

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 587-3852

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

Kathy McCrary, Paralegal
(360) 753-7012
kathym@localaccess.com

July 15, 2010

VIA E-MAIL AND HAND DELIVERY

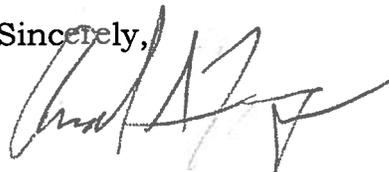
David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-100562 – Reply Comments of the Washington
Independent Telecommunications Association

Dear Mr. Danner:

Enclosed is an original of the Reply Comments of the Washington
Independent Telecommunications Association (WITA) in response to the
Commission's Notice of Workshop. WITA appreciates the opportunity to submit
these Reply Comments on the vital issue of universal service in Washington.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Clients (via e-mail)

RECEIVED
RECORDS MANAGEMENT
2010 JUL 15 PM 1:44
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

DOCKET UT-100562

**REPLY COMMENTS OF THE WASHINGTON INDEPENDENT
TELECOMMUNICATIONS ASSOCIATION**

July 15, 2010

The Washington Independent Telecommunications Association ("WITA") is pleased to provide these Reply Comments in this docket. This is a critical point in telecommunications history in Washington. The time for the creation of a universal fund for the State of Washington has come.

These Reply Comments will address the issues raised in the Opening Comments of other parties. In particular, these Reply Comments will touch on (i) the importance of the network; (ii) issues related to creation of a Washington universal service fund (WUSF); (iii) access reform and its timing; and (iv) rate rebalancing.

1. The Role of the Public Switched Telecommunications Network is Critical in Advancing Communications in Rural Washington.

It was a welcome development that several of the parties that commented recognized that the public switched telephone network (PSTN) is an important component of communications services in Washington. As stated by Integra, "The ILEC network has traditionally delivered Universal Service. In many, if not all cases, this network continues to be essential for the provisioning of Universal Service."¹ Public Counsel observed, "While telecommunications services and technologies continue to evolve, the public switched telecommunications network (PSTN) operated by ILECs in Washington continue [*sic*] to constitute fundamental infrastructure by which universal service is provided in the state of Washington at the present time."² AT&T commented along the same line, "... the PSTN, or at least elements of the PSTN, can still serve a valuable role in ensuring universal, affordable service for today's communications to an all-broadband world."³

The support for the PSTN as it continues to evolve to a broadband network (a public broadband network or PBN) is crucial to maintaining and advancing communications in rural Washington. The evolution of the PSTN to the PBN will be jeopardized without a state support mechanism. This is a critical juncture. It is time to establish a WUSF. AT&T recognizes this fact in their Comments stating: "... Washington must act to provide stability for the rural LECs to ensure the continuation of universal service in this state."⁴

¹ Integra Comments at p. 2 responding to Question 1.

² Initial Comments of Public Counsel at p. 1.

³ AT&T Comments at p. 3.

⁴ AT&T Comments at p. 4.

2. Elements Related to the Creation of a WUSF.

A. Funding the WUSF.

Sprint and Comcast argue that if a WUSF is to be created, it should be supported through general tax revenues.⁵ In today's economic and political environment, this is not a feasible approach. A critical element of a WUSF is that it must provide predictable and stable support if investment in the evolving PSTN is to continue.

This requirement for predictable and stable support is one of the elements for universal service set out in 47 U.S.C. § 254(b). 47 U.S.C. § 254(b)(5) states: "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." This requirement applies to state programs as well. 47 U.S.C. § 254(f) addresses state USF programs, and provides: "A State may adopt regulations not inconsistent with the Commission's [FCC's] rules to present and advance universal service." Further, the statute goes on to address funding for state programs: "A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support [the state program]." (Emphasis added.) Thus, funding of the WUSF must come from a stable and predictable source. Using general tax revenues would mean the WUSF is subject to year-by-year (or at least biennial) changes in the appropriation process. Such a funding mechanism is not stable or predictable.

AT&T and Public Counsel join with WITA in recommending a broad-based methodology for support.⁶ Since universal service is delivered over the PSTN or the PBN, recognizing that the PBN is just the next evolutionary step of the PSTN, support should come from those that use the network or derive services from the network for their own retail or wholesale offerings.

B. Universal Service Support Should Not be Used to Promote Competition.

Sprint raises the outdated notion that a state universal service fund should "promote competition."⁷ The notion of using universal service funds to promote competition is one of the driving factors that have gotten the federal universal service fund in the predicament it is today. The unprecedented growth in CLEC, primarily wireless, draws from the federal fund as a means of promoting competition underscores that fact.

