

February 24, 2006

TO: Commissioners

FROM: ETC Rulemaking Team

SUBJECT: ETC Rulemaking – Proposed Rules
Docket No. UT-053021

RE: Meeting on March 7 from 2:30 to 3:30

Purpose of Meeting

Produce proposed rules for ETC designation and certification.

Attachment

- Suggested changes to draft rules

Background

Draft rules were reviewed by stakeholders in October and November. Comments exceeded 60 pages and many were very negative. Staff has spent the intervening time developing proposed amendments in response to the comments.

Overview

The suggested changes to the draft rules:

- Contain many of the changes suggested by commenters;
- Eliminate most reporting by wireline companies if an existing rule requires a report, or if an existing rule requires compliance with a rule on the topic covered by the report;
- Reduce by 75% or more the cost of advertising required of ETCs;
- Retain reporting and certification for Qwest and Verizon even though commission certification is not required; and
- Retain reporting and certification for that portion of support received by rural ILECs for which commission certification is not required.

Discussion

This discussion concerns one major issue – whether to require reporting of information about total federal high-cost support provided to Washington ETCs or to require reporting only about that portion of federal high-cost support to Washington ETCs for which UTC certification is essential.

Federal support for Washington now totals in excess of \$105 million per year (projected from 12-05 distributions). UTC certification is essential for receipt of \$30 million. The remaining \$75 million can be self-certified to the FCC by ETCs.

Qwest and Verizon would like to be exempted from this rule. Annually, about \$17 million is distributed to Verizon and about \$2.6 million to Qwest from the federal high-cost fund as a replacement for interstate access support (IAS). While each company had to be designated an ETC by the UTC in order to be eligible to receive this support, state certification is not required for Qwest and Verizon to receive the explicit support that replaced the implicit access support. That is, none of that \$19.6 million must be subject to the rules and certified to the UTC. However, if the use of funds received by Qwest and Verizon is not reported to the UTC under these rules, then the UTC will have no knowledge of how Qwest and Verizon use federal high-cost support.

Rural ILECs would prefer not reporting all of their federal support, although they were not as emphatic on this matter as were Qwest and Verizon. Rural ILECs receive about \$52 million in federal high-cost support. The UTC must certify to the FCC the proper use of \$26 million while rural ILECs may certify on their own behalf the use of the remaining \$26 million received from the category called interstate common line support (ICLS). The draft rules require rural ILECS to report the use of all \$52 million. A report on the use of all \$52 million provides the commission with a complete picture of the companies' use of support.

Wireless companies receive about \$34 million a year in federal high cost support (projected from 12-05 distributions). Approximately \$16 million is IAS and \$9 is ICLS. Only the remainder, approximately \$9 million, requires UTC certification. Wireless companies have not stated they do not want to report on the use of IAS and ICLS. As with the other companies, if the UTC wants a complete picture of the use of federal support in Washington, it must require reporting on all high-cost support.

The FCC in its March 2005 order encouraged states to adopt annual reporting requirements and stated that "state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements." That notwithstanding, the commission could choose not to apply this rule to Qwest and Verizon altogether, as well as not apply it to a portion of rural ILEC and wireless federal high-cost support.

THE FOLLOWING PAGES CONTAIN THE DRAFT RULE CIRCULATED FOR
COMMENTS IN OCTOBER AND NOVEMBER

and

- Each page contains a subsection or subpart with changes
- Stakeholder comments are included on each page
- NOTES appear where necessary to explain suggested amendments
- RESPONSES appear where no change is made

Draft Rule

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WAC 480-123-0010 Definitions. As used in sections 0020 through 0070:

“Applicant” means any person applying to an ETC for new service or reconnection of discontinued service.

▫ NOTE: This definition is fashioned after the definition of an applicant in Chapter 480-120 WAC. ETCs are responsible for serving applicants in their designated service areas. The term applicant is used in draft WAC 480-123-0060(3).

“Eligible Telecommunications Carrier” and “ETC” mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

“Facilities” means for the purpose of 480-123-0020(1)(b) any physical components of the telecommunications network that are used in the transmission of or routing of the services that are supported by federal universal service mechanisms.

