specific evidence that the Commission deems necessary to evaluate the merits of any specific project for which it seeks support.

**5. The Broadband Bill requires a company seeking support to adopt a plan to provide, enhance, or maintain broadband services in its service area. Please comment on Commission Staff's preliminary recommendation that the broadband plan should include, at a minimum, the information listed below:**

- **A five-year investment plan;**
- **Locations where, using geospatial coverage data, the company proposes to undertake or is currently undertaking specific work to provide, enhance, or maintain broadband services at speeds that meet state or federal requirements;**
- **High-quality fixed broadband coverage polygons depicting the areas where the company has a broadband-capable network and makes fixed broadband service available to end-user locations. The plan must include the maximum download and upload speeds actually made available in each area and the technology used to provide the service. The plan also should differentiate between residential-only, business-only, or residential and business broadband services. The company must submit a broadband coverage polygon for each combination of download speed, upload speed, and technology.**
- **The company's Form 477 Subscription Data at the census tract level. Data should be provided in the same form as it is provided to the FCC.**

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available at <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-fcc-vote-to-preempt-local-regulation-of-broadband>.

<sup>15</sup> In fact, while the current rules require wireline providers to supply a long list of financial documents, the guidelines for accepting petitions from wireless providers remain unspecified (subject to an eventual prescription by the Advisory Board). *See*, WAC 480-123-110(2).

19. Section 12(3) of the Broadband Bill addresses eligibility. It retains the existing eligibility requirement concerning provider type and size (ILEC serving fewer than 40,000 lines or wireless provider serving fewer than 40,000 lines) [subsection 3(a)(i)] and adds, in place of language regarding risk of rate instability or service interruption, the requirement that the communications provider has adopted “a plan to provide, enhance, or maintain broadband services in its service area.” As it pertains to eligibility, it makes sense for the “plan” referenced in this subsection to be incorporated into the Commission’s rules. One preliminary question is whether the requirement for a “plan” in Section 12(3)(a)(ii) pertains to general eligibility (as addressed in WAC 480-123-100, “Prerequisites for requesting program support”) or relates to specific funding requests (as addressed in the current WAC 480-123-110, “Petitions for eligibility to receive program support”).

20. Certainly, the Commission should require all of the information contained in Commission Staff’s preliminary recommendation. The Commission should also consider adding requirements for:

- A detailed account of efforts the provider has made to obtain funding from the FCC and other available funding sources to support broadband expansion in its service area, including actual and anticipated awards and the specific obligations the provider has or will assume pursuant to those awards;
- Evidence demonstrating the provider’s prospective financial, operational, and technical expertise and stability over the long term;

- A strategic plan that addresses the provider's plans both for achieving broadband coverage throughout its service territory and for maintaining long-term operation of its broadband infrastructure;
- Detailed cost support related to the specific project being proposed; and
- An account of the provider's plans for supporting broadband adoption.

21. The current WAC 480-123-120 includes criteria for determining the eligibility of specific funding requests and for calculating the size of an annual distribution to the requesting provider. However, since its focus is on legacy services with existing infrastructure, it does not adequately address the project-specific information a provider should provide to the Commission to obtain broadband project funding. Applications to receive funds should contain specific information about the committed coverage and speeds, a committed timeframe for project completion, the estimated costs, and the estimated rates for be charged to end users (in line with an affordability benchmark). As consumers in high-cost areas are unlikely to have competitive options for their broadband service, it is important to preserve their competitive choices for broadband-enabled video programming and Voice over Internet protocol services by giving funding preference to broadband providers who commit to offering stand-alone broadband service (Internet access without bundled video programming and/or voice services).

6. **Once location-specific data are available, a portion of program support could be distributed based on a company's ability to deploy to locations where the company does not provide 25/3 Mbps broadband service.**
  - a) **What portion of program support, if any, should the Commission direct solely at deploying 25/3 Mbps broadband service?**
  - b) **Should the Commission focus support on areas that are either "unserved" or "underserved"?**
  - c) **Should "underserved" be defined in this context as a location with an available speed less than 25/3 Mbps (or another speed, as determined by the Commission), but faster than 10/1 Mbps (or another speed, as determined by the Commission)?**
  - d) **Should "unserved" in this context be defined as a location with an available speed equal to or less than 10/1 Mbps (or another speed, as determined by the Commission)?**

22. As noted above, the FCC anticipates eventually revising its rules to require location-specific data. The Commission, however, is not limited by the FCC's timetable and should consider making its own independent transition to requiring location-specific data. This data can be augmented with data collected by the FCC once it becomes available.

