BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

COMMENTS OF PUBLIC COUNSEL

December 7, 2018

I. INTRODUCTION

1. The Public Counsel Unit of the Attorney General's Office of Washington (Public Counsel) appreciates the opportunity to submit comments in response to the notice issued by the Washington Utilities and Transportation Commission (WUTC or Commission) on October 22, 2018 (Notice). Public Counsel begins its comments by providing a context for assessing Commission policies regarding obligations to serve and carrier of last resort, then briefly discusses those issues that were addressed in the recent Docket UT-171082 that relate to this docket, and, finally, responds to many of the specific questions that the Commission has posed in the Notice. Public Counsel looks forward to the opportunity to discuss these important issues further during the Commission's workshop, scheduled for January 7, 2019.

II. CONTEXT FOR RE-EVALUATION OF COMMISSION POLICIES REGARDING OBLIGATION TO SERVE AND CARRIER OF LAST RESORT

2. The obligation of telecommunications companies to provide service upon reasonable request derives from the principle of "common carriage" and appears in many state statutes[1] as

[1] *See, e.g.*, N.Y. PUB. SERV. LAW § 91 (Adequate service; just and reasonable rates; unjust discrimination; unreasonable preference; protection of privacy).

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well as in federal law.[2] The Washington version of this obligation is set forth in RCW 80.36.090, which the Commission quotes in relevant part as follows: "Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded."[3]

3. The common carriage concept was initially applied to providers of transportation (of persons and of goods), but it was later adapted to apply to communication services. At the time such laws were drafted, there was a single local exchange carrier (LEC) serving any given area ("service area"),[4] and state regulation also incorporated principles applied to other providers of "public utility" service, such as electricity, gas, and water. The "regulatory compact" gave the monopoly local exchange service provider exclusive access to all of the customers in its service territory, allowing it to recover all of its costs (plus a fair return on capital investments). Revenues from long distance and other services were used to subsidize the cost of providing basic local exchange service in high-cost areas (among other things).

4. With the advent of local competition, the existing telecommunications local exchange carrier became referred to as the "incumbent" and new providers were referred to as

[2] Communications Act of 1934, 47 U.S.C. § 201(a) ("It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor"). Related obligations for service to be provided on terms that are "just and reasonable" are set forth in other subsections of Section 201, as well as in Section 202 (prohibiting "unjust or unreasonable discrimination in charges, practice, classifications, regulations, facilities, or services for or in connection with like communications service"). 47 U.S.C. §§ 201(b), 202.

[3] It should be noted that this provision predates competition (the language is unchanged from the 1961 version of the law). When adopted, the term "every telecommunications company" would necessarily have referred to the various ILECs in their respective monopoly service areas.

[4] The use of the plural "telecommunications companies" in RCW 80.36.090 would presumably have referred, at the time of adoption, to the various ILECs operating in different service territories, as no locations were being served at that time by more than one LEC.

"competitive" LECs (ILECs and CLECs). The purpose for permitting competition (and, where competition arose, ending the ILEC's monopoly status) was to promote consumer choice. Thus, new entrants were also required to assume "common carrier" obligations with respect to offering service to all persons on just and reasonable and non-discriminatory terms and conditions. Importantly, the legalization of competition did not dilute any of the incumbent's pre-existing common carrier obligations.[5]

5. Under monopoly conditions, there was no need for explicit designation of the ILEC as a "carrier of last resort." That term became relevant after the legalization of competition.[6] In 1996, when federal law made competition legal across all 50 states (some had authorized it earlier), the incumbent LEC was the sole wireline provider. It was assumed that it would be many years, if ever, before an additional wireline provider (or providers) could broadly serve residential customers over its own facilities, and wireless service was neither widespread, robust, nor sufficiently affordable at that time to be considered to provide effective competition. Thus, the ILEC was deemed a "carrier of last resort" or "COLR"[7] – the only provider offering a

[5] If anything, the common carrier obligations were expanded, in order to facilitate competition, by explicit mandates in federal law that imposed obligations of wholesale access and interconnection upon incumbent LECs. 47 U.S.C. §§ 251, 252.

[6] Some authorities use the term "carrier of last resort" as shorthand for the ILEC's common carrier obligations. Peter Bluhm and Phyllis Bernt, Ph.D., *Carriers of Last Resort: Updating a Traditional Doctrine*, NRRI Report No. 09-10 (July 2009), http://nrri.org/download/2009-10-carriers-of-last-resort_-updating-a-traditional-doctrine/; Sherry Lichtenberg, Ph.D., *Carrier of Last Resort: Anachronism or Necessity?*, NRRI Report No. 16-06 (July 2016), http://nrri.org/download/nrri-16-06-carrier-of-last-resort-pdf/. When viewed this way, the COLR concept predates competition.

