

**REDLINE MARKUP OF
DRAFT PROPOSED RULES**

DRAFT

Temporary Universal Communications Services Program Rules

Chapter 480-123

(*) WAC 480-123-020. Definitions.

As used in WAC 480-123-030 through 480-123-080:

Comment [NA1]: May need to define "affiliate" and these references may need to change.

"Applicant" means any person applying to an ETC for new service or reconnection of discontinued service.

"Communications provider" or "provider" means a company providing communications service that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

"Communications services" includes telecommunications services and information services and any combination of these services.

"Eligible telecommunications carrier" and "ETC" mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

"Facilities" means for the purpose of WAC 480-123-030 (1)(b) any physical components of the telecommunications network that are used in the transmission or routing of the services that are supported by federal universal service mechanisms.

".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS™.

"Service outage" means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider's network.

"Program" means the state universal communications services program created in RCW 80.36.____.

"Substantive" means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.

"Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

(I) WAC 480-123-____. Prerequisites for requesting program support

(1) **Wireline communications providers.** A wireline communications provider may seek support from the program if the provider satisfies all of the following requirements:

(a) The provider is a local exchange company as defined in WAC 480-120-021 that serves less than 40,000 access lines within the state;

(b) The provider is an incumbent local exchange carrier as defined in 47 U.S.C. §253(h);

(c) The provider offers basic local residential and business exchange telecommunications services as set forth in 47 C.F.R. § 54.101(a);

(d) The provider's rates for residential local exchange service, plus mandatory extended exchange area service charges, are at or XX percent above the local urban rate floor

Comment [RF2]: By definition, this is redundant with (e), below. To be designated as an ETC a carrier must offer the supported services set out in 54.101. WITA suggests this be deleted.

Comment [RF3]: WITA recommends that this item be deleted and rates that are below the urban rate floor be handled as the FCC does, by an Imputation that lowers the amount of support rather than barring support altogether. This, then would be the benchmark required by Section 204(1)(c) of the legislation. See WITA's suggested new Section III(3), below.

established by the Federal Communications Commission pursuant to 47 C.F.R. § 54.318 prior to July 1 of the year in which the provider files a petition for support; and

Comment [RF4]: Does this mean the rate in effect in 2013, or is this a delegation issue and is meant to float as the FCC makes future changes?

(e) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 CFR § 54 Subpart D – Universal Service Support for High Cost Areas.

(2) **Wireless communications providers.** A wireless communications provider may seek support from the program if the provider satisfies all of the following requirements:

(a) The provider is licensed by the Federal Communications Commission to offer commercial mobile radio service within the state;

(b) The provider serves less than 40,000 subscribers in the state; and

Comment [RF5]: How should this term be defined? The Legislation uses "equivalent of ...access lines." See (3) below which also uses access lines.

(c) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 CFR § 54 Subpart D – Universal Service Support for High Cost Areas.

(3) In calculating access lines under this section, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington. For the purposes of this calculation, an affiliate of a wireline communications provider is another wireline communications provider that falls within the definition of an affiliate and an affiliate of a wireless communications provider is another wireless communications provider that falls within the definition of an affiliate.

(II) WAC 480-123-___. Petitions for eligibility to receive program support

(1) **Wireline communications providers.** A wireline communications provider that satisfies the prerequisites in WAC 480-123-___ may petition the commission to receive support

from the program. The provider must petition the commission each year to be eligible to receive support from the program the following two years. The petition must include the following information:

(a) The name of the legal entity that provides communications services;

(b) A corporate organization chart showing the relationship between the legal entity and all affiliates as defined in RCW 80.16.010 and a detailed description of any transactions between the provider and its affiliates recorded in the provider's operating accounts;

(c) A service area map or detailed reference to any maps on file with the commission showing the provider's Washington service area;

(d) A demonstration that the provider's customers are at risk of rate instability or service interruptions or cessation in the absence of support from the program;

(e) Detailed financial information, in a form prescribed by the commission and with supporting documentation, for the provider's total Washington un-separated regulated operations for the calendar three calendar years prior to the year in which the provider is filing the petition, including but not limited to the following:

(i) The provider's (or parent company if not available on the operating company level) consolidated audited financial statements or, if audited statements are not available, financial statements reviewed by a certified public accounting firm;

Comment [RF6]: This is essentially a duplicate of the requirement to provide the Form 481 in (f) below. WITA recommends deletion of (e)(i). See the additions WITA suggests to (f), below.

