BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Rulemaking to consider amending and adopting rules in WAC 480-120, telephone companies, and WAC 480-123, universal service, to implement legislation establishing a state universal communications service program.	Docket No. UT-131239

COMMENTS
OF
THE WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION
ON THE COMMISSION'S SPECIFIC QUESTIONS

October 10, 2013

INTRODUCTION

In the Notice of Opportunity to File Written Comments issued by the Commission in Docket UT-131239, the Commission requested comments on three specific issues. The purpose of these comments is to address those three issues. A second set of comments will be filed which addresses the draft rules in general.

COMMENTS

1. What mechanism should the Commission use to establish the rate of return and return on equity levels carriers must fall below to be eligible for distribution from the program?

RESPONSE: WITA does not believe it is necessary to focus on establishing a precise rate-of-return. Just looking at the results achieved by the potentially eligible carriers in 2012 means it may be credibly assumed that no carrier is over earning.[1] However, if the Commission determines that this exercise is necessary, WITA has a recommendation.

WITA does not support having a separate test for a return on equity in addition to a test on overall rate-of-return. For a company's regulated operations, a return on equity is a component of the calculation of the rate-of-return and is usually calculated on a hypothetical basis. On a total company basis, a return on equity calculation means the Commission expects non-regulated activities to subsidize regulated activities. WITA's position is that use of non-regulated revenues to subsidize regulated activities is not appropriate. In addition, for some companies that operate in multiple states, use of total company financial results means the Commission is expecting customers in another state to support customers in Washington. That is also inappropriate.

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[1] See WITA's Reply Comments: Data Presentation and Recommendation at page 3. (September 4, 2013),

Given that the vast majority of the companies that are eligible to participate as wireline companies drawing from the new state universal service fund are not publicly traded, are very small and face a number of difficult economic and financial hurdles, WITA believes that the best methodology is one that has been advocated by the National Associations. It is called the Free Cash Flow (FCF) method. Attached as Exhibit 1 is an excerpt from the comments filed by the National Exchange Carrier Association, Inc., NTCA - The Rural Broadband Association, US Telecom, Eastern Rural Telecom Association, and Western Telecommunications Alliance. Exhibit 1 is Appendix B to their comments filed July 25, 2013, before the Federal Communications Commission in the proceeding entitled In The Matter of Connect America Fund, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 10-90, 07-135, 05-337, 03-109 and WT Docket No. 10-208.

The FCF methodology is based on the real world events and tells us what the market has decided is the acceptable return on investment level for telecommunications systems of a size similar to most of WITA's rural company members. It reflects the actual price paid between willing sellers and willing buyers in an open market. Thus, it reflects the real world valuation of the cost of capital.

The FCF methodology is described in some detail in Exhibit 1. The bottom line is that if the weighted median of recent sales of those systems is used, the cost of capital is between 15.66% and 23.49%. If the weighted mean is used, then the cost of capital is between 11.59% and 17.38%. Use of the FCF methodology would allow the Commission to move forward without a separate, extensive proceeding.

2. Which specific intrastate switched access charge rate elements currently assessed by Washington carriers and administered by the Washington Exchange Carrier Association (WECA) should be abolished concurrently with initiation of program funding to eligible carriers?

RESPONSE: The only intrastate switched access charge rate element that is administered by WECA that should be terminated is what has been called the Traditional Universal Service Fund rate element. This rate element was created in Cause No. U-85-23. See the 17th and 18th Supplemental Orders in that docket. The Traditional Universal Service Fund rate element was also part of the Washington Carrier Access Plan which was reviewed and ultimately approved in Docket No. UT-971140.[2] Most recently, the Commission confirmed the Traditional Universal Service Fund rate element in light of the FCC's decision reducing intrastate terminating access charges. In Order 01 in Docket UT-120853, the Commission stated as follows:

> The Traditional Universal Service Fund (TUSF) which is currently $.00152 per minute is a universal service support element previously adopted by the Commission in Docket U-85-23, and should continue to be assessed and remitted to Washington Exchange Carrier Association and is not an access element that will be terminated or otherwise modified under the FCC's order No. 11-161. However, the Commission retains the right to examine the appropriateness of the TUSF element in light of future changes in the telecommunications industry.[3]

With the limited nature of the new universal service fund and given the financial conditions of the companies that are eligible to receive those funds (see the Reply Comments of the Washington Independent Telecommunications Association: Data Presentation and Recommendation (September 4, 2013)), WITA only reluctantly agrees that the TUSF be eliminated. The reluctance is related to the size of the new state program. Replacing the TUSF

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[2] Washington Utilities and Transportation Commission v. Washington Exchange Carrier Association et al., Docket UT-971140, Ninth Supplemental Order Approving Washington Carrier Access Plan (June 28, 2000).
[3] In the Matter of Petition of the Washington Carrier Exchange Association, Docket UT-120853, Order 01 at paragraph 19 (July 2, 2012).

consumes approximately twenty percent of the funds available in the program. WITA understands that the termination of the TUSF is the direction in which parties to the new legislation agreed to go. However, WITA believes that the TUSF is the only WECA rate element that should be eliminated. [4]

AT&T has previously argued that the new universal service fund should also be used to reduce originating access charges. Moving in that direction produces no new revenues for the participating companies and would defeat the purpose of the legislation, which is to reduce the upward pressure on residential rates for those companies that are eligible to participate in the fund.

One of the points that is made in Question 2 is that the Traditional Universal Service Fund rate element should terminate concurrently with the initiation of program funding to eligible carriers. That is a very important consideration. The timing of the termination of the Traditional Universal Service Fund rate element with the funding of the new universal service fund must coincide in order to avoid cash flow problems for the eligible carriers that are currently receiving funds under the Traditional Universal Service Fund rate element administered by WECA.

3. Should the Commission abolish the WECA support fund through these rules or by order in a separate docket?

RESPONSE: This is an interesting procedural question. The TUSF rate element, which WITA

[4] It is important to note that recovery of the TUSF funding for a company should be revenue neutral. For example, assume that the Commission decides to use 11.25% as a threshold rate of return and a company has a return on total Washington un-separated regulated operations of 11.26%. The company should still recover the lost TUSF support.

assumes that this question is addressing, has been the subject of at least three dockets as described in the response to the previous question. Given that, it is difficult to see how the use of yet another adjudication docket to terminate the Traditional Universal Service Fund rate element would work efficiently. In addition, the administration of the Traditional Universal Service Fund rate element has been the subject of contracts which were submitted to and approved by the Commission in each case. A sample of one of those contracts is attached as Exhibit 2. Given this, probably the cleanest way to terminate the Traditional Universal Service Fund rate element would be in the Commission's rules. The Commission has addressed access rates in the past by rulemaking, and presumably can do so again.[5]

CONCLUSION

WITA appreciates the opportunity to submit comments on these three questions. As noted above, WITA is submitting more general comments on the proposed rules under separate cover.

Respectfully submitted this 10th day of October, 2013.

WASHINGTON INDEPENDENT
TELECOMMUNICATIONS ASSOCIATION

By:____________________
Betty S. Buckley, Executive Director

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[5] See WAC 480-120-540.