[7] The term "COLR" is not specifically used in the federal law. State laws that use the term are more likely to be ones that eliminate the obligation, which would previously have been created through various laws and regulatory decisions that did not specifically refer to "COLR."

ubiquitous, stable service[8] that customers could fall back on if one or more of the new entrants proved unsuitable or failed.

6. No one would contest that the state of affairs in the telecommunications industry has changed since 1996. Cable companies, who initially failed to leverage their distribution facilities (deployed, like the ILECs' networks, under the protection of exclusive franchises) to offer voice telephone service, eventually succeeded by transitioning from circuit-switched technology to the use of voice-over-Internet-protocol (VoIP). Wireless service improved in both its coverage and its functionality, with improvements in technology and the continuing willingness of the Federal Communications Commission (FCC) to make available additional spectrum. At the same time, it is clear that the concept of "basic service" has also evolved. While the public policy focus continues to be on ensuring the availability and reliability of "basic voice service," consumers have become increasingly reliant on broadband-enabled access to the internet for their communications needs.

7. However, despite all of these changes, the public policy principles for ensuring ubiquitous, reliable, and fairly-priced telecommunications service are still entirely relevant. The legalization of competition notwithstanding, not all residential consumers (or small businesses) are similarly situated with respect to their wireline telecommunications options. This is especially a problem in rural areas. The quality of wireless service varies widely and may not be a reliable option for all consumers, especially those living in some rural communities where wireless coverage may be spotty or non-existent. The price of cable companies' stand-alone

[8] At this time, ILEC service was also typically subject to some form of state rate and service quality regulation.

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voice (VoIP) service (if even offered) typically exceeds significantly that of ILECs' basic voice service[9] and, moreover, cable companies may not have deployed their facilities to all communities, especially the more sparsely populated ones.

8. Moreover, insofar as the availability of wireless service alternatives is deemed relevant to the Commission's assessment in this docket, it must be borne in mind that federal law precludes state entry/exit and rate regulation of wireless providers and their services.[10] Similarly, to the extent that the Commission's authority over cable companies falls short of what is necessary to require ubiquitous coverage, the ILEC remains the only wireline LEC with broad service area coverage, and thus the only wireline carrier that offers residential service to which the Commission can practically apply a broadly based obligation to serve. Furthermore, service quality oversight with respect to the oft-cited competitors is also lacking or very limited. These factors are relevant considerations when deciding about carrier of last resort and line extension issues.

[9] Spectrum's web site does not show an option for stand-alone voice service and so Spectrum cannot be considered to offer an alternative for those who do not want to purchase a bundled offering. *Spectrum Voice*, SPECTRUM, https://www.spectrum.com/home-phone.html (last visited Nov. 30, 2018). Comcast charges $44.95 for stand-alone voice service in Southwest Washington (Vancouver) and in Western Washington as of November 14, 2018. *Comcast XFINITY® Voice Service Residential Pricing List Southwest Washington*, COMCAST, https://cdn.comcast.com/-/media/Files/FEDCM-MIG/Batch-3/PDF/pages/Corporate/About/PhoneTermsOfService/ComcastDigitalVoice/CDVRStatePricing/Washington/Vancouver_pricing_list.pdf?rev=fc234713-8c8e-4e90-a928-8f1ef8769f10&la=en (last visited Nov. 30, 2018); *Comcast XFINITY® Voice Service Residential Pricing List Western Washington*, COMCAST, HTTPS://CDN.COMCAST.COM/-/MEDIA/FILES/FEDCM-MIG/BATCH-3/PDF/PAGES/CORPORATE/ABOUT/PHONETERMSOFSERVICE/COMCASTDIGITALVOICE/CDVRSTATEPRICING/WASHINGTON/WASHINGTON_PRICING_LIST.PDF?REV=73327F5A-A622-4E42-9523-3EB9D434E065&LA=EN (last visited Nov. 30, 2018).

[10] 47 U.S.C. § 332(c)(3). Under this section, states may continue to regulate the terms and conditions of wireless providers and subject wireless providers that offer intrastate services to "requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates" (i.e., state universal service funds).

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9. New providers and new technology are emerging but do not yet offer proven substitutes for the ILECs' basic voice service. For example, Phase II of the FCC's Connect America Fund (CAF) Program is subsidizing entry into unserved areas by broadband providers that are using various technologies over a 10-year period beginning in 2018, and these providers must also offer stand-alone voice service as a condition of their receipt of these federal subsidies.[11] However, the services are not yet up and running and so cannot yet be considered viable alternatives to the ILECs' voice service.

10. Bidders in the CAF II program must be designated either by the FCC or the state public utility commission as eligible telecommunications carriers (ETC).[12] At some point, these ETCs may offer voice in certain remote communities in Washington State, but until voice service is actually available and has been proven to be reliable, the mere fact that these new entrants have been awarded federal monies should not be relied upon as evidence that consumers have alternatives to the ILECs' service.

