

**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)
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DOCKET UT-131239

**INITIAL COMMENTS OF THE
BROADBAND COMMUNICATIONS
ASSOCIATION OF WASHINGTON**

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**Initial Comments of the Broadband Communications Association of Washington
Regarding Amending and Adopting Rules to Implement Legislation Establishing
a State Universal Communications Program**

INTRODUCTION

The Broadband Communications Association of Washington (“BCAW”) appreciates this opportunity to provide initial comments regarding the Commission’s implementation of the intrastate universal service fund established in recently enacted legislation.¹ Set forth more fully below are BCAW’s specific initial recommendations. These recommendations are informed by the overarching goals of ESS HB 1971, in which the Legislature has created as a finite transitional support mechanism designed to provide small companies with temporary relief from the impact of federally-mandated reductions to access revenues while they alter their business plans in order to compete in the marketplace.

The universal service program established in ESS HB 1971 is the result of several years of investigation by this Commission, including significant input from stakeholders, examination of the communications market in the State, and a review of the financial and operational profile of Washington’s small incumbent local exchange companies (“ILECs”). The legislation is based largely on the Commission’s November 2010 recommendation to the Legislature for the adoption of a limited universal service fund targeted to small rural carriers to “compensate the ILEC for reduced access revenues after increasing local service rates to a ‘benchmark’ but . . . not make the ILEC ‘whole’ relative to its overall shortfall relative to its

¹ See Second Engrossed Second Substitute House Bill 1971, Part II, § 201, *et seq.* (“ESS HB 1971”).

total intrastate revenue requirement.”² In that same recommendation, the Commission made clear that the fund “would serve as a transitional mechanism during which ILECs could make the investments in operational adjustments necessary to further develop their networks and pursue business objectives and opportunities.”³ These principles are echoed in the legislative findings set forth in Section 201 of ESS HB 1971. The Legislature intends the fund to be “targeted and temporary”, and has, therefore, capped the fund at no more than \$5 million per year for five years.⁴ It is with these principles as a core bedrock that BCAW provides the following recommendations.

The Commission’s July 3, 2013 Notice of Workshop and Notice of Opportunity to File Written Comments identifies the following topics for discussion both at the workshop and in written comments:

1. Rules to implement the state universal communications service program (including establishment of a benchmark).
2. Rules governing operation of the program.
3. Rules concerning monitoring, compliance and use of funds.
4. Changes to existing rules.
5. Establishment of additional eligibility criteria.
6. Development of an agreement with eligible communication providers.
7. Establishment of an Advisory Board.
8. Delegation of authority to Commission staff.

At the July 15, 2013 workshop, the Commission distributed an agenda that set forth in summary form those sections of ESS HB 1971 relating to the topics set forth above. For ease of reference, BCAW’s initial comments follow the items set forth in the July 15th Agenda.

² Washington Utilities and Transportation Commission Report Reviewing State Telecommunications Policies on Universal Service, Docket UT-100562 (November 29, 2010), p. 29.

³ *Id.*

⁴ ESS HB 1971 §§201(3), 203(2) and 211(1).

SPECIFIC RECOMMENDATIONS

a. Section 203

i. **(3)(a) Communications Provider Eligibility:**

1. **Incumbent carrier.**

BCAW Recommendation: The Commission should confirm the ILEC's access line counts based on data the ILEC submits to the Federal Communications Commission ("FCC") and to the Universal Service Administrative Company ("USAC")

2. **Wireless carrier.**

BCAW Recommendation: No position at this time.

ii. **(3)(b) Risk of rate instability, service interruptions or cessations absent a distribution to the provider to maintain rates reasonably close to benchmark.**

BCAW Recommendation: In order to make the necessary determination that, absent funding, there is a risk of rate instability, service interruptions or cessations at rates close to the benchmark, the Commission should update the earnings review that it previously conducted, the summary of which was discussed at the Commission's August 14, 2012 Workshop in docket UT-100562, entitled "Overview of Staff's Earning Review and State USF Analysis" ("Earnings Review Overview"). The Commission should update the test year period to year end December 31, 2012. The other parameters of the analysis can remain the same, utilizing the two step process outlined at page 3 of the Earnings Review Overview. An ILEC would be eligible to receive fund distributions only if: a) its adjusted rate of return is below its authorized rate of return; and b) its consolidated return on equity leaves the company in an under-earning position.

iii. **(3)(c) Any other requirements established by the Commission pertaining to communications services (including basic telecommunications services).**

BCAW Recommendation: The Commission should, at a minimum, continue to require eligible carriers to satisfy the Commission's existing service quality standards on basic service. BCAW takes no position at this stage of the proceeding regarding "other requirements . . . pertaining to communications services" provided by eligible ILECs.

iv. (4)(a) Establishment of local rate benchmark (Commission determines reasonable amount customers should pay for basic residential service).

