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VIA E-FILING

Mr. Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

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State Of WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Notice of Opportunity to File Written Comments – UT-190437 – Comments of
Washington Independent Telecommunications Association

Dear Mr. Johnson:

The Washington Independent Telecommunications Association (WITA) welcomes the opportunity to submit comments in this docket considering amendments to the rules related to the Universal Communications Services Program as set out in Chapter 480-123 WAC. First and foremost, WITA compliments Commission Staff on its efforts in bringing these draft rules forward. WITA appreciates being involved in the rule development process.

In these comments, WITA has one major concern and a number of more minor items to address. The major concern will be addressed first. WITA also has comments on the concept of buildout to additional locations, which is incorporated in the draft rule changes.

1. Major Concern

The major concern is the inclusion of additional buildout requirements under eligibility Criterion One. As set forth in proposed WAC 480-123-110(1)(j)(i) and WAC 480-123-120(2) there is a requirement to commit to deploy additional broadband locations as determined by the Commission. Criterion One is essentially the default criterion. If a company cannot fit under Criteria Two, Three or Four, they are left to Criterion One. Under Criterion One, there is a traditional rate-of-return review. That rate-of-return review is lifted under Criteria Two, Three and Four.

The quid pro quo for lifting the rate-of-return review was the agreement to build to additional broadband locations. Unfortunately, if a company defaults to Criterion One, it is not relieved of rate-of-return review and potentially could lose half of its support. Since there is no trade off of relief from rate-of-return review, it does not seem fair to require buildout to additional locations. There is no benefit achieved by defaulting into Criterion One. WITA respectfully requests that the additional buildout requirement be removed for Criterion One.

2. More Minor Items

Although this section is labeled "Minor Items", the items that are addressed are still important.

The first of these is in definition of Broadband Service in WAC 480-123-020. The next to last sentence of the proposed definition reads "Any broadband speed standards that are established in these rules or by commission order may be met by the communications provider or its affiliate or a combination of both." (Emphasis supplied). The ability to meet broadband standards through the actions of an affiliate is an important consideration. Many of WITA's members are set up structurally to do just that. That is, they have an affiliate that provides the retail broadband service. As a result, the ability to use an affiliate to meet broadband standards should not be limited solely to "speed" standards. It must apply across the board. WITA recommends the word "speed" be deleted.

The next item is in draft WAC 480-123-110(1)(h). There is new language added to this section that reads "and the provider will continue to provide broadband services. . ." WITA recommends the language read "and the provider through itself or its affiliate will continue to provide broadband services. . ." This change is needed to recognize that in many cases it is the affiliate that provides the retail broadband service.

The third item for comment is in the proposed new language for WAC 480-123-120(1). In the draft language, the reference is made to "the provider's plan to provide, maintain, and enhance broadband services in its service area." (Emphasis supplied). To conform to the statutory delineation of the broadband plan, WITA recommends the language read "the provider's plan to provide, maintain, or enhance broadband service in its service area." WITA notes that elsewhere in the rule, the language construction is to use "or" rather than "and," which is consistent with the statute. Also, the term "eligibility category" should probably be "eligibility criterion" to be consistent in usage.

The next item is WAC 480-123-120(6). If there is a pro rata reduction in support, there

should be a corresponding reduction in the number of locations required to meet the broadband obligation. WITA recommends the following sentence be added: "If there is a pro rata reduction in support, the broadband build out requirement is reduced proportionally.

The fifth item is in WAC 480-123-130(1)(i). WITA believes that the availability data from the Form 477 is more important than subscription data. The customers often purchase much lower speed levels than what is available. So subscription data will provide misleading data as to what is available. Please note that availability data is reported by census block, not census tract.

The sixth item is that to provide a firm distinction between WAC 480-123-130(1)(b) and (c), the words "telecommunications services" should be inserted in (1)(b). Otherwise, (1)(b) and (1)(c) can be read as duplicative.

The final item is more than just a minor provision. It has to do with fulfilling the policies behind the change in the legislation. The proposed language related to "other communications provider" in WAC 480-123-120(4) leaves much of the development of eligibility and distribution calculations to the advisory board. However, there should be a baseline. That baseline should be that the "other communications provider" must commit to provide broadband service to at least the designated speed and to at least those numbers of locations that the incumbent local exchange carrier would provide under federal and state standards. Otherwise, the rule could result in a diminution of the deployment of broadband rather than insuring that broadband is at least viable as it would be had the incumbent local exchange carrier provided the service.

3. Buildout Obligations

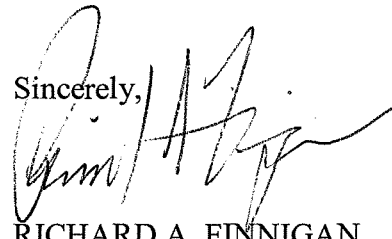
WITA wants to emphasize to the Commission that a very critical part of this whole procedure is the additional buildout requirements that the Commission is to establish by order under the rule. In negotiations with Commission Staff, WITA has a firm understanding of what those requirements will be. WITA's support for this program is predicated on the understanding as to the extent of those buildout requirements. Set out in Table 1, which is attached, is WITA's understanding of those requirements.

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Conclusion

WITA looks forward to finalizing these rules and moving forward with the extension of the Universal Communications Services Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Finnigan", written in a cursive style.

RICHARD A. FINNIGAN

RAF/cs
Enclosures

cc: Client (via e-mail)