

The Washington State Utilities and Transportation Commission

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Eligible Telecommunications Carrier (ETC) Rulemaking

Docket UT - 053021

I. BACKGROUND

Eligible telecommunications carriers (ETCs) are common carriers designated by the Washington State Utilities and Transportation Commission (UTC) to be eligible to receive funds from the federal universal service fund. ETCs in Washington receive approximately \$105 million in federal support each year. The Federal Communications Commission (FCC) adopted new rules for ETC designation and certification in 2005 and encouraged state commissions to adopt rules similar to those adopted by the FCC.¹ The purpose of the federal rules is to increase oversight of the use of federal support.

Designation as an ETC is the threshold requirement for a carrier to be eligible to draw funds from the federal universal service fund. For an ETC to continue receiving funds from one year to the next, it must obtain annual certification from the UTC to the FCC that the ETC will use federal universal service support funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

The essential effect of the rules is to require information from each ETC sufficient for the UTC to determine if it should certify to the FCC that the ETC uses federal high-cost support only for the intended purposes under law, and to determine how the funds benefit customers in Washington. The proposed rules seek less information on many topics from companies than the FCC requires of companies it certifies, but the proposed rules also seeks information on portions of federal support that companies self-certify to the FCC.²

¹ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, FCC 05-46 (rel. March 17, 2005).

² “In addition, 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.” *Id.*, ¶ 71.

II. PROCESS

On May 10, 2005, the UTC invited comments on this topic from interested persons. After comments were received and reviewed, the UTC held a workshop attended by approximately 15 representatives of stakeholders and the commissioners. The June 29, 2005 workshop was held in the afternoon and the discussion touched on all significant issues raised in the comments.

On July 14, 2005, the UTC held a workshop for the purpose of receiving a presentation by the National Exchange Carrier Association (NECA). Two commissioners attended and several representatives of stakeholders. The presentation described the process used by NECA to determine the amount of federal universal service fund support that will be received by rural telephone companies (all of which are ETCs in Washington).

On October 21, 2005, the UTC circulated draft rules and requested comments not later than November 14, 2005. On October 27, 2005, the UTC circulated a request for comments on the expected economic impact of the draft rules and requested responses not later than November 22, 2005.

On November 23, 2005, the UTC notified interested persons that a rule proposal would be presented to the Commission on Wednesday, December 14, 2005. On December 6, 2005, the UTC notified interested persons that it would not hold a hearing for the purpose of receiving oral comments on a proposed rule on December 14, 2005, and invited further comment not later than January 27, 2006.

The UTC received 13 responses to its request for economic information to use to develop a small business economic impact statement (SBEIS) for this rulemaking.

III. REGULATORY FAIRNESS ACT REQUIREMENTS

The Regulatory Fairness Act requires that an SBEIS include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule. It also requires a list of the kinds of professional services needed to comply with the requirements of the proposed rule.

The proposed rules are based on comments, including economic impact information, made by stakeholders in response to draft rules. The proposed rules reflect the process of sharing a draft with stakeholders, reviewing their comments and economic impact information, and preparing proposed rules that contain changes intended to reduce the economic impact of the final rules on small business.

IV. BRIEF DESCRIPTION OF REQUIREMENTS IN DRAFT RULE

Petitions for ETC Designation

The draft rules required a petition by a carrier that seeks ETC designation. This has been required of petitioners for ETC designation since 1997.

In addition to the petition, the draft rules required a substantive plan identifying 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.

The petition must also be accompanied by a general description of the area where the petitioner has customers, and an electronic (.shp format) map must be included. The map need only be general; it need not show the location of every line or cable but must, through shading or cross-hatching, describe the area where service is provided.

The petition must also contain factual information about the operations of the petitioner that demonstrate the petitioner's ability to remain functional in emergency situations. Finally, the petition must include information that demonstrates the petitioner will comply with the applicable consumer protection and service quality standards.

Annual Certification Reports in Draft Rules

To obtain annual certification under the draft rule, each ETC would have had to:

- Certify that the ETC has used federal funds only for the intended purposes.
- Report on the use of federal funds and benefits to customers.
- Complete a service outage report.
- Report on failures to provide service.
- Report on complaints per 1,000 handsets or lines.
- Certify compliance with applicable service quality standards.
- Certify the ability to function in emergency situations.
- Certify that advertising requirements were met.
- Provide an annual plan for universal service support expenditures and update electronic-format maps every three years.

All of these requirements in the draft rule would be new requirements for ETCs in Washington except for the certification that funds will be used only for the purposes intended under law and the certification that advertising requirements have been met. However, the draft rules described the advertising requirement for the first time.

V. COST OF COMPLIANCE WITH DRAFT RULES

The UTC must analyze the costs of compliance with the draft rules by small businesses, and compare the compliance costs of small businesses to large businesses. The UTC conducts this analysis with company information provided in response to a questionnaire.

The UTC received economic information from three businesses that are not small businesses. Qwest, one of the state's largest businesses, responded but did not assign dollar values to anticipated efforts that would be required by the draft rules. CenturyTel responded and did assign dollar values to anticipated efforts that would be required. Mashell Telecom also assigned dollar values to anticipated efforts that would be required under the draft rules.

Cost Information

The remaining responses were from small businesses that are ETCs and that will be required to comply with the rules in order to continue receiving federal support.

The reported estimate of increases in cost for small businesses and large businesses to operate in compliance with the draft rules is \$1,177,541.³ The small business share is \$385,936. If all small and large businesses that are ETCs had responded, the amounts would be greater.

