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June 21, 2007

VIA E-MAIL AND HAND DELIVERY

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-073032 – WITA Petition for Moratorium on ETC
Designations – Comments on the Response of Eltopia
Communications, LLC

Dear Ms. Washburn:

On June 20, 2007, Eltopia Communications, LLC (“Eltopia”) filed Comments in this docket. WITA is filing the original and twelve copies of this response to those Comments.

Eltopia makes three points in its Comments of June 20, 2007. The first is that the WITA Petition should be treated as a request for emergency rule. The second is that these matters should be left for determination by the Federal Communications Commission. And, the third is that if a moratorium is to be imposed, it should not apply to applications that have been filed prior to the date of WITA’s Petition. WITA will respond to each of these points.

1. WITA’s Petition is not a Request for Emergency Rulemaking.

Eltopia suggests that WITA’s Petition be treated as a petition for emergency rulemaking for the simple reason that Eltopia wants the Commission to deny the Petition. WITA did not request emergency rulemaking. An emergency rule may be enacted only if the rule is absolutely necessary for the “preservation of the public health, safety or general welfare.” RCW 34.05.350(1). That situation does not

exist with the designation of ETCs and WITA would not pretend to make that argument.

A legitimate question is if the Petition for a Moratorium that was filed by WITA is not a petition for emergency rulemaking, what is it? Simply put, a moratorium is the Commission exercising its discretion and notifying applicants for ETC status that the Commission will not be acting immediately upon their applications.

There is no timeline contained in 47 U.S.C. §214(e) under which the Commission must act on an application for ETC designation. There is no timeline contained in the Commission's rules, Chapter 480-123 WAC. Thus, the Commission, through exercise of its discretion, may choose the time in which it will consider an application. Putting a moratorium in place simply is a means of notifying the applicants that consideration of applications will be deferred for some time.

This then leads to the question of why should a moratorium be put in place. As discussed in the WITA Petition, there are very good reasons. For one, the Joint Board Recommendation freezes a state's competitive ETC support at the 2006 level. This means any designation of an ETC in 2007 will dilute the support received by competitive ETCs who are designated as such prior to January 1, 2007. The Commission may think it prudent to examine that effect before or during the consideration of any new competitive ETC applications. The Commission will know what rules will apply only when the FCC takes action on the Joint Board's recommended freezing of competitive ETC support. The Commission might also desire to consider the full effects of final USF reform, which is expected to take place within the next several months. These are valid reasons for adoption of a moratorium.

2. The Exclusive Control of ETC Designations is not at the Federal Communications Commission.

Eltopia argues that the Commission needs to continue to approve ETC designations because the ultimate decision on universal service reform is at the Federal Communications Commission (FCC). While the second part of the statement is correct, that the ultimate responsibility for reform of the universal service mechanisms rest with the FCC, the first part of the statement is not correct.

ETC designation is a clear example of federal-state interaction and division of responsibilities. A state has the authority under Section 214(e) to designate competitive ETCs. However, the FCC must establish the basic rules for funding and distribution of federal USF mechanisms. In looking at the relationship of this federal-state partnership, it is clear that a state can decide to take into account actions that are proceeding at the FCC when it chooses the manner in which it will exercise its authority to designate competitive ETCs. This means that putting a moratorium in place while the FCC sorts out the high-cost fund distribution rules is entirely appropriate.

3. The Moratorium Should Not be Prospective Only.

Eltopia's final argument is that a moratorium apply prospectively. Eltopia argues that its application had been submitted under the standards of Chapter 480-123 WAC when it was filed in May and "[i]t would be unfair to change the rules now." This is not a change of rules. This is simply a request that the Commission exercise its discretion, which it clearly has, to take more time before it acts on the application.

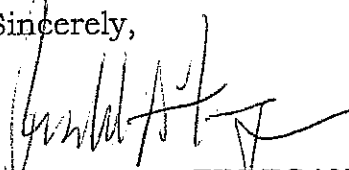
Even if it were a change of rules, Eltopia does not point to any particular standard that would prevent the Commission from applying new rules to a pending application.

However, the WITA Petition is not a set of new rules. As noted above, the pending application of Eltopia and the other pending applications can have a direct effect on existing competitive ETCs if the Joint Board's recommendation is adopted since it would dilute the funding that those other competitive ETCs would receive. There is nothing unfair to Eltopia if the Commission decides it wants to be clear about the effects of any decision it may make.

Carole Washburn
June 21, 2006
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WITA respectfully requests that the Commission grant WITA's Petition.

Sincerely,



RICHARD A. FINNIGAN

RAF/km

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Kristin Jacobson (via e-mail)
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