- WITA - The definition leaves out some categories of acceptable plant expenditure; ignores, for e.g., that employees need an office in which to work.

- NOTE: This change responds to WITA’s comment. This definition is taken from the federal rule that describes the services supported by the universal service fund. The definition of facilities is used to describe the minimum level of network use by an ETC to qualify for funds; its purpose is to exclude resellers from ETC designation. The amendment limits this definition of facilities that apply in this set of rules to the threshold for designation. Other facilities, such as offices where ETC employees work, may be supported with federal funds so long as the ETC is not just a reseller.

“.shp format” means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS.™

“Service outage” means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider’s network. Planned service interruptions with a duration of less than five minutes that occur between the hours of 12:00 midnight and 5:00 a.m. are not included in this definition.

- RCC & USCC – Insert “voice” so the rule applies only to supported services, voice grade communication.
- WITA – suggests the definition in the draft rule apply to wireless ETCs and that another definition of service outage be drafted for wireline ETCs that would exempt service outages for non-voice service, e.g., voice messaging, inside wire.

NOTE: The addition of “voice” is responsive to the comments of RCC & USCC and WITA. Exclusion of planned service interruptions from the definition is consistent with WAC 480-120-439(5).

“Substantive” means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, specific benefits for customers. ~~Examples of information that will permit an evaluation is~~ For example, information about investments and expenses that will provide, increase, or maintain service quality, increase signal coverage, or increase network capacity, in conjunction with information about and the number of customers that have or will benefit, and how they will benefit from such investments and expenses is sufficient to enable evaluation.

- WITA – “sufficiently detailed” not described.
- WITA – What is “technically specific?” Will a description of the continuation of the same level of service and maintenance of existing facilities meet the requirements of “sufficiently detailed and technically specific?”
- RCC & USCC – Statute and FCC rules require support to be used “for the provision, maintenance, and upgrading of facilities and services for which support is intended.” Focusing annual review only on upgrading and improvement is too narrow...as networks mature, support can be expected to be used more for provision and maintenance of services and less for expansion.

NOTE: The definition is intended to permit the informed discretion on the part of those who must report. The changes respond to the comments of RCC & USCC and WITA by providing examples of information that will enable evaluation by the commission.

WAC 480-123-0020 – Contents of Petition for Eligible Telecommunications

Carriers. (1) Petitions for designation as an ETC must contain:

- (a) a description of the area or areas for which designation is sought;

(b) a statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);

- Public Counsel – Draft rules do not seem to address the FCC's issue that all ETCs may become a provider of last resort for the area for which they are certified. ETCs should have to acknowledge that they may become a provider of last resort.
- WITA – Draft rule is inadequate to meet standards for commitment to serve established by FCC.

RESPONSE: Washington does not have a “carrier of last resort” doctrine. Any carrier operating in an area has a duty to serve if requested to do so by an applicant for service. Even if Washington had a “carrier of last resort” doctrine, there would be no need for acknowledgment because the obligation is not lesser or greater if an ETC is the only carrier or one of many.

Responding to WITA, this subsection paraphrases that statutorily created commitment to serve in 47 U.S.C. 214(e)(1). Carriers may relinquish ETC designation pursuant to 214(e)(4).

(c) a description of how it will provide each supported service;

- WITA – The FCC requires a local usage plan comparable to the one offered by the incumbent LEC. Local usage is not mentioned in draft rules.
- WITA – The FCC requires ETCs to acknowledge that in some circumstances the ETC must be ready to assume the responsibility of providing equal access to long distance carriers.

RESPONSE: The commission chose not to require a local usage plan like the local usage offered by the incumbent LEC because to do so would reduce diversity of service offerings and reduce consumer choice. Diversity of service and consumer choice would be reduced because wireless carriers would not seek ETC designation and wireless carriers would have less money to invest in areas where their service would offer diversity and consumer choice.

