

DRAFT RULES
Temporary Universal Communications Services Program Rules
Chapter 480-123
Docket UT-131239

December 3, 2013

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

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

"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 WAC 480-120-102;

(d) The provider's rates for residential local exchange service, plus mandatory exchange area service charges, are no lower than the local urban rate floor established by the commission based on the Federal Communications Commission's most current calculation of a national local

urban rate floor pursuant to 47 C.F.R. § 54.318 in the year in which the provider files a petition for support; PROVIDED that if the provider's rates exceed the benchmark, the provider may not seek support from the program for the purpose of reducing those rates to the benchmark; and

(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 of Washington;

(b) The provider serves fewer than the equivalent of 40,000 access lines in Washington;
and

(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 or equivalents 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.

(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 year. 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 regulated operations for the two 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 balance sheet and statements of income and retained earnings or margin from, or in the same format and detail required in, Rural Utilities Service (RUS) Form 479;
 - (ii) The provider's consolidated audited financial statements; if the provider does not have consolidated audited financial statements prepared in the normal course of its business, the provider must submit financial statements reviewed by a certified public accountant;
 - (iii) Information demonstrating the provider's earned rate of return on a total Washington un-separated regulated operations basis for each of the two prior years;

(iv) Information demonstrating the provider's earned return on equity on a total company (regulated and nonregulated) Washington basis for each of the two prior years;

(v) Information detailing the provider's network access service revenues from the statements of income and retained earnings or margin section of RUS Form 479 for interstate, intrastate and federal universal service fund revenues for the two prior years; if the provider does not submit RUS Form 479, the provider must file with the commission the same information required to complete that form;

(vi) Information detailing the amounts of any corporate operations adjustments required by the Federal Communications Commission for the two prior years or a sworn statement from a company officer of the provider with personal knowledge and responsibility certifying that no such adjustments apply;

(vii) Any additional supporting information the commission requests to enable it to analyze the provider's financial results; and

(viii) A sworn statement from a 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;

(f) A complete 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; if the provider does not submit Form 481 to the Federal Communications Commission, the provider must file with the commission the same information required to complete that form;

(g) Information detailing the number of residential and business local exchange access lines the provider served as of December 31 for each of the prior two years and the monthly rate charged to each customer category; and

(h) A sworn statement from a company officer of the provider certifying that the provider will continue to provide communications services pursuant to its tariffs on file with the commission throughout its service territory in Washington during the entirety of the calendar year in which the provider is applying for support from the program.

(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) **Information already on file with the commission.** To the extent that the provider has filed any of the information required under this rule in conjunction with its application for certification as an eligible telecommunications company, the provider need not include that same information in its petition so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

(4) **Timing of petitions.** A provider must file a complete petition that fully complies with this section no later than September 1 if the company seeks support from the program for the following calendar year. Program support is available annually until the expiration of the program on June 30, 2019.

(54) **Certification.** One or more company officers responsible for the provider's business and financial operations must certify in the form of a sworn statement 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 statements with its petition.

(III) WAC 480-123-____. Eligibility and distributions from the program. The commission will authorize distributions from the program on a calendar year basis. Each eligible provider will receive a single distribution for the year after January 1 of that 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 financial circumstances are such that its customers are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark the commission has established. In making that determination, the commission will consider the provider's earned rate of return on a total Washington company books and un-separated regulated operations basis, the provider's return on equity, the status of the provider's existing debt obligations, and other relevant factors, including but not limited to the extent to which the provider is planning operational efficiencies

and business plan modifications to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program.

(2) **Calculation of support amount.** The amount that a wireline communications provider eligible to receive support from the program may receive in a calendar year shall not exceed the sum of the following:

(a) The amount the provider received in 2012 from the fund established in Docket U 85-12 and administered by the Washington Exchange Carrier Association if that fund had remained in effect during the calendar year in which the provider is eligible for program support; and

(b) The annual access revenue reduced for the five percent baseline adjustment factor as required in 47 C.F.R. § 51.917(3) for revenue recovery from the federal Connect America Fund for each of the three annual reduction periods beginning July 1, 2012, that preceded the calendar year in which the provider is eligible for support from the program (e.g., if the provider is eligible for program support for calendar year 2015, the provider may receive up to the five percent reduction in CAF funding for each of the annual July 1 2012, 2013, and 2014 reductions; if the provider is eligible for program support for calendar year 2016, the provider may receive up to the five percent reduction in CAF funding for the years 2013, 2014, and 2015).

(3) **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 is entitled consistent with RCW 80.36.____ and commission rules.

(4) **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 distribute the available funds to eligible carriers on a pro rata basis. The commission may seek a recommendation from the advisory board on the best pro rata distribution methodology to use

(5) **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 year in which funds from the program will be distributed.

(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 of Washington 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;

(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) A sworn statement from a company officer of the provider with personal knowledge and responsibility certifying that the provider complied with all commission rules in WAC 480-120 that are applicable to the provider;

(e) Complete 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; if the provider does not submit Form 477 to the Federal Communications Commission, the provider must file with the commission the same information required to complete that form;

(f) A report on operational efficiencies and business plan modifications the provider has undertaken to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program, 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 the commission requires, including but not limited to information the commission needs to provide a report to the legislature concerning the program.

(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.

(3) **Information already on file with the commission.** To the extent that the provider has filed any of the information required under this rule in conjunction with its application for certification as an eligible telecommunications company, the provider need not include that same information in its report so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

(4) **Comments from stakeholders.** Interested persons may submit information or comments on any of the issues on which the providers must report under this rule. Persons must submit such information or comments by August 1 of the year following each calendar year in which the commission distributes program support.

(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.

(4) Initiating board action. The commission alone may initiate board action other than the execution of administrative duties, which the board may conduct on its own initiative. Any person who seeks board participation in program issues or matters must petition the commission to initiate board action.

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

An affected provider may petition the commission to resolve any disputed matter concerning the program, including, but not necessarily limited to, 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.

The commission will authorize and process payments from the Universal Communications Services Account for providers that the commission determines have met the requirements of WAC 480-123-XXX through 480-123-XXX.