BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Policy Statement to Review State Universal Service Policies	))))	DOCKET UT-100562

REPLY COMMENTS OF VERIZON

Verizon[1] submits these reply comments in response to comments filed in this docket by AT&T Communications of the Pacific Northwest, Inc., New Cingular Wireless, PCS, LLC, and TCG Seattle (collectively "AT&T") and the Washington Independent Telecommunications Association ("WITA"). As Verizon stated in its opening comments filed on June 16, 2010 ("Verizon Comments"), establishing a state universal service fund ("USF") in Washington is unnecessary and inappropriate, and intrastate access charge reform in Washington should not be linked to creation of a state universal service fund. In these reply comments, Verizon will elaborate on its concerns about establishing a state USF and why intrastate access reform should not be linked to creation of a state USF.

A. CREATION OF A STATE UNIVERSAL SERVICE FUND IS UNNECESSARY AND INAPPROPRIATE

There is significant consensus that establishing a state universal service fund in Washington is unnecessary and inappropriate. In addition to the reasons provided by Verizon in its comments, Comcast Cable ("Comcast") states that there is "no demonstrated need for a state USF at this point in time," only unsupported proposals

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[1] The Verizon entities submitting these reply comments are MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively "Verizon").

from those who would benefit from the creation of a state USF "as a make-whole fund" for incumbent local exchange carriers ("ILECs").[2] Similarly, Integra Telecom ("Integra") argues that a state USF "should not be a mechanism to protect eroding revenue streams for ILECs."[3] And Sprint Nextel Corporation ("Sprint") asserts that universal service funds "distort the market and burden consumers and business end-users"[4] and that "[a]ny carrier seeking a replacement of access revenue through a WUSF must bear the burden of proving a need that cannot be addressed in a way that does not involve taxing other carriers' customers."[5]

Finally, Public Counsel states that it "has not seen strong evidence that there is currently a need to establish a WUSF," and that: (i) "competition has emerged in varying degrees to different sectors"; (ii) "rates have remained stable"; (iii) universal service penetration rates have increased in Washington since 1999; and (iv) "substantial broadband deployment has occurred in many rural carrier service territories even in absence of a [WUSF]."[6] Public Counsel correctly concludes that any new state USF "would merely add to the financial burden already borne by consumers for the federal program."[7]

WITA predictably argues for creation of a state USF as a mechanism for replacing access revenues that may be "at risk." WITA argues that there is a need for a

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[2] Comcast Response in response to Question 3, unnumbered p. 2.

[3] Intergra Comments in response to Question 3, unnumbered p. 2.

[4] Sprint Comments in response to Question 3, at 2.

[5] *Id.* in response to Question 5, at 5.

[6] Initial Comments of Public Counsel in response to Question 3, at 3-4.

[7] *Id.* p.4. Public Counsel notes that the current federal USF contribution rate is in the range of 13%.

fund to facilitate intercarrier compensation reform and because of the anticipated effects of the National Broadband Plan ("NBP").[8] WITA notes that, on average, its member companies receive sixty-five percent of their regulated revenue from intercarrier compensation (access charges) and federal universal service funds,[9] and that the NBP proposes to freeze federal universal support at existing levels and, over time, to transition that support away.[10] In other words, WITA's position is that it is entitled to keep receiving most of its revenue from other carriers (and their customers), rather than from its own end users. And it proposes that the Commission create a WUSF now, in anticipation of the eventual elimination of a support stream that the Federal Communications Commission ("FCC") has recommended be phased out over time — in effect, WITA urges the Commission to replace the very subsidy stream that the FCC believes needs to be eliminated, in contravention of the NBP's recommendations.

There is no basis for WITA's proposal except for self-interest. WITA proposes perpetual subsidization of its members, without regard for whether any such subsidization is necessary to preserve universal service — and based on an outdated notion of universal service as a wireline phone for everyone, whether they want it or not. WITA's proposal

[8] WITA also contends that a new WUSF should be created "whether the National Broadband Plan exists or not." WITA Comments at 11. However, it failed to provide any information demonstrating that the state's current universal service policies have not been achieved in the absence of a state fund. Not only did WITA fail to show that consumers are not currently receiving traditional services at affordable rates but, as Public Counsel explained, universal service penetration rates have increased in Washington over the past decade and broadband deployment has taken place in rural areas even without state funding support. Public Counsel Comments at 3-4. WITA states that a new WUSF will provide support for wireline, wireless and broadband connectivity in rural Washington (WITA Comments at 19) but, again, it provides no evidence demonstrating that carriers have an actual need for state funding to continue with such development. The state should not authorize a multi-million dollar slush fund in the absence of a proven need that such funding is required.