A wireless carrier designated by a state commission as an ETC is required to provide access to inter-exchange (long distance) service, but is not required by FCC rule to provide equal access to long distance carriers. All wireless carriers provide calling to the entire nation, and many do so without any additional charge for such extensive long distance calling. In the event a wireless carrier would become the only ETC in a location and a customer requests equal access to long distance carriers, the commission can respond to such a request for equal access when it is made.

(d) a substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;

(e) a statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of ~~telephone assistance~~ Lifeline programs that is reasonably calculated to reach low-income consumers not receiving discounts;

▫ NOTE: What, if any, requirements apply to wireless ETCs with respect to the state telephone assistance program is unclear. It is a legislative matter. Wireless ETCs (as well as others) must offer federal lifeline program discounts.

(f) for wireless petitioners, a ~~general description, including a map in .shp format,~~ of proposed service areas (exchanges) the area with locations of cell sites and shading to indicate where the carrier has customers, plant and equipment, and, for wireless carriers, provides commercial mobile radio service signals;

- RCC & USCC – Please clarify whether wireless needs to identify the area where the ETC has plant and equipment, or only where it provides a signal for service.

- NOTE: The changes respond to RCC & USCC’s request for clarification. The additional changes are included because UTC Staff very recently created electronic maps for those wireline companies with tariff maps. As a result, there is no need to require wireline ETCs to duplicate the maps. We lack the information necessary to create maps for wireless ETCs.

(g) information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch; and

- Public Counsel – should require applicants for ETC status to describe contingency plans for maintaining network infrastructure until normal power and operations are restored.

RESPONSE: ETCs all have contingency plans for operating during power outages. The commission is convinced that ETCs operating under WAC 480-120-411 are prepared for most power outages and that the requirements for wireless ETCs in this subsection will result in those ETCs being prepared for most power outages. In addition, ETCs, and particularly wireless ETCs that usually face three or four competitors, have a market incentive to restore service.

To the extent Public Counsel’s comments may be taken as a request to require plans and the ability to recover from a catastrophic failure, the Washington Military Department received Homeland Security funds to prepare for catastrophic disasters. The commission thinks it is better to have one state agency rather than two in charge of policy for recovery from a catastrophe.

(h) information that demonstrates that it will comply with the applicable consumer protection and service quality standards of Chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service, ~~as released Sept. 9, 2003~~ Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-0999.

- Public Counsel - The so-called "consumer Code" provides consumers of cellular service little substance and less value.
- RCC & USCC – Support the CTIA consumer code to protect consumers.

RESPONSE: The commission is following the FCC in adopting the CTIA code.

(2) A company officer must submit the petition ~~The petition must be submitted by a company officer~~ in the manner required by RCW 9A.72.085.

▫ NOTE: Active voice.

WAC 480-123-0030 – Approval of Petitions for Eligible Telecommunications Carriers. The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-0020, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and ~~if~~ the designation is in the public interest.

- WITA – No discussion of what is the public interest. The FCC has a detailed description how it will evaluate the public interest. WITA recommends the Commission delay moving to a CR-102.
- RCC & USCC – The FCC has twice decided when a public interest test is required and the decisions are diametrically opposed. There is no public interest requirement for designation of ETC to serve where a non-rural company serves.

RESPONSE: ETC designation results in payments of federal support to carriers that will use the funds for the purposes stated in 47 U.S.C. § 254. The change in this section responds to WITA by relating designation to the purposes for which federal funds are provided. With respect to the public interest, the commission determines the public interest when the petition is before the commission at an open meeting. The public interest often depends on facts and circumstances associated with each petition.

WAC 480-123-0040 – Revocation of Eligible Telecommunications Carrier

Designation. ~~The Commission may modify, suspend, or revoke the designation of an ETC if it determines that the ETC is not in compliance with its designation order or this chapter, or is not operating in a manner that is consistent with the public interest.~~
Subject to notice and an opportunity to be heard, the commission may decline to grant annual certification, and may revoke, suspend, or modify a designation granted previously if it determines that the ETC has failed to comply with the requirements of section 47 U.S.C. Sec. 214(e) or any other conditions imposed by the commission.

