BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Rulemaking to Consider Amending and Adopting Rules in WAC 480-123, Universal Service, to Implement Legislation Amending and Extending the State Universal Communications Services Program	Docket No. UT-190437

COMMENTS
of the
WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION

December 16, 2019

INTRODUCTION

On November 15, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments in this docket. The Washington Independent Telecommunications Association (WITA) welcomes the opportunity to submit comments in response to the Notice.

The first part of these comments will address certain aspects of some of the proposed changes to Chapter 480-123 WAC. The basic structure of the proposed rules is to defer many of the important elements of the extension of the State Universal Communications Services Program to a Commission order that will provide more of the substance. Thus, just as important as what the rules will say is what they do not say. The second part of these comments will address WITA's understanding of what the Commission's subsequent order will address.

COMMENTS ON THE PROPOSED RULES

This section of the comments will address some of the matters that are set out in the proposed rules. The first of those is the definition of broadband service provided in WAC 480-123-020.

1. The Definition of Broadband Service should be Consistent with the Federal Standard.

It is a necessity that the proposed definition of broadband service be consistent with existing federal standards. Most of the support that rural incumbent local exchange carriers (ILECs) receive comes from the federal funding sources. The State Universal Communications Services Program provides support that is incremental to the support that companies receive

under the federal programs. There is not enough funding in the state program to independently create new standards for broadband service. Therefore, WITA recommends that the definition of "Broadband service" as set out in WAC 480-123-020 include language at the end of the definition that it should be "consistent with federal standards." WITA also provides a few technical changes to the draft language. The entire definition, as revised, is set out on Attachment 1 for the Commission's convenience.

2. The Broadband Plan is to Cover the Provision, Enhancement or Maintenance of Broadband Services.

Perhaps the most important aspect of the Commission's proposed rules is the description of what needs to be in a broadband plan. The requirement for a broadband plan was adopted in the recent Broadband Bill.[1] What is important is the legislation stated that the broadband plan is a plan for a provider to "provide, enhance or maintain broadband services in its service area."

However, the language in proposed WAC 480-123-110(1)(d) is only about construction projects. That approach ignores the intent and scope of the legislation. For carriers who have already done substantial construction projects, trying to submit a broadband plan that talks only about further construction would either be impossible or very close to it. The Commission must recognize that the broadband plan called for in the legislation is broader than just construction projects.

What the proposed rule language fails to recognize is the maintenance of existing broadband services. The maintenance of existing broadband service is a very expensive proposition with companies having to invest in additional software, perform hardware maintenance and undertake other activities just to maintain the service at the levels that have been attained. Further, the substantial expenditures required to build the infrastructure to create

[1] Second Substitute Senate Bill 5511, Section 12(3).

communications networks that provide both telecommunications and broadband services produces a very substantial debt obligation. Meeting debt service obligations is a very important part of maintaining the broadband services.

Aside from the need to address maintenance as a component of the broadband plan, WITA recommends that the proposed subsection (iii) of WAC 480-123-110(1)(d) be deleted. The proposed subsection calls for identification of the number of locations proposed to be passed by year. The planning process is really only good for about a one-year horizon. And, even then, it is subject to weather factors and other issues. Trying to project the number of locations to be passed year by year is pure speculation.

To address the need for the rule to be broader than just construction, WITA has provided suggested language in Attachment 2. The language in Attachment 2 also addresses other clean-up matters.

3. Locations Passed is the Standard.

On a technical level, WITA notes that proposed WAC 480-123-110(1)(d)(iii) talks about the number of "locations served." If the Commission elects to retain this element of the broadband plan, the language should address the number of locations passed, not served. The goal in making broadband service available is that the service be physically present and able to be provided to the customers. There is nothing that a company can do to make customers buy the service. To put a twist on an overused adage: we can build it, but they may not buy it.

4. There should be Less Financial Data Required when moving from Rate-of-Return Reviews.

One of the important components of the proposed rules is the movement away from rate-of-return regulation. The proposed rule creates four categories (called eligibility criteria in the

draft) for obtaining support from the program. Three of those categories do not use rate-of-return regulation.

As part of the movement away from rate-of-return regulation, the Commission should cut back on the financial reporting for those companies that will be in Critieria Two, Three and Four of the proposed rules. There is no need for detailed financial information if a company is not under rate-of-return regulation for purposes of the program.

Therefore, WITA recommends that the detailed financial information delineated under WAC 480-123-110(1)(e) not be required of those companies that are not undergoing a rate-of-return review. To accomplish that end, WITA recommends that the following language be inserted at the beginning of subsection (e): "For a provider that is seeking support under (j)(i), below, or under (2) or (3), below, detailed financial information . . ."

This change will accomplish the goal of requiring the filing of information where it is needed, but relieves companies that are not undergoing rate-of-return review of the obligation to submit unnecessary financial information and, thus, avoiding the costs attendant to doing so.

