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5 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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8 In the Matter of
9 Rulemaking Concerning Telecommunications
10 Service (Line) Extensions (WAC 480-120 and
11 480-123)
12

Docket No. UT-073014

COMMENTS OF UNITED STATES
CELLULAR CORPORATION AND RCC
MINNESOTA, INC.

13 *I* United States Cellular Corporation ("U.S. Cellular") and RCC Minnesota, Inc.
14 ("RCC") respond to the Commission's August 14th "Notice of Opportunity to File Written
15 Comments" ("Notice") seeking input whether new or revised regulations are needed to
16 govern telecommunications service line extensions under WAC 480-120-071 ("Rule")
17 and whether the Rule has been beneficial or burdensome to wireless eligible
18 telecommunications carriers ("ETC").¹

19 *2* U.S. Cellular and RCC ask the Commission to clarify that the Rule does not apply
20 to wireless carriers because (1) the Rule by its own terms does not apply to wireless
21 carriers, (2) it would discriminate against them, since wireless carriers cannot recover line
22 extension costs through access tariffs as wireline carriers may do, and (3) the
23 Commission lacks jurisdiction to apply the Rule to wireless carriers.

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25 ¹ U.S. Cellular and RCC, with and through their licensed subsidiaries, are wireless carriers
26 holding eligible telecommunications carrier ("ETC") certifications from this Commission and
serving customers in rural Washington and other states.

1 3 This clarification is necessary because the Notice reflects uncertainty as to
2 whether the Rule applies to wireless carriers, despite the fact that the plain language of
3 the Rule indicates that it should not. This uncertainty is due to the fact that the
4 Commission has never specifically stated that the Rule does not apply to wireless carriers
5 and also never required a wireless carrier to extend service under the Rule, to the
6 knowledge of U.S. Cellular and RCC. Now is the appropriate time for the Commission
7 to eliminate any lingering questions.

8 **I. THE PLAIN LANGUAGE OF THE RULE ONLY APPLIES TO WIRELINE**
9 **CARRIERS, NOT WIRELESS CARRIERS**

10 4 There is ample evidence that the Rule applies only to wireline carriers, not
11 wireless carriers. For example, the Rule only applies to companies "required to file
12 tariffs under RCW 80.36.100." In fact, the word "tariff" appears thirty two times in the
13 Rule. Wireless carriers do not file tariffs with the Commission and cannot be required to
14 do so, as noted above. See, e.g., RCW 80.66.010; 47 U.S.C. § 332(c).

15 5 The Rule also does not specifically state that it applies to wireless carriers. The
16 Rule's only discussion of wireless carriers relates to the fact that carriers subject to the
17 Rule may extend their own "distribution plant" through arrangements *with* wireless
18 carriers. "Distribution plant" moreover is a term applicable to facilities of wireline
19 carriers, not wireless carriers.

20 6 Subsection (4)(b) of the Rule describes situations involving "companies that serve
21 fewer than 2% of the access lines in the state." Wireless companies do not serve "access
22 lines." Subsection 4(b)(i) refers to "Class A companies." Wireless companies are not
23 classified according to that terminology, which applies to wireline companies only.

24 7 The waiver provisions of the Rule do not apply to wireless companies. That
25 section provides that the Commission may "determine whether . . . *the local exchange*
26 *company* is not obligated to provide service to an applicant." WAC 480-120-071(7)(a)

1 (emphasis added). Wireless companies are not "local exchange companies." The Rule
2 also provides that the Commission will consider "the comparative price and capabilities
3 of radio communications service or other alternatives available to customers." WAC
4 480-120-071(7)(b)(ii)(C). In order to draw a comparison with wireless, the Rule must
5 necessarily be referring to a company *other* than a wireless company. Otherwise, the
6 provision of the Rule would not make sense.

7 8 Finally, the order adopting the Rule mentions industry stakeholders as being
8 customers, incumbent LECs, facilities-based CLECs, reseller CLECs, and IXC. General
9 Order No. R-474, Order Amending And Adopting Rule Permanently, Docket UT-991737
10 at ¶¶ 30-37 (2000). The Order does not discuss wireless carriers.

11 9 Despite the foregoing, there is evidently confusion over whether this Rule applies
12 to wireless carriers. This issue arose in Docket No. UT-011439, which considered
13 whether the Rule required Verizon or other carriers to extend service to the Taylor and
14 Timm Ranches in eastern Washington (the "Timm Ranch Proceeding"). The
15 Commission joined RCC as a party to that proceeding. RCC at that time asked the
16 Commission to hold that the Rule did not apply to wireless carriers, but the Commission
17 determined that RCC's request was "premature." This issue is now ripe for resolution.

