

Brooks E. Harlow
brooks.harlow@millernash.com
(206) 777-7406 direct line

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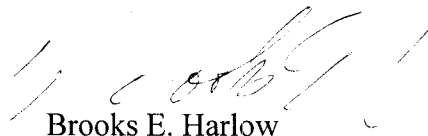
Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street NE, Suite 215
Salem, Oregon 97308

Subject: Docket UM 1217

Dear Filing Center:

Enclosed, for filing, are an original and five copies of the Rebuttal Brief Of RCC and U. S. Cellular Corporation in the above-referenced docket.

Very truly yours,



Brooks E. Harlow

cc w/enc: Parties of Record

CERTIFICATE OF SERVICE

UM 1217

I hereby certify that true and correct copies of the foregoing was served on the following by electronic mail and by first class U.S. Mail, postage prepaid in sealed envelopes to the following:

Charles L. Best
Frontier
P. O. Box 8905
Vancouver, WA 98668-8905
Cbest@ELI.Net

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
Rickfinn@localaccess.com

Alex M. Duarte
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204
Alex.Duarte@qwest.com

Sheila Harris
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204
Sheila.Harris@qwest.com

Barbara Young
Government Affairs Manager
Sprint
902 Wasco Street, A0412
Hood River, OR 97031
barbara.c.young@sprint.com

Stacey A. Klinzman
VCI Company
3875 Steilacoom Blvd. SW, #A
Lakewood, WA 98499
staceyk@vcicompany.com

Kay Marinos
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148
kay.marinos@state.or.us

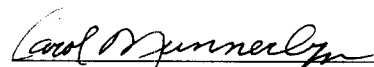
Timothy J. O'Connell
Stoel Rives, LLP
3600 One Union Square
600 University Street
Seattle, WA 98101
tjoconnell@stoel.com

Marty Patrovsky
Wantel, Inc.
1016 SE Oak Ave.
Roseburg, OR 97470
marty.patrovsky@comspanusa.net

Michael T. Weirich
Department of Justice
Regulated Utility & Business Section
1162 Court St. NE
Salem, OR 97301
Michael.Weirich@state.or.us

Mark P. Trincherro
Davis Wright Tremaine LLP
1300 SW Fifth Ave., Suite 2300
Portland, OR 97201
Marktrincherro@dwt.com

Dated this 1st day of May, 2006, at Seattle, Washington.



Carol Mummerlyn, Secretary

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

OREGON PUBLIC UTILITY COMMISSION

Staff Investigation to Establish Requirements
for Initial Designation and Recertification of
Telecommunications Carriers Eligible to
Receive Federal Universal Service Support

Docket No. UM 1217

REBUTTAL BRIEF OF RCC AND USCC

I. OVERALL

A. WHAT POLICY OBJECTIVES SHOULD THE COMMISSION ATTEMPT TO ACHIEVE THROUGH THIS DOCKET?

There is general agreement among the parties at a high level regarding the policy objectives that the Commission should attempt to achieve in this docket. As is often the case, “the Devil is in the details.” Thus, the parties differ on how best to implement the objectives and quibble about how to define the objectives. For example, Staff opposes the two additional policy objectives proposed by RCC witness Don Wood. Staff’s Opening Brief at 2 (see RCC-USCC/4, Wood/6).

Regarding Mr. Wood’s recommendation that a Commission objective should include “complete and thorough accountability of the use of all USF support received by both competitive ETCs and ILEC ETCs,” the Staff asserts this objective is “subsumed” under its recommended objective No. 3. Staff’s Opening Brief at 2-3. However, RCC and USCC do not believe that the Staff’s recommendations in this docket provide a “complete and thorough”

REBUTTAL BRIEF OF RCC & USCC - 1

1 accountability for the use of USF support, because the Staff recommends omitting an annual
2 reporting requirement for ILECs that CETCs must report.¹ The RCC/USCC position on this is
3 addressed in Section III A. 3, below. In reviewing the arguments regarding Issue III A. 3, the
4 Commission should bear in mind that the RCC/USCC position is in support of a policy objective
5 that Staff states it supports, at least in the abstract.

