

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Eligible)
Telecommunications)
Carrier)
(ETCs))
Rulemaking.)
_____)

DOCKET NO. UT-053021

**Comments of Public Counsel
Attorney General of Washington**

June 2, 2005

I. INTRODUCTION

The Public Counsel section of the Washington State Attorney General’s Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission’s (Commission) May 10, 2005 *Notice of Opportunity to File Written Comments*. Public Counsel supports the Commission’s efforts to clarify its obligations under federal law and to clarify the Federal Communications Commission’s (FCC) recent actions regarding ETC designation.

II. COMMENTS

As a general matter, Public Counsel concurs with the Commission’s approach that ETC designation and regulation of ETCs should be competitively and technologically neutral. Further, that all requirements imposed by either federal law, FCC orders or rules, or Commission orders or rules should apply equally to all ETCs who are so designated within the state of Washington. If the Commission decides to impose new or substantially different requirements

upon ETCs then there should be a process whereby existing ETCs demonstrate their compliance with the new requirements.

The Telecommunications Act of 1996 requires carriers seeking ETC designation to offer supported services and to advertise their availability.¹ The FCC's recent order provides guidance and *permissive* guidelines to state commissions recommending that they adopt the guidelines the FCC has announced it will use in making ETC designations.² It is clear from the FCC's order that they are not preempting state commission jurisdiction, nor are they mandating a standard for review that state commissions must apply in considering designation of ETCs.

Stated broadly, the FCC has recommended the following standards be applied to prospective ETCs:

1. The ETC applicant must demonstrate the ability to provide service throughout its designated service area to all customers who make a reasonable request for service;³ and provide a five-year plan for improving its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support;
2. The ETC applicant must be able to remain functional in emergency situations;
3. The ETC applicant must satisfy consumer protection and service quality standards;

¹ 47 U.S.C. § 241(e)(1).

² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order at ¶¶ 58-64, CC Docket No. 96-45, FCC 05-46 (March 17, 2005) (FCC Order).

³ *FCC Order* at ¶ 22.

4. The ETC applicant must offer plans comparable to those offered by the incumbent local exchange carrier (ILEC) in the area; and
5. The ETC applicant must stipulate that it may become the “provider of last resort” if all other ETCs in the area relinquish their designations.⁴

These are substantial requirements which Public Counsel recognizes will impose certain burdens upon the ETCs. Public Counsel believes the Commission should carefully consider these requirements and whether more explicit standards should apply, particularly with regard to consumer protection and service quality.⁵

The Commission has requested comments on a list of thirty questions relating to ETC designation.⁶ The following comments are general in nature and Public Counsel looks forward to working with the Commission and interested persons as draft rules are developed.

Question #	Comments of Public Counsel
1	Another issue the Commission should consider is whether it would be appropriate to have specific “low income” competitive ETCs (“CETCs”) to improve participation in the Washington Telephone Assistance Program (WTAP), Lifeline/LinkUp, and Tribal Lifeline programs.
2	Public Counsel believes the Commission should continue to be technologically and competitively neutral in considering ETC designations. Public Counsel believes that it is appropriate to take into account different technologies when

⁴ 47 C.F.R. § 54.202.

⁵ 47 C.F.R. § 54.202(a)(3).

⁶ *ETC Designation – Request for Comments*, Docket No. T-053021 (May 9, 2005).

	<p>those technologies are unable to meet the social policy goals established by the FCC or the Commission. For example, a VoIP carrier seeking ETC status would have difficulty demonstrating that it would remain functional in emergency situations.⁷ VoIP relies upon a customer’s existing broadband connection and some form of computer or other VoIP-enabled customer premises equipment which would be unlikely to function during an electrical outage. This was widely experienced by VoIP consumers during the East coast black-out of 2003.</p>
3	<p>A specific commitment would have to be an enforceable commitment to provide service throughout the area within a given time period. Perhaps the five years for which the FCC seeks plans.</p>
4	<p>Public Counsel believes that requiring service within a defined time frame to all customers within the area for which designation is sought is more critical than the means by which service is provided; so long as that service meets all other requirements.</p>
5	<p>The FCC’s five-year plans could provide useful information, as well as a baseline for measuring the ETCs’ ability to meet its commitments. That said, the Commission should frankly consider whether it will in fact allocate the resources necessary to monitor and audit such requirements.</p>
6	<p>Public Counsel would encourage the Commission to consider T-Mobile’s interactive “coverage map” which allows customers to determine signal strength at specific locations.</p>

