

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

In the Matter of the Petition of

CONSOLIDATED COMMUNICATIONS
OF WASHINGTON COMPANY, LLC,
d/b/a CONSOLIDATED
COMMUNICATIONS,

Requesting distribution of funds from the
state universal communications services
program created in RCW 80.36.650

DOCKET UT-220584

ORDER 01

GRANTING DISTRIBUTION OF
FUNDS FROM THE STATE
UNIVERSAL COMMUNICATIONS
SERVICES PROGRAM

BACKGROUND

- 1 On May 13, 2019, the Governor signed Second Substitute Senate Bill (SSSB) 5511, which addresses broadband service issues by: (a) creating the Governor’s State Broadband Office, (b) establishing a broadband grant and loan program administered by the Public Works Board, (c) revising the conditions in which a port district can offer telecommunication services, and (d) extending and revising the purpose of the State Universal Communications Services Program (State USF Program or Program).¹ The State USF Program is primarily intended to provide direct financial support to Washington’s small incumbent Class B Telephone companies that have adopted a plan to provide, enhance, and maintain broadband services in high-cost rural areas of Washington.²
- 2 The Washington Utilities and Transportation Commission (Commission) is allotted \$5 million each year over the remaining two-year term of the program,³ and may distribute

¹ RCW 80.36.650(1) provides that “The purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission and the provision, enhancement, and maintenance of broadband services, recognizing that, historically, the incumbent public network functions to provide all communications services including, but not limited to, voice and broadband services.”

² The legislation described above in (a) through (d) creates other opportunities for broadband expansion in addition to this program.

³ This is the ninth year of the program (year nine) and the next two years (nine and ten) make up the final “two-year term” discussed in this memo and is consistent with the Commission’s

up to \$5 million annually (less the Commission's administrative costs) to qualifying companies each year through June 30, 2024.⁴

3 On May 27, 2020, the Commission entered General Order R-598 (Adoption Order) in Docket UT-190437 amending and adopting rules in Chapter 480-123 WAC to reconfigure the State USF Program in accordance with SSSB 5511.⁵

4 Paragraph 14 of the Adoption Order states that an "Eligible provider may now receive a distribution from the Program if they have adopted a plan to provide, enhance, or maintain broadband services in their service areas." The Adoption Order further establishes four different eligibility criteria.⁶ In addition to these requirements, a company must comply with the prerequisites in WAC 480-123-100.⁷

5 A company accordingly must include in its petition a broadband plan that maintains, provides, or enhances broadband service within the provider's service area.⁸ The rule also

rulemaking order which includes more of the details for reference. *See* General Order R-598 in Docket UT-190437 (May 27, 2020).

⁴ RCW 80.36.650(2) allows that if less than \$5 million is expended in any fiscal year, the unexpended portion must be carried over to subsequent fiscal years and be available for program expenditures. This fiscal year, \$4,850,000 is available for distribution from the State USF Program.

⁵ The Adoption Order established minimum standards of 25 megabits per second download and 3 megabits per second upload (25/3 Mbps) for service to be considered high-speed broadband for the purpose of the State USF Program.

⁶ *Id.* at ¶¶ 16-22.

⁷ WAC 480-123-100 sets forth various criteria for requesting program support for wireline, wireless, and other communications providers. Wireline communications providers must: (a) be local exchange companies that serve fewer than 40,000 access lines within the state, (b) be an incumbent local exchange carrier, (c) offer basic residential and business telecommunications services, (d) have an established plan to provide, maintain, or enhance broadband service, and (e) be designated by the Commission as an ETC for the purposes of receiving federal universal service support.

⁸ To the extent applicable, a company's broadband plan to provide, maintain or enhance service should include:

- (i) A multiyear investment plan;
- (ii) Specific project(s) that are projected to provide or enhance broadband services at speeds required by the Commission or the Federal Communications Commission. Project information should include an estimated timeline, geographic location, number of locations passed, and upload and download speeds;
- (iii) A plan for maintenance of broadband services in the provider's service area;

requires a petitioning company to identify at least one of four eligibility criteria that it claims to satisfy.