6 Staff opposed Mr. Wood’s final policy recommendation because it found his use
7 of “market power and position” to be unclear. Mr. Wood’s recommendation merely intended to
8 reflect that annual reporting requirements need not impose “parity for parity’s sake.” Thus, for
9 example, RCC and USCC do not advocate that ILECs must file trouble ticket reports in the same
10 way as CETCs when existing ILEC reporting requirements accomplish the same purpose.
11 Likewise, RCC and USCC oppose OTA’s recommendation that wireless ETCs must comply
12 with the Commission’s existing wireline service quality rules because wireless customers have
13 numerous competitive choices, while many wireline customers do not have any competitive
14 options for their wireline service. Staff agrees with RCC and USCC on this issue. Thus, it does
15 not appear that the Staff opposes this policy objective in substance.

16 **II. INITIAL DESIGNATION OF ETCs**

17 **A. WHAT SPECIFIC BASIC ELIGIBILITY REQUIREMENTS SHOULD THE** 18 **COMMISSION ADOPT FOR THE INITIAL CERTIFICATION OF ETCs?**

- 19 1. Should the Commission adopt any, or all, of the requirements proposed by the
20 FCC in Order 05-46 (“ETC Report and Order”)?

21 There does not appear to be any meaningful substantive disagreement among the
22 parties on this issue.

- 23 2. Should the Commission adopt other basic eligibility requirements?

24 ¹ Staff describes the RCC/USCC argument as requiring that ILECs file “network improvement
25 plans.” This is a misunderstanding of the RCC/USCC recommendation that Section III A. 3.,
26 below, should clear up. RCC/USCC recommend that ILECs file information during the annual
recertification process that would demonstrate how much support was received and how support
was used, as well as how much support is expected in the coming year, and how it will be used.
RCC/USCC are not asking the Commission to require the ILECs to submit the same type of two
year network improvement plan that CETCs would file.

1 There is some disagreement among the parties on this issue regarding Staff's
2 proposal for seven additional basic eligibility requirements. As RCC and USCC noted in their
3 opening brief, they do not oppose Staff's recommendations but do not have sufficient interest in
4 them to submit further briefing on the issue. The major dispute regarding this issue from the
5 perspective of RCC and USCC arises from OTA's recommendation that the Commission adopt
6 wireline quality of service standards for wireless ETCs. No other parties support this
7 recommendation and Staff joins RCC and USCC in actively opposing it.

8 OTA's proposal to apply an unspecified, customized version of the Commission's
9 quality of service rules to wireless ETCs suffers from numerous infirmities. First and foremost,
10 is that despite OTA devoting more pages in its brief to this issue than any other issue in this
11 docket² OTA is unable to articulate why it would be in the public interest to do so. To put it
12 bluntly, OTA's recommendation is a solution in search of a problem.

13 OTA's rationale on service quality seems to be summed up as follows:

14 Wireline ETCs are subject to quality of service standards. There is no reason not
15 to have wireless ETCs subject to equivalent standards.

16 OTA Opening Brief at 2. In fact RCC established in the record, through its witnesses, that there
17 are several reasons NOT to subject competitive carriers to requirements designed to protect
18 consumers from monopoly business practices.³ When consumers have choices, regulatory
19 micromanagement is unnecessary and, if OTA's members are no longer monopoly carriers as a
20 result of new ETC designation, they too may properly seek less regulation of their business
21 practices.

22 OTA's justification is nothing more than a "parity for parity's sake" argument that the
23 Joint Board and the FCC have urged states to reject. *See, e.g.*, Exhibit RCC-USCC/4, Wood/33.
24 Through testimony, Mr. Wood and Mr. Otto established that adopting such rules would drive up

25 _____
26 ² Indeed, OTA's discussion of its quality of service recommendations substantially exceed this
discussion of the disaggregation issue.

³ These reasons were discussed in the RCC/USCC Opening Brief and will not be repeated here.

1 wireless carriers' costs significantly—thereby diverting money that could be used to add cell
2 sites, upgrade networks, and take other steps that *would* improve wireless service—with no
3 corresponding benefits. *See, e.g.*, Exhibits RCC-USCC/1, Wood/17-18; RCC-USCC/4,
4 Wood/14-15 & 33-34; RCC/3, Otto/6-8; Transcript at 72-73. This testimony was unrebutted,
5 other than a sprinkling of sarcastic remarks in OTA's brief alleging that some wireless carriers
6 are not providing service quality (*See, e.g.*, OTA Opening Brief at n.24).⁴

7 OTA failed to establish on the evidentiary record or in its brief that the public
8 will receive any benefit whatsoever by imposing detailed and extensive quality of service rules
9 on wireless ETCs. Accordingly, in the absence of a