	<p>See: http://www.t-mobile.com/coverage/Default.asp?class=coverage</p> <p>Cingular also has a similar functionality which they do not make available to consumers over their website, but which is available to their sales staff.</p> <p>Such a functionality is clearly now within all carrier's abilities and the Commission should consider whether a requirement to provide a similar functionality to all wireless ETC customers would be in the public interest. Public Counsel believes it would.</p>
7	<p>Without build-out timelines it is not clear what commitments the Commission would have to enforce with respect to providing "service throughout its proposed designated service area...on a timely basis..."⁸</p>
8	<p>Yes, the Commission should adopt this requirement as necessary to the maintenance of public health, safety and welfare. No, compliance with WAC 480-120-412 and 414 would not satisfy the requirement of 47 C.F.R. §54.202(a)(2).</p> <p>The Commission must carefully consider how it defines the terms it referenced to provide actual services during an emergency event.</p>
9	<p>Public Counsel looks forward to discussing ETC's current capabilities and the appropriate standard that should apply to all ETCs.</p>
10	<p>Public Counsel looks forward to discussing ETC's current capabilities and the appropriate standard that should apply to all ETCs.</p>
11	<p>Yes, and such reporting should be public.</p>
12	<p>Existing consumer protection laws in Washington are an appropriate baseline for</p>

	consideration. Public Counsel looks forward to addressing this question further in the future.
13	Existing disparities between ETC carriers based upon the technology they use is an appropriate basis for considering enhanced or different consumer protections for various ETCs.
14	<p>It is unclear to Public Counsel what additional information a traditional “rate of return” investigation would provide that allow the Commission to determine the comparability of the local plan being offered. It would appear that a price, services, and availability analysis would allow the Commission to make a judgment regarding comparability.</p> <p>The Commission’s comparability analysis should take into account the differing nature of the offerings by land line and CMRS carriers. However, the focus of the Commission’s inquiry should be “the services that are supported by Federal universal service support mechanisms under section 254(c)...”⁹</p>
15	Yes, the Commission should consider an equal access requirement.
16	<p>Public Counsel believes all carriers providing service should have the financial means to provide the service they have contracted to provide to their customers. However, Public Counsel is concerned that “financial capability” not become an undue barrier to entry. Public Counsel believes the Commission should carefully consider what standards it would apply and any such standards should be part of a rulemaking workshop.</p>

17	The Commission should consider all of these factors, and more, in making a public interest determination.
18	Public Counsel has no quantifiable metric to suggest by which the Commission could measure “the benefits of competition.” Public Counsel would be quite interested in any metric other stakeholders may propose.
19	Public Counsel concurs with the Commission’s current approach of allowing customers to best evaluate and determine their interests and needs. That said, service price and quality are certainly factors the Commission could consider in making an ETC designation.
20	Public Counsel looks forward to participating in the Commission’s discussion of service quality metrics in this context.
21	Public Counsel believes the predicate question of how the Commission would measure or determine the existence of a “public benefit” must first be addressed.
22	Public Counsel looks forward to participating in the Commission’s discussion of this topic with all interested persons.
23	Public Counsel is unclear on the Commission’s responsibility regarding the sustainability of the high-cost fund and whether its actions can have a material impact upon the sustainability of the fund. Public Counsel looks forward to participating in the Commission’s discussion of this topic with all interested persons.
24	Public Counsel is unclear on the Commission’s responsibility regarding the sustainability of the high-cost fund and whether its actions can have a material

	impact upon it. Public Counsel looks forward to participating in the Commission's discussion of this topic with all interested persons.
25	Public Counsel looks forward to participating in the discussion defining a possible state benchmark in this context.
26	No. No.
27	Public Counsel believes the Commission's consideration of ETC applications should be competitively and technologically neutral.
28	Yes. Public Counsel believes the Commission should also inquire of such ETCs their intent to participate in and promote Tribal Lifeline.
29	If the information provided by ETCs to the FCC will be publicly available in its entirety than a duplicate requirement seems unwarranted. If it will not be publicly available than the Commission should require production of such information. The Commission should make reasonable inquiry of the ETCs to determine the scope of their efforts to promote WTAP, lifeline/LinkUp and Tribal Lifeline programs; including how they process requests for these services.
30	No, the Commission should not disclaim jurisdiction.

IV. CONCLUSION

Public Counsel looks forward to working with the Commission's staff and all interested persons in this rulemaking process.