[11] The Phase II auction ("Auction 903") ran from July 24, 2018 to August 21, 2018. *Auction 90: VHF Commercial Television*, FCC, https://www.fcc.gov/auction/90 (last visited Dec. 6, 2018). The FCC stated in a Public Notice earlier this year: (footnotes omitted): "For CAF Phase II support recipients, the Commission defines supported service as qualifying voice service and conditions grant of funding on the offering of qualifying broadband services. As a condition of receiving support, ETCs must therefore offer voice telephony as a standalone service throughout their designated service area and must offer voice telephony services at rates that are reasonably comparable to urban rates." The FCC also stated (footnotes omitted): "An ETC satisfies its obligation to 'offer' qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund (USF)-related requirements. Accordingly, a broadband provider may satisfy its voice obligation by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options." Public Notice DA 18-714, FCC, *WCB Reminds Connect America Fund Phase II Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, at 3-4 (July 10, 2018) https://docs.fcc.gov/public/attachments/DA-18-714A1.pdf.

[12] Public Notice DA 18-714, FCC, *WCB Reminds Connect America Fund Phase II Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, at 1 (July 10, 2018) https://docs.fcc.gov/public/attachments/DA-18-714A1.pdf.

11. In Washington State, four companies were winning bidders in the summer of 2018 in the FCC's CAF II auction, and should eventually be offering voice service in those areas where they have received federal subsidies to build and operate new broadband networks: Computer 5 Inc. d/b/a LocalTel Communications (1,910 locations);[13] Declaration Networks Group, Inc. (2,929 locations);[14] Newmax, LLC dba Intermax Networks (823 locations)[15]; and Viasat, Inc. (10,982 locations).[16]

12. Viasat, Inc., the largest of the four winning bidders, offers satellite-based broadband and voice service. This is an emerging technology that may eventually offer a viable alternative to ILECs' landline service, but it does not yet have much of a track record. Based on the FCC's most recent internet access report, nationally, in the residential market, only 1,571,000 customers out of 92,354,000 broadband customers (that is, less than two percent) rely on satellite technology for broadband internet access (for download speeds of at least 3 Mbps) – which is the required platform for satellite-based voice service.[17] The FCC's state-specific data further illustrates the negligible role of satellite-based service in Washington. For download speeds of at

[13] LocalTel serves only North Central Washington. Its website does not include a price for stand-alone voice. LOCALTEL, http://www.localtel.net/ (last visited Nov. 30, 2018).

[14] Declaration Networks builds wireless broadband networks in rural areas. DECLARATION NETWORKS, https://www.declarationnetworks.com/, (last visited Nov. 30, 2018).

[15] Newmax operates a wireless internet service "fed by fiber" in northern Idaho. *Residential*, NEWMAX, https://intermaxnetworks.com/residential/ (last visited Nov. 30, 2018).

[16] *Connect America Fund Phase II: Assignments - Winning Bidders*, FCC, https://auctiondata.fcc.gov/public/projects/auction903/reports/winning_bidders (last visited Nov. 30, 2018).

[17] INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, FCC, INTERNET ACCESS SERVICES: STATUS AS OF JUNE 30, 2017 at 18, Figure 16 (Nov. 2018) [hereinafter "FCC Internet Access Services Report"], https://docs.fcc.gov/public/attachments/DOC-355166A1.pdf.

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least 200 kbps, there are so few satellite-based broadband connections in Washington that the FCC does not publicly report the actual number.[18]

13. Moreover, many of these customers may not use their satellite-based connection for voice service, and so the numbers that the FCC provides in its internet access report overstate the *existing* role of satellite technology in providing an alternative to ILECs' voice service, as the FCC's report on voice competition demonstrates. The FCC's data regarding satellite-based voice shows an infinitesimal demand: Out of 122,619,000 (residential and business) switched access and VoIP voice lines nationwide, only 81,000 are provided over satellite and fixed wireless technology.[19] For these various reasons, any assessment of the availability of alternatives to ILECs' voice service should take into account the specific and existing (as opposed to future) market conditions of individual communities. As Public Counsel has previously stated: "The benefits of competition are not uniformly distributed in Washington and the Commission continues to have an important role in ensuring public policy goals are met."[20]

14. Separate and apart from the obligation to provide service upon request, the allocation of costs for extension of service to new locations within the LEC's service territory is not a new issue with respect to telecommunications service (or service from other utilities, for that matter). Even though customers at new premises located within the service territory should be presumed

[18] When the number of providers and their market share is very small, the FCC will mask the actual number and note that the data is being withheld or summarized "to maintain firm confidentiality" where "firm" is presumably referring to the companies offering the service. FCC Internet Access Services Report at 33, Figure 34.

