



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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MEMORANDUM

May 7, 2020

TO: David Danner, Chairman, and Ann Rendahl and Jay Balasbas, Commissioners

FROM: Jing Roth (Lead and RS), Greg Kopta (ALJ), Jennifer Cameron-Rulkowski (AG), Sean Bennett (RS), Kristen Hillstead (RS), Kyle Murphy (Policy), and Barry Zickuhr (IT)

SUBJECT: Docket UT-190437; State Universal Communications Services Program Rulemaking

ATTACHMENTS: 1. CR-102 Comment Matrix
2. CR-102 Redline Rules

Recommendation

Commission Staff (Staff) recommends that the Utilities and Transportation Commission (Commission) adopt staff's proposed edits to WAC 480-123. Staff proposes five edits to rules filed in the CR-102 consistent with this memo and attachment 2.

Background

The Washington Utilities and Transportation Commission (Commission) has administered the State Universal Communications Services Program (SUSF Program or Program) in accordance with RCW 80.36.610 through .700 for the last six years. The legislature in its 2019 session enacted SB 5511, which amends the SUSF Program to support broadband in addition to basic local telecommunications services. Eligible providers 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 legislation requires the Commission to undertake a rulemaking to implement the new requirements.

On August 9, 2019, the Commission filed a CR-101 to initiate the requisite rulemaking and issued a notice of opportunity to comment. The notice included several questions on which the Commission sought specific comments from stakeholders. The Commission received responsive comments on September 9, 2019.

Commission staff (Staff) prepared draft rules based on its analysis of SB 5511 and the stakeholder comments received. On November 15, 2019, the Commission issued a second notice of opportunity to comment and small business economic impact questionnaire, along with the draft proposed rules. The Commission received comments in response to the notice on December 16, 2019. Taking comments into consideration, Staff and Washington Independent Telecommunications Association (WITA) largely reached an agreement except for Eligibility Criterion One. The disagreement focused on the number of broadband locations to which a petitioning company must deploy over four years. WITA contended that the number of locations should be left to the company to determine. Staff proposed, and WITA initially agreed, to the Commission's broadband buildout requirement. Staff recommended, and the Commission agreed to file, rule language consistent with Staff's recommendation.

On February 12, 2020, the Commission filed a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser and issued a Notice of Opportunity to File Written Comments on the Proposed Rules. The Commission received comments from WITA, which was the only stakeholder to file comments, on March 13, 2020. A matrix summarizing those comments and Staff's responses (Matrix) is appended to this memo as Attachment 1.

Revised Draft Proposed Rules

Staff and WITA largely agree on rule language. WITA provided comments on eight different areas and Staff agrees, in part, with five of WITA's non-substantive edits, which do not change the application of the rule and provide clarity to the telecommunications industry. One comment sought clarification, which was provided, on broadband buildout requirements. WITA recommends two edits that Staff does not support.

Each issue raised by WITA is summarized below, along with a brief Staff recommendation. Areas of agreement that require a change to the rules have been incorporated into the redlined draft that accompanies this memo as Attachment 2.

Changes in Response to WITA Comments

- Proposed WAC 480-123-020 – “Broadband Service” definition. WITA believes “speed” should be removed from the standard that a company must meet because the current definition limits the broadband standards that the Commission can set.

Recommendation – Staff agrees. Simply remove the word “speed” from the fifth sentence. The revised sentence will read “Any broadband 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.”

- Proposed WAC 480-123-110(1)(h) – WITA believes the language “and the provider will continue to provide broadband services” should be edited to include affiliate language because not all companies provide retail broadband services directly to end users.

Recommendation – Staff agrees. Edit the language to read “and the provider, or its affiliate if appropriate, will continue to provide broadband services.”

- Proposed WAC 480-123-120(1) – In the third sentence, WITA believes the language “provide, maintain, and enhance” is inconsistent with the statute and similar language elsewhere in the rules. Accordingly, the language should be adjusted to “provide, maintain, or enhance.” Furthermore, “eligibility category” should be “eligibility criterion” to be consistent with other rule language.

Recommendation – Staff agrees. Adjust language to read “provide, maintain, or enhance” and change the word “category” to “criterion.”

- Proposed WAC 480-123-120(6) – WITA believes that language should be added to provide that if there is a pro rata reduction in support, there should be a corresponding reduction in the number of locations required to meet the Commission’s broadband buildout requirement.

Recommendation – Staff agrees, in part. Language should be edited to provide that if there is a pro rata change (increase or decrease) the number of locations should be adjusted accordingly. After the first sentence, add “If there is a pro rata reduction or increase in support, the company’s broadband buildout obligation will be adjusted proportionately.”

- Proposed WAC 480-123-130(1)(b) – WITA believes that the words “telecommunications services” should be inserted between the words “Detailed” and “information” so that this requirement is differentiated from subsection (1)(c).

Recommendation – Staff agrees. Edit language to read “Detailed information on how the provider used program support during the preceding year to maintain, provide, or enhance telecommunications services.”

- WITA Comment Table – Buildout Requirement Confirmation – Staff and WITA have tentatively confirmed the current FCC’s and Commission’s buildout requirements. The specific number of locations for buildout are tentative because they are estimated based on the amount of support each company will receive over the next four years and the amount will be divided by the annual ACAM Cost per location (or other Commission approved cost factor). If a company’s support ultimately is increased or decreased, the buildout requirement would be adjusted accordingly. WITA has indicated that one company would like to use a different cost factor.

Areas of Contention

- Proposed WAC 480-123-110(1)(j)(i) and WAC 480-123-120(2) – WITA believes a company that petitions for support in category one is not relieved of rate-of-return review and, as a result, could lose half of its support. It is not fair to require buildout to a specific number of locations for the other half of the state USF support in addition to the FCC’s requirement.

Recommendation – Staff disagrees, and the Commission should not make changes to the proposed rule. The intent of the legislation is to promote broadband deployment while providing support for on-going maintenance expenses. In WITA’s previous comment, WITA maintained that the buildout requirement should be set by the company. Now, WITA contends that a buildout requirement is unfair. The proposed structure was designed to promote broadband buildout while also recognizing that companies need to maintain their existing network. Under sole rate-of-return review, either a company receives 100% of funding or zero funding, or more recently, a portion of funding with the balance of the funding subject to conditions. The current proposed approach in the rule is flexible to allow a company to receive either 100 percent funding, or 50 percent funding if it has either an excessive rate of return or is unable to commit to the Commission’s broadband buildout requirement (based on the ACAM cost or a company’s actual cost of delivering service).

- Proposed WAC 480-123-120(4) – WITA believes that the development of eligibility and distribution calculations for “Other Providers” should not be left to the board and that there should be a baseline in rule. Furthermore, it believes that the baseline should be 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.

Recommendation – Staff disagrees. Without knowing the specifics (i.e., what company is seeking support, support amount, the area served, or the technology used, and speeds offered) Staff believes that it is premature and unnecessary to set a baseline in this rulemaking.

Conclusion

Staff recommends the Commission adopt revisions to WAC 480-123 consistent with Staff’s recommended changes, as shown in Attachment 2.