

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Policy Statement to Review State  
Universal Service Policies

DOCKET NO. UT-100562

**INITIAL COMMENTS OF PUBLIC COUNSEL**

**JUNE 16, 2010**

**I. INTRODUCTION**

1. Public Counsel submits these preliminary comments in response to the Commission's Notice of Workshop dated May 26, 2010. The focus of these comments is to highlight a few key policy principles raised by the Commission's questions, rather than to provide detailed recommendations for the structure of a state universal service fund. Public Counsel may address specific issues in more detail upon review of comments filed by other participants.

**II. RESPONSES TO QUESTIONS CONCERNING APPROPRIATE UNIVERSAL SERVICE POLICIES IN WASHINGTON**

1. *What is the role of the public switched telecommunications network operated by incumbent local exchange carriers (ILECs) in providing universal service in the state of Washington?*
2. While telecommunications services and technologies continue to evolve, the public switched telecommunications network (PSTN) operated by ILECs in Washington continue to constitute the fundamental infrastructure by which universal service is provided in the state of Washington at the present time. Although line losses and "cord cutting" are taking place, landline telecommunications service is still subscribed to by the majority of residential and small

business customers in communities statewide. Service options such as wireless service and broadband (DSL) also are significantly reliant on the PSTN. To the extent “intermodal” competition exists in telecommunications, it is dependent in large part on the existence of the PSTN as a delivery infrastructure for a major sector of the industry.

2. *Does the UTC need to address intrastate switched access rates to ensure universal service and the widespread availability of telecommunications services at reasonable rates in Washington? What statutory or rule changes are needed in order to do so?*

3. The UTC has addressed intrastate access charge reform over a number of years and has adopted rules to that end. While there are issues to be addressed in the access charge arena, from the consumer perspective there are several principles that should apply. First, access charge rebalancing should be done on a gradual basis, not in a “flash cut” or extreme fashion, which can result in dramatic increases in local rates. Second, access charge rebalancing needs to include an earnings review for the ILEC if a local rate increase is sought. Many independent ILECs have not had earnings reviews for a number of years. There should be no presumption that access charge reductions result in rate increases on a dollar for dollar basis. Third, access charge reductions should be passed on to consumers by the carriers who benefit from the reductions. There may be jurisdictional limits on the UTC’s ability to enforce this requirement.

3. *Should there be a Washington Universal Service Fund (WUSF)? If so, what factors should the State of Washington consider in weighing the need for establishing a WUSF?*

*Commenting parties are encouraged to address the following factors:*

- a. trending reductions to incumbent carrier’s intrastate access charge revenues,*
- b. the need for comprehensive or streamlined earnings review including determination of the effective intrastate or overall rates of return of recipients of WUSF funding,*
- c. revenues from regulated services,*
- d. revenues from both regulated and unregulated services,*
- e. carrier of last resort obligations of potential WUSF recipients,*

f. *any other factors that should be used in determining the need for establishing a WUSF.*

4. Public Counsel has not seen strong evidence that there is currently a need to establish a new state Universal Service Fund (USF) in Washington. Following the passage of the Telecommunications Act of 1996, as now, there was increased interest in the establishment of a state fund and a legislative requirement to present a plan to implement state universal service with an estimate of the cost to provide support to “high-cost” areas.<sup>1</sup> The UTC and stakeholders conducted extensive policy and cost analysis as part of this effort. The proceedings included both a cost docket and a rulemaking.<sup>2</sup> Varied estimates were developed in the cost docket for the annual cost of a state fund. The large customer group TRACER estimated a total USF requirement of approximately \$37 million annually.<sup>3</sup> US West (Qwest’s predecessor company) estimated a total fund of \$148 million annually would be required.<sup>4</sup> Most parties in the proceedings recommended that these amounts be collected in a surcharge on the customer bill. Ultimately, no fund was established. The result is that, from a purely financial perspective, Washington telecommunications consumers have “saved” between \$370 million and \$1.48 billion over the past decade which would otherwise have been paid into a state universal service fund. Competition has emerged in varying degrees in different sectors of the market. Rates have remained stable, with few or any Washington rural ILECs filing rate cases during this period.

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<sup>1</sup> *In the Matter of Determining Cost for Universal Service*, Docket No. UT-980311(a), Tenth Supplemental Order, p. 1, November 20, 1998 (1998 USF Cost Docket).

<sup>2</sup> Dockets UT-980311(a) and UT-980311(r). The adjudication docket sought to develop the cost of providing universal service support in Washington, while the rulemaking docket adopted policy principles.

<sup>3</sup> 1998 USF Cost Docket, Reply Testimony of Ben Johnson (Public Counsel), August 3, 1998, p. 34:6-10 (citing Testimony of Thomas Zepp).

<sup>4</sup> *Id.*, p. 34:11-15 (citing Testimony of Richard Delk).

Universal service penetration rates do not appear to have been affected,<sup>5</sup> and substantial broadband deployment has occurred in many rural carrier service territories even in the absence of a fund.

5. If there is consideration of establishing a fund, all of the factors listed should be taken into account. In particular, before imposing surcharges on consumers to support carriers, effective and reliable earnings reviews should occur of potential fund recipients. Revenues from both regulated and unregulated services should be taken into account to avoid providing support where it is not necessary.

6. Any new state universal service fund established would merely add to the financial burden already borne by consumers for the federal program. The “contribution factor” for the federal USF is currently in the range of 13 percent. Public Counsel will review the comments filed by other parties with respect to the need for a state fund, but there should be a compelling showing before state telecommunications customers are asked to fund an additional expensive support program.