[19] INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, FCC, VOICE TELEPHONE SERVICES: STATUS AS OF JUNE 30, 2017 at 8, Table 1 (Nov. 2018) [hereinafter "FCC Voice Telephone Services Report"], https://docs.fcc.gov/public/attachments/DOC-355165A1.pdf. State-specific information is not available for satellite-based voice service, nor is national satellite information available separately from national fixed wireless information. *Id.*

[20] Initial Comments on Behalf of Public Counsel (June 9, 2014) ¶ 3, *In re Amending, Adopting, and Repealing Rules in WAC 480-120 to -123, -140, -143*, Docket UT-140680.

to be "reasonably entitled" to service, there are circumstances under which they may reasonably be required to contribute to the recovery of costs associated with extending service to the new location. It is very important that the issues of obligation to serve and cost recovery for service extensions be evaluated independently.

III. ISSUES RAISED IN RECENT COMPLAINT CASE

15. In a recent proceeding, Docket UT-171082, the Commission reviewed one customer's request to Qwest Corporation d/b/a CenturyLink QC (CenturyLink or Company), the state's largest ILEC, for an extension of service to a residence located less than 1000 feet from existing facilities, within an area that CenturyLink considered to be a development and that Staff and Public Counsel considered not to be part of a development.[21] Telecommunications service was available from Comcast, a cable company, to all households within the area, including the customer's. While the Commission rendered its decision based on the specific circumstances of this case and expressly declined to adopt any party's position, it concluded that there were broader policy issues that could be best addressed in a rulemaking (thus, the current proceeding).[22]

16. Among the CenturyLink positions which the Commission expressly declined to embrace were:

1) The notion that WAC 480-120-071(2) only applies to a telecommunications provider who was receiving federal universal service fund (USF) support for the particular census block where the service extension was requested.[23]

[21] *WUTC v. CenturyLink Corp.*, Docket UT-171082, Order 03, Final Order ¶¶ 12-17 (Aug. 23, 2018) [hereinafter "Complaint Case Order"].

[22] S*ee, e.g.*, *Id.* ¶¶ 11, 16, 20-21.

[23] *Id.*¶ 11.

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2) The proposition that CenturyLink's alternative form of regulation (AFOR) makes it "like a CLEC" with respect to duty to serve locations where it did not have facilities in place.[24]

The Commission should explicitly affirm in the current proceeding that it does not accept these interpretations of Washington law and regulations with regard to CenturyLink's (and other ILECs') obligation to serve.

17. The Commission also suggested that a list of specific factors to be considered in determining whether to grant a waiver of the line extension requirement, which had been included in an earlier version of WAC 480-120, could provide a framework for assessing the equities of requiring a line extension under the existing rule. The Commission distilled these criteria to two factors: "(1) the impact on the Company and other ratepayers of extending a line to the consumer without charge; and (2) the effect on the consumer of [the provider's] refusal to provide service."[25] The application of these two criteria is certainly relevant to the Commission's next steps with respect to re-evaluating the adequacy of its current line extension rule.

IV. REPONSES TO QUESTIONS POSED IN DOCKET UT-180831

18. The Commission's Notice focuses on the LEC's statutory obligation (RCW 80.36.090) to furnish service, after reasonable notice, upon request, and on the Commission's rules that relate to that obligation. The Notice specifically focuses on WAC 480-120-071, regarding requests for the extension of service. This focus indicates that the scope of decisions in the current proceeding will be limited to requests for new service (at new locations or to new customers at existing locations), but some of the questions posed in the Notice suggest that the Commission may be considering changes to the fundamental common carrier obligations. As a threshold

[24] Complaint Case Order ¶¶ 20-21.
[25] *Id*. ¶ 24.

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issue, regardless of any changes to the service extension provisions of WAC 480-120-071, Public Counsel strongly recommends that the Commission continue to enforce its existing authority to require LECs to provide adequate service, on reasonable terms and conditions, to all locations presently on its network and maintain the obligation of ILECs to provide service to consumers at residential premises that are or have previously been connected to their networks.

19. The foregoing is intended to help frame Public Counsel's comments on the specific questions raised in the Commission's Notice, which follow.

(1) RCW 80.36.090 provides, in relevant part, "Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded."

a. Under what circumstances are persons "reasonably entitled" to "suitable and proper facilities and connections for telephonic communication"? Should the Commission require local exchange companies (LECs) to furnish residential basic local telecommunications service to any applicant who resides within that company's service territory in Washington? If not, why not?