There are two competing goals in these discussions. One set of goals is to promote competition. The other set of goals is to promote universal service. The mechanism used to promote universal service should not be used to promote competition.

⁵ Sprint Comments at p. 6; Comcast Comments in response to Question 10.

⁶ Initial Comments of Public Counsel at p. 7; AT&T Comments at p. 7.

⁷ Sprint Comments at p. 6.

That has been a problem that has been recently recognized and it should not be allowed to spill over into a state universal service fund.

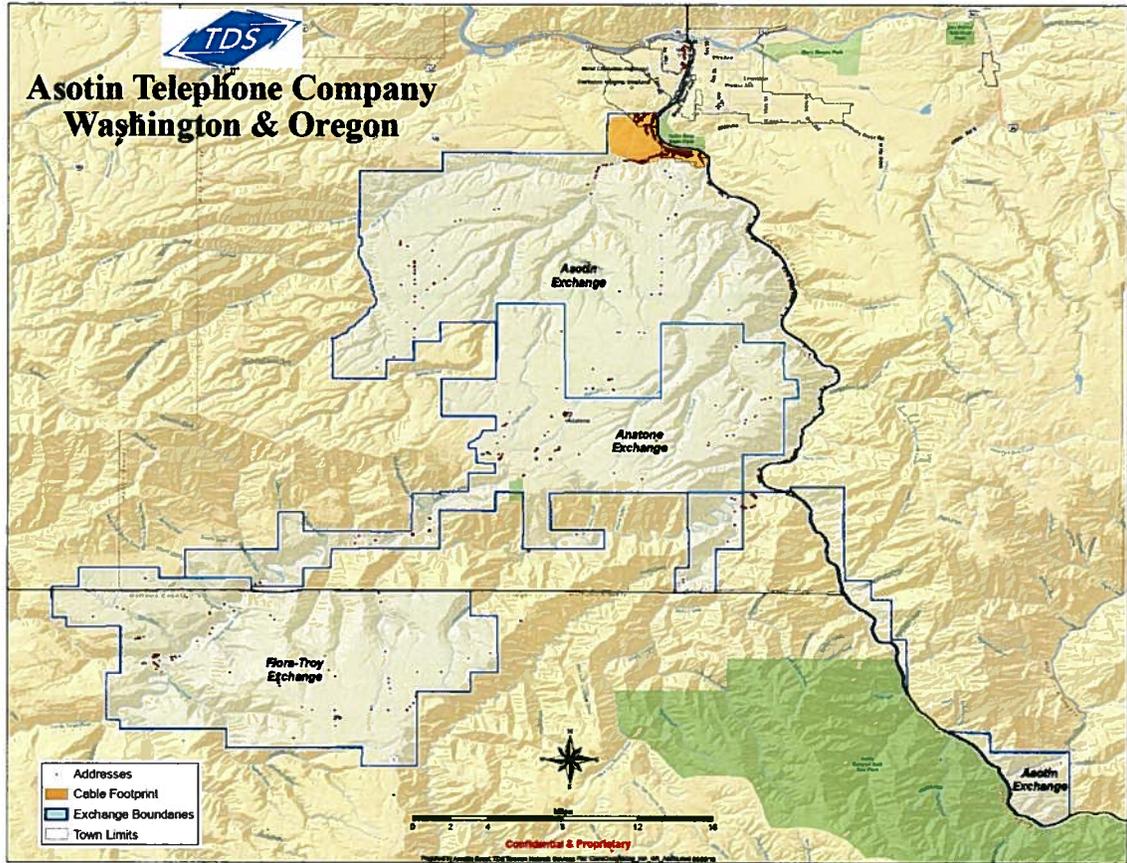
C. The Presence of Competition Does Not Mean There is a Lack of Need for Support.