The bulk of the expected increase in costs is for advertising and map making. Small businesses expect the cost of compliance with the advertising standard to be \$74,925 and the cost to produce electronic maps to be \$178,707. The remaining \$132,304 is divided between the cost of producing a report on the use of funds received and producing a plan for how funds will be used.

Small businesses supplied information sufficient to permit the UTC to calculate cost-per-year estimates and a cost-per-employee estimate. The range of cost-per-year estimates for small businesses is from \$4,000 per year to \$65,848. *See Table 1.* The range of cost-per-employee estimates for small businesses is from \$900 to \$6,280. *Id.*

The variation in costs per year is explained by differences in the number of maps a company would be required to produce under the draft rule, the number of daily

³ Qwest did not provide a dollar amount for compliance activities; however, it provided sufficient information about anticipated additional advertising costs to estimate it would spend \$336,000 more per year in advertising.

newspapers published where ETCs operate, and the stated range of anticipated hourly labor costs (i.e., from \$30 to \$85 per hour⁴) to perform tasks required by the draft rules.

These reported costs for small businesses can be compared to those provided by two large businesses that responded. CenturyTel reported costs of \$419,313 per year and Mashell reported \$36,292 per year. The costs per employee for these businesses are, respectively, \$1,165 and \$637.

According to these data, the average cost-per-employee for small businesses is more than double that of large businesses.

	Small Business	Large Business
Average cost-per-year	\$24,000	\$227,000
Average cost-per-employee:	\$2,255	\$1,093

Professional Services

Most respondents identified an anticipated need to hire outside consultants to prepare reports and maps. Those costs are reflected in the cost-per-year and cost-per-employee amounts.

Although the reported data are highly inconsistent and therefore do not appear to be particularly reliable, they suggest that the costs impacts on small businesses may be disproportionate. Accordingly, the UTC found it should consider carefully the possible changes to the draft rules that would reduce the costs of compliance.

VI. MITIGATION

The Regulatory Fairness Act lists six methods for reducing the costs on small businesses. They are:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements.
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements.
- (c) Delaying compliance timetables.
- (d) Reducing or modifying fine schedules for noncompliance.
- (e) Any other mitigation techniques.

⁴ We accept the costs provided to us notwithstanding the substantial range of the hourly rates quoted. For example, Western Wahkiakum reported a “loaded labor rate” of \$29.97 per hour and Tenino reported a “loaded labor rate” of \$85.00 per hour.

The UTC's proposed rules reflect consideration of these approaches and modification of the draft rules to mitigate the compliance costs for small and large businesses.

Reductions, modifications, and elimination of substantive requirements

- The proposed rules eliminate the requirement in draft rule 480-123-0020(1)(f) that wireline carriers must submit electronic maps with their petition to be designated as an ETC.
- The proposed rules eliminate prescriptive advertising requirements from draft rule 480-123-0060(7) in favor of a restatement of existing obligations under federal statute and rule.
- The proposed rules eliminate the requirement in draft rule 480-123-0070(3) that wireline carriers must submit electronic maps every three years.

Simplifications, reductions, and elimination of recordkeeping and reporting requirements

- Proposed rule 480-123-0020(1)(f) clarifies that maps from wireless petitioners must only show signal location and not the location of plant and equipment.
- Proposed rule 480-123-0060 clarifies that reports must only include activity in Washington.
- The requirement to provide copies of all reports provided to the National Exchange Carrier Association (NECA) is removed from draft rule 480-123-0060(1)(a) thereby reducing the reporting requirements for ETCs that receive federal high-cost funds based on past investment and past expenses.
- Draft rule 480-123-0060(2) is changed by eliminating reporting for carriers subject to certain other commission reporting rules related to local service outages.
- Draft rule 480-123-0060(3) is changed by eliminating reporting for carriers subject to certain other commission reporting rules related to failure to provide service.
- Draft rule 480-123-0060(4) is changed by eliminating reporting on complaints to ETCs and complaints to the commission. There is also a change with respect to categories of complaints which reduces or eliminates an additional recordkeeping requirement.

Delayed compliance timetables

The compliance timetable is set by the FCC. Certification is required on or before October 1 each year.

Reduction or modification of fine schedules for noncompliance

There are no fine schedules in the proposed rules.

Other mitigation

All economic mitigation is reported in the preceding sections.

Summary of Effect of Mitigation on Costs of Compliance

For wireline small businesses, removal of the mapping requirement will eliminate what was reported to be a substantial expense. As a percentage of total expenses anticipated by those ETCs that responded, elimination of the mapping requirement reduces the reported cost of compliance by 44 percent.

The elimination of prescriptive advertising requirements in favor of a restatement of federal advertising requirements eliminates all incremental advertising costs because ETCs under the proposed rule will need to do no more than is already required by federal law. This eliminates 43% of the reported compliance costs.

The remaining reporting requirements represent 13% of the reported costs of compliance. As indicated above, that reporting requirement is reduced by changes to several of the rules. Thus, the UTC estimates mitigation included in the proposed rules, relative to the draft rules, results in a reduction of at least 87% of the anticipated cost of compliance.

Table 1

Docket UT-053021	11/22/05		
Company	Cost Estimates	# of Employees	Cost per Employee
BCTS	\$4,000	3	\$1,333
CenturyTel	\$419,313	360	\$1,165
Hood Canal	\$38,132	23	\$1,658
Inland	\$36,100	30	\$1,203
Kalama	\$36,898	14	\$2,636
Mashell	\$36,292	57	\$637
Pend Oreille	\$29,750	5	\$5,950
St John	\$31,402	5	\$6,280
Tenino	\$36,692	16	\$2,293
Toledo	\$65,848	20	\$3,292
WeaveTel	\$4,500	5	\$900
Western			
Wahkiakum	\$25,643	16	\$1,603