(ii) Information demonstrating the provider's earned rate of return on a total Washington company books and un-separated regulated operations basis for each of the three prior years;

(iii) Information detailing the provider's interstate and intrastate access charge revenues and federal universal service fund distributions for three three prior years;

Comment [RF7]: What is the purpose of setting this out separately? The revenue would be included in (ii), above.

(iv) Information detailing the amounts of any corporate operations adjustments for the three prior years or an affidavit certification from an company officer of the provider with personal knowledge and responsibility certifying that no such adjustments apply; and

(v) An affidavit certification from an company officer of the provider with personal knowledge and responsibility certifying that the provider complies with state and federal accounting, cost allocation, and cost adjustment rules pertaining to incumbent local exchange companies the provider;

Comment [NAB]: With small companies the officer will have to rely on the word of an outside cost consultant for this certification.

(f) For privately-held rate of return companies, A complete and unredacted copy of the Form 481 the provider filed with the Federal Communications Commission for the calendar year preceding the year in which the provider is filing the petition and, for providers that are subsidiaries of publicly-traded companies, a copy of the Form 481 as it applies to such companies, along with either operating company level audited financial statements or a copy of the parent company's audited financial statements and the unaudited financial statements of the provider;

Comment [RF9]: The FCC requires that a complete copy of the form be filed with the Commission when it is filed with FCC. This term is not needed and WITA recommends deletion.

(g) Information detailing the number of residential and business local exchange customers and the monthly rate charged to each customer category; and

(h) An affidavit certification from an company officer of the provider certifying that if the provider receives support from the program, the company will continue to provide communications basic telecommunications services pursuant to its tariffs rates, terms and conditions established by the commission on file with the commission throughout its service territory in Washington during the entirety of the calendar year period for in which the company is seeking support from the program.

Comment [RF10]: Will "provider" be used throughout?

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(2) **Wireless communications provider.** A wireless communications provider that meets the requirements in WAC 480-123-___ may petition the commission to receive support from the program. The provider must petition the commission each year to be eligible to receive support from the program the following year. The petition must include the same type of information required of wireline communications providers in subpart (1) of this rule. The first time a wireless communications provider seeks to file such a petition, the provider must first submit its request to file the petition to the advisory board, pursuant to any guidelines the advisory board will adopt, detailing how the provider will compile and supply the information required by this rule. The advisory board will make a recommendation to the commission, and the commission will determine the precise information the provider must file in support of its petition.

(3) **Timing of petitions.** A provider must file a complete petition that fully complies with this section no later than September 1 of the program year if the company seeks support from the program, ~~for the following calendar year.~~

(4) **Certification.** One or more company officers responsible for the provider's business and financial operations must certify ~~in the form of sworn affidavits~~ that the information and representations made in the petition are accurate and ~~that the provider has not withheld any information on which the commission reasonably would rely to determine the provider's eligibility and distribution calculations for support from the program.~~ The provider must file ~~these affidavits~~ certifications with its petition.

Comment [RF11]: What is the purpose of this language? If a provider submits all of the information affirmatively required by the rule, is there something else it is supposed to file and how would the provider know what that is?

(III) **WAC 480-123-___.** Eligibility and distributions from the program. The commission will authorize distributions from the program on a calendar year basis for each year.

(1) **Eligibility.** A wireline communications provider that complies with the requirements in this chapter is eligible to receive distributions from the program if the provider demonstrates that its earned rate for return on a total Washington-company-books and un-separated regulated operations basis is at or below the percentage established by the commission and the provider's return on equity at a total holding company or parent company level is at or below the percentage established by the commission for the calendar year immediately preceding the year in which the provider filed its petition; provided, that, a provider that has an earned rate of return above the percentage established by the commission for this purpose shall still eligible to recover the amounts under (2)(a), below. [The petition must contain sufficient information to enable the commission to calculate a rate of return based on total-company Washington un-separated regulated operations and a return on equity at a total holding company or parent company level on for the prior calendar year prior to the year in which the provider filed its petition.]