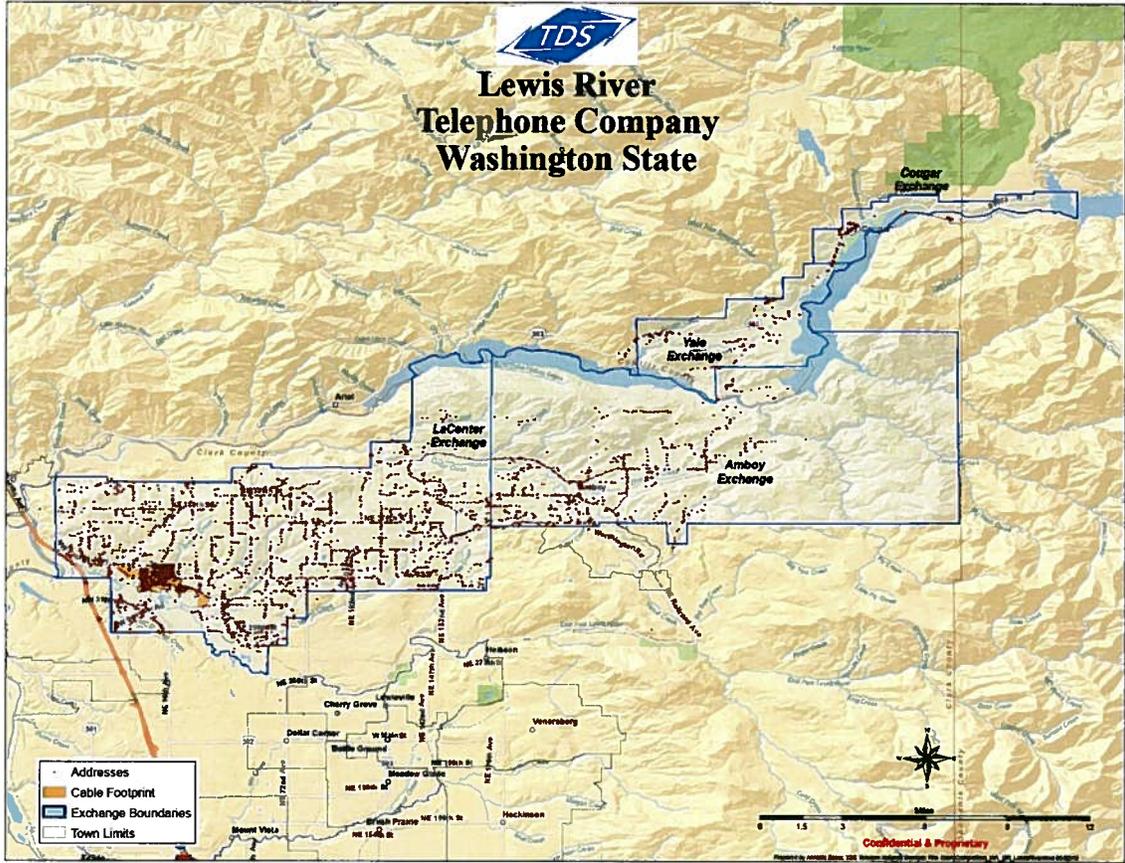
In several places in its Comments, Integra talks about the presence of competition as a factor in measuring whether there is a need for universal service funding. This is the concept that if there is a second wireline carrier in an area that is competing without support, that fact demonstrates that support may not be needed for the incumbent carrier.

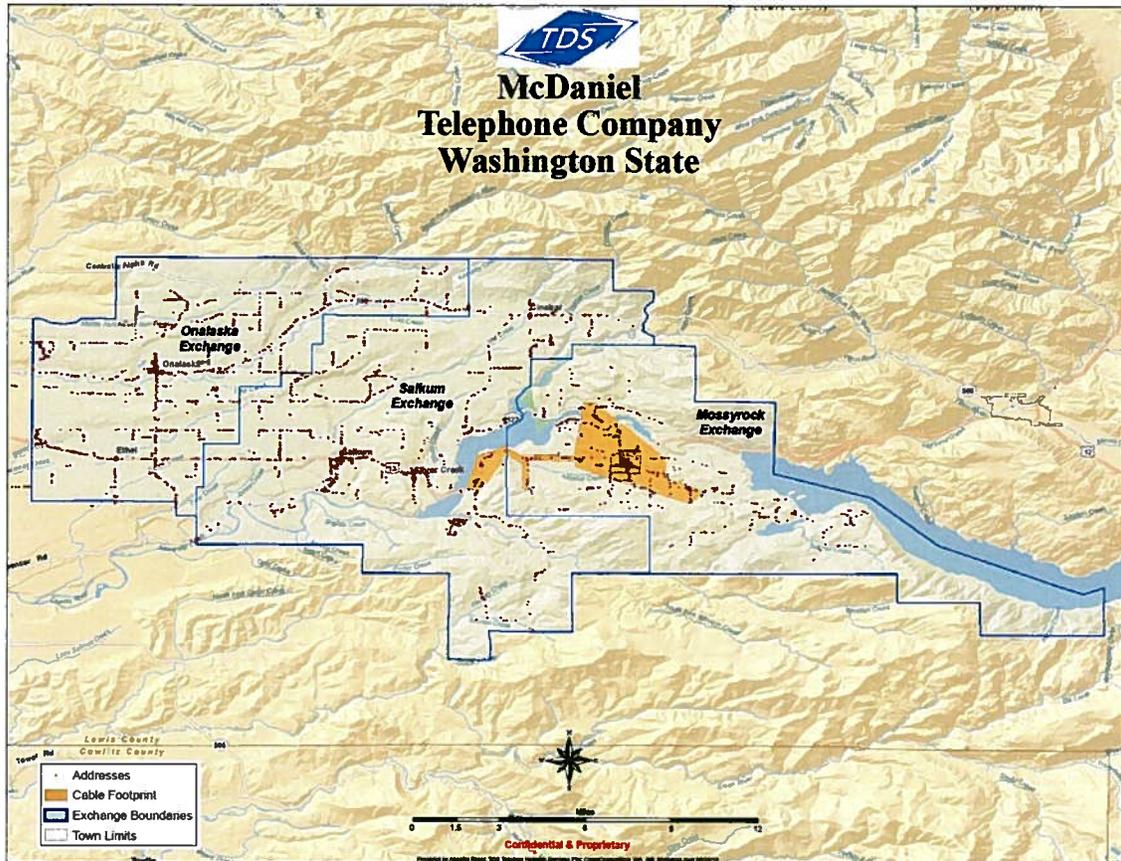
However, the concept does not take into account carrier of last resort (COLR) responsibilities. The ILEC must serve all customers who reasonably request service. A cable competitor does not have the same obligation.

