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June 8, 2005

VIA ELECTRONIC MAIL

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-053021 – ETC Rulemaking

Dear Ms. Washburn:

The Washington Independent Telephone Association (WITA) offers the following opening comments in this docket. The May 10, 2005, Notice of Opportunity to File Written Comments requested that comments be filed by June 1, 2005. Unfortunately, due to a number of commitments between May 10 and June 1, WITA was not able to file comments by June 1, 2005. WITA appreciates the Commission's willingness to consider these comments even though filed after June 1, 2005.[1]

At this stage, WITA has a comment to offer on the overall approach that the Commission should frame. Further, WITA will also offer short comments on: (1) the minimum size of the service area sought in an application by a competitive eligible telecommunication company (CETC); (2) the appropriateness of limiting the number of ETCs in a particular service area; and (3) the cream skimming analysis. WITA is working on more detailed responses to other issues as well. However, responses are still under development.

[1] Conversation with Commission Staff was to the effect that WITA's comments would be considered timely if filed by this date.

It is WITA's position that all ETCs should be held accountable for their use of universal service fund monies. However, that does not mean the approach that should be built into the Commission's analysis should be identical for incumbent ETCs and CETCs. There are at least three significant differences between the two categories that the Commission should keep in mind in its thinking in this docket. Those three differences are as follows:

- Incumbent ETCs receive support based upon expenditures that have already been made. That is, the investment in facilities is demonstrated by the fact that those facilities are already "in the ground" and used to provide service. USF funds are provided to incumbent ETCs generally on a two-year lag basis. That is, USF funds are received after the supported investment has been made on the supported expense incurred. To the contrary, CETCs receive USF support independent of past investment in a rural service area.

- Incumbent ETCs receive support based upon cost studies that are submitted on an annual basis and are subject to audit by the National Exchange Carrier Association. CETCs receive support based upon the incumbent ETC's costs, not the CETC's costs.

- Incumbent ETCs have Carrier of Last Resort obligations imposed by statute. CETCs do not.

In the ETC Designation Order,[2] the FCC seemed to have particular focus on wireless ETC applicants and providers. For example, in discussing how an ETC applicant must commit to provide service to requesting customers, the FCC stated as follows:

> …the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the existing customer's equipment; (2) deploying a roof-mounted antennae or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.[3]

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[2] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (Released March 17, 2005) ("ETC Designation Order").
[3] ETC Designation Order at ¶22.

Obviously, this passage is directed at wireless carriers, not wireline carriers.

As another example, the FCC discussed the five-year building plan requirements in terms of how "signal quality, coverage, or capacity will improve due to receipt of high-cost support for the areas for which the ETC seeks designation."[4] Again, this discussion seems aimed with particularity at wireless carriers.

The point in bringing these passages to the attention of the Commission is to support the idea that in some ways, what is required of the incumbent ETC may differ from what is required from the CETC. There are already several layers of accountability built into the system for the incumbent ETC.[5] It may be appropriate that further levels of accountability be developed. However, as a minimum, competitive ETCs should be held to the same level of accountability as incumbent ETCs. This does not mean that competitive ETCs need to file embedded cost studies. What it does mean is that the Commission should look to find the equivalent for the competitive ETC. That equivalency may be found in the way in which the five-year build out plan requirement is applied to competitive ETCs, coupled with a recognition that such a plan should look different for the incumbent ETC which receives support based upon <u>past expenditures</u>, or may not be needed at all for incumbent ETCs, reflecting the fact that for incumbent ETCs support is distributed <u>only</u> <u>after</u> the build-out has occurred and the expenditures have been made. In other words, the planning requirements for the competitive ETC should probably be more rigorous than for the incumbent ETC since the incumbent has already spent the money to provide universal service and the competitive ETC is only in the planning stage.

1. <u>Minimum Service Area</u>.

One of the important issues for the Commission to consider is the area for which an ETC may seek designation. The FCC has found that for its consideration of rural areas, an ETC must commit to serve no less than a

[4] ETC Designation Order at ¶23.
[5] Attachment A contains a description of some of the levels of accountability already in place for incumbent ETCs.

complete wire center.[6] In other words, ETC designations will not be for less than a wire center. The FCC found that "…requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner."[7] WITA advocates that the same minimal service area be adopted in Washington for applicants seeking designation in areas served by rural telephone companies. The same concerns the FCC identified about cream skimming are applicable in the state of Washington.

2. Public Interest Limits on the Number of ETCs for a Particular Service Area.

Over the past two years, WITA has joined with other state associations to file collective comments on USF issues at the federal level. One of the points that has been advocated in those comments is that there are some areas where the cost to provide service is sufficiently high that the public interest does not support designating an additional ETC. The FCC declined to adopt a specific national per-line support benchmark for designating ETCs.[8] However, the FCC stated that it is part of the public interest analysis to look at the per-line support levels:

> We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in an area may be the level of per-line support provided to the area.[9]

One approach to this is to pick per line, per month support levels to define when additional ETCs are appropriate. An example of this is the approach set forth by Billy Jack Gregg as identified at Page 10 of CenturyTel's Comments. Mr. Gregg has also authored several comments on behalf of the National Association of State Utility Consumer Advocates. The primary limitation that this principle would produce is that it does not serve the public interest to have more than the incumbent ETC receiving universal service support when the monthly per line

[6] ETC Designation Order at ¶77: "… designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest." Citing Highland Cellular ETC Designation Order, 19 FCC Rcd. at 6438, ¶33.
[7] ETC Designation Order at ¶77.
[8] ETC Designation Order at ¶56.
[9] ETC Designation Order at ¶55.

support amount is $30.00 or greater. WITA continues to support such an approach.

3. Cream Skimming.

It is WITA's position that the Commission should take a hard look at cream skimming issues. The FCC has adopted an approach where it will review the population densities of wire centers for which an applicant for competitive ETC status seeks designation.[10] The population densities of those wire centers are compared to population densities of other wire centers served by the same rural telephone company to determine if there is a substantial risk of cream skimming. If the higher density wire centers are those for which designation is sought, then the risk of cream skimming becomes great enough to suggest that the application should be denied.

The FCC urged states to adopt the FCC's cream skimming analysis in at least two separate passages in the ETC Designation Order. At Paragraph 49, the FCC stated:

> In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs.

The FCC emphasized this position by later stating: "We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area."[11] WITA supports adoption of the FCC's cream skimming analysis.

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[10] ETC Designation Order at ¶s 41, 48-53. The FCC noted that disaggregation of support may help, but is not a complete response. The FCC put much greater emphasis on the need for a density analysis.
[11] ETC Designation Order at ¶53.

Thank you for the opportunity to submit these opening comments. WITA looks forward to participating at the workshop on June 29, 2005.

Sincerely,

/s/ Richard A. Finnigan

RICHARD A. FINNIGAN

RAF/km
Enclosure

cc: Terry Stapleton (via e-mail)
Member Companies (via e-mail)