

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**Rulemaking to Consider Amending)
and Adopting Rules in WAC 480-)
120, Telephone Companies, and)
WAC 480-123, Universal Service, to)
Implement Legislation Establishing)
a State Universal Communications)
Service Program)**

DOCKET UT-131239

**COMMENTS OF THE
BROADBAND COMMUNICATIONS
ASSOCIATION OF WASHINGTON
REGARDING
THE COMMISSION'S
DRAFT RULES**

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Dated: December 20, 2013

**Comments of the Broadband Communications Association of Washington
Regarding the Commission's Draft Rules**

INTRODUCTION

The Broadband Communications Association of Washington (“BCAW”) appreciates this opportunity to provide comments on the Commission’s draft rules, issued December 3, 2013 (“the Draft Rules”), which would implement the State’s Temporary Universal Communications Services Program (“the Program”) established in legislation enacted earlier this year.¹ BCAW commends the Commission and its Staff on continuing to refine the regulations that will govern the program. The Draft Rules in large part are now expressly tailored to achieve the goals of ESS HB 1971, namely, to provide small rural companies with temporary state subsidies to replace federal universal service support and access revenues that have been reduced, while permitting these companies to alter their business plans in an evolving communications market.

As BCAW pointed out in comments submitted regarding the Commission’s initial set of draft rules, issued September 26, 2013, the Program these regulations will implement is a limited universal service fund targeted to small rural incumbent local exchange companies (“ILECs”) to “compensate the ILEC for reduced access revenues after increasing local service rates to a ‘benchmark’ but . . . not make the ILEC ‘whole’ relative to its overall shortfall relative to its total intrastate revenue requirement.”² In doing so, the Program creates a fund that will “serve as a transitional mechanism during which ILECs could make

¹ See Second Engrossed Second Substitute House Bill 1971, Part II, § 201, *et seq.* (“ESS HB 1971”).

² Washington Utilities and Transportation Commission Report Reviewing State Telecommunications Policies on Universal Service, Docket UT-100562 (November 29, 2010), p. 29.

the investments in operational adjustments necessary to further develop their networks and pursue business objectives and opportunities.”³

In addition to comments regarding the Draft Rules generally, the Commission has asked for specific comment on “the revised calculation of support amount for eligible wireline communications providers.” BCAW will first address the Commission’s request for specific comments on the proposed “glide path” level of support and then turn to general comments regarding the Draft Rules.

SPECIFIC COMMENT REGARDING THE COMMISSION’S REVISED SUPPORT CALCULATION

The Notice of Opportunity to File Written Comments, at page 2, issued December 3, 2013, states:

The latest proposed draft provides a transitional ‘glide path’ level of state support from the Universal Communications Services Program as an off set for certain reductions in federal and state support to such providers. The Commission seeks comment on the approach reflected in the revised draft rule as well as alternative ‘glide path’ proposals that provide a reasonable level of Universal Communications Services Program support given the statutory duration of the fund.

The revised support calculation rule to which the Notice refers appears in subsection (2) “Calculation of support amount” of section III WAC 480-123-___ “Eligibility and distributions from the program.” Subsection 2(a) provides that an eligible wireline provider will receive annually the equivalent of the amount that provider received in 2012 from what is commonly referred to as the “traditional universal service fund” (“TUSF”), a rate element added to access charges and administered by the Washington Exchange Carriers Association. As BCAW has noted in prior comments, it is the understanding of the parties that the TUSF will be terminated

³ *Id.*

and replaced with support from the Program. Therefore, BCAW agrees that the equivalent of an eligible provider's 2012 TUSF support should be a component of the Program support calculation.

Subsection 2(b) provides that an eligible provider will also receive on an annual basis support from the Program equal to the annual five percent downward adjustment the provider will experience each year under the federal Connect America Fund. This component of the support calculation is also consistent with the legislative goal of providing rural ILECs with temporary assistance relating to federally-mandated reductions to federal universal service support and access revenues. BCAW, therefore, supports the support calculation draft rule.

BCAW agrees with the Commission's approach to the calculation of support reflected in the Draft Rules. This support calculation provides rural ILECs with exactly the type of transitional glide path support that was contemplated by the Legislature when it passed ESS HB 1971. BCAW does not believe the Commission needs to consider any alternative approaches because the support calculation proposed in the Draft Rules will provide a "reasonable level of Universal Communications Services Program support given the statutory duration of the state fund."

GENERAL COMMENTS REGARDING THE DRAFT RULES

As noted in the introduction to these comments, the Commission's Draft Rules do an admirable job of capturing and effectuating the intent of the Legislature. BCAW's comments point out several areas in the Draft Rules that are particularly well-crafted for this purpose. In addition, BCAW provides a limited number of recommended edits to ensure that

the regulations the Commission adopts comport with the express terms of the Legislation and with the underlying legislative intent.

Benchmark: WAC 480-123-___ (Prerequisites for requesting program support)

In its Initial Comments, dated August 2, 2013, BCAW noted that “[t]he benchmark should reflect what the average consumer pays for service in the State, whether that service is purchased from ILECs, wireless providers, competitive local exchange carriers (“CLECs”) or cable companies.” In its initial set of draft rules, issued September 26, 2013, the Commission proposed that a provider’s residential rates would need to be a certain percentage above the Federal Communications Commission’s (“FCC”) local urban rate floor in order to be deemed eligible for Program support. BCAW supported that position because it allowed the Commission to establish a benchmark that would better reflect the average price paid for residential service throughout the state than the rate reflected in the FCC’s local urban rate floor.

