

	WITA	Public Counsel	Mercy Forbes	Staff
Overview Comments		<p>The proposed rules do not accomplish a number of key objectives that the Commission set out in its December 2018 Report to the Legislature. Proposed rules make smaller, incremental changes that create an unnecessary hybrid of the old & new frameworks. PC agrees with the Commission's proposal to deemphasize rate of return and basic service rate instability as primary drivers. Appropriate to move away from reliance on preservation of historic voice service related revenues as the basis for allocating funds. Clear legislative objective to promote BB deployment. <i>PC Unit should be changed from "section" to "unit."</i></p> <p>Proposed rules begin to address incorporating the expanded scope of the UCS into the UTCs rules - modification & augmentation of the draft rules should occur before they are adopted.</p>	<p>WAC will damage small business . . . UTC has no right to hijack my industry! UTC is an advocate for an outdated unrelated industry in order to punish the private BB industry for having vision and providing a new service.</p> <p>I will be more than happy to provide complete input once you modify this proposed WAC to match the law and stop trying to illegally regulate us.</p>	<p>Purpose of the program is to support continued provision of basic telecom services and the provision, enhancement and maintenance of broadband services, recognizing that historically, the incumbent public network functions to provide both of these services. Current proposed rules utilize a hybrid approach to promote both broadband and voice services as required by statute.</p>
Benchmark speeds/minimum speed	25/3 should be the speed standard for program support purposes. . . Consistent with the FCC's current program standards. However, requirements for price cap carriers, based on 25/3 have not been established.	PC encourages the Commission to target its limited funding to services operating at benchmark speeds which would in turn encourage the widest participation. Minimum speed thresholds is important in advancing WA BB goals and providing transparency and guidance to applicants. PC does not agree that it would be counterproductive to apply a more ambitious goal than what is required by a specific FCC program. UCS should be focused on promoting new BB deployment & emphasis on making clear progress towards an evolving speed benchmark.		Staff supports a flexible broadband benchmark in rule. This will allow the Commission to adjust the benchmark as Washington State and federal standards shift. Staff supports the Commission to set an initial benchmark of 25/3 Mbps in order.
Wireless		Statute and rules allow for participation in UCS by mobile wireless providers. . . Commission should take steps to address gaps in its rules with respect to participation in UCS by mobile wireless providers.		To date, neither the Commission nor the Advisory Board have received communication from a mobile wireless provider about petitioning the program for funds. The proposed rule contains language that the advisory board will address eligibility of a mobile provider.
Consistency Issues	<p>Proposed rules recognize that it may be an affiliate of the petitioner that provides the BB services; however, there appear to be places in the draft rules where that concept should be carried through for the sake of consistency. <i>See Attachment 3.</i></p> <p>Another area that should be consistent in the rules is language that the petitioner may not be seeking program support for its entire service operations. <i>See Attachment 3.</i></p>			<p>An affiliate may provide the end user broadband service, however, it is the ILEC that builds the infrastructure. Adjusted affiliate language.</p> <p>Program support is on an exchange basis. Does not carve out eligible and ineligible locations.</p>
Cost methodologies	Staff has used the A-CAM cost calculations. . . A-CAM is not perfect. . . Model produced a per location cost calc that was unreasonably low compared to the actual cost of construction. Commission should recognize the need to be flexible in the choice of costing methodologies. . . if the company opted into the weighted average cost methodology for FCC purposes, it should be allowed to use that same methodology to calc the number of locations in lieu of Staff's use of the A-CAM benchmark. Order should be an "either/or". Companies should be allowed to provide evidence of actual cost of deployed 25/3 or proposed alternative approach.			This is not a rule issue, but rather, an order issue. Staff believes the current proposed approach provides a company with options. Either, the company can commit to the broadband deployment numbers based on the ACAM model, or, the company can provide evidence of their actual cost of deploying 25/3 Mbps. ACAM is a forward-looking company specific model. WITA suggests companies be allowed to use the weighted average cost methodology used to calculate broadband deployment obligations for the FCC. This methodology is backward looking and is not company specific, rather, it is based on 150% of the weighted average cost of companies with similar density and broadband buildout. If a company is unwilling or unable to meet the ACAM based obligation or provide evidence of the actual cost, a company is not required to petition the Commission for support. Or, alternatively, the company can petition the Commission to use a different methodology and the Commission can assess such a petition on a case by case basis. If a company does not petition for support, staff believes support should be focused elsewhere. Whidbey and Hat Island are the only company's that would like to use 150% of the weighted average cost to calculate the broadband commitment. If Whidbey used 150% of the weighted average cost, Whidbey Telco's BB deployment obligation for category 1 would decrease from 1,098 locations to 350.