Comment [RF12]: Is this information any different than what is described in 11(1)(e), above? If it is what is it? If not, why have the language here?

(2) **Calculation of support amount.** The maximum amount that a wireline communications provider eligible to receive support from the program may receive in a calendar year is the sum of the following three items: difference between the company's actual intrastate access-charge revenues for calendar year 2011 or any subsequent base year the commission establishes, including any distributions from the fund administered by the Washington Exchange Carrier Association, and the company's actual intrastate access charge revenues for the calendar year preceding the year the company files its petition seeking support, less any distributions from the fund administered by the Washington Exchange Carrier Association during that year; Provided that companies whose distributions from the fund administered by the Washington Exchange Carrier Association end when that fund terminates during the calendar year for which the companies receive program support may receive an increase to the amount of program

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~~support they receive for that year to compensate for the distributions they would have received if that fund had not terminated.~~

(a) The amount of support for the provider attributable to calendar year 2013 through the operation of the traditional universal service fund rate element approved in Cause No. U-85-23 and Docket No. UT-971140;

(b) The cumulative reduction in support from the Connect America Fund incurred by the provider up through and including the year for which program support is distributed to the provider to the extent funds from the program are available; and

(c) A portion of lost access revenue as calculated by the commission for the period between January 1, 2007 and September 30, 2010 to the extent funds from the program are available.

(3) **Benchmark.** The commission establishes as the benchmark the urban rate floor as set out in 47 CFR 54.318 as it exists on the effective date of these rules. If a provider is charging a residential rate (including mandatory extended area service) that is below the benchmark, the commission will impute a sum of revenue equivalent to the difference between the rate the provider is charging and the benchmark and will deduct this calculated amount from the support the provider may receive.

~~(43)~~ **Distribution to wireless communications providers.** The advisory board will make a recommendation to the commission on eligibility and distribution calculations for any wireless communications provider that seeks support from the program, and the commission will determine that company's eligibility and the amount of support, if any, to which the ~~company~~ provider is entitled consistent with RCW 80.36. ___ and commission rules.

(54) **Total requests in excess of available funds.** If the total requests for support for a calendar year exceed the program funds available for that year, the commission will seek a recommendation from the advisory board on how best to distribute the available funds to eligible providers. The commission will then determine how to distribute the funds.

(65) **Commission determination.** The commission will consider petitions from companies seeking support from the program and will make the necessary eligibility and distribution determinations in response to those petitions prior to January 1 of the calendar-first program year of the two-year period in which funds from the program will be distributed.

(7) **Support Distribution.** Support for the program shall be distributed in January of each program year. Each program year shall run from July 1 of the calendar year prior to the January distribution to June 30 of the calendar year in which the distribution is made. For example, the first program year runs from July 1, 2014 through June 30, 2015.

Comment [RF13]: This subject is not covered by the draft rules. WITA suggests a one-time distribution each year. However, please see WITA's comments requesting an earlier distribution date.

Comment [NA14]: This definition avoids the argument that a program year is a calendar year and that the distributions in the fifth calendar year can only be for the first six months of that year due to the program's termination provisions.

(IV) WAC 480-123-___ . Reporting requirements.

(1) **Wireline communications provider reports.** A wireline communications provider that receives program support must submit the following information and reports to the commission by August 1 of the year following each calendar year in which the provider receives that support unless a different date is specified below:

(a) The number of residential and business lines served within the state for which the provider used program support in the provision of basic telecommunications service (broken down to reflect beginning and end of year quantities);

(b) Detailed information on how the provider used program support other than providing basic telecommunications services if it did so;

Comment [RF15]: What is the purpose of this requirement? The legislation seems to have as its basic purpose providing support for basic telecommunications services as that term is defined in the legislation.

(c) A list and detailed information on all consumer requests for new basic telecommunications service that the provider denied or did not fulfill for any reason;

(d) ~~An affidavit certification from an company~~ officer of the provider with personal knowledge and responsibility certifying that the provider was in substantial compliance with all substantive commission rules in WAC 480-120 that are applicable to the provider;

Comment [RF16]: language appears to be redundant.