20. Once an LEC has established a service territory in the state, the default presumption should be that every resident or business located within that service territory is "reasonably entitled" to receive service. The circumstances that would counter this presumption should be explicit and subject to Commission review. As noted in the Commission's recent Order in UT-171083, WAC 480-120-061 (Refusing service) specifies some conditions under which an applicant would not be entitled to service. Likewise, under certain circumstances, line extension policies permit the LEC to shift some or all of the costs of connecting a customer or providing an atypical service configuration. In such cases, however, the customer remains "reasonably entitled" to receive service, and an outright denial of service or failure to offer service on reasonable terms and conditions would still be inappropriate. In no event should this

determination be left to the unfettered discretion of the provider, as that would essentially negate the broad obligation to serve imposed by RCW 80.36.090.

21. Moreover, although "extensions of service to developments or extensions of service for temporary occupancy or temporary service" are excluded from the current version WAC 480-120-170, this carve-out should not be deemed to exempt the ILEC from the overriding obligation to serve pursuant to the statutory mandate. To fulfill this obligation, the LEC should be required to respond to a request from a developer and engage in reasonable negotiations to arrive at terms for extending service. There should be a separate rule that addresses the extension of service to developments upon the request of a developer and, subsequently, by individuals whose residences will be located within a development. Public Counsel does not have specific language for a new rule at this time but looks forward to discussing this issue at the upcoming workshop.

b. Should all LECs have the same obligation to furnish residential basic local telecommunications service upon request from an applicant within the company's service territory in Washington? If not, what obligations should different LECs have, and what is the basis for the varying obligations?

22. The statutory language, on its face, applies to all providers (both ILECs and CLECs). However, as noted earlier, the term "telecommunications companies" was used in RCW 80.36.090 even when there was a single (ILEC) company for each of the multiple service areas within the state. Moreover, as a practical matter, despite the fact that the Commission's website contains a six-page listing of companies deemed to be providing local exchange service, nearly all of the state's wireline CLECs serve only business customers and do not have facilities in residential neighborhoods.[26] The rare CLEC that might claim to offer residential service is

[26] Recent data collected by the FCC shows that, nationwide, non-ILEC circuit-switched wireline service to residential customers amounts to approximately 2% of all residential wireline service. FCC Voice Telephone

entirely dependent on the underlying network of the ILEC. Thus, while in theory CLECs are covered by the statutory mandate in RCW 80.36.090, they do not hold themselves out as providers of residential service.

23. Typically, if there is another wireline provider of residential basic local exchange service to a community, it is a (single) cable company. As cable companies only offer voice service where they have deployed facilities for video programming distribution (and broadband internet access), they have typically claimed to be exempt from the obligation to serve exclusively as a telecommunications provider. While unfortunate, it is unlikely that this obstacle can be overcome in the present proceeding. Wireless companies have an obligation to serve under federal law, but while they may agree to sell service to anyone residing in their coverage area, there is no guarantee that the service will be reliable at every location, and, in any event, there is no recourse for consumers through the WUTC if the service is not reliable.

24. The ILEC has had, and must continue to have, the obligation to furnish service at any location within its service territory. What would make a request for service not "reasonable" is not specifically spelled out in the statute, but the Commission (not the provider) should establish the exceptional circumstances that would override this obligation. The ILEC has near-ubiquitous coverage within its service area, and the capital costs associated with much of its core transmission and distribution network have long been recovered. Extensions of service raise different issues, as the Commission has acknowledged, and cost sharing or service commitment

Services Report, at 8, Table 1. For Washington State, the FCC reports 20,000 non-ILEC residential circuit-switched lines out of a total of 1,332,000 residential wirelines, that is, the FCC data show that approximately 1.5 percent of residential wirelines are being served by CLECs. INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, FCC, VOICE TELEPHONE SERVICES: STATUS AS OF JUNE 30, 2017, STATE-LEVEL SUBSCRIPTIONS (Nov. 2018), https://www.fcc.gov/sites/default/files/vts_st1.xlsx.

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arrangements that help to ensure a reasonable opportunity for cost recovery may be appropriate under certain conditions.

c. Should the Commission promulgate a rule that establishes the circumstances under which a company must furnish basic local telecommunications service upon request other than, or in addition to, WAC 480-120-071?

25. The appropriate and controlling presumption from RCW 80.36.090 is that a company *must* furnish basic local telecommunications service upon request, as discussed in response to a., above. The current rules only address 1) extensions of service (not involving developments or temporary service) (WAC 480-120-071) and 2) circumstances justifying the refusal of service to a specific customer (WAC 480-120-061). It would be useful to add a separate provision to the rules which reinforces the duty of telecommunications companies to provide service upon reasonable request as an affirmative obligation. Under this approach, the Commission should distinguish between the ILEC and other LECs that have limited facilities available to provide residential service.

(2) What is a "carrier of last resort"? Should the Commission designate a carrier of last resort in each LEC's service territory in Washington? If so, what criteria, factors, or other considerations should the Commission use to make such a designation?