Section 12 (3)(b)		BB bill nominally expands eligibility to "other" providers, restrictions impose significant barrier. Commission's rules should allow for maximum participation.		Staff believes the proposed rules are consistent with statute.
WAC 480-123-020	<p>Definition of BB service should be consistent with the Federal Standard. Support that is incremental to the support that companies receive under the federal programs. Definition should end with "consistent with federal standards."<i>See revised definition in Attachment 1.</i></p> <p>Rules as drafted tend to move to the concept of a "sworn statement" for petition purposes. May be helpful to have a definition of the term "sworn statement". WITA recommends "<i>Sworn statement" means a statement made under penalty of perjury, as set forth in RCW 9A.72.085.</i></p>	<p>Proposed rule declines to establish minimum speed thresholds. PC recommended in its initial comments that the Commission set minimum speed thresholds consistent with current FCC benchmark. Perhaps a reference to the statute or federal rule would allow the rule to have longevity and reduce the need to amend the rule when statutory or Federal policy changes occur. Definition of BB should specify minimum speed thresholds of 25/3 Mbps for fixed service and 10/1 Mbps for mobile wireless service.</p> <p>25/3 Mbps benchmark is specifically referenced in the BB bill.</p>		<p>Staff believes the Commission should set the benchmark while taking state and federal standards into consideration. Benchmark speed is not in rule to allow the Commission to adjust the minimum speed as technology advances.</p> <p>Staff agrees with WITA and has incorporated this change. A 25/3 Mbps speed is referenced in the BB bill, however, a speed was not provided in the definition of broadband service.</p>
WAC 480-123-100 (1)		PC does not object to proposed language provided that it is understood that UCS funds will not be used to make up any shortfall in revenues associated with residential local exchange service.		Staff agrees.

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WAC 480-123-100 (2)		PC has no objections to the proposed provisions in subsection (2) but notes that providers of fixed wireless BB services, who could potentially extend BB to unserved remote areas, do not appear to be included within the statutory definition.		Staff agrees. This subsection is for providers that offer mobile wireless service. Fixed wireless broadband service providers fall under subsection (3)
WAC 480-123-100 (3)		Regarding new subsection. . . PC appreciates the attempt to avoid linking eligibility to full ILEC-like regulation.		Revised subsection 3 to be consistent with statute.
WAC 480-123-110(1)(d)	Important aspect of rules is the description of what needs to be in the BB plan. What is important is the legislation stated that the BB plan is a plan for a provider to "provide, enhance or maintain BB services in its service area." Language in proposed rule is only about construction projects and ignores the intent and scope of the legislation. Commission must recognize that the BB plan called for in the legislation is broader than just construction projects. The proposed rule language fails to recognize the maintenance of existing BB services. Maintenance is very expensive. Meeting debt service obligation is a very important part of maintaining BB services.	Requirements assume certain characteristics will be present in petitioner's BB plan. . . Requirements listed should be clarified.		Staff believes a provider's broadband plan should address their plan to provide, maintain and enhance broadband service. The current structure will allow the Commission to understand a provider's short and medium term plans.
WAC 480-123-110(1)(d)(i). . . Multi-year investment plan	Need to address maintenance as a component of the BB plan.	This section should be clarified to include the speed required by the Commission and direction regarding which Commission's requirements take precedent. . . If there is no benchmark, subsection needs clarification regarding the intent of referring to the speed required by the Commission.		This section addresses maintenance and speed. The Commission sets the benchmark speed to be considered advanced telecommunications. To be considered broadband, the infrastructure must be able to provide advanced telecommunications.