23. As to the questions of how the Commission should allocate funding, this will be informed by the data received through requests for funding. More granular broadband mapping is a prerequisite to assessing both the location and the types of gaps that exist (no broadband vs. below-benchmark-speed broadband). Better information about the estimated cost-per-location for deploying broadband to rural locations would help the Commission understand how far its funds will go for new deployment relative to upgrading existing broadband infrastructure to higher benchmark speeds. Other funding sources may be available to support initial deployment versus system upgrades and should be considered. If, for example, a provider would be eligible for federal support for a new deployment but not to increase the speed of below-benchmark existing broadband service, this could be a relevant factor in the Commission's decision about where to prioritize the focus of its funding.

- 7. Broadband Bill, Section 12(3)(b) enables companies other than incumbent local exchange carriers (ILECs) to receive support from the fund under specified circumstances. What data/information should the Commission require of a non-ILEC communication provider to demonstrate that it is able to provide the same or comparable services at the same or similar service at a lower price than the existing ILEC?**
- a) How quickly should the Commission require a non-ILEC company to provide the applicable service?**
  - b) Should the Commission enable a company to “submit” to Commission regulation of its service as if it were an ILEC?**
  - c) How should the Commission regulate applicable service provided by a non-ILEC?**

24. Section 12(3) may be underutilized as written. The original Section 12(3)(a) makes funding potentially available to either small ILECs or to small wireless providers (“radio communications service company[ies]”) with 40,000 or fewer lines (subject to the submission of a plan and compliance with other Commission-established criteria that are not specified in the current rules). Revised Section 12(3)(b) permits the Commission to also fund a communications provider who demonstrates the ability to provide “the same or comparable services at the same or similar quality standards at a lower price” to all customers in the exchange(s) where it would obtain support, on the additional condition that it “submit” to regulation by the Commission “as if it were the incumbent local exchange company serving [those exchanges]. Although theoretically possible, it is highly unlikely that a non-ILEC will voluntarily submit to the type of regulation that applies to small ILECs. For example, we are not aware of any state in which cable companies have agreed to submit to traditional common carrier regulation as a prerequisite to providing broadband service, with or without a universal service subsidy.

25. One possible way of prioritizing the Commission’s limited funds is to continue to focus support on rural ILECs and leave funding of non-traditional providers (cable companies, competitive local exchange carriers, public entities, etc.) to the new grant and loan program that



is being initiated through the Board and Broadband Office. This approach also supports the objective of establishing a stable transition path from basic voice service infrastructure to a broadband platform.

26. Despite the low probability of non-ILEC wireline providers seeking to deploy broadband to unserved areas using UCS support, the Commission may find it prudent to adopt changes to its rules to accommodate the inclusion of such providers. Aside from the traditional measures of common carrier fitness (technical, financial, and managerial qualifications), the Commission should ensure that the provider is prepared to fulfill all customer requests for service within a reasonable time, maintain adequate service quality, and charge reasonable and nondiscriminatory rates. In addition, all eligibility and application-related criteria that apply to small wireline and wireless providers under the Commission's rules (other than size requirements) should also apply to a Section 12(3)(b) provider.

**8. The current distribution amount a company receives is the sum of the amount a provider received in 2012 from the former traditional Universal Service Fund established in Docket U-85-23, et al. and the cumulative reduction in support from the FCC's Connect America Fund. Should these two historical components continue to be used in calculating the future distribution amount an eligible company receives?**

27. In updating its rules, the Commission should transition away from legacy universal service fund mechanisms and toward an approach that results in more predictable and competitively neutral funding, such as model-based support or, where practical, competitive bidding. Legacy universal service funding calculations seek to make incumbents "whole" with regard to past revenue streams for basic voice service, fail to reflect current market conditions (line losses, revenue opportunities associated with the provision of new broadband services), and

can operate as a drag on resources that could more appropriately be allocated to expanding the state's broadband priorities.