- WITA – Standard is too open and therefore not consistent with due process standards. No prior notice that conduct may place the status and receipt of funds in jeopardy. WITA recommends the Commission not move to a CR-102. ETCs must be put on notice of what conduct runs afoul of the law and might result in revocation, and the standards for which revocation of ETC status can be effected must provide clear warning of the offending behavior (from 1/27/06 comments).

- RCC & USCC – The rule should be amended to require a complaint or on the Commission’s own motion that notice and hearing will be given. The standard should be “... materially not in compliance...”

▫ NOTE: The change responds to the comments by stating the requirement for notice and hearing. A hearing on compliance will reach the question of materiality raised by RCC & USCC.

WAC 480-123-0050 Annual certification of eligible telecommunications carriers.

(1) Each ETC seeking certification by the commission of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 must request certification by July 31 each year. The ETC must, as a part of the request, certify that it will use federal high-cost universal service fund support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 only if the ETC complies with the requirements in WAC 480-123-0060, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-0070.

WAC 480-123-0060 Annual certifications and reports. Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1 through December 31 of the previous year. A company officer must submit the certifications ~~Certifications must be submitted by a company officer~~ in the manner required by RCW 9A.72.085.

- RCC & USCC – Appropriate that all ETCs held accountable for their use of high-cost funds. The requirements are competitively neutral. Modify to make clear the scope is activity in Washington.

- NOTE: The changes respond to RCC & USCC and limit the extent of information to Washington and use active voice to describe the submission of the certification.

(1) Report on use of federal funds and benefits to customers.

(a) For an ETC that receives support based only on factors other than the ETC's investment and expenses, the report must provide a substantive description of investments made and expenses paid with federal support from the federal high-cost fund, or, f

For ETCs that receive any support based on filings made with the National Exchange Carrier Association (NECA) in its role as a contractor for the Universal Service Administrative Company, the report may consist of copies of all material supplied to NECA to obtain the support received for the relevant twelve-month period in lieu of the substantive description the ETC's investment and expenses, the report must provide a substantive description of investment and expenses the ETC will report as the basis for support from the federal high-cost fund.

(b) In addition to the information required in subsection (1)(a) of this subsection, every Every ETC must provide a substantive description of the benefits to consumers that resulted from the investments made and expenses paid with federal support reported pursuant to subsection (1)(a) of this section.

- Verizon – Verizon has built its network and requiring information such as “investments made and expense paid with federal support” would provide no new or meaningful information.
- RCC & USCC – The language follows 47 C.F.R. § 54.314(a) and we support it.
- WITA – Apparently proposed in response to WITA's pitch that there are differences between how incumbent's and ETCs receive support. Requirement to provide all material filed with NECA is overkill because there is a very large quantity of information involved. Because ETCs certify to the FCC on their own behalf with regard to monies received as IAS and ICLS, ETCs should not have to report on its use to the UTC.

What information does UTC need to satisfy its role in making ETC certification? Commission not acting in audit capacity; only needs sufficient information to provide confidence that certification is accurate. Recommend changes to permit rural incumbents to report by providing summaries of NECA reports.

Change “federal support” to “federal high-cost support.”

- RCC & USCC – ICLS should be included in reporting because it is explicit support from the fund that replaced implicit support (from 1/30/06 comments).

▫ NOTE: Rural ILEC ETCs and other ETCs receive support based on different financial information. The suggested amendments will result in both types of ETCs reporting

information to the commission about investment during the calendar year preceding the year in which reports are made. At the same time, the elimination of the requirement to provide all NECA reports responds to WITA's comment that less information should be collected. The substantive descriptions (see definition of "substantive description" in 0010) do not require ETCs to provide the amount of information that an audit would require.

Verizon and WITA would like the rule not to apply to receipts from the federal high-cost fund for which each company must self-certify to the FCC (the so-called IAS and ICLS). The memo at the beginning of this document describes the receipts and the issue about whether the commission should request information about IAS and ICLS. The commission concludes that it has a responsibility to determine whether all federal high-cost funds are used properly in Washington.