5. Construction to Additional Locations should be Ongoing.

In proposed WAC 480-123-110(1)(j)(iii) it is stated that the construction must have been "during the 2018 or 2019 calendar year." That implies the construction was undertaken and completed in a single year. That is not how construction programs work. Many construction programs are multiyear or overlap from one year to the next. Instead of focusing on construction by year, the construction should be able to have occurred up to and through a certain date. WITA recommends that the date be as of the date of the petition. Although a seemingly minor change, WITA contends this is critically important.

In addition, the draft rule starts counting construction of locations at 2018. WITA believes that the starting point that was agreed to in discussions with Commission Staff was January 1, 2017. That date is more consistent with the start of the A-CAM process. To address these concerns, WITA suggests that WAC 480-123-110(1)(j)(iii) be written as follows:

> "Eligibility Criterion Three: a sworn statement by an officer of the provider certifying that the provider has already met the Federal Communications Commission's total deployment obligations associated with federal high-cost support as of the date of the petition and that from January 1, 2017, the provider and/or its ISP affiliate has deployed broadband to the number of locations the commission has determined by order."

This language in a more general format has the added advantage of allowing a company to move from Criterion One to Criterion Three as time passes.

On a related point, it is important to understand that any multiyear plan can only be detailed as to the immediate year in which the plan starts. There are too many variables to be able to give any details beyond the immediate year for the initiation of the plan. Obviously, updates can be filed and should be if a new petition is filed for support in a subsequent year. However, there should not be any expectation that there will be any detailed information in the plan for other than the immediate year.

6. The standards for Criterion One are different than what WITA anticipated.

Based on WITA's understanding of the discussions with Commission Staff, the standards for Criterion One are different than what WITA understood the discussions achieved. Under WITA's understanding of the discussions, there was no specific buildout requirement. Rather, the provider would need to submit a broadband plan and work to be consistent with a broadband plan. Fifty percent of what the provider would otherwise be eligible to receive would be distributed to the provider if it met standard eligibility requirements (other than rate-of-return) to

help the provider meet both its telecommunications service obligations and its broadband plan proposal.

In addition, there was no need to show "financial need." Rather, the provider would be subject to a rate-of-return review under the same standards that have applied to past reviews for eligibility for program funding. This means a flexible application of rate-of-return standards taking into account an individual provider's circumstances. This review would apply to the other half of the distribution. As a result, WITA is suggesting changes to the draft rules which are set out in Attachment 3.

7. Affiliated Companies should be Allowed to File a Single Petition.

Finally, in discussions with Commission Staff, and consistent with how the Commission Staff has been analyzing affiliated companies for the first iteration of the Universal Communications Services Program, it was agreed with Commission Staff that affiliated companies could submit one petition if they so chose. However, that concept was overlooked in the draft rules. To address this concept, WITA recommends that a new subsection (7) be added to the proposed WAC 480-123-110 to read as follows:

(7) Affiliated companies may submit a combined petition for support.

8. Reporting Requirement Issues.

WITA is recommending changes to the draft language of WAC 480-123-130. WITA recommends a change to the information that is to be filed. First, under WAC 480-123-130(1)(c) WITA recommends that latitude and longitude information not be required. Instead, WITA recommends that the location information as filed with the Federal Communications Commission or the United States Administrative Company (USAC) be the standard. Requiring a locations latitude and longitude to be reported

when that is not required to be reported at the federal level simply adds an additional expense that is unnecessary.

WITA also recommends that some flexibility be allowed in filing of Form 477. It can be quite hectic when major filing dates are before a company and to require that the Form 477 be filed on the same date that it is filed at the FCC may be very difficult to meet. WITA recommends that the "same day" language be deleted.

9. Technical Matters.

In this subsection, WITA addresses several technical items in the draft rules.

First, the rules as drafted tend to move to the concept of a "sworn statement" for petition purposes. It may be helpful to have a definition of the term "sworn statement." WITA suggests the following definition:

> "Sworn statement" means a statement made under penalty of perjury, as set forth in RCW 9A.72.085.

This definition would be added to WAC 480-123-020. Then to be consistent, the term "sworn statement" can be substituted for the language "statement under penalty of perjury" in WAC 480-123-110(e)(vi), (f) and (h). Consideration should also be given to substituting the term "sworn statement" in WAC 480-123-110(6).

The proposed rules recognize that it may be an affiliate of the petitioner that actually provides the broadband services. This is a structure that has been put in place for many of the rural ILECs. However, there appear to be places in the draft rules where that concept should be carried through for the sake of consistency. Suggested changes are contained in Attachment 3.