18 **II. APPLICATION OF THE RULE TO WIRELESS CARRIERS WOULD BE**
19 **UNLAWFULLY DISCRIMINATORY**

10 10 Wireline carriers can recover their costs expended in compliance with the Rule
21 under subsection (4)(a) as part of their terminating access tariffs. The Rule specifically
22 allows wireline carriers to file "a service extension element on terminating access." *Id.*
23 In contrast, this remedy is unavailable to wireless carriers since wireless carriers do not
24 file tariffs and therefore cannot collect terminating access. This makes it impossible for
25 wireless carriers to recover costs in the manner that wireline carriers are able to recover
26 easily.

1 11 This problem was highlighted in the Timm Ranch Proceeding. In the Timm
2 Ranch Proceeding, RCC estimated that Verizon would have been able to recover 100% of
3 the extension costs (hundreds of thousands of dollars) to serve the Taylor and Timm
4 Ranches in about a year, based on Verizon's ability to temporarily increase its access
5 charges. In contrast, RCC would have needed to collect all investment from the end
6 users themselves in tiny increments per month. RCC would not have recovered even one
7 percent of its costs within ten years. It would have taken 1,000 years to recover the
8 investment, even disregarding the present value of the money spent to construct the
9 extension and the expected life of the plant. Applying this rule to wireless carriers which
10 have no means of recovering their costs would be inequitable, burdensome and supported
11 by no sound public policy.

12 **III. THE COMMISSION DOES NOT HAVE JURISDICTION OVER WIRELESS**
13 **ETCS BEYOND THE RECERTIFICATION REQUIREMENTS**

14 12 The Rule cannot apply to wireless carriers because the Commission does not have
15 jurisdiction to regulate them in circumstances that are relevant to the Rule. RCW
16 80.66.010 states that "[t]he commission shall not regulate radio communications service
17 companies" except where they are the "only provider of basic telecommunications
18 service within [a] geographic area." In line extension cases, there is no existing "provider
19 of basic telecommunications service." Line extension petitioners lack basic
20 telecommunications service and are seeking it under the Rule. If the customer or
21 customers were already served, there would be no reason for the line extension case.
22 Since it is inherent in the nature of a line extension case that the wireless carrier is not a
23 current "provider of basic telecommunications service within [the] geographic area," the
24 Commission is prohibited by RCW 80.66.010 from regulating the wireless carrier as to
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1 the area lacking service. So there will never be a situation where the Commission can
2 claim jurisdiction over a wireless carrier in a line extension case.²

3 13 Though the Commission lacks jurisdiction over wireless entry into unserved
4 areas, the Commission does have some oversight as to wireless ETCs through the process
5 for evaluating whether the ETC has met the requirements for annual recertification.
6 Every ETC has a duty to “[c]ommit to provide service throughout its proposed designated
7 service area to all customers making a reasonable request for service” and to provide that
8 service within a reasonable period of time “if service can be provided at *reasonable cost*”
9 by following six specified steps listed in the C.F.R. *See* 47 C.F.R. § 54.202 (emphasis
10 added); *see also* WAC 480-123-070(3). The Rule does not limit extensions of service to
11 situations where the cost to serve is reasonable and conflicts with the requirements
12 applicable to the obligations of ETCs, so it exceeds the Commission’s jurisdiction.

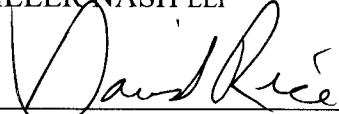
13 14 In fact, line extensions under the Rule can involve unreasonable costs. In the case
14 of the Timm and Taylor Ranches, it would have been extremely costly, burdensome and
15 unreasonable to extend service. Due to topographical issues, RCC would have needed to
16 construct at least one new cell site for each ranch in order to provide more reliable
17 service. *See* Opening Post-Hearing Brief of RCC Minnesota (March 6, 2003). RCC
18 estimated the cost to do so as between \$150,000 and \$500,000 per site, at a cost per
19 resident between \$30,000 and \$100,000 for the Taylor Ranch and between \$50,000 and
20 \$100,000 per resident at the Timm Ranch. This huge cost would have benefited ten
21 families, who in the end may not have lived at that location or wanted the service by the
22 time the cell sites were built one to three years later. The Commission ultimately did not
23 require RCC to extend service to the Timm and Taylor ranches, but RCC expended
24 significant resources defending its rights during that proceeding.

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26 ² Federal law also preempts state regulation of wireless “entry.” *See, e.g.*, 47 U.S.C. § 332(c).

1 **IV. CONCLUSION**

2 15 Applying the Rule to wireless carriers would impose a discriminatory burden on
3 them and is inconsistent with the plain language of the Rule. The Commission should
4 now clarify that the Rule does not apply to wireless carriers, so that they are not drawn
5 into dockets like the Timm Ranch Proceeding without purpose and at great expense.

6 Respectfully submitted this 19th day of September, 2007.

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