26. The objective for having a "carrier of last resort" is to ensure that all customers are guaranteed access to a provider of basic telecommunications service that will reliably fulfill all of the traditional common carrier obligations. This effectively comprises a combination of enforcing all of the fundamental common carrier obligations (including the obligation to serve ubiquitously within the service territory, to maintain adequate service quality, along with "just and reasonable" and non-discriminatory rates, terms, and conditions) and making sure that the COLR is not permitted to simply walk away from these obligations (e.g., by failing to maintain

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its network or by withdrawing service, absent regulatory permission). As Public Counsel has previously explained, "[c]arrier of last resort obligations are closely intertwined with the fundamental policy goal of universal service."[27] Among the important objectives safeguarded by maintaining designated (or de facto) COLR is the ability to ensure that all customers can securely access the public health and safety protections made possible through the E-911 system over a reliable voice connection.

27. The evolution of competitive conditions *for some customers* has not eliminated the need to maintain the COLR function. Thus, it is appropriate that the deregulatory concessions (relative to the form of price and service quality regulation) that were incorporated into the alternative form of regulation (AFOR) plans for Washington's largest ILECs appropriately stopped short of eliminating the COLR obligation. The risks associated with eliminating COLR protections are particularly high in states that have extensive rural areas, where the abandonment of service by a single provider could leave a community without reliable telecommunications service.

28. Some parties may argue that there are now sometimes conditions that may override the presumption that the ILEC should serve as COLR, such as in remote locations where an eligible telecommunications carrier other than the ILEC has applied for and received federal USF to support its deployment of broadband and voice service. However, the mere fact that another provider has obtained federal funding to support broadband (with voice service capability) should not be deemed to excuse the ILEC from its pre-existing obligations to serve its local customers. Moreover, even after an ETC's application has been approved for funding,

[27] Initial Comments on Behalf of Public Counsel (June 9, 2014) ¶ 11, *In re Amending, Adopting, and Repealing Rules in WAC 480-120 to -123, -140, -143,* Docket UT-140680.

deployment of the promised service may not occur immediately, and actual experience is required to test the reliability of the new service.

29. While designating a COLR has become more complex, it still makes sense for consumers to have access to a reliable provider of basic local exchange service with ubiquitous coverage. Thus, each ILEC should be designated as COLR for its entire service territory. A process for transferring COLR responsibility to a provider other than the ILEC must go beyond simply ensuring that another provider has been granted ETC status and been authorized to receive high-cost federal support to deploy broadband to the affected customers. Review and affirmative findings about the suitability of a non-ILEC to assume COLR status should precede any reassignment of this status. Service reliability, the financial stability of the non-ILEC, and a commitment by the non-ILEC to serve all customers on reasonable request should be among the criteria applied for determining whether a non-ILEC ETC can function as a replacement "carrier of last resort" for all affected customers.

(3) Are there any populated areas in Washington in which a LEC is the only source of reliable basic local telecommunications service? If so, where?

30. While this question may seem relatively straightforward, the answer is not so simple. The primary non-ILEC residential local telecommunications services in populated areas are those offered by 1) cable companies and 2) wireless carriers. Cable companies offer voice service as an adjunct to their broadband-based video and internet access services. Broadband providers (which can offer voice service over their broadband platforms) report their coverage to the FCC by census block, using the "Form 477," but this information is often misleading, because the service may not in fact be available to every location, or even most locations, within the census block – if only one home is served, the FCC's current data collection and reporting considers the entire

census block to be served, which has led to a well-recognized flaw in the FCC's broadband data.[28] Wireless service coverage can also be described using maps that purport to show where there is adequate signal strength to ensure reliable service, but first-hand accounts of current and former customers sometimes indicate that wireless service is not reliable at many of these locations because of various factors (e.g., topography, other structural barriers, weather, etc.). Thus, if the answer to this question is deemed central to any policy determination in this proceeding, the Commission should look for broad public input (from residents, businesses, municipal leaders, and first responders) about service availability and reliability, rather than deferring to industry sources as the primary or exclusive basis for its evaluation. Consumers and communities are the best source of information about the alternatives that they *actually* have as well as the reliability of such alternatives.

(4) WAC 480-120-071(4) requires each LEC that receives federal high-cost universal service support to "allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The company may allow for an extension of service for distances over the allowance," but