6 The four eligibility criteria options are:

1. A sworn statement made by a company officer certifying that the provider commits to the deployment of broadband to the number of locations the Commission has determined by order. Such deployment obligations are in addition to any Federal Communications Commission deployment requirements. Additionally, a provider that elects to petition the program for support under this category is subject to review of its rate of return and financial reporting requirements.
2. A sworn statement by a company officer certifying that the provider commits to the deployment of broadband to the number of locations the Commission has determined by order. Such deployment obligations are in addition to any Federal Communications Commission deployment requirements.
3. A sworn statement by a company officer certifying that the provider has already met the Federal Communications Commission's total deployment obligations associated with federal high-cost program support as of the date of the petition, and that, since January 1, 2018, the provider has deployed broadband to the number of locations the Commission has determined by order. If a company has deployed broadband to a number of locations less than the number required by Commission order, the company must certify that it will deploy broadband to the remaining number of locations.
4. A sworn statement by a company officer certifying that broadband service is available to 100 percent of locations within the provider's service area, and that the company commits to making broadband service available to any new locations.

7 On July 7, 2022, Consolidated Communications of Washington Company, LLC, d/b/a Consolidated Communications (Consolidated Communications or Company) filed with the Commission its State Universal Service Fund (State USF) compliance report. On August 5, 2022, the Company filed a revised report.⁹ In its report, Consolidated

(iv) A description for how the provider will enhance broadband services in its service area; and

(v) Any supporting information that the Commission requests to assist its review and analysis of the provider's broadband plan.

⁹ Consolidated Communications' revised compliance report includes the locations used to meet its UTC broadband buildout obligation, administrative corrections, and the addition of language that

Communications indicated that it has deployed broadband to 214 of its UTC broadband buildout requirement locations; 158 of these locations now have 25/3 Mbps broadband availability, and 56 locations now have 50/5 Mbps broadband availability. The Company has indicated that it has three projects scheduled to be completed by the end of 2022. The Company is still in the process of burying conduit, distributing fiber, acquiring material, and finalizing permitting. Based on Commission staff's (Staff) review and several conversations with the Company, Staff believes the report meets the requirements of WAC 480-123-130.

8 On August 2, 2022, Consolidated Communications filed a petition requesting support from the State USF Program (Petition) for fiscal year ending June 30, 2023, under eligibility criterion two. Consolidated Communications provides in its broadband plan a revised and updated look at the nine projects that were proposed in last year's petition. Each project details the construction of buried and/or aerial conduit and distribution fiber to a new/existing VDSL2 capable remote. The plan details three projects that are scheduled for completion by the end of 2022, reaching a total of 155 locations that count towards its 398 UTC broadband buildout obligation. Lastly, the broadband plan outlines two projects scheduled to begin in the second quarter of 2023 and one scheduled to begin in the first quarter of 2024. These final three projects are expected to reach another 104 locations. Additionally, the Company is in the process of deploying 2-gig fiber to the city of Ellensburg, which will connect 3,000 homes and businesses by the first quarter of 2023. Consolidated Communications continues work to meet its UTC broadband buildout obligation prior to the program's expiration on June 30, 2024.

9 Staff reviewed Consolidated Communications' Petition and supporting exhibits, including a broadband plan, and has determined that the Company meets the prerequisites for requesting program support set forth in WAC 480-123-100 and the second eligibility criterion. Overall, Staff finds that Consolidated Communications certified its commitment to deploy broadband services to the number of locations in the Adoption Order in addition to any locations required by the Federal Communications Commission (FCC).¹⁰ The Company also provided a broadband plan to enhance broadband services to areas it does not currently serve 25/3 Mbps. Staff recommends the Commission find the

the Company will file its Broadband Data Collection lists or polygon in Docket UT-220275 no later than September 15, 2022.