Another point that should be carried through the draft rules for consistency in the rule language is that the petitioner may not be seeking program support for its entire service operations. For example, some of the rural ILECs have competitive local exchange offerings and

they do not seek support for those offerings. In addition, Whidbey has a Supplemental Service Area and does not seek support for that area as well. Therefore, it may be important to carry the distinction that the reporting and the offering of services under the program is for those areas in which the petitioner is seeking support. Again the suggested language to address this point is contained in Attachment 3.

CONSIDERATIONS FOR THE COMMISSION ORDER

Just as important as what the Commission's rules say is what the Commission's order will say. Much of the substance of the State Universal Communications Services Program will be built around the number of locations to which broadband service must be available to receive program support. Also of importance is the determination of what speeds will allow broadband service to be considered as an advanced service. WITA's discussions with Commission Staff have been predicated on two very important concepts.

1. 25/3 should be the Speed Standard.

The speed of broadband service eligible for program support purposes should be set at 25/3.[2] This is consistent with the FCC's current program standards. The FCC has established the required number of newly deployed broadband locations for rate-of-return carriers, based on the 25/3 standard, whether they chose to use the A-CAM model or stay on legacy support. However, similar requirements for price cap carriers, based on 25/3, have not been established. The current CAF II program for price cap carriers, which used 10/1 as the broadband deployment standard and determined the number of required locations accordingly, is set to expire in 2021.

[2] "25/3" means a download speed of 25 Mbps and an upload speed of 3 Mbps.

The FCC's pending Rural Digital Opportunity Fund[3] proposes to auction off the remaining price cap service territory that is unserved by broadband, using 25/3 as the minimum deployment standard. However, it does not set specific location requirements. In the end, the point is that 25/3 should be the standard.

2. There should be Flexibility in Determining the Number of Locations.

WITA is aware of how Commission Staff has looked at establishing the concept of additional broadband locations. Commission Staff has used the A-CAM cost calculations. However, as is the case with any average cost model, A-CAM is not perfect. The reason that many rate-of-return companies did not opt into the A-CAM standard is that in their case the model produced a per location cost calculation that was unreasonably low compared to the actual cost of construction, which, in turn, produced a very high number of required locations.

The FCC itself seems to have recognized that in some cases the A-CAM model cost is not appropriate. In fact, the FCC has allowed legacy rate-of-return carriers to choose between using the A-CAM cost per location or a weighted average cost per location. Thus, it would be appropriate for the Commission to recognize the need to be flexible in the choice of costing methodologies. WITA recommends that if a company has opted into the weighted average cost methodology for FCC purposes that it be allowed to use that same methodology to calculate the number of locations in lieu of the Commission Staff use of the A-CAM benchmark. In other words, the number of locations calculated for purposes of the Commission order should be an "either or" using the A-CAM cost per location or the weighted average cost per location as the company has chosen for its FCC goals.

In addition, there are some cases where neither the A-CAM nor the weighted average

[3] Notice of Proposed Rulemaking; FCC 19-77

cost methodology makes sense. Companies should be allowed to bring in evidence of their actual cost of deployed 25/3 or proposed alternative approach for estimating cost of deploying 25/3 as a substitute mechanism to calculate the number of locations. As an example, it has been agreed with Commission Staff that since Consolidated Communications of Washington Company is a price cap company and the current cost information per location for a price cap company is premised on a 10/1 build, not 25/3, that an alternative method should be used. In this case, it was agreed that Consolidated could use the state wide average A-CAM cost per location at 25/3 for all other WITA members as a surrogate for its cost of deployment and the resulting numbers of locations.

Finally, on a more technical level, in reading the language in draft WAC 480-123-110(1)(j) it is difficult to see the distinction between Eligibility Criterion One and Eligibility Criterion Two. The distinction that was agreed to with Commission Staff, which is not in rule language, is that to move Criterion Two, a company would need to agree to build to more locations. It is critical that there is a clear understanding of the number locations. The table below sets out WITA's understanding of its discussion with Commission Staff.

COMPANY	A-CAM OR WEIGHTED COST LOCATIONS	CRITERION 2 LOCATIONS
Asotin	12	24
Consolidated	192	384
Hat Island	1	2
Hood Canal	37	74
Inland	123	246
Kalama	59	118
Lewis River	127	254
McDaniel	169	338
Pend Oreille	110	220
Pioneer	21	42
Rainier Connect	49	98
Skyline	11	22

St. John	10	20
Tenino	21	41
Toledo	19	38
Westgate	34	68
Wahkiakum	19	38
Whidbey	350	700

Note that Consolidated is based on the average A-CAM cost per location for other WITA members. Whidbey is based on use of the average weighted cost methodology.

CONCLUSION

In conclusion, WITA wants to express its gratitude to Commission Staff for the hard work that has gone into the development of the draft rules. WITA requests that the Commission give due consideration to the foregoing comments as the State Universal Communications Service Program moves forward into a new environment that gives express recognition to broadband service.

Respectfully submitted this 16th day of December, 2019.

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