(e) Complete ~~and unredacted~~ copies of the Form 477 the provider filed with the Federal Communications Commission during and for the calendar year in which the provider receives support at the same time the provider submits those forms to the Federal Communications Commission;

(f) A report on operational efficiencies or business plan modifications the provider has undertaken to transition or expand from primary provision of legacy voice telephone service to broadband service, and whether and how disbursements from the program were used to accomplish such outcomes;

(g) Detailed information on any other efforts the provider made to use program support to advance universal service and the public interest in Washington; and

(h) Any other information or reports pertaining to the provider's participation in the program the commission requires, including but not limited to information the commission needs to provide a report to the legislature concerning the program.

Comment [RF17]: Why would these reports be different than the wireline reports? Except perhaps (f), which could be substituted as "advanced wireless technology."

(2) **Wireless communications provider reports.** The advisory board will make a recommendation to the commission on the information and reports that any wireless communications provider that receives support from the program should provide, and the commission will determine the information and reports the company must provide consistent with RCW 80.36. ___ and commission rules.

(V) WAC 480-123-____. Commission compliance review of accounts and records.

Communications providers authorized to receive program support are subject to compliance reviews and other investigations to ensure compliance with program rules and orders. Each provider shall retain all records required to demonstrate to the commission that the support the company received was consistent with RCW 80.36.____ and commission rules and orders. The providers shall retain all documentation for at least five years from the distribution of program funds, and a provider shall make that documentation available to the commission upon request. Any eligible providers authorized to receive program support that fail to comply with public interest obligations or any other terms and conditions established by the commission may be subject to further action, including the commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of eligibility designation, and suspension from, or disentitlement to future participation in, the program.

(VI) WAC 480-123-____. Advisory board

(1) **Establishment.** The commission will establish an industry and consumer advisory board to provide recommendations to the commission on the implementation and management of the program.

(2) **Membership.** The commission secretary is authorized to solicit nominations and approve membership on the board.

(a) The board will be comprised of members representing the following interests:

(i) One from incumbent local exchange companies serving fewer than 40,000 access lines in Washington;

- (ii) One from incumbent local exchange companies serving more than 40,000 access lines in Washington;
- (iii) One from competitive local exchange companies serving customers in Washington;
- (iv) One from wireless communications providers offering service in Washington;
- (v) One from the Public Counsel division of the Office of the Attorney General of Washington; and
- (vi) One from the commission staff.

(b) Industry membership on the board shall be limited to __ years by any representative of a particular industry segment and will be staggered so that no more than ___ of the members will be new members in any one year. Commission staff and Public Counsel shall have permanent membership on the board.

(3) Duties. The board shall:

- (a) Have a consultative role on matters directly referred to it by the commission or upon written request of interested parties;
- (b) Prepare and publish an agenda at least __ days in advance of any meetings;
- (c) Conduct meetings no less than once per year;
- (d) Conduct public meetings in accordance with the Open Public Meetings Act, RCW 42.30; and
- (e) Prepare and submit a written report on matters brought to it for consideration, including, where appropriate, a recommendation to the commission on potential resolution of such matters.

(VII) WAC 480-123-___: Resolution of disputes

If the Commission delegates any of its authority to make determinations under RCW 80.36.____ [Section 206], an affected provider may petition the commission to resolve any disputed matter concerning the program, including, but not necessarily limited to, a determination of the provider's eligibility to receive program support, the amount or timing of any distribution of support, and calculations of the provider's revenues and earnings levels. The commission may refer such requests to the advisory board as the initial point of review and consideration of the matter for which a carrier seeks resolution. The commission will make the final determination on any petition.

(VIII)WAC 480-123-___ . Operation of the Program.

[Placeholder pending conversations with OFM] The secretary or the secretary's designee is responsible for managing the day-to-day operation of the program and may authorize expenditures from the account. The secretary or the secretary's designee will manage the program and the account consistent with the rules of the Office of Financial Management, WAC _____.