[28] S*ee*, Statement of Commissioner Jessica Rosenworcel regarding the FCC's release of a new national broadband map (Feb. 22, 2018), https://docs.fcc.gov/public/attachments/DOC-349388A2.pdf. *See also, e.g.*, H. TROSTLE, ET AL., INSTITUTE FOR LOCAL SELF-RELIANCE, BROADBAND COMPETITION IN THE ROCHESTER REGION: REALITY VS. FEDERAL STATISTICS (Aug. 2018), https://ilsr.org/wp-content/uploads/2018/08/rochester-mn-policy-brief-august-2018.pdf. See also this observation from Microsoft: "In addition, the more we've examined alternative data sources, the more we've found additional reasons to doubt the federal government's broadband data estimates. For example, the Pew Research Center has been tracking internet usage in this country since 2000 through regular surveys. According to their latest data, 35 percent of Americans report that they don't use broadband at home — roughly 113 million people. While availability (estimated by the FCC) and usage (estimated by the FCC) are different, the significant gap between these two numbers raises important questions. It has led us to do more detailed work ourselves based on Microsoft's data sources, with substantial review by our data scientists and analysts. Their work suggests that the Pew numbers are far closer to the mark. All of this leaves us with the inescapable conclusion that today there exists no accurate public estimate of broadband coverage in the United States." Brad Smith, *The rural broadband divide: An urgent national problem that we can solve*, MICROSOFT ON THE ISSUES (Dec. 3, 2018), https://blogs.microsoft.com/on-the-issues/2018/12/03/the-rural-broadband-divide-an-urgent-national-problem-that-we-can-solve/.

"[t]he applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance."

- **a. Should the Commission continue to require these or any other LECs to provide an extension of service for up to 1,000 feet at no charge to the applicant? If not, why not? Would a different distance be more appropriate? If so, why?**
- **b. Under what circumstances should an applicant be responsible for the costs of an extension of service?**
- **c. Should the Commission continue to exclude "developments," as that term is defined in the rule, from extensions of service? If so, under what terms and conditions? If not, why not, and should the Commission modify the definition of "developments"?**
- **d. Should the Commission revise its rules to require all LECs to keep records of instances in which they have denied requests for residential basic local telecommunications service due to lack of facilities?**
- **e. Should the Commission otherwise modify WAC 480-120-071? If so, how and why?**

31. The Commission is contemplating whether modifications to WAC 480-120-071 are warranted. The recent complaint case sheds some light on the issues that might arise going forward, but it is certainly not indicative of the full range of issues.

32. The first modification that the Commission should adopt with respect to WAC 480-120-071(4) pertains to the subsection (a). The current language states that, within the company's service territory, a company "must" allow for an extension of service of up to 1000 feet at no charge to the applicant, but that "[t]he company may allow for an extension of service for distances over the allowance." This language should be changed to clarify that the permissive allowance pertains to a free extension – that is, that the discretion relates to whether or not to charge, rather than whether or not to provide a service extension over the "by right" allowed distance. As to the 1,000-foot allowance itself, it appears that distance is not the only factor that may influence the cost of providing an extension of service. Other factors, such as whether the extension can be provided above vs. underground, are also cost drivers.

33. The treatment (and definition) of developments and the individually owned residences within those developments (before, during and after construction) can be problematic, as the recent complaint case has demonstrated. Public Counsel understands that developers may be reluctant to make a contribution to multiple providers for the wiring of a new development or to have paved areas disrupted after the completion of construction. The ILEC may have reasonable concerns about recovering investments made to compete with an established cable provider (or vice versa). This being said, these interests must be balanced against those of consumers who reside at homes within a development, who have statutory right to obtain service from a local exchange company whose service area includes their residence.

34. Public Counsel agrees that all wireline providers who serve areas proximate to the development should be encouraged to come to terms with developers before construction is completed. If there is a request for proposals to install telecommunications service (most likely along with broadband), it important that each local exchange company that has facilities proximate to the new construction submit a good-faith proposal. It is also important that correspondence and other documents related to this process be retained so that they can be made available to the Commission, if necessary. This would enable the Commission to monitor whether ILECs and any other facilities-based wireline providers of telecommunications service are fulfilling their obligation to serve.

35. The conditions under which an ILEC refuses to consider providing service to a location within its service territory must comport with Commission rules and be subject to review by the Commission. The ILEC should be required to report annually to the Commission identifying all

development locations within its service territory that it classifies as "no-serve" [29] (or a similar designation) and explaining the basis for any new additions to that list during the previous year. In addition, every provider that is required to file an annual report with the Commission should be required to include information about development locations it serves in its annual report to the Commission.

36. The definition of a development in WAC 480-120-071 should be re-examined. The current definition refers to "land which is divided or proposed to be divided for the purpose of disposition into four or more lots, parcels, or units." Depending on the lot, parcel, or unit size, the overall footprint of such a complex could be quite small – perhaps no larger than a single residence situated on a large lot. It could make sense to raise the number of units needed to qualify as a development, or to specify the definition in terms of a minimum acreage so as to not unduly limit customers' access to ILECs' service, but Public Counsel does not have a specific recommendation at this time. The rules regarding extension of service to developments would benefit from further discussion amongst stakeholders, and Public Counsel appreciates the opportunity to do so at the upcoming workshop.