WAC 480-123-110(1)(d)(iii). . ."number of locations served in each phase or year of deployment plan. . . "	This language should be deleted. The planning process is really only good for about a one-year horizon and is subject to weather factors and other issues. <u>SEE ATTACH 2</u> for language. If this element of BB plan retained, should address the number of locations passed, not served. . . Nothing that a company can do to make customers buy the service.	Should be clarified regarding whether the UTC will use this info to inform a multi-year commitment of UCS funds or simply obtain better understanding of how the company intends its plan to proceed. PC disagrees with WITA, the UTC should attempt to be more detailed and specific with regard to the elements of a provider's BB Plan. The UTC might reference the info required in FCC Form 683.		Rule has been updated to "locations passed". The broadband plan will provide the Commission with a better understanding of how the company will achieve the required broadband buildout or otherwise maintain the current infrastructure. FCC Form 683 is the FCC's long form application for the completed CAF-II reverse auction. The information would be provided to a grant or project-based program.
WAC 480-123-110(1)(d)(vi)		This section is a catchall for any other info the Commission might require. . . Useful while Commission evaluates applications.		Staff agrees.
WAC 480-123-110(1) (e)	Detailed financial info delineated under 110(1)(e) should not be required of those companies that are not undergoing a ROR review. WITA recommends the following language be inserted at the beginning of sub (e)"For a provider that is seeking support under (j)(i) below, or under (2) or (3), below, detailed financial information. . . " This will accomplish the goal of requiring the filing of information where it is needed and companies under ROR review to submit unnecessary information and avoiding the costs attendant to doing so.	PC recommends that the Commission fortify the proposed rules by going into greater detail about plan and application-specific requirements - less emphasis on the traditional ILEC accounting documents. UTC can obtain info in (e) under other rules. . . detail relating to regulated ILEC financial reporting could be eliminated from the current rule.		Staff agrees and has made changes to the proposed rules. Detailed financial information is only required if a provider seeks eligibility under category 1.
WAC 480-123-110(1)(j)	1) There should be less financial data required when moving from ROR reviews. 3 of the 4 categories do not use ROR regulation. The Commission should cut back on the financial reporting for those companies that will be in Criteria Two, Three & Four. No need for detailed financial info if a company is not under ROR regulation. 2) It is difficult to see the distinction between Eligibility Criterion One and Eligibility Criterion Two. Distinction that was agreed to with Staff is not in rule. . . to move to Criterion Two, a company would need to agree to build to more locations. Critical that there is clear understanding of the number of locations. 3) Standards for Criterion 1 are different than what WITA anticipated. Under WITA's understanding of the discussions, there was no specific buildout requirement.	Purpose of the 4 criteria is unclear within WAC 480-120-110, but are used in 480-123-120.		Staff agrees with WITA. The four eligibility categories will be used in analyzing a provider's plan to enhance, provide and maintain broadband services. The Commission will determine the number of locations each petitioner will pass by order. The number of locations is based on the eligibility criterion selected by the petitioner. The figures provided are for Criterion One and Criterion Three. If a company has not already met the FCC final deployment obligations and UTC obligations, but still wishes to avoid a ROR calculation, they can select Criterion Two. If Criterion Two is selected, the provider will be required to deploy to twice the number of locations the Commission released for Criterion One/Three. Staff respectfully disagrees. WITA contends that a company can develop its own broadband deployment requirement. However, Staff and WITA Previously agreed that for 50% of program support, a company would commit to deploying broadband to the UTCs required number of locations by the end of the program. Alternatively, a company can provide evidence of higher costs and the Commission will use the higher cost information to set a company's broadband deployment obligation on a case by case basis. WITA indicates that few, if any, companies plan to file under this criterion.
WAC 480-123-110(1)(j)(iii)	Construction to additional locations should be ongoing. Many construction programs are multiyear or overlap from one year to the next. . . 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. . . Minor change, but critically important. WITA believes that the starting point that was agreed to in discussions with Staff was 1/1/17, that date is more consistent with A-CAM process. <u>WITA has proposed language</u> . Allows a company to move from Criterion 1 to Criterion 3 as time passes.			Although WITA has concerns, WITA accepts a 1/1/2018 start date. Staff agrees about multi-year construction projects or overlap from one year to the next and has made changes to address this. If a company hasn't met the UTC deployment obligation, staff supports order language that would allow a company to meet the remaining portion of a company's UTC deployment requirement by building out to the remaining locations over the next four years of the program.