(2) Local service outage report. ETCs not subject to WAC 480-120-412 and WAC 480-120-439(5) are required to report local service outages pursuant to this subsection. The report must include detailed information on every local service outage lasting at least 30 minutes or longer in duration experienced by the ETC in a , for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a public safety answering point as defined in WAC 480-120-021. The report must include:

- (a) The date and time of onset and duration of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected, including whether a public safety answering point (PSAP) was affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The estimated number of customers affected.

- Verizon – Requires additional reporting that conflicts with outage reporting under WAC 480-120-412. The phrase “potentially affect at least ten percent of the end users” is unclear; subpart (f) is in the past tense.
- Sprint/Nextel – Annual outage reports duplicates existing FCC reporting obligations; market incentives are enough to ensure wireless networks remain in good condition. A wireless company with outages will lose customers and thereby lose support.
- Qwest – Major outage reporting does not provide assurance that USF is spent for the intended purposes. Reports only supply information about outages that could be caused by many things unrelated to use of USF. This report should be eliminated.
- WITA – The rule is not limited to outages of services that are USF supported. Reporting outages that “potentially” affect customers or PSAPs is inconsistent with reporting outages that have already occurred.
- Cingular – this is onerous and conflicts with other FCC reporting. UTC will receive reports of outages that may be a year old. More timely outage information is available from the FCC.
- RCC & USCC – The phrase “potentially affect” is particularly vague; it is confusing. Subpart (2)(f) should be revised to request “estimated” number of customers affected. Always hard to know how many customers are affected, particularly for wireless with mobile customers.

▫ NOTE: The changes respond to Verizon; it may meet its obligation as it does currently by complying with WAC 480-120-412 and 439(5). Sprint/Nextel states this will duplicate FCC requirements. This requirement is essentially the same as that required by the FCC for ETCs it designates. Qwest states that major outage reports do not provide assurance that USF is spent for the intended purposes. That is correct, but knowledge of major outages that reveals a pattern of problems in high-cost locations could lead to commission action to be certain that federal high-cost support is directed to remedy problems in high-cost locations. WITA states that the rule is not limited to outages of services that are USF supported. The section requires reports on outages in “designated areas,” locations that are associated with ETCs. Cingular states that this report conflicts with reporting to the FCC. As we stated in response to Sprint/Nextel’s statement that this report duplicates FCC requirements, this requirement is essentially the same as that required by the FCC for ETCs it designates. The changes respond to RCC & USCC by replacing “potentially affect” with “estimated” number of customers affected.

(3) Report on failure to provide service. ETCs not subject to WAC 480-120-439 are required to report failures to provide service pursuant to this subsection. The report must include detailed information on the number of requests for service from ~~potential customers~~ applicants within its designated service areas that were unfulfilled for the ~~past year~~ reporting period. The ETC must also describe in detail how it attempted to provide service to those ~~potential customers~~ applicants.

- Verizon – this duplicates and conflicts with existing requirements in WAC 480-120-439(4) that requires reports on a monthly, quarterly and six-month basis.
- Sprint/Nextel – Market forces will resolve any problems with failure to provide service.
- Qwest – Duplicates 480-120-439(4).
- WITA – Suggest using definition of “applicant from 480-120-021.”

▫ NOTE: The changes respond to Qwest’s and Verizon’s comments. The commission has agreed with Sprint/Nextel that in some instances market forces aid in addressing some problems, but in this instance we follow the FCC’s suggestion. In response to WITA, a definition of applicant is included in 0010.

(4) Report on complaints per 1,000 handsets or lines. The report must provide separate totals for the number of complaints concerning local service related issues that the ETC's customers made to ~~the ETC, the commission,~~ the federal communications commission, ~~and~~ or the consumer protection division of the office of the attorney general of Washington attorney general. ~~These totals must be further divided into at least the four categories of complaints: (i) no dial tone and other connection problems; (ii) billing for services not ordered; (iii) inaccurate amounts on bill; and (iv) failure to provide service in a timely fashion.~~ The report must also generally describe the nature of the complaints ~~within each category~~ and outcome of the carrier's efforts to resolve the complaints.