BCAW Recommendation: The benchmark should reflect what the average consumer pays for voice service in the State, whether that service is purchased from ILECs, wireless providers, competitive local exchange carriers (“CLECs”) or cable companies. In the alternative, BCAW suggests the Commission set the benchmark based on the R-1 rate floor set by the FCC in effect on July 1, 2014, which will likely be approximately \$16.00.

v. (4)(b) Affirmatively consent to continue to provide communications services.

BCAW Recommendation: No position at this time.

vi. (6) Commission must periodically review the accounts and records of any communications provider receiving distributions to ensure compliance.

BCAW Recommendation: The Commission should review the accounts and records of fund recipients at least annually to ensure the continuing eligibility of the recipient as well as any modification to the amount of support that should be distributed to the recipient.

vii. (7) Commission must establish an advisory board consisting of representatives from different types of communications providers and consumers to advise on rules and policies for operation of the program.

BCAW Recommendation: The Commission should establish an advisory board consisting of one representative of the large ILECs, one representative of the small ILECs, one representative from the cable industry, one representative from the wireless industry, one representative from the CLEC industry, one representative of consumers (e.g., Public Counsel), and one Commission Staff member. The Commission should establish the Advisory Board at its earliest convenience and appoint members immediately thereafter. This will allow the Advisory Board to advise the Commission on the rules and rule amendments being considered in this docket. This is consistent with the intent of the Legislature as expressed in Section 203(7) of ESS HB 1971, which requires the Commission to establish an advisory board “. . . to advise the commission on any rules and policies governing the operation of the program.” It is important that the Advisory Board be established early enough to advise the Commission on the rules and rule amendments being considered in the instant proceeding as these will form the basis for operation of the universal service program.

b. Section 204

- i. (1)(a) Commission must adopt rules for operation of the fund, eligibility, identification of any reports or data to be filed (including how provider used the funds and infrastructure).**

BCAW Recommendation: BCAWs recommendations on operation of the fund and eligibility are provided above. With respect to reports and data to be filed, BCAW urges the Commission to require ILEC recipients of fund distributions to provide adequate data annually in order to ascertain the following: a) verify on an annual basis the earnings position of the ILEC consistent with the analysis discussed above (*see* BCAW Recommendation regarding Section 203(3)(b)) in order to ensure continued eligibility and to determine annual distribution amounts; b) track how the ILEC is using the distributions, including a detailed plan showing anticipated capital and operating expenditures for the coming two years and a detailed accounting of actual capital and operating expenditures during the preceding year (comparable to the network improvement plans required of wireless competitive eligible telecommunications carriers); c) whether the ILEC is making “investments and operational adjustments necessary to further develop their networks and pursue business objectives and opportunities” that will make the ILEC competitive at the end of the five year transitional period of the fund.

- ii. (1)(b) operation of the universal services account.**

BCAW Recommendation: No position at this time.

- iii. (1)(c) establishment of a benchmark.**

BCAW Recommendation: See BCAW recommendation regarding Section 203(4)(a), above.

- iv. (1)(d) Readoption, repeal or changes to RCW 80.36.610 and 80.36.620.**

BCAW Recommendation: No position at this time.

c. **Section 205**

- i. **Commission may impose penalties for failure to make or delays in reporting and Commission may recover amounts determined to have been improperly distributed under Section 203.**

BCAW Recommendation: No position at this time.

d. **Section 206**

- i. **Commission may delegate authority to the commission secretary or other staff to resolve disputes and make other administrative decisions and supervision of the program.**

BCAW Recommendation: No position at this time.

e. **Section 207**

- i. **Rules must be adopted prior to July 1, 2014**

BCAW Recommendation: No position at this time.

- ii. **Commission may initiate efforts prior to July 1, 2014 to implement act in timely manner.**

BCAW Recommendation: As discussed above in BCAW's recommendation regarding Section 203(7), BCAW urges the Commission to establish the Advisory Board at its earliest convenience so that the Advisory Board can advise the Commission on the rules to be adopted and/or amended as part of this proceeding. BCAW reads the statute as affirmatively permitting the Commission to establish and appoint the advisory board prior to the July 1, 2014 effective date. Establishing the Advisory Board is the type of "effort . . . to implement the act in a timely manner" that this section is intended to authorize so the Advisory Board can "advise the Commission on any rules and policies governing the operation of the program" as required under Section 203(7).

f. **Section 211**

- i. **Universal communications services program terminates on June 30, 2019.**

BCAW Recommendation: No comment.

g. **Section 212**

- i. **Commission must report to legislature:**

1. **Whether funding levels have been adequate.**
2. **Future impacts on small telecommunications companies of eliminating funding.**
3. **Impacts on customer rates from current funding and future impact.**
4. **Impacts on line and service delivery investments when funding is terminated.**

BCAW Recommendation: Much of the information required for the Commission to compile the required report will be provided by the ILEC recipients of fund distributions in the annual reporting discussed above in BCAW's recommendation regarding Section 203(3)(b). In addition, BCAW recommends that, prior to compiling the required report, the Commission open a proceeding to receive input from all stakeholders in the form of workshops and written comments (and evidentiary hearings if needed).

Respectfully submitted this 2nd day of August, 2013.

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