Miller Nash LLP
www.millernash.com
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
(206) 622-8484
(206) 622-7485 fax

3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3699
(503) 224-5858
(503) 224-0155 fax

500 E. Broadway, Suite 400
Post Office Box 694
Vancouver, WA 98666-0694
(360) 699-4771
(360) 694-6413 fax

Brooks E. Harlow
brooks.harlow@millernash.com
(206) 777-7406 direct line

January 30, 2006

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Post Office Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Comments of RCC and U.S. Cellular Re Draft Proposed Rules
Docket No. UT-053021

Dear Ms. Washburn:

We submit these reply comments on behalf of Rural Cellular Corporation ("RCC") and United States Cellular Corporation ("USCC") in response to the Commission's Notice Extending Date For Consideration Of Proposed Rulemaking (December 6, 2005). RCC and USCC continue to support the Commission's initiative to adopt reasonable rules patterned after those adopted by the Federal Communications Commission ("FCC") in its Report and Order released last March. *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46 (released March 17, 2005) ("Report and Order"). RCC and USCC disagree with the comments of WITA that the draft rules are not ready for issuance of a CR-102 notice.

At the outset, RCC and USCC note that while they support adoption of the rules, they would benefit from relatively minor revisions. The most salient of these are the need to revise the complaint reporting and tracking requirements, which are extremely burdensome as initially drafted, and the requirements for advertising lifeline/link-up/WTAP programs, which are excessive. There was universal industry consensus on these two issues. Given the extensive comments already filed by all the carriers, RCC and USCC provide additional substantive comment only on the requirements to report billing complaints.

Proposed Section 480-123-0060(4), which requires carriers to include in a report every caller with a billing problem, duplicates or exceeds the multiple federal requirements that carriers already comply with, while not delivering any additional benefit to consumers. The Federal Trade Commission and the FCC stringently regulate cramming and slamming. *See*, *e.g.*,

http://www.fcc.gov/cgb/policy/truthinbill.html, which contains an appendix of the FCC's Major Truth-in-Billing orders and notices. RCC and USCC instead urge the Commission to address consumer complaints on these issues and to require carriers to submit an annual report disclosing the number of billing complaints, formal or informal, filed with any recognized agency, including the Commission, the FCC, or the Better Business Bureau.

RCC and USCC disagree with WITA's arguments that an additional workshop is necessary before a CR-102 can be issued. First, the Commission largely followed the FCC's requirements in the Report and Order. The FCC itself had an extensive process leading up to the Report and Order, in which WITA actively participated through a coalition of rural telco trade associations. *See*, Report and Order at Appendix B. This Commission has had three rounds of comments, counting this round. The Commission held a lengthy workshop in the first half of 2005. There will be an opportunity for oral argument before a CR-102 is issued. Further comments will be received after the CR-102 is issued. Given the extensive processes that have already occurred and will occur, WITA's efforts to delay adoption of what are generally reasonable rules should be rejected. Accordingly, we offer only a brief rebuttal to WITA's comments at this time.

As we understand of WITA's arguments, they are generally the same as those previously presented to the FCC by all ILEC trade associations leading up to the FCC's Report and Order. Fearing competition, WITA seeks to erect as many barriers as possible to discourage wireless carriers from seeking ETC status. They continue to confuse regulatory parity with competitive neutrality, claiming that all service quality standards and other ILEC regulations should be placed on competitors.

The Congress settled this matter almost precisely ten years ago now, when it enacted a statute that does not require a competitive ETC to be an ILEC, or submit to ILEC regulation. *See, e.g.*, *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 97-157, ¶ 144 (released May 8, 1997) ("Several ILECs assert that the Joint Board's recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. ***The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs***." (Emphasis added, footnotes omitted).

Rather than adopt policies that preserve monopoly status in rural areas indefinitely, this Commission has progressively introduced competition throughout the state by providing competitively neutral access to federal high-cost support. The far better course is to lower regulatory burdens on ILECs on a case-by-case basis, as evidence demonstrates that

market forces are delivering benefits to consumers in rural areas, as they are in the state's urban areas today.

We are somewhat at a loss to understand WITA's comment that support for Interstate Common Line Service ("ICLS") should not be part of the state's proceeding. Like all high-cost support, ICLS that has been moved from rates into an explicit fund is universal service support. ICLS is not a "replacement" for access or other interstate common line charges that were lowered when ICLS was created. The FCC has "teased out" universal service support what used to be implicit in carrier rates and has made it explicit and subject to 47 C.F.R. § 54.7. That is, all carriers receiving ICLS, whether directly as ILECs do, or on a per-line basis as competitors do, must be willing to account for how such support is used.

Likewise, WITA's request to exempt ILECs from manual reporting because support they receive is based on "actual costs" is at least partially misleading. At least one rural ILEC in Washington is an average schedule company, which means that it reports only line counts and switch data, not cost information. The remainder of rural ILECs operate on a cost system that is best described as "cost plus," providing carriers with more support as reported costs rise. There is virtually no accountability at the federal level to operate an efficient business or to minimize costs and resulting support.

Congress has thus far denied the FCC additional funding to conduct more than a few audits per year of the 1300+ rural ILECs. Audit criteria in existence or under consideration completely fails to examine whether support is necessary or warranted, but is limited to proving that the expenses were made on plant that is used or useful. Competitive carriers are today demonstrating exactly what support was used for and how it is benefiting consumers. Surely ILECs, who draw the overwhelming bulk of support, can support accountability on their end as well.

Like most trade associations representing a threatened industry, WITA is going to preserve its competitive position at all costs. Unfortunately, rural consumers who have poor wireless service, and who pay into the fund, are paying those costs. Reduced productivity, lagging economic development, and lack of access to the health and safety benefits that wireless service can provide are all costs rural consumers pay as a result of WITA's attempt to slow down designation of competitors who are willing to invest and to erect artificial barriers that will discourage competitors from entering.

RCC and USCC urge the Commission to promptly adopt the proposed rules, with minor modifications, and to ensure that all carriers are using support for the benefit of Washington consumers.

Very truly yours,

Brooks E. Harlow

cc: Parties of Record