[9] WITA Comments in response to Question 3, at 11.

[10] *Id.* at 12.

would also undermine federal efforts to phase out anachronistic support by simply *increasing* the USF burden for Washington consumers.

Moreover, it is premature to establish a state USF without knowing whether and how the FCC will implement its NBP proposals. As Public Counsel points out, it is premature to design a state USF based upon the NBP, noting that decisions made by the FCC are likely to have a major impact in dictating what actions are most needed.[11] Similarly, Comcast observes that if there is any need for additional state funding, it will become apparent only after the FCC determines how it will implement the NBP.[12] Integra proposes that this Commission closely monitor the FCC's NBP proceedings to evaluate whether it is appropriate to move ahead of, or inconsistent with, the FCC.[13] Sprint points out that the NBP does not require any state to establish a state USF.[14] Indeed, if anything, the message in the NBP is that funding should be phased out, not increased, and that carriers should look primarily to their own end users for cost recovery.

In contrast to the consensus against a state fund, AT&T argues a state USF is necessary to provide support to carriers who are unable to make up switched access revenue losses through rate rebalancing after switched access reform is implemented.[15] AT&T makes this argument without offering any basis for concluding that such carriers will be unable to do so. Importantly, WITA acknowledges that access minutes "have substantially declined

[11] Public Counsel Comments in response to Question 4, at 5.

[12] Comcast Response in response to Question 4, unnumbered p. 3.

[13] Integra Comments in response to Question 4, unnumbered p. 3.

[14] Sprint Comments in response to Question 4, at 5.

[15] AT&T Revised Comments filed June 24, 2010, at 8.

over the past several years,"[16] but does not show that carriers have been materially affected, nor does it claim that all of its members would not be able to recover their costs from the customers of their various retail services in the event of additional access charge reductions.

Verizon supports intrastate access reform, but does not support tying such reform to the creation of a state USF fund. AT&T's recommendation to create a state USF to offset lost access revenues is still a make-whole fund — it would merely replace one subsidy (switched access) with another (state USF funding). Under AT&T's proposal, carriers would continue to be forced to subsidize their competitors at unreasonable levels, which is harmful to the competitive marketplace.

Thus, for the reasons stated by Verizon, Public Counsel, Comcast, Integra, and Sprint, there is no need for a state USF, and this Commission should advise the legislature not to create one.

B. INTRASTATE ACCESS REFORM SHOULD NOT BE LINKED TO THE CREATION OF A STATE UNIVERSIAL SERVICE FUND

It is inappropriate to create a state USF in conjunction with implementing intrastate switched access charge reform, as proposed by WITA. Using 2008 data, WITA estimates that to make its members whole after reducing their intrastate switched access rates to their interstate level would require a $35 million state USF in the first year and, after completion of a transition described in its Comments, $27.5 million annually thereafter.[17] Ultimately, Washington consumers would pay these amounts, in the form of a USF assessment on their bill — one applied on top of the federal USF assessment that

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[16] WITA Comments at 12.

[17] WITA Comments in response to Question 12, at 21-22. It is not clear if the projected fund amount is only for WITA members or for all potential recipients of a state USF.

recently reached a high of more than 15%.[18]

The far better solution is to grant all carriers, including WITA's members, sufficient retail pricing flexibility for their regulated services to allow them a reasonable opportunity to recover their network costs, as well as relaxing any legacy regulatory constraints that may apply to them and not their competitors. Carriers should recoup any foregone access revenues that they choose not to absorb through their rates for retail services. In addition, WITA's own data shows that the local exchange rates of several of its members are priced at levels that are artificially low as the result of longstanding, but no longer sustainable subsidies.[19] Thus, moving ILEC local rates closer to their underlying costs would have the salutary effect of sending appropriate pricing signals to the market and creating incentives for ILECs to operate more efficiently.

Proceeding in this manner would be far superior to shifting an ILEC's existing intrastate access revenue stream to a state USF and allowing ILECs to obtain funding from that source. The latter approach would create an inappropriate "entitlement" mechanism with all of its drawbacks, including insulation of WITA members from the rigors of the competitive marketplace. Proposals to create an insurance policy for "lost" access revenues and ILEC profits would perpetuate distortions in communication markets, allow companies to continue recovering a disproportionate amount of their costs from other providers and their customers, inhibit fair and efficient competition, and do nothing to enhance consumer welfare.