¹⁰ Each company has a specific UTC Deployment Obligation based on its cost benchmark and the amount of anticipated support each company is potentially eligible to receive through June 30, 2024. For these calculations, Staff calculated that \$4,850,000 would be available annually for fiscal years 2022-2024.

Company eligible for State USF Program support in the amount of \$1,077,515 to be disbursed no later than December 31, 2022.

10 However, because the Company has not yet met its broadband buildout obligation, Staff additionally recommends, and the Company agrees, that the Commission impose a condition on the distribution requiring the Company to return a portion of the distribution in the event it fails to meet its broadband buildout obligation during the last two years of the program.¹¹ That portion would be a prorated amount for the 2023 and 2024 State USF distributions, with the Company returning a proportional share based on the percentage of obligated broadband locations to which the Company did not deploy broadband.¹² The Company's compliance report illustrates the work that Consolidated Communications has undertaken to deploy broadband and its broadband plan specifies how the Company will continue to advance broadband availability and achieve its commitment prior to June 30, 2024.

DISCUSSION AND DECISION

11 We agree with Staff that Consolidated Communications has demonstrated its eligibility for a distribution from the State USF Program for fiscal year ending June 30, 2023, subject to the condition described in paragraph 10.

12 The Company has certified its commitment to continue to deploy broadband services to a number of locations in the Adoption Order in addition to locations previously required by the FCC. Consolidated Communications provided a broadband plan to enhance broadband service locations it does not currently serve at 25/3 Mbps and has committed to making broadband service available to any new locations. Consolidated Communications has provided a broadband plan to maintain its existing infrastructure while continuing to invest in capital improvements to make available broadband at speeds faster than 25/3 Mbps. Furthermore, the Company has shown its ability to provide and

¹¹ WAC 480-123-140 allows that "Any eligible providers authorized to receive program support that fail to comply with public interest obligations under federal or Washington law or any other terms and conditions established by the commission may be subject to further action, including the commission's existing enforcement procedures and penalties, reductions in program support amounts, potential revocation of program eligibility designation, and suspension from, or disentanglement to future participation in the program."

¹² Put mathematically, the amount the Company would return is equal to the dollar amount of the distributions for 2023 and 2024 multiplied by the number of locations to which the Company fails to deploy broadband divided by the total number of deployment locations in the Company's broadband plans.

maintain service. Consolidated Communications committed in its Petition to deploy broadband services, continue maintenance, and enhance its services.

- 13 We find that a distribution in the amount of \$1,077,515 from the State USF Program is consistent with the Adoption Order and applicable statutes and rules and is therefore in the public interest. Accordingly, we grant the Company's Petition subject to the condition that, in the event the Company fails to meet its buildout obligation, the Company must return a prorated portion of the distribution proportional to the percentage of obligated broadband locations to which the company does not deploy broadband by June 30, 2024.

FINDINGS AND CONCLUSIONS

- 14 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate public service companies, including local exchange companies.
- 15 (2) Consolidated Communications is a local exchange company as defined in WAC 480-120-021 and a public service company subject to Commission jurisdiction.
- 16 (3) Consolidated Communications has certified its commitment to deploy broadband services to the number of locations required by the Commission's Adoption Order in Docket UT-190437 in addition to locations required by the FCC.
- 17 (4) Consolidated Communications has provided a broadband plan to enhance broadband services to areas it does not currently serve at 25/3 Mbps.
- 18 (5) Consolidated Communications is eligible to receive funding from the State USF Program in the amount of \$1,077,515 to be disbursed no later than December 31, 2022, subject to the condition described in paragraph 13.

ORDER

THE COMMISSION ORDERS:

- 19 (1) Consolidated Communications of Washington Company, LLC, d/b/a Consolidated Communications' request for funds from the State USF Program for fiscal year ending June 30, 2023, in the amount of \$1,077,515 is granted, subject to the condition described in paragraph 13.
- 20 (2) The funds will be disbursed by December 31, 2022.

- 21 (3) The Commission retains jurisdiction over this matter for purposes of effectuating this order.

DATED at Lacey, Washington and effective December 8, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner