

**Docket No. UT-190437 - Vol. I**

**Public Hearing for Proposed WAC Rule Amendment 480-123**

**May 7, 2020**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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Public Hearing for Proposed WAC Rule Amendment 480-123  
Docket No. UT-190437

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TELEPHONIC ADOPTION HEARING, VOLUME I

Pages 1-18

CHAIR DANNER, COMMISSIONER RENDAHL, AND  
COMMISSIONER BALASBAS

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May 7, 2020

1:30 p.m.

Washington Utilities and Transportation Commission  
621 Woodland Square Loop Southeast  
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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A P P E A R A N C E S

DAVE DANNER, Chair  
ANN RENDAHL, Commissioner  
JAY BALASBAS, Commissioner  
SEAN BENNETT, UTC Staff  
RICHARD FINNIGAN, Representative for WITA  
LISA GAFKEN, Public Counsel

\* \* \* \* \*

1 LACEY, WASHINGTON; MAY 7, 2020

2 1:30 P.M.

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4 P R O C E E D I N G S

5

6 CHAIR DANNER: Today is May 7th, 2020, and  
7 we are here having a virtual hearing of the Utilities  
8 and Transportation Commission today. This is a rule  
9 adoption hearing in Docket UT-190437, which is a  
10 rulemaking to modify the state universal communication  
11 service program.

12 This is a rulemaking that began in May of  
13 2019, a little less than a year ago, and I know a lot of  
14 work has gone into this, and I appreciate the comments  
15 from everybody who has participated -- participated in  
16 this, and I appreciate the Staff work.

17 What I'd like to do now -- I'm Dave Danner.  
18 I'm Chair of the Commission. I'm joined by my  
19 colleagues, Ann Rendahl and Jay Balasbas. What I would  
20 like to do now is turn it over to Sean Bennett from  
21 Commission Staff, who will give us an overview of the  
22 rules and of the -- the issues before us today.

23 So, Mr. Bennett, why don't you go ahead.

24 MR. BENNETT: Thank you. Good afternoon,  
25 Chair and Commissioners. I am Sean Bennett with

1 regulatory services.

2 This rulemaking started as a result of  
3 passage of second substitute Senate Bill 5511, also  
4 known as the Broadband Bill, which extends the safe  
5 universal communication services program through fiscal  
6 year 2024. A notable change in that -- in this is that  
7 broadband service is now a supported service.

8 Before I dive into the details, I would like  
9 to thank all of the stakeholders who have provided their  
10 time, expertise, and attention with this rulemaking.  
11 Everyone's willingness to work together and talk through  
12 issues as they arise has been invaluable to this  
13 process, and quite frankly, has probably set a fairly  
14 high expectation for me on any future rulemakings.

15 I also want to thank the entire rulemaking  
16 team. So thank you, Jing Roth, Greg Kopta, Jennifer  
17 Cameron-Rulkowski, Kristen Hillstead, Kyle Mor- -- Kyle  
18 Murphy, and Barry Zickuhr.

19 Through the process of collaboration and  
20 negotiation, the proposed rule includes revisions within  
21 Title 480, Chapter 123, Sections 20, 100, 110, 120, 130,  
22 and 150. In order to achieve the intent of Broadband  
23 Bill, Staff proposes essentially three major revisions  
24 to the current program rules.

25 First, we have revised the requirements for

1 petitioning and eligibility. The current rule requires  
2 that the petition company needs to demonstrate that  
3 their customers are at risk of rate instability, service  
4 interruptions, or cessation of services. In the  
5 proposed rule, eligibility is based on a company's  
6 broadband plan to provide, enhance, or maintain  
7 broadband services while also meeting one of four  
8 eligibility criterion that the proposed rules establish.

9 In addition to any of the requirements with  
10 the FCC, each of these criterion have forward-looking  
11 broadband build-out obligations that a company needs to  
12 have already achieved or will achieve by the end of  
13 fiscal year 2024.

14 Secondly, the proposed rule allows for other  
15 providers to petition for support in the event that they  
16 meet the prerequisites of Section 100, Sub 3.

17 Third, the proposed rule parts from the  
18 current formula to calculate support notes. The new  
19 method removes the amounts that the petitioning company  
20 previously received from the traditional USF fund that  
21 was established in Docket U-8523. The new calculation  
22 sets the company's support amount to be no more for  
23 their pro rata share of the cumulative reduction and  
24 support from the Connect America Fund & Intercarrier  
25 Compensation mechanism incurred up, through, and

1 including the 2020 fiscal year.

2 Now I would like to take just a couple  
3 minutes to discuss the stakeholders' comments to CR-102.  
4 On March 13th, the Washington Independent Telephone  
5 Association, or WITA, filed written comments. Based on  
6 these comments, Staff recommends the following five  
7 changes that were also included in the memo posted in  
8 this docket on May 5th.

9 In Section 20, there's a broadband service  
10 definition. Simply remove the word "speed" from the  
11 fifth sentence. The revised sentence will read, (as  
12 read), Any broadband standards that are established in  
13 these rules or by Commission order may be met by the  
14 communications provider or its affiliate or a  
15 combination of both.

16 The next is Section 110, Sub 1, Paragraph H,  
17 and the change is to make (as read), And the provider  
18 will continue to provide broadband services, that is  
19 changed into (as read), And the provider or its  
20 affiliates, if appropriate, will continue to provide  
21 broadband services.

22 The next is in Section 120, Sub 1. In the  
23 third sentence change "provide, maintain, and enhance,"  
24 and I use air quotations, not that anyone can see those,  
25 to -- to "provide, maintain, or enhance." Additionally,

1 "eligibility category" needs to be changed to  
2 "eligibility criterion."

3 In Section 120, Sub 6, after the first  
4 sentence add, (as read) If there is a pro rata reduction  
5 or increase in support, the company's broadband  
6 build-out obligation will be adjusted proportionally.

7 The last is Section 130, Sub 1, Paragraph 5,  
8 and this needs to be changed to, (as read) Detailed  
9 information on how the provider used program support  
10 during the preceding year to maintain, provide, or  
11 enhance telecommunication services.

12 I also need to note that we did provide two  
13 additional comments or recommendations that Staff does  
14 not support. These are addressed in the adoption  
15 hearing memo and has been fully discussed in your -- the  
16 Commission briefings as well. Rick Finnigan, on behalf  
17 of WITA, may wish to present their point of view on  
18 these areas.

19 Additionally, on May 6th, WITA did bring to  
20 Staff's attention that, on page 29, that it listed as  
21 being the United States Administrative -- Administrative  
22 Company; however, it should read, "Universal Service"  
23 Administrative Company.

24 Staff recommends that the Commission adopt  
25 Staff's proposed revisions to Title 480, Chapter 123.

1           Thank you, Chair, thank you, Commissioners,  
2 stakeholders, and the rulemaking team. We are available  
3 for questions, and I -- I do believe Rick Finnigan,  
4 representing WITA, is on the line as well.

5           CHAIR DANNER: All right. Thank you very  
6 much.

7           Are there any questions for Mr. Bennett or  
8 others on the team?

9           Okay. Sean, I'm not hearing any questions.  
10 I do want to just make sure we're changing the "and" to  
11 "or" in the phrase, "Provide, maintain, or enhance"? So  
12 basically, the effect of that is you don't need to  
13 enhance your service as long as you're maintaining your  
14 service; is that the way you read this?

15           MR. BENNETT: It -- it kind of has two  
16 separate eligibility requirements. The -- the -- the  
17 statute is specifically that a provider needs to adopt a  
18 plan to provide, enhance, or maintain. And that's in  
19 statute, and the plan that they're providing --

20           CHAIR DANNER: The statute says "or;" is  
21 that correct, Sean?

22           MR. BENNETT: That is correct. However, in  
23 addition to the broadband plan, we're also essentially  
24 requiring these companies to submit a petition and to  
25 elect one of the four eligibility criteria. And -- and

1 that eligibility criteria would also be used in  
2 determining whether or not a company should be eligible  
3 for funds.

4 If a company -- just as an illustration, if  
5 a company only had one broadband customer and they  
6 provide a broadband plan to only maintain their network  
7 for that one service, I don't think that would quite  
8 pass muster. It is called a -- the state universal  
9 communication services program. And so as broadband is  
10 now a supported service, the program purpose was changed  
11 to support continued provision of basic telecom  
12 services, and the provision enhancement and [inaudible]  
13 the broadband services. And so with that, it's kind of  
14 a two-prong eligibility criteria in order to receive  
15 support.

16 CHAIR DANNER: All right. Thank you very  
17 much.

18 All right. Any other questions for  
19 Mr. Bennett?

20 All right, then. Thank you so much. Stay  
21 tuned unless we need to come back to you.

22 Let me ask, Mr. Finnigan, do you wish to  
23 comment on this proceeding?

24 MR. FINNIGAN: Yes, thank you. Rick  
25 Finnigan on behalf of the Washington Independent

1 Telecommunications Association. First, I -- I want to  
2 express our thanks to Commission Staff. This was a very  
3 highly collaborative effort, and we appreciate the  
4 opportunity to be involved.

5 As Sean noted, there are two items we  
6 include in our comments that Staff disagrees with, and I  
7 just want to touch on those very briefly.

8 The first has to do with what's called  
9 criterion one, which is essentially a default standard  
10 where the company would have to go through the same sort  
11 of rate of return analysis that has been in effect for  
12 the past five years. The -- the tradeoff that we had  
13 for finding ways to avoid a rate of return analysis was  
14 to agree to build two additional locations and thought  
15 that was a very -- very good, very equitable trade.

16 For a company if they're in the rate of  
17 return review provision, and -- and they're -- and  
18 they're found to be eligible to get support, it means  
19 that they have a rate of return below an acceptable  
20 level, and they may be needing those funds simply to  
21 keep everything going. And so it was on that basis that  
22 WITA took the position that there shouldn't be  
23 additional build-out requirements for that category of  
24 participant.

25 And then the other one was for the category

1 of other providers, everything is put off until we see  
2 if there is going to be any -- anyone like that, and  
3 then the advisory committee is supposed to come up with  
4 some standards.

5 What WITA thought was that there ought to be  
6 a baseline standard, and that baseline standard should  
7 be there needs to be a commitment to build to the same  
8 number of locations, broadband locations, at the same or  
9 better speed than what the incumbent would be required  
10 to do. If -- if that standard isn't there, it's  
11 possible the customers would be worse off, not better  
12 off to move forward. Now, it may be that the advisory  
13 committee will -- will recommend such a standard, but  
14 WITA thought it ought to be included in the rules as a  
15 baseline standard.

16 And that -- that's all I have. If -- if  
17 there are any questions about that, I'd be happy to try  
18 to respond.

19 CHAIR DANNER: All right. Are there  
20 questions for Mr. Finnigan?

21 COMMISSIONER BALASBAS: Yes, Chair, I do  
22 have a question for Mr. Finnigan.

23 CHAIR DANNER: Go ahead, Commissioner.

24 COMMISSIONER BALASBAS: Thank you.

25 So good afternoon, Mr. Finnigan. So I'd

1 like to just ask, do you anticipate any of current WITA  
2 members requesting funding from the program under  
3 criterion one?

4 MR. FINNIGAN: At this moment, I do not.  
5 There are a couple of companies where -- where if things  
6 don't stay the way they are today, and -- and given  
7 where we're doing things today, it's -- it's uncertain.  
8 They may -- they may fall into that default category,  
9 but my last count was that that would not happen. So  
10 I'm hoping that's the case, but we're -- in dealing with  
11 the rulemaking, you tend -- you tend to have to deal  
12 with the what-ifs. And so that was the basis for our  
13 comment.

14 COMMISSIONER BALASBAS: Okay. All right.  
15 Thank you.

16 CHAIR DANNER: All right. I'd like to -- to  
17 go back to Mr. Bennett. Mr. Bennett, you heard those  
18 comments, how do you respond to a situation -- do you  
19 agree that customers might be worse off under this  
20 scenario?

21 MR. BENNETT: I don't. The intent of the  
22 legislation is to certainly provide companies or to help  
23 companies be able to provide and take care of their  
24 maintenance expenses; however, it is also to -- to  
25 promote broadband. It's a voluntary program, and I

1 think that determining eligibility solely based on a  
2 company's rate of return doesn't fully take into  
3 consideration a company's plan to enhance or provide  
4 broadband service.

5 I mean, a company could have a reasonable  
6 rate of return below -- typically, historically the  
7 benchmark we kind of looked has -- has been 10 percent;  
8 however, the -- there's certainly been circumstances  
9 where it has been higher. But the company could have a  
10 reasonable rate of return and not deploy broadband to  
11 any new locations.

12 By having these two separate eligibility  
13 considerations, both the rate of return and then the  
14 broadband build-out commitment, I think funds can best  
15 be directed for those companies that exhibit that they  
16 will maintain, provide, and enhance both voice and  
17 broadband services.

18 CHAIR DANNER: Thank you very much.

19 So let -- let's -- first, let me ask, is  
20 there anyone else on the line who wishes to speak on the  
21 proposed rules today?

22 MS. GAFKEN: Good afternoon, Chair Danner.  
23 This is Lisa Gafken with Public Counsel.

24 CHAIR DANNER: Good afternoon.

25 MS. GAFKEN: Good afternoon. I just wanted

1 to -- to also express my support for the adoption of the  
2 rules as proposed and modified as described by  
3 Mr. Bennett this morning. I'll -- I'll start off by  
4 also expressing my appreciation to all the work that's  
5 gone into this docket to implement the legislation from  
6 SB-5511 that extended the -- the universal service  
7 funding for broadband infrastructure. We recognize that  
8 this fund is limited and it's part of a bigger broadband  
9 picture.

10 I want to express some support on the  
11 accountability pieces in the proposed rule. That was  
12 one area that Public Counsel provided substantial  
13 comment on, and so we -- we are very appreciative that  
14 the rule include some enhanced accountability for  
15 carrier in terms of what a carrier needs to show in  
16 order to have access to the funds. We -- we do think  
17 that that's an important piece.

18 We also agree with Staff that the Commission  
19 should not eliminate or reduce the build-out  
20 requirements in criterion one, which was being discussed  
21 here. We -- we think that that's also a fairly critical  
22 piece, because the purpose of the -- the legislation is  
23 to support broadband and -- and to have that -- you  
24 know, in our view, we had recognize that that -- the  
25 funding be focused on expansion of broadband, and

1 certainly maintenance is a component, but it's, you  
2 know, all things being equal, if you have two proposals  
3 and one of them shows that they would expand it, we  
4 would feel that the money would go towards the expansion  
5 proposal.

6 So we -- we certainly think that removing  
7 expansion requirements or build-out requirements from  
8 criterion one would not be appropriate.

9 CHAIR DANNER: Okay. Thank you very much.

10 Are there questions for Ms. Gafken?

11 All right. I -- I -- I am struggling  
12 because I -- I see there's twofold here and one is to  
13 promote broadband, of course, but the other is to  
14 maintain the existing network, and, you know, you  
15 need -- you need to do both. You can't promote  
16 broadband and then let the existing network fall apart  
17 and -- and vice versa.

18 So I think what we're trying to do is -- is  
19 find the approach that basically meets all the goals  
20 here. What I'd be interested to -- to hear if -- if --  
21 if others have some thoughts on that as well. All  
22 right. So let me ask --

23 COMMISSIONER RENDAHL: This is Commissioner  
24 Rendahl. I don't know if you're seeking stakeholders or  
25 Commissioner thoughts.

1 CHAIR DANNER: Oh, anyone.

2 COMMISSIONER RENDAHL: I just wanted to  
3 acknowledge that the balance that you've identified,  
4 there is a change. The statute did add broad --  
5 broadband capability to -- to the focus of the funds.  
6 So it's -- it's both maintaining the network and  
7 building out broadband, so I just wanted to echo your  
8 thoughts on that.

9 CHAIR DANNER: All right. Well, thank you.

10 Is there anyone else on the line today who  
11 wishes to comment on this -- on these proposed rules?

12 All right. Well, I guess that brings us to  
13 the end of the testimony here today, and I believe  
14 our -- our charge now is to take what we've heard today,  
15 and we will take this under advisement, and we will  
16 issue an order in due course. And unless there's  
17 anything else from any of the parties this -- this  
18 afternoon, I think we're ready to adjourn.

19 So let me ask my colleagues, is there  
20 anything else we need this afternoon?

21 COMMISSIONER RENDAHL: I don't think so.  
22 Thank you.

23 COMMISSIONER BALASBAS: No, I don't have  
24 anything else today.

25 CHAIR DANNER: All right, then. Thank you,

1 everyone, for your participation in this docket. It has  
2 really been helpful, and I think we're on the cusp here,  
3 and -- and we'll come out with something shortly. So  
4 thank you all for your participation today and  
5 throughout this proceeding. So with that, we're  
6 adjourned.

7 (Adjourned at 1:49 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

*Tayler Garlinghouse*

Tayler Garlinghouse, CCR 3358