There is no reason to create any state USF here, but WITA's notion of including

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[18] *Proposed Second Quarter 2010 Universal Service Contribution Factor*, Public Notice, 25 FCC Rcd 2383 (2010) which can also be found at http://www.fcc.gov/omd/contribution-factor.html.

[19] *See* WITA Comments at 18, Table 6.

wireless and VoIP providers in the base of contributors to the fund deserves no consideration at all.[20] WITA's proposal would penalize those consumers who, in the competitive market, have availed themselves of service alternatives to the WITA member companies' services. The end user customers of other carriers should not be burdened with supporting the ILECs' operations when the ILECs are not charging their retail customers rates commensurate with either the costs of their local services or the rates charged to other Washington consumers for comparable services. Imposing what would effectively be a tax on wireless and VoIP customers to support the rural LECs would chill innovation and drive investment from Washington.

WITA's position is based on the unsubstantiated and erroneous assumption that ILECs are entitled to continue receiving 100% of the amount they have historically received through their current level of access charges, regardless of any changes taking place in the competitive market, in the level of demand for access services, and without regard to changes in their business and the size of their customer base over time. WITA's position effectively presumes that every ILEC should be able to retain the substantial subsidies currently generated from intrastate switched access services in perpetuity, in direct contravention of the NBP's recommendation that per-minute charges be eliminated completely by 2020.[21]

As stated by Public Counsel, before considering the imposition of any USF surcharges, potential fund recipients should undergo effective and reliable earnings

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[20] *Id.* in response to Question 10 , at 21.

[21] *See* Federal Communications Commission, "Connecting America: The National Broadband Plan" (http://www.broadband.gov/download-plan/ (March 16, 2010) at 148).

reviews.[22] The Commission would also need to evaluate whether there is any need for carriers to receive support anywhere in the state and, if there is any such need that is not met by the competitive market, tailor support measures to that specific need. However, even if the Commission established tailored support measures for a specific carrier, such support must be time-limited and phased out. Because WITA's proposal would impose an indiscriminate, substantial burden on Washington consumers, the public interest demands an examination of the carriers' costs, rates and earnings before considering whether any support is justified anywhere in the state. Without an effective and reliable earnings review, there is no indication that ILECs cannot adequately recover their costs through the prices they charge for their regulated retail services, and no basis on which to conclude that WITA members require any supplemental funding to offset the decline in access revenues and keep local rates affordable.[23] WITA's ominous assertions can only be tested with a full specific and detailed cost and earnings review.[24]

WITA's proposal to protect its member ILECs' revenue stream would protect its members from competitive forces that encourage typical firms to operate as efficiently as possible. Furthermore, providing one group of carriers in a competitive market a multi-year revenue guarantee when other providers have no such guarantee (and would have to subsidize the group that does) is the antithesis of competitive neutrality, and will distort competition, which ultimately harms consumers. In short, the anti-competitive and anti-

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[22] Public Counsel Comments in response to Question 3, at 4.

[23] WITA supports using a *streamlined* earnings review that would purportedly address total company regulated results of operations. WITA Comments in response to Question 3, at 13 and Exhibit A to its comments. Such a streamlined review is not a sufficient source of data to justify the establishment of a state USF. Rather, specific and detailed information is required in order to impose a surcharge on consumers of other carriers as well as WITA members' own customers.

[24] *See*, e.g., Comcast Response in response to Qwest 3a, unnumbered p. 2.

consumer effects of allowing ILECs to collect too much revenue from other carriers through their high switched access rates would not be remedied by allowing the ILECs to collect the same revenue from other carriers in a different way through a WUSF. The ILECs should be *reducing* their dependence on revenue from other carriers, not simply shifting that burden from access rates to another carrier-funded source such as a state USF. There is no doubt that WITA's approach would be quite beneficial to its member ILECs: they would no longer have to be concerned about declining access revenues, because those revenues would be locked in forevermore.

For the foregoing reasons, the Commission should reject proposals to use a state USF as a replacement vehicle for preserving access revenues, and instead allow all local exchange carriers to recover their costs primarily from their own retail customers.

C. CONCLUSION

There is substantial consensus that establishing a state universal service fund in Washington is unnecessary and inappropriate. Moreover, while Verizon supports intrastate access charge reform in Washington, such reform should not be linked to creation of a state universal service fund because the use of such a fund would allow companies to continue recovering a disproportionate amount of their costs from other providers and their customers. Finally, if the Commission, nonetheless, incorrectly recommends the creation of a state universal service fund, the Commission and the legislature should remember that it is Washington consumers that will be burdened with paying the surcharge on their bill on top of the federal USF assessment.

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