- Cingular – Far more detailed report than FCC's. Cingular does not have ability to run a report with the nature of every call received. Cannot sort complaints. Recommend limiting the report to complaints filed with UTC, FCC or the AG and not require categorization.
- Sprint/Nextel – Market forces will result in the loss of customers by an unresponsive provider.
- WITA – “What constitutes a complaint?” Is the reference to Washington Ag only to consumer Protection division? Rather than a report on complaints, certification of compliance with the Commission's quality of service rule should suffice.
- RCC & USCC – This is the most troublesome provision of the draft rules. Practical problems cannot be overstated; no way of knowing when a call to ETC constitutes a “complaint.” Better to define complaint as formal or informal complaints to the FCC, the attorney general, and the UTC. Categorization of complaints should not be required, but if required it should be limited to complaints concerning voice service and ETCs should report based on their chosen categories.
- Verizon – The requirement is significantly greater than the FCC's. The suggested categories are too limiting. The UTC already has the appropriate level of information from its customer complaint records. No need for this part of rule.

▫ NOTE: The changes respond to comments, in part, by eliminating the requirement for ETCs to report on complaints made directly to the ETC. Commenters are concerned about categorizing complaints. Because the rule is changed to require ETCs to report only complaints made to the FCC and the office of attorney general, ETCs may describe complaints with the same general descriptions used by those agencies.

(5) Certification of compliance with applicable service quality standards. Certify that it met substantially the applicable service quality standard found in WAC 480-123-0020(1)(h).

- Verizon – Impossible to determine with which rules the company must comply. “Met” implies perfection and companies cannot meet that standard. Officers would be at risk of swearing the company met an imprecise standard. ETCs that report under 480-120 should not have to certify compliance.
 - Qwest – This duplicates the requirement of 480-120-439 other commission rules on service quality.
 - WITA – This provision is discriminatory. Wireline ETCs must meet very specific service standards and wireless would only have to general requirements. Wireless ETCs have 30 days to respond to complaints under the CTIA Code, but wireline ETCs must respond to complaints in two days. The UTC is creating a competitive advantage for wireless ETCs. The UTC should hold wireless ETCs to many of the wireline requirements in 480-120, or eliminate the 480-120 requirements for wireline ETCs.
- NOTE: Inclusion of substantial addresses the concern of commenters that the draft rule could have been interpreted to require perfection.

(6) Certification of ability to function in emergency situations. Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-0020(1)(g).

- Cingular – The FCC rejected rigid requirements; suggest “has a reasonable amount of back-up power to ensure functionality without external power sources.”
- Qwest – Duplicates the requirements of WAC 480-120-439, 480-120-414, and other Commission rules.
- Verizon – The scope of the certification should be narrowed to back-up power for switches and similar equipment.

RESPONSE: This is a *certification* that the ETC continues to meet the designation requirement associated with functioning in an emergency. The substantive requirements are in 0020(1)(g). Those substantive requirements are similar to those required by the FCC in its ETC designation order and the commission believes the requirements are minimal and reflect industry practices.

Qwest’s comment is that this certification duplicates WAC 480-120-439 and 480-120-414. WAC 480-120-439(5) requires LECs to report on major outages, but 439(5) neither requires LECs to have the capability to function in an emergency as required by WAC 480-120-414, nor does it require LECs to certify that the company has a plan for emergency operation required in 414. Under 414(1)(b), the commission could request a copy of a LEC’s plan for emergency operation; the certification requirement essentially requires LECs (including Qwest) to certify that they have the emergency plan that is subject to request.

(7) Advertising certification; safe harbor, including advertisement on Indian reservations. Certify it has provided the required advertisement, including advertisements reasonably calculated to reach low income individuals not already receiving discounted services publicized the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service, including residents of federally-recognized Indian reservations within the ETC's designated service area. Such publicity should include advertisements likely to reach those who are not current customers of the ETC.