37. Public Counsel agrees that a reasonable expectation of cost recovery is relevant to whether cost-sharing is required for extensions of service over a specified distance. However, when considering cost recovery, it is important to consider all of the revenues that the investment

[29] Public Counsel's witness in the Complaint proceeding noted that "CenturyLink uses the designation 'no serve housing development' for (1) a housing development where a developer refuses to execute a PAHD; (2) a development where the developer never requested service from CenturyLink and therefore would not have been offered a PAHD; and (3) situations where the developer may have had preliminary discussions with CenturyLink but decided against proceeding." Response Testimony of Susan M. Baldwin at 15:12-20, *WUTC v. CenturyLink Corp.*, Docket UT-171082 (2018). While CenturyLink described this as a long-standing practice, it was not established that the Commission was aware of and approved the use of these criteria as a basis for refusing to consider a service extension.

enables – not just what is expected to be recovered for charges from basic local service. It is likely that today's infrastructure investments will provide a platform for offering higher-revenue services such as video programming and internet access.

38. Finally, as currently written, WAC 480-120-071 applies to "local exchange companies receiving federal high-cost universal service support." In a recent case, CenturyLink argued that this limitation should be applied on a granular basis, that is, only as to specific census blocks where the LEC has accepted universal service support.[30] This proposed interpretation was not adopted by the Commission in that proceeding. Public Counsel recommends that the Commission take this opportunity to affirm in the WAC that whether or not an ILEC receives federal high-cost universal service support in a particular census block is not relevant to its obligation to extend service to applicants within its service territory. In fact, Public Counsel questions why (as under the current rule) the receipt of federal high cost universal service funds generally (that is, anywhere in the state) should be a precondition to the ILEC's line extension obligation, especially given that no such condition exists in the obligations set forth in RCW 80.36.090, and the ILEC has the discretion to forgo accepting federal universal service funds.[31]

(5) Should the Commission modify or repeal any other rules in chapter 480-120 WAC with respect to telecommunications companies' obligation to provide service on demand or request? If so, please identify those rules and explain how and why the Commission should modify or repeal them.

[30] Complaint Case Order ¶ 11.

[31] The current federal high-cost universal service fund, referred to as "Connect America Fund – Phase II" or "CAF Phase II," supports broadband capable of also supporting voice service in high-cost areas. In the initial stage of CAF Phase II, price cap ILECs such as CenturyLink, were permitted to accept CAF2 funds based on an FCC cost model for all eligible census blocks in their service area or to decline those funds. *See, Connect America Fund et al.*, 29 F.C.C. Rcd. 7051, ¶¶ 4, 13 (FCC May 19, 2017) (Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking). In a subsequent stage of the CAF Phase II program, the FCC opened the unclaimed census blocks to a competitive bidding process, in which any ETC, including the price cap ILEC, was permitted to participate. *Id.* ¶¶ 37, 43. The FCC has separate rules that apply to "rate-of-return" ILECs (RLECs), which, in part, rely on existing state rules regarding requests for voice service over a broadband-capable voice network. *Id.* ¶¶ 59-62.

39. Public Counsel requests that the Commission clarify WAC 480-120-183, regarding "Cessation of Telephone Service." As that rule is currently drafted, it could be interpreted to permit the ILEC or other designated COLR to withdraw any service, including basic voice local exchange service, either throughout its service territory or in a portion of that service territory. This could effectively circumvent the very protections offered by the statutory obligation to serve and COLR status.

40. As public service companies, ILECs are subject to the same statutory controls (Commission review and approval) as other utilities with respect to the sale of their assets under RCW 80.12.020.[32] It is possible that lawmakers did not contemplate that a provider would simply walk away from assets, rather than sell them off to another company. Under the statutory framework, therefore, the ILEC is responsible for serving its customers until it gets permission to transfer control to a fully vetted buyer (with the Commission overseeing the terms of transfer). However, without a financial transaction, WAC 480-120-083 would appear to permit the unilateral withdrawal of any service, with only minimal notice. The Commission should take this opportunity to clarify that it does not intend for there to be such a large and incongruous loophole in the state's framework for ensuring universal service.

[32] RCW 80.12.020 ("Order required to sell, merge, etc.—Exemption") provides in relevant part:

> (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so.

V. CONCLUSION

41. Public Counsel appreciates the opportunity to participate in this proceeding, and is hopeful that the Commission, in its deliberations, will take into account ILECs' continuing and essential role in furthering the goal of universal service. Until such time as those consumers and communities that could be harmed by the premature elimination of ILECs' obligation to serve corroborate the availability of proven, reliable alternatives to the ILECs' voice service, it is essential for consumers' and communities' public safety and welfare that that they be able to count on ILECs' voice service, and that such service be well-maintained. For these reasons, Public Counsel urges the Commission to clarify and strengthen its rules consistent with the recommendations in these comments.

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