

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION

Policy Statement to Review State
Universal Service Policies

DOCKET NO. UT-100562

SECOND COMMENTS OF PUBLIC COUNSEL

SEPTEMBER 17, 2010

I. INTRODUCTION

1. Public Counsel submits these comments in response to the Commission's Notice Seeking Comments on Washington Independent Telecommunications Association USF Concept Paper and Tentative Notice of Third Workshop, dated September 1, 2010.
2. Public Counsel agrees with the opening paragraph of the Concept Paper that the public communications network is fundamental infrastructure for rural Washington. Indeed this is true for urban Washington as well. The key question presented by the Concept Paper is whether there is a need at this time to create a state "universal service fund" to subsidize that infrastructure, and, if so, how that fund should be structured.

II. COMMENTS REGARDING THE CONCEPT PAPER

A. General Points.

3. The initial round of comments and workshops in this proceeding addressed the broader question of the need to create a state fund, as well as related questions regarding fund design and access charge issues. A number of parties, including Public Counsel, sounded a note of caution

with respect to the creation of a new fund. Many of the points made in the earlier comments are relevant to the Concept Paper as well.

4. Before establishing a state universal service fund, as a recent analysis¹ observed, there are a number of questions that must be considered:

- Is a fund needed?
- Is there legal authority for a fund?
- What are the fund's goals?
- What services, providers, and facilities should be supported?
- What distribution mechanism is best?
- Are controls needed over fund size?
- How will funds be collected?
- Who will administer the fund?
- How will the fund be evaluated and made accountable for results?

To these questions can be added others, including:

- What fund size results from the policy decisions regarding goals and supported services?
- What is the financial impact on business and residential ratepayers surcharges for of fund collection?
- Is the fund design competitively and technologically neutral?

5. While the Concept Paper understandably takes a theoretical approach, the ultimate decision about whether and how to proceed with a state universal fund and/or with access reform

¹ *State High Cost Funds: Purpose, Design, and Evaluation*, Bluhm, Bernt, Liu, National Regulatory Research Institute, January 19, 2010, at page v.

should be based on rigorous factual and data analysis. Decision makers must have empirical information about key factors such as fund size, ratepayer impact, appropriate benchmark rates, location and nature of high cost areas, cost models, and company revenues and earnings. Inclusion of broadband support requires information about current broadband speeds, deployment and upgrade costs, penetration, subscribership rates, and service offerings and rates. Without this base of information, establishment of the fund will be a shot in the dark, and likely an expensive one.² While maintaining Washington's public telecommunications infrastructure is unquestionably an important goal, in the current economic situation, Washington cannot afford imposition of a hastily designed multi-million dollar surcharge on residential and business customers.

B. Specific Responses to The Concept Paper.

1. Washington Universal Service Reform – Contributions.

6. Public Counsel generally agrees with the parameters set out in this section of the outline.

The concept that all carriers who use the Public Switched Telephone Network (PSTN) should contribute to support the network is a key one. Broadening the contribution base to more carriers and services eases the financial burden on individual consumers and is a more equitable allocation of cost responsibility.

7. One thing missing from the Concept Paper is a definition of "universal service," i.e., what service or services are to be supported by the new fund. This is an important part of any universal service support structure, as the federal program reflects. It is a key determinant of fund size.

² See, Initial Comments of Public Counsel, June 16, 2010, ¶ 13. The comments described the detailed policy and technical review conducted when a state universal service fund was last considered.

2. Access Reform Track.

8. Public Counsel incorporates by reference its initial comments regarding access reform. Access reform has the potential to cause rate increases, potentially significant ones, for both residential and small business customers. The methodology for establishment of a local benchmark rate, a key factor in determining that impact, is not addressed in the Paper. Public Counsel is also concerned with the proposal for “simplified earnings review.” Given that virtually none of the affected companies have undergone any form of thorough rate review by the Commission in many years, and given that the result of access reform is likely a local rate increase, perhaps a large one, this is not the time for a cursory or casual review of earnings. Customers have a right under Washington law to have a determination that their telecommunications rates are fair, just, and reasonable. This requires more than a “simplified” cursory review. Public Counsel also disagrees that the simplified review should be limited to “regulated” revenues only. This narrow framework will yield an inaccurate picture of a company’s true revenue need. Limiting review to regulated revenues only is contrary to the goal of minimizing the size of a fund because it may overstate the need of a company for universal service support.

3. High Cost Track.

9. The Concept Paper proposes the use of a forward looking cost model. While Public Counsel supports the use of forward looking costs in designing a fund, the selection of a cost model was a major bone of contention in the previous universal service proceedings. The type of model selected will have a major impact on the size of the fund.

10. Public Counsel is concerned with the breadth and uncertainty of the “regulatory treatment” proposals in this section. In Phase 1, there is reference to automatic competitive

classification of low-cost areas (as opposed to carriers or services). As a general matter, Public Counsel does not support the automatic deregulation (by competitive classification) of areas, carriers or services based on universal service fund parameters, as opposed to statutory requirements. The Phase 2 section contains very broad language proposing that “ROR regulation will be eliminated and streamlined regulatory protection rules will be identified and implemented.” This goes far beyond the scope of creating a state universal service fund. It is both premature and unnecessary to link such broad change in regulatory protection to the creation of a fund. The appropriate level of regulatory treatment is an important consideration that should be reviewed separately. State law already allows companies to request reduced regulation and competitive classification. It is not possible to predict at this time what impact a state universal service fund or access charge reform will have on the levels of competition or the need for regulatory protection for the public. No matter what level of economic regulation is ultimately found to be appropriate, the UTC should retain broad consumer protection authority and enforcement powers.

11. Another area of concern for Public Counsel is the establishment of carrier-of-last-resort (COLR) requirements. Public Counsel supports the general concept that carriers who receive support assume COLR obligations. The concern is with creation of potential instability of COLR status for a particular geographic area. A mechanism under which carriers in an area could be automatically “relieved” of COLR obligations by virtue of the USF funding structure could be harmful to consumers, to economic activity, and to the infrastructure itself. COLR obligations exist independently of the existence of universal service funding. They are part of the “obligation to serve” under Washington’s regulatory framework, which to date has resulted

in an affordable, reliable, well-maintained, and robust telecommunications network, with adequate consumer protections. This aspect of the proposal should be carefully designed to avoid creating the potential for instability and unpredictability in the basic availability of essential telecommunications services.

4. Broadband.

12. Public Counsel agrees that there should be a “trigger” for any state broadband fund, based on the classification of broadband as part of universal service. This is likely to be tied to action by the Federal Communications Commission on this issue. As with a state universal service fund generally, the design of a state broadband fund ought to take into account anticipated federal action in this area. Public Counsel agrees with the Concept Paper that state universal service funding, if established, would transition over time to broadband support, to the extent broadband becomes the primary essential service. As noted in our initial comments, widespread broadband deployment in Washington has occurred successfully in the absence of a state fund, under existing support frameworks and market pressures. Broadband support, if any, therefore, should be targeted only to unserved or underserved areas, carefully defined, and verified to make the most efficient use of funds. If broadband is recognized as an essential telecommunications service, it should be subject to the regulatory authority of the UTC just as other telecommunications services are.

III. CONCLUSION

Public Counsel respectfully requests consideration of these comments and looks forward to further participation in this rulemaking docket on these important issues.