~~(a) An ETC will be considered to meet the advertisement requirements if at a minimum it:~~

~~_____ (i) sends to all customers at least one annual bill insert explaining its services and charges available to low income customers; _____ (ii) displays a notice of services and charges available to qualified low income consumers at its payment agencies and its offices open to the public;~~

~~_____ (iii) places a notice in the telephone book published by (or on behalf of) the ETC at least ¼ page in size containing information about the services and charges available to qualified low income consumers;~~

~~_____ (iv) advertises its services and charges available to low income consumers:~~

~~_____ (A) by placing a display ad in a daily newspaper, one sixteenth page in size or larger, on four or more occasions in each calendar quarter; or~~

~~_____ (B) by placing an ad on a local radio station or television station that runs at least five times a day in general rotation for seven consecutive days in each calendar quarter; and~~

~~_____ (v) for an ETC with a geographic service area that includes a reservation or portion of a reservation of a federally recognized Indian tribe, by placing an ad containing information about the services and charges available to qualified low income consumers living on a reservation in the tribal newsletter, tribal newspaper, or similar publication on two or more occasions in each calendar quarter.~~

- Cingular – UTC should not implement prescriptive rules. FCC has outreach guidelines.
- Sprint/Nextel – Excessive requirements. No objection to annual bill insert and directory notices. Quarterly adds OK; four times a quarter is excessive.
- Verizon – safe harbor is excessive and costly; there is already a requirement for a notice in directories. Verizon already places a notice in more than ten newspapers.

- Advertising Requirements Continued -

- Public counsel – Support generally requirement for improved outreach. However, newspaper advertising may not reach the intended audience. UTC should consider developing a work group to develop a rule with alternative approaches to advertising, e.g., investigate whether notices included in weekly grocery coupon mailers would be more effective for a reasonable cost (from 1/27/06 comments). Should also address concern that carriers would bill WTAP for cost of advertising (from 1/27/06 comments).
 - WITA – Must state that advertising is in each service area or carriers could advertise in only one daily newspaper. Should be permitted to advertise in weekly newspapers. Many rural ETCs do not have a local radio station. Might be more effective to advertise once a year and make information available to social service agencies in the service areas. WITA notes that the requirements related to directories, payment agencies and local offices are discriminatory because they apply only to wireline companies.
 - Citizen’s Utility Alliance – Only 26% of eligible households participate in WTAP. CUA supports advertising requirements to increase enrollment.
 - RCC & USCC – Lifeline customers generate a very low percentage of bad debt and generate significant and reliable revenue. Because of this, wireless carriers motivated to serve WTAP customers and therefore prescriptive advertising requirement unnecessary. USCC provides lifeline service to nearly all households on the reservation, so advertising there is a waste of resources. Rules will discourage resourcefulness and innovation in advertising. Prefer bill message to bill insert. Prefer a requirement for ten ads per calendar quarter in designated service area in the state. Not all tribes accept advertising in publications.
- NOTE: The changes respond to the several commenters who requested the commission not be prescriptive. The changes allow ETCs to fulfill the advertising requirements of 47 U.S.C. § 214(e)(1) and publicity requirements of 47 C.F.R. § 54.405(b) in creative ways. Public counsel raised the concern that carriers would bill the Washington Telephone Assistance Plan (WTAP) fund for the cost of advertising. WTAP informed the commission it has never reimbursed carriers for advertising. We note the requirement to advertise and the federal rule are several years old.

WAC 480-123-0070 Annual plan for universal service support expenditures.

(1) Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report on:

(a) the ~~expected~~ planned use of federal support related to Washington state that will be received during the period October 1 of the current year through the following September; or

(b) the planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund.

- Verizon – The FCC rule is directed at new ETCs and established carriers with existing networks should not be required to do more than state the funds will be used for intended purposes. Verizon reads the rule to require a very detailed and extensive report. Such detail about operation of an established, extensive network will provide no benefit.
- Qwest – This rule is excessive and should be limited to recipients of high-cost (as opposed to interstate access) support.
- WITA – a report on how support will be used does not fit the circumstances of incumbent's that have already invested money as the basis to request support.
- RCC & USCC – Support this section. This rule only requires forecasting for five quarters, a reasonable length of time.