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	No need to show financial need. WITA is suggesting changes to the draft rules which are set out in <u>Attachment 3</u> .			Staff agrees. A provider who elects eligibility under Criterion One will undergo a rate of return review.
WAC 480-123-110(6)	Consideration should also be given to substituting the term "sworn statement" in WAC 480-123-110(6).			Staff agrees and has made this change.
<i>NEW subsection (7)</i>	It was agreed with Staff that affiliated companies could submit one petition if they so chose. This concept was overlooked in the draft rules. WITA recommends that a new subsection be added: <i>(7) Affiliated companies may submit a combined petition for support.</i>			Staff agrees and has made this change.
WAC 480-123-120		The proposed rule for ILEC distributions set forth in (1) and (2) should be modified. No statutory requirement or policy reason to continue to link UCS support to historical revenue flows from intercarrier compensation. PC believes there should be no automatic entitlement level under the new UCS framework. <i>See initial comments.</i> . .		Staff believes this is an efficient and effective method to distribute funds to providers to help them continue to provide, enhance and maintain telephone service and to provide, enhance and maintain broadband service.
WAC 480-123-120 (3) and (4)		Just as distributions to wireline providers should be based on criteria focused on obtaining the greatest expansion of benchmark-level BB at the lowest cost, so should distributions to wireless and other providers. Applications should contain info about coverage and speeds, timeframe, costs and rates.		In the event a provider would like to seek support from the program, staff believes the advisory board should make a recommendation to the Commission on eligibility and distribution calculations.
WAC 480-123-120 (5)		Adds important language regarding support being contingent on provider's commitment to deploy BB. . . Incorporates important accountability provisions.		Staff agrees.
WAC 480-123-120 (6)		Retains UTC's original provision regarding pro rata distribution of funds in the event that total eligible requests exceed available funding. Pro rata distribution methodology could result in less efficient fund allocation. PC believes the UTC should determine which applications deserve priority and fund those proposals fully as possible with pro rata as a last resort. PC recommends the UTC use the advisory board for input on how to optimize a pro rata distribution methodology.		Staff believes the pro rata distribution will be an efficient way to reallocate funds if a provider is ineligible. If a provider is ineligible, other providers will receive their pro rate share of the ineligible providers support. If a company has broadband deployment obligations, the number will increase based on the increased support. If a provider does not have broadband deployment obligations, the company will need to indicate how the support was used to maintain current broadband service.
WAC 480-123-130	WITA recommends that latitude and longitude data not be required, instead the location information as filed with FCC or USAC be standard.	Proposed rule leaves the reporting requirements for wireless and "other" providers undefined; report requirements should cumulatively extend to each of the grant years if UTC grants multi-year funding.		In the event a provider would like to seek support from the program, staff believes the advisory board should make a recommendation to the Commission on reporting requirements. Broadband data reported to the FCC or USAC includes latitude and longitude. However, the data and format filed with the FCC or USAC is acceptable.
WAC 480-123-130 (1)(i)		PC supports using FCC Form 477 data until more granular data becomes available.		Staff agrees. Staff revised language so that filings due within 14 calendar days of the date it is filed with the FCC. Staff believes the Commission Order should require provider to file their Digital Opportunity Data Collection, once available, within 14 days of the filing date with the FCC or USAC. This requirement should continue throughout the programs operation to ensure the Commission has an accurate understanding of broadband availability in the State of Washington.
WAC 480-123-130 (2) and (3)	WITA recommends that some flexibility be allowed in filing of Form 477. WITA also recommends that the "same day" language be deleted.	Should be revised to include a requirement similar to that in subsection (1)(b).		In the event a provider would like to seek support from the program, staff believes the advisory board should make a recommendation to the Commission on reporting requirements.
WAC 480-123-150		PC does not have objections to either of the proposed modifications nor the use of the advisory board to provide input.		Thank you for your input.