28. Under the original UCS program, the Commission's calculation of an eligible ILEC's support amounts were relatively straightforward, as described in WAC 480-123-120.<sup>16</sup> If the Commission no longer uses this formula as the basis to calculate support, then it must have another basis for determining the size of awards.<sup>17</sup> Up until now, the small ILEC would demonstrate eligibility and then describe the purposes to which it intended to use funds up to the calculated amount. Going forward, the Commission might reasonably conclude that there should be a different method for both allocating and awarding support. The FCC has used both a cost model approach and a competitive bidding approach to award broadband funds. The Commission might consider whether these approaches – or a different method – will best suit the purposes of the expanded and revised UCS fund. Identifying an efficient and workable approach raises various questions that go beyond the current notice. For example, would the Commission rely on the FCC's cost model? Does the Commission anticipate that more than one eligible provider would seek support for a given area (a prerequisite for competitive bidding)? How much administrative resource will be necessary to apply the new calculation criteria?

29. The current allocation method under WAC 480-123-120(2) is simple, and although simplicity might justify retaining the method, it is not advisable.<sup>18</sup> Because the calculation is

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<sup>16</sup> Whereas the 2013 law gave some limited guidance to the Commission about a distribution formula, the Broadband Bill requires the Commission to establish the distribution criteria Section 12(4)(a).

<sup>17</sup> Somewhat confusingly, Section 12(4)(b) of the Broadband Bill (a new subsection) directs the Commission to distribute support on a pro rata basis if there are not sufficient funds to fully fund the distribution formula "set out in (a)" – when (a) does not in fact set out any distribution formula.

<sup>18</sup> Somewhat confusingly, Section 12(4)(b) of the Broadband Bill (a new subsection) directs the Commission to distribute support on a pro rata basis if there are not sufficient funds to fully fund the distribution formula "set out in (a)" – when (a) does not in fact set out any distribution formula.

based on criteria unrelated to the status of broadband in the provider's service territory, the simple method would be a blunt tool for assessing provider needs. If the Commission were to use this approach, the award recipient would need to justify how it proposed to use the allocated funds (including the proposed coverage, timeframes, speeds, cost support, sustainability, etc.) to provide, enhance, or maintain broadband in its service area. The Commission might also have to decide whether certain projects could proceed efficiently within the constraints of an annual support allocation under the current WAC 480-123-120(2), rather than a larger award covering multiple years. One obvious limitation of this approach is that the Commission's rules do not specify a basis for calculating awards to non-ILEC providers, should any apply.

**9. Should the distribution criteria have a multi-pronged approach? That is, should there be two components: one for maintaining broadband and another for deployment of broadband to new locations? If so, should there be a transitional period?**

30. As discussed in the response to Question 2, the Commission should give priority to funding requests that are likely to result in sustainable broadband service without the need for an ongoing subsidy for maintenance. Beyond this, it is unclear what type of transitional period this question refers to – perhaps to temporary funding for maintenance of existing broadband infrastructure by a provider that is also applying to expand its coverage? Experience shows that operational subsidies, once established, are hard to back away from. Unfortunately, however, there is not enough actual experience with rural broadband systems to adequately assess their economic viability to provide quality service at affordable rates on an unsubsidized basis.

**10. What build-out requirements should the Commission adopt? How should build-out requirements be established? Because companies will be receiving additional funding, should companies have build-out requirements above and beyond their current federal build-out requirements? Should build-out requirements be uniform or company specific?**

31. This is one of the many questions that the Commission needs to assess in the overall context of developing its framework for awarding support (e.g., model/cost-based, competitive bidding, or fixed support). The amount and type of broadband expansion (new build or upgrade), the award amount, and the timeframe for the buildout are interdependent variables. The Commission should nonetheless attempt to develop guidelines for build-outs that receive UCS support.

32. The last part of this question presupposes that companies applying for funding are likely to also be receiving federal funding. If companies are receiving federal funds for build outs, they should not be eligible for state funds without undertaking some additional commitments – such as to expand the number of locations covered, increase broadband speeds beyond the previously agreed-to benchmark, or accelerate the timeframe for completing deployment.

**11. WAC 480-123-110 outlines the information that must be included in a company’s petition. Should the Commission revise that rule to modify the requirement to provide any of that information? If so, what information should the Commission remove or add, and why?**

33. The current WAC 480-123-110 focuses a great deal of attention on the financial status of the petitioner as a rate-of-return ILEC. As explained in the response to Question 4, this information does not explain why the petitioner has not previously expanded broadband to an unserved area for which it is seeking support. It is also information that will not be readily available to wireless or non-ILEC providers. Insofar as rural ILECs continue to file financial information, that information remains available to the Commission to examine, should it appear

relevant to evaluating a particular petition. Please refer to the response to Question 4 for other information that the Commission should require in support of proposals for funding of specific projects.