In addition, the mere presence of a competitor is not a sufficient indicator of the lack of need for universal service support. As the diagrams that were included in WITA's Opening Comments for Asotin, Lewis River and McDaniel demonstrate, the mere presence of a cable competitor does not tell the whole story. Under the "hole in the donut" concept, it is obvious that the cable footprint covers only the easier to serve, lower-cost, relatively more dense areas. The presence of a competitor in the donut hole does not say anything about the true cost of providing service to the harder to reach customers.

For ease of reference, those diagrams are set forth below.







What the cable competitor is doing is going after the low hanging fruit. This is why COLR obligations and duties are key to understanding universal service.

WITA does recognize that there are occasions when the presence of a wireline competitor does, in fact, signal that the portion of the exchange or rate center where that competition occurs does not need support from a fund. However, since support tends to be provided on an averaged basis, it may also turn out to be the case, depending on the mechanism chosen, that removing that area from support and calculating support only in the portion of the exchange or wire center that does not have wireline competitive presence, the actual amount of support received for the supported area may be greater than the amount of support would be on an averaged basis for the entire exchange or wire center. WITA is looking at a possible mechanism to address the issue of support where there is a wireline competitor. WITA hopes to have more detail available on a possible mechanism prior to the next workshop.

D. The Role of COLR.

AT&T argues that only the carrier with COLR obligations should be funded.⁸ Public Counsel supports the continuation of the COLR concept.⁹ WITA agrees that the COLR obligation should be a key element in universal service funding. In addition, as discussed in WITA's Comments, the COLR obligation should evolve as communications evolve to a broadband basis.

The concepts of COLR and universal service are inextricably intertwined. Fulfillment of the COLR obligations is what makes universal service work.

3. Access Reform and Timing.

Not surprisingly, the interexchange carriers (IXCs) support immediate access reform. For example, Sprint Nextel supports access reductions, even to the point of reducing them to a zero rate.¹⁰ Sprint suggests that the reductions could be recovered from the local exchange carrier's end users.¹¹ Much like Sprint, Verizon supports access reform with rate rebalancing and asserts that a universal service fund is not needed.¹² In agreement with these two IXCs, Comcast responds to Question 2 by stating that access rates should be reduced to long run incremental cost or even to zero and in response to Question 8, that a WUSF is premature.¹³

In contrast, AT&T desires access reform to take place as quickly as possible, but recognizes that there is a need for a universal service program.¹⁴ AT&T also recognized that if there is going to be access reform, there is an obligation to show that customers will benefit through reduced toll rates. To that end, AT&T presented an empirical analysis supporting the concept that in states where access reform has occurred, toll rates are lower than they are in other locations. WITA appreciates AT&T's efforts in this regard.

However, as WITA demonstrated in its Comments filed June 16, 2010, access reform without some supporting mechanism is just not feasible. Local rates would be unacceptably high and would be in violation of the statutory mandate contained in federal law that rates in rural areas be comparable to rates in urban areas. The resulting local rates would also violate the state policies established in state law that rates be affordable.

⁸ AT&T Comments at p. 8 and 15.

⁹ Initial Comments of Public Counsel at p. 8.

¹⁰ Sprint Nextel Corporation's Response to the WUTC's Questions Concerning Appropriate Universal Service Policies in Washington (Sprint Comments) at p. 5.