▫ NOTE: Verizon states the section will require a very detailed report and it should not be applied to carriers with existing networks. Congress requires federal high-cost support to be used “only for the provision, maintenance, and upgrading of services and facilities for which the support is intended.” The commission believes that “maintenance” includes existing networks. As indicted in the Note to subsection (2), the report must be substantive as that is defined in section 0010. A substantive report need not be “very detailed and extensive.” Qwest distinguishes high-cost support from IAS, but IAS is a category within the federal high-cost fund. The memo at the beginning of this document addresses certification issues related to IAS. The rule responds to WITA by requiring a report on funds already invested in the calendar year before the report for which the ETC expects to use as the basis to request federal support.

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

▫ NOTE: The commission has revised the definition of “substantive” in 0010 which, in turn, clarifies what is expected of ETCs reporting pursuant to this subsection.

(3) As part of the filing required by this section to be submitted in 2007, and at least once every three years thereafter, ~~the report must include a map in .shp format that shows the general location of customers, plant and equipment, and, for a wireless carriers, ETC must submit a map in .shp format that shows the general location~~ where it provides commercial mobile radio service signals.

- Verizon – Requires maps with unprecedented detail. Established wireline networks extend to virtually every premise in an exchange, so no useful purpose is served by mandating that the ETC add details showing customer locations.
- WITA – Object to submission of maps with so much detail. Impossible to show location of every household. Maps are expensive. Maps already submitted of little use. Raises national security issues to show detail of network.

▫ NOTE: The change responds to Verizon and WITA by eliminating the map requirement for wireline ETCs. There is now no need to require wireline ETCs to file maps because UTC staff very recently created electronic maps for wireline companies with tariff maps. We lack the information necessary to create maps for wireless ETCs, so the requirement remains for wireless ETCs.

WAC 480-123-0999 – Adoption by Reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

1. The Cellular Telecommunications and Internet Association’s (CTIA) Consumer Code for Wireless Service.
2. The commission adopts the version in effect on September 9, 2003.
3. This publication is referenced in WAC 480-123-0020 (Contents of Petition for Eligible Telecommunications Carriers).
4. Copies of the CTIA Consumer Code for Wireless Service are available at http://www.ctia.org/wireless_consumers/consumer_code/.

WAC 480-120-399 Access charge and universal service reporting. (1) Intrastate mechanism reporting.

(a) Until legislation creating a new universal service fund is adopted and effective and commission rules to implement the legislation are adopted and effective, each Class A company in the state of Washington and the Washington Exchange Carrier Association, must provide annually:

(i) The actual demand units for the previous calendar year for each switched access tariff rate element (or category of switched access tariff rate elements, both originating and terminating) it has on file with the commission.

(ii) Primary toll carriers (PTCs) must file, in addition to the information required in (a)(i) of this subsection, the annual imputed demand units for the previous calendar year that the company would have had to purchase from itself if it had been an unaffiliated toll carrier using feature group D switched access service (including intraLATA and interLATA, both originating and terminating demand units). For purposes of this subsection, a PTC means a local exchange company offering interexchange service(s) to retail customers using feature group C switched access service for the origination or termination of any such service(s).

(b) The report containing the information required in (a) of this subsection must be filed by July 1 of each year.

(c) Each company providing information required by this section must include complete work papers and sufficient data for the commission to review the accuracy of the report.

~~—(2) **Annual state certification requirements for interstate (federal) mechanism.** Each eligible telecommunications carrier (ETC) in Washington receiving federal high-cost universal service support funds must provide the following to the commission not later than August 31 of each year:~~

~~—(a) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;~~

~~—(b) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the commission order granting it ETC status;~~

~~—(c) A certification that funds received by it from the federal high cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;~~

~~—(d) The amount of all federal high cost universal service fund support received for the calendar year preceding the year in which the filing must be made (this includes, but is not limited to, high cost loop support or "HCL," local switching support or "LSS," long term support or "LTS," interstate access support or "IAS," and interstate common line support or "ICLS");~~

~~—(e) The loop counts on which federal high cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made;~~

~~—(f) The certifications required in (a) through (e) of this subsection must be made in the same manner as required by RCW 9A.72.085.~~