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Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Dockets UT-131239 and UT-971140

Enclosed for filing are comments by AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively "AT&T") in the above mentioned docket.

Sincerely,

Cynthia Manheim by Dal with permission

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**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to consider amending and adopting rules in WAC 480-120, telephone companies, and WAC 480-123, universal service, to implement legislation establishing a state universal communications service program;)	
)	
)	Docket UT-131239
)	
)	
Washington Utilities and Transportation Commission v. Washington Exchange Carrier Association, et al)	
)	Docket UT-971140
)	

COMMENTS OF AT&T

AT&T appreciates the opportunity to submit comments on the Commission’s draft rules to implement a state universal service program as set forth in Section 204 of the Second Engrossed Second Substitute House Bill (HB 1971) (“Universal Service Program” or “USP”) that was signed into law last year. AT&T commends the Commission’s effort to adopt rules to implement the USP.

The Commission’s current draft rules are the result of two workshops and numerous rounds of comments. The Commission has incorporated a number of suggested edits in this latest draft of the proposed rules. These edits, for the most part, strengthen the rules. The proposed rules comport with the legislative intent and ensure substantial oversight of the spending of limited general revenue fund dollars. AT&T, therefore, offers these limited comments.

1. Calculation of Support

As these rules will likely be in place for the entire five year term of the USP, the rules need to address various situations that could arise. AT&T is concerned that the latest revision to proposed rule WAC 480-123-120(2)(b) when read in conjunction with WAC 480-

123-100(d) may unintentionally lead to a situation where a carrier is able to receive more than the annual five (5) percent reduction contemplated in 47 C.F.R. 51.917(3). To address this situation, AT&T suggests a change to WAC 480-123-120(2)(b).

Specifically, WAC 480-123-100(d) provides, in relevant part:

The provider's rates for residential local exchange service, plus mandatory extended area service charges are no lower than the local urban rate floor established by the commission as the benchmark rate based on the Federal Communications Commission's most current calculation of a national local urban rate floor pursuant to 47 C.F.R. Sec. 54.318...

As the benchmark is "based on" the FCC's current national local urban rate floor, it arguably allows the UTC to set a rate other than the FCC's current national local urban rate floor for the benchmark, if appropriate. The proposed rule arguably allows the Commission to evaluate the current FCC urban floor and decide whether a different rate (higher or lower) is appropriate in Washington to represent a reasonable amount customers should pay for basic residential service. The first mention of the "local urban rate floor" in the proposed rule is not defined and, therefore, it is not clear whether this "local urban rate floor" is the same as the national local urban rate floor mentioned later in the rule. This ambiguity could lead to a situation whereby the commission has the flexibility to set the benchmark lower than the national local urban rate floor.

If the Commission set the benchmark lower than the FCC's local urban rate floor and, the RLEC only increased its rates to the state benchmark (not up to the FCC's local urban rate floor), the federal revenue recovery for RLECs is reduced. AT&T is concerned that the broad language in current proposed rule WAC 480-120-123-020(2)(b) which allows the wireline provider to receive "the cumulative reduction in support from the Connect America Fund incurred by the provider up through and including the year for which program support

is distributed to the provider...” could be argued to allow an RLEC to receive funding from the USP that it could have, but did not receive from the CAF, because it did not raise its rates to the FCC’s national urban floor.

AT&T recognizes that it is likely not the Commission’s intent to allow anything more than the annual five percent reduction to be recovered from the state USP. However, to avoid any future issue that may arise, AT&T recommends using a portion of the language from the December 2013 draft rules to clarify that the amount recoverable from the USP is limited to the annual five percent reduction and nothing else. AT&T recommends that WAC 480-123-020(2)(b) be revised to the following:

The annual access revenue reduced for the five percent baseline adjustment factor as required in 47 C.F.R. 51.917(3) for revenue recovery from the federal Connect America Fund.

2. Traditional USF Must be Eliminated

AT&T supports proposed rule WAC 480-123-120(2)(a) which makes it explicit that the traditional USF (TUSF) will be eliminated and instead replaced by the USP. It is well past the time for the elimination of the TUSF. When the TUSF was adopted over 25 years ago, it was “designed to be a transitional mechanism, not a permanent source of LEC support.” The proposed rules provide TUSF funding for those carriers eligible to receive USP support. As noted in WITA’s comments, “[p]art of the lobbying effort associated with the state universal service program was to promote the program as in part, a replacement for the existing ‘traditional’ universal service fund.”¹ WITA has further stated that, “[i]t has clearly been the understanding that the traditional USF access rate element would be replaced by the new universal service fund.”²

¹ WITA Comments, Dec. 23, 2013, p. 12.

² WITA Comments, Aug. 13, 2013, p. 1.

Further, the elimination of the TUSF is consistent with the intent of the legislation. The legislation recognizes that “[s]ignificant changes are occurring in the communications marketplace...” including “changes in federal regulations governing: How communications providers compensate other providers for the use of the network...” The legislation goes on to state that “absent explicit federal and state universal service support for such communications providers, may lead, in the short term, to unreasonable telephone service rate increases or cessation of service for some Washington consumers.

The TUSF is a \$.00152 charge that is assessed on every originating and terminating access minute in the state. Access minutes, however, are decreasing. Therefore, the TUSF revenues previously received by many of the WITA companies are also decreasing. As discussed by the Commission in its *Report Reviewing State Telecommunications Policies on Universal Service* (Docket UT-100562) “[a]s traditional long distance services have shifted from conventional telecommunications technologies to new platforms such as VoIP, the access charge revenues that ILECs have historically enjoyed have declined.”

The legislature established the state USP to “support continued provision of basic telecommunications service.” As intrastate switched access minutes continue to decline, rural ILECs need to transition from relying on access charges and the TUSF to relying on charges for the products and service provided to their own customers. The state USP will provide support to assist in this transition for the rural ILECs eligible for support.

Last, as AT&T has stated in its previous comments and has been separately advocated by WITA,³ it is important that the elimination of the TUSF coincide with the

³ WITA Comments on Three Specific Questions, October 10, 2013, p. 4 (“The timing of the termination of the Traditional Universal Service Fund rate element with the funding of the new universal service fund must coincide in order to avoid cash flow problems for eligible carriers that are currently receiving funds under the Traditional Universal Service Fund rate element administered by WECA.”)

timing for eligible RLECs to start drawing support from the USP.

III. Other Comments:

In its comments, Public Counsel seems to be advocating mini individual rate cases for each LEC rather than “a strict formulaic approach”⁴ It is likely not feasible for staff to conduct a mini-rate case for each LEC that would like to draw from the state fund each year for five years. Other universal service funds at state and federal level have taken a formulaic approach.

Public Counsel also recommends that the USP could be used to reduce local rates down to a national benchmark. This is contrary to the legislature’s stated purpose for the fund which is to avoid “unreasonable telephone service rate increases or cessation of service.” There is no mention in the legislation that funds could be used to reduce local basic service rates.

Submitted this 5th day of May, 2014

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⁴ Second Comments of Public Counsel, p. 6.