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<sup>5</sup> In fact, Universal Service Penetration rates have increased roughly 2 percent since 1999. Universal Service Penetration rates in 1999 were 96 percent and in 2009 were 98.8 percent. U.S. Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *Telephone Service Penetration by Income by State*, 26 (2010), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-297986A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297986A1.pdf).

4. *What is the role of the National Broadband Plan in evaluating the need for a WUSF? If Congress and the Federal Communications Commission (FCC) implement the recommendations in the National Broadband Plan, what would be the role of a state USF? What are the possible effects on Washington consumers of the changes to federal rules contemplated in the National Broadband Plan if there is no state universal service fund? Does the National Broadband Plan alleviate or intensify the need for Washington to address intrastate access charge reform and universal service issues at this time?*

5. The National Broadband Plan provides a good framework and a trigger for discussion of universal service support mechanisms. The Plan is a policy statement, however, with many details undetermined. The specific shape and direction of universal service reform to be undertaken by the FCC will take a while to unfold. It would be premature to design a state universal service fund based on the National Broadband Plan. Decisions made in the FCC universal service proceedings are likely to have a have a major impact in dictating what actions are most needed at the state level.

6. *If the UTC addresses intrastate access charge reform, to what extent is there a need for a WUSF to replace some or all intrastate access charge revenues of ILECs in order to preserve and advance the telecommunications network in the State of Washington? Are statutory changes necessary in order to do so?*

7. See response to question 2 above.

8. *What direct benefits, if any, will there be to consumers in Washington by addressing intrastate switched access and universal service reform? If intrastate access charge reform is implemented, how will access charge cost reductions realized by current interexchange carriers in Washington be flowed through to Washington consumers?*

9. Public Counsel is not aware of any immediate or direct benefits that consumers would experience from access charge reform. As noted above, on the other hand, consumers face a risk of increased local rates from rate rebalancing. Unless reductions are passed through to customers or absorbed by companies, customers may see net increases in telecommunications

prices. Universal service reform could potentially create customer benefit by rationalizing and targeting revenue support flows more effectively. In the long run, for example by eliminating duplicative support, this could reduce the cost of universal support paid by consumers. To the extent universal service support is transitioned to broadband service over a period of time, consumers should see benefits in the availability of broadband in unserved or underserved areas.

10. As universal service policies and mechanisms are examined, it is important to maintain a focus on the ultimate goal -- supporting and advancing affordable universal service for telecommunications consumers. Universal service should not be viewed primarily as a support or subsidy system for particular companies or industry sectors.

9. *If a WUSF is established, what should be the criteria for eligibility to draw from the fund? How should the size of the fund be determined? What should be the basis of the amount of support to be received?*

11. The basic criterion for drawing from a universal service funding mechanism should be that the recipient carrier provides all the services included in the concept of universal service. At the present time, the supported services are defined as basic telephone and related services. Part of establishing a new USF in Washington would need to be a determination of whether the definition of basic or supported services should be changed.

12. Any universal service fund must be designed to be no larger than necessary to provide the level of support that has been decided for the services selected. As noted above, a significant issue with the federal USF is the expanding size of the fund and the increasing burden it places on customers. A central motivation of federal universal service reform is the goal of removing unneeded and excessive subsidies from the system. Any state fund which is pursued should meet these same goals.

13. The determination of fund size was a key aspect of the Commission’s review of a state USF over ten years ago. The Commission was required by the legislature to estimate the costs of a state fund and described its mission as being to “accurately determine the size of the fund, the source of the funding, and the assessments that will be needed to provide funding.”<sup>6</sup> To accurately determine a correct fund size for Washington is a very technical and labor intensive process, as the prior experience shows. In the *1998 State USF Cost Docket*, the Commission used cost models in a fact-finding adjudication to estimate the amount of support needed to support lines located in high-cost locations. The determination of the fund size needed for the purpose was a threshold question that had to be determined before a fund could be implemented. At the same time, the Commission engaged in a detailed review in the rulemaking context of the appropriate policies for state universal service support. This approach still makes sense today if the Commission decides to move forward on these issues.

10. *What, if any, is an appropriate contribution basis for a WUSF? To what extent should other telecommunications providers, including wireless and VoIP service providers (nomadic and fixed) contribute to a WUSF? If so, on what basis should they contribute?*

14. As a general policy matter, the contribution basis for any USF should be broad, based on a “service pays” principle. Any service that uses the network to be supported by the USF should contribute to the support mechanism.

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<sup>6</sup> *In the Matter of Determining Costs for Universal Service*, Docket No. UT-980311(a), Second Supplemental Order, p. 3 (1998 State USF Cost Docket).

11. *What is the role of carrier of last resort in a state universal service fund? Should any carrier that receives support from the universal service fund be required to assume the obligations of carrier of last resort with respect to traditional voice services, with respect to broadband service, or both? Should the fund support more than one provider per geographic area? How should "area" be defined?*
15. As a general policy matter, it is preferable that a carrier which receives state universal service support should assume or continue COLR obligations. This better furthers the ultimate policy goals of universal service by requiring the recipient carrier to provide supported service throughout its territory to all requesting customers.
12. *What other kind of oversight, if any, should the UTC have over administration of the WUSF?*
16. If a state universal service fund is created, the UTC should be the administrator of the fund with full oversight authority. The UTC has experience and expertise with telecommunications generally and with universal service programs specifically. The UTC also has an established statutory role of regulating in the public interest. The UTC's authority to administer the fund could be clarified or augmented if necessary by legislation. An alternative approach would be to place the function in another state agency, or to create a state parallel to the federal USAC.
17. One area of concern is the uncertainty of state jurisdiction over some sectors of the telecommunications industry. Any administrator of the fund will need to have clear authority over all industry participants who contribute to and receive payments from the fund.