**12. WAC 480-123-130 outlines a provider's reporting requirements. Should the Commission revise this rule to modify any of these requirements? If so, which requirements should the Commission remove or add, and why?**

34. The current USC reporting requirements were developed to address basic voice service and need to be overhauled to reflect focus on broadband. The current rule requires the provider to report detailed information on how the provider used program support received during the preceding year. The revised rule should focus on project status and accounting – such as whether the provider has met its specific commitments for extending broadband coverage. The reports should provide the Commission with information necessary to compare a provider's actual costs with projections. They should also gather information that will enable the Commission to evaluate the prices charged to consumers and the level of adoption of broadband service in the affected area.

**13. Available data on broadband deployment are currently limited to what companies report on the FCC's Form 477 data. Should the Commission require this data set to be expanded to include other information that the FCC or other third parties have, or will have in the future? If not, why not?**

35. As explained in the response to Question 3, there is a broad consensus concerning the limitation of Form 477 data. Data, reports, or other relevant information that is being produced in connection with a requirement imposed by the FCC or other state or federal agency should be shared with the Commission. There may also be information that is being provided to the Universal Service Administrative Co. (USAC) that could aid the Commission in targeting support to unserved locations. Recipients should be required to submit information about the

prices they are charging customers for broadband.<sup>19</sup> Recipients should also provide information not only as to the locations where broadband has become newly available but also the numbers of customers actually subscribing in those areas supported by the UCS subsidies, with the subscription information being afforded confidential treatment if carriers so request.

**14. Should the Commission require companies to provide geocoded data as part of their compliance report to show how and where they propose to invest to enhance, maintain, or provide broadband services? If not, why not? Should the Commission require companies to provide any additional or other information to enable the Commission and the legislature to understand how companies are using program support?**

36. The question is somewhat confusing as it appears to mix timeframes – referencing “how and where they propose to invest” with “compliance report[ing].” It is appropriate to require companies to provide the most detailed and accurate information available, including but not necessarily limited to geocoded data, both in their applications for support and in subsequent reporting to substantiate that they are spending support in a manner consistent with what they have represented to the Commission in their applications. The provision of geocoded data in compliance reports certainly support this goal. The Commission should also coordinate with the Broadband Office with regard to broadband mapping, to ensure the most accurate and up-to-date assessment of broadband coverage.

**15. Once a company receives program support, should the Commission require the company to continue voice and broadband reporting throughout the program’s operation, even if the company does not receive support in subsequent years, to ensure the Commission can timely identify served, unserved, and underserved locations.**

37. Accountability that extends beyond the award year is paramount to the success of the UCS program with respect to broadband. It is thus completely appropriate for the Commission to

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<sup>19</sup> Rate information should include information on rates for service at different speeds, non-recurring charges, and charges, if any, related to term service commitments.

require a provider that has received UCS support to continue to report on the status of its broadband service (coverage, speeds, etc.), regardless of whether the provider is a recipient of subsequent funding.

**16. The Advisory Board constituted under the current rules includes representatives from different types of stakeholders, including, but not limited to communications providers and consumers. What other stakeholders should serve on the Board under revised rules?**

38. In the transition to supporting broadband services through the UCS, the Commission may find it useful to rely on advice from diverse stakeholders. The deployment of new infrastructure often requires providers to access public ways. The Commission should seek to identify an organization or association that represents the interests of entities responsible for planning and management of public ways in the types of areas where new broadband infrastructure is likely to be deployed.

39. While providers certainly have important insights to offer, the current Advisory Board membership seems provider-heavy, relative to non-industry participation, with four industry representatives. In particular, large ILECs (over 40,000 lines) are included, even though they were ineligible to receive funds from the original UCS, and experience from the FCC's broadband program suggests that they are highly unlikely to seek to expand broadband coverage to unserved areas beyond their current service territories. Certainly, consumer input is important to include in the Advisory Board, and weighs in favor of Public Counsel's continued involvement.

### III. CONCLUSION

40. The Commission's Notice raises a series of interrelated and complex questions that arise from changes in the statutory framework and conditions in the evolving telecommunications environment. We look forward to reviewing comments filed by other stakeholders, participating in workshops, and providing further input with additional opportunities for comment.