The Commission has revised subsection 1(d) of section I (Prerequisites for requesting program support) to eliminate that particular requirement. However, the revised language now reads:

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

(Emphasis added.)

BCAW reads this language as an express requirement that *this Commission* set the benchmark rate annually and that in doing so the Commission will use the FCC's benchmark as the starting point. BCAW supports this approach as it will still allow the Commission to set a benchmark that reflects the average price consumers pay for service throughout the State, regardless of provider or technology – a rate level that is substantially higher than the current FCC local urban rate floor.⁴

Petitions for Eligibility: WAC 480-123-___ (Petitions for eligibility to receive program support)

In subsection (1)(h) of section II (Petitions for eligibility to receive program support), the Draft Rules state that a company officer must certify that the provider “will continue to provide communications services pursuant to its tariffs” The certification should specifically refer to basic residential services, consistent with the intent of the Program.

Return on Equity: WAC 480-123-___ (Eligibility and distributions from the program)

In subsection 1 of section III (Eligibility and distributions from the program), the Draft Rules provide a formula for determining whether a provider has demonstrated “that its financial circumstances are such that its customers are at risk of rate instability or service interruptions or cessations absent a distribution” The Draft Rule states that in making the 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”

BCAW recommends that the Commission clarify that it will consider the provider’s consolidated

⁴ See Comments of the Broadband Communications Association of Washington Regarding the Commission’s Initial Draft Rules, dated October 10, 2013 (filed in docket UT-131239) (“BCAW 10/10 Comments”), pp. 6-8.

return on equity, including both regulated and non-regulated activities. This would ensure that the language in the rule comports with the approach this Commission has taken in estimating the need for and size of the fund. As BCAW recommended in its Initial Comments, dated August 2, 2013:

. . . . the Commission should update the earnings review that it previously conducted, the summary of which was discussed at the Commission's August 14, 2012 Workshop in docket UT-100562, entitled "Overview of Staff's Earning Review and State USF Analysis" ("Earnings Review Overview").

That earnings review included a two-step process in which the second step was a review of the provider's consolidated return on equity.

Accordingly, BCAW recommends the Commission revise the language in the Draft Rules to read as follows:

WAC 480-123-___ (1) Eligibility.

* * * *

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 *consolidated* return on equity *including regulated and non-regulated activities*, the status of the provider's existing debt obligations, and other relevant factors

Proper use of support: WAC 480-123-___ (Reporting requirements)

In subsection 1(b) of section IV (Reporting requirements) the Draft Rules would require providers that receive program support to report to the Commission "[d]etailed information on how the provider used program support other than providing basic telecommunications services". This reporting requirement suggests that program support can legitimately be utilized for the provision of non-basic telecommunications services.

As BCAW pointed out previously,⁵ this is contrary to the express mandate of ESS HB 1971, which states in pertinent part: “[t]he purpose of the program is to support continued provision of basic telecommunications service”. Program support should not be used for other purposes. Accordingly, BCAW recommends the Commission substitute “for” in place of “other than” for this reporting requirement, so as not to suggest that use of the funds for other than basic telecommunications services would be appropriate.

Similarly, in subsection 1(f) of section IV, the Draft Rules would require providers that receive program support to 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.*” (Emphasis added). As BCAW recommended previously,⁶ and for the reasons set forth above, BCAW recommends the Commission delete the italicized language from the draft rule.

In recommending these revisions, BCAW is not suggesting that providers receiving support from the Program should refrain from investing in the transition from the primary provision of voice services to broadband services. Such a transition is recognized as one of the reasons for the Program. However, Program support is intended to subsidize legacy basic telecommunications services only, not broadband services. Undoubtedly, a provider receiving support for basic telecommunications service will then have a greater ability to use its own resources to invest in broadband. It is in this manner that Program support for basic telecommunications service aids in the transition to broadband.

⁵ See BCAW 10/10 Comments, pp. 8-9.

⁶ *Id.*

Report to the Legislature: WAC 480-123-___ (Reporting requirements)

In subsection 1(h) of section IV, the Draft Rules include a “catch all” provision for such additional information as may be needed for the Commission to “provide a report to the legislature concerning the program.” ESS HB 1971 requires such a report in 2017. While the proposed rule is needed, it does not go far enough. In its Initial Comments filed August 2, 2013 and again in the BCAW 10/10 Comments, BCAW recommended that “prior to compiling the required report, the Commission open a proceeding to receive input from all stakeholders in the form of workshops and written comments (and evidentiary hearings if needed).” BCAW continues to urge the Commission to include such a provision in the rules.

Stakeholder Comments: WAC 480-123-___ (Reporting requirements)

In subsection (4) of Section IV, interested persons are given an opportunity to submit information or comments on “any of the issues on which the providers must report under this rule.” To allow time for reviewing any available submissions from providers, BCAW suggests that the deadline for submissions by interested persons be extended to September 15th or some other date after August 1st consistent with both the Commission’s administrative needs and an adequate opportunity for review and comment.

Records: WAC 480-123-___ (Commission compliance review of accounts and records)

In section V, the Draft Rules require that “[e]ach 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.” In the BCAW 10/10 Comments, BCAW recommended that the requirement be expanded to include record retention to demonstrate that the support was also *used* consistent with the requirements of

the statute and commission rules and orders. BCAW continues to recommend that the Draft Rules be revised to read as follows: “[e]ach provider shall retain all records required to demonstrate to the commission that the support the company received *and the manner in which it was utilized* was consistent with RCW 80.36. ___ and commission rules and orders.”

Respectfully submitted this 20th day of December, 2013.

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