¹¹ Sprint Comments at p. 3.

¹² Verizon Comments at p. 3.

¹³ Comcast Response to WUTC's Questions Concerning Appropriate Universal Service Policies in Washington (Comcast Comments).

¹⁴ Comments of AT&T Communication of the Pacific Northwest, Inc., New Cingular Wireless PCS, LLC, and TCG Seattle (AT&T Comments).

What follows is a modified version of Table 6 from WITA's Comments. This table shows the rate, including the existing \$6.50 Subscriber Line Charge (SLC), that would be in effect in each company's area if the composite level of intrastate switched access rates is lowered to the composite level of interstate switched access rates.

Table 6
Residential Rate Increase
from Transition of Intrastate Switched
Access Rates to Interstate Levels

Company	Current Rate*	Post Transition Rate**	Post Transition Rate with SLC
TDS (Asotin)	\$17.20	\$33.36	\$39.86
CenturyLink (WA)	\$25.90	\$35.08	\$41.58
CenturyLink (Covache)	\$19.00	\$25.71	\$32.21
CenturyLink (Embarq)	\$16.40	\$22.83	\$29.33
FairPoint (Ellensburg)	\$8.47	\$19.90	\$26.40
FairPoint (YCOM)	\$16.00	\$22.99	\$29.49
Hat Island	\$15.00	\$21.37	\$27.87
Hood Canal	\$13.75	\$26.96	\$33.46
Inland	\$13.80	\$46.16	\$52.66
Kalama	\$13.00	\$21.35	\$27.85
TDS (Lewis River)	\$26.00	\$31.30	\$37.80
TDS (McDaniel)	\$14.30	\$28.65	\$35.15
POTC	\$14.50	\$26.45	\$32.95
Pioneer	\$9.00	\$40.16	\$46.66
Rainier Connect	\$13.75	\$29.31	\$35.81
St. John	\$9.50	\$31.70	\$38.20
Tenino	\$12.00	\$20.66	\$27.16
Toledo	\$30.94	\$49.75	\$56.25
Wahkiakum	\$13.40	\$40.86	\$47.36
Whidbey	\$9.40	\$22.94	\$29.44

*Taken from Exhibit TWZ-3 prepared by Commission Staff Member Mr. Zawislak in Docket UT-081393. The rates include EAS. Where a company has different rates for different exchanges, the rate for the most populated exchange was chosen.

**Transition of composite intrastate switched access rate level to composite interstate switched access rate level.

Note: Loop counts taken from USAC Report HC05, 3rd Quarter 2009. Amount of transition to interstate rate levels calculated using 2009 interstate and intrastate tariffed rates and 2008 intrastate access minutes reported by the Washington Exchange Carrier Association.

In most areas, these are not sustainable customer rate levels. These rate levels would violate the mandate in 47 U.S.C. § 254(b) that rates in rural areas be reasonably comparable to rates in urban areas. These rates would violate the policies established by the Legislature in RCW 80.36.300 that it is the policy of the State to preserve affordable universal telecommunications service and that customers pay only reasonable charges for telecommunications service.

4. Rate Rebalancing Should be Done as a Transition and is Insufficient in Itself to Accomplish Access Reform.

As set out in the revised Table 6, above, rate rebalancing alone will not accomplish access reform. The resulting rates are simply too high. However, WITA recognizes that there is a great reluctance to use a WUSF to maintain rates for some companies at current levels. That is why WITA's Comments proposed establishing a local rate benchmark and allowing a transition up to that benchmark or imputing revenue for USF purposes if a company decided to not raise rates to the benchmark. That should satisfy those carriers who recognize the need for a USF, but argue that rate rebalancing should occur first. For example, that is the position taken by Integra Telecom.¹⁵ Public Counsel also supports the creation of a universal service fund if it is demonstrated to be needed and opposes a flash cut on access reform.¹⁶

WITA advocates the use of a benchmark at the \$16.00 local rate level. That coupled with the existing SLC produces a rate that the customer pays of \$22.50 per month. This is a reasonable benchmark for this purpose. It is a rate level that is consistent with state policies in RCW 80.36.300. The result would also be in line with the goals of federal law in 47 U.S.C. § 254(b).

CONCLUSION

There is a need for a WUSF. That need is now. WITA recommends that the Commission embark upon a path which will lead to new legislation in 2011 creating the WUSF.

¹⁵ Integra Telecom's Response to the WUTC's Questions Concerning Appropriate Universal Service Policies in Washington (Integra Comments).

¹⁶ Initial Comments of Public Counsel at p. 3-4 (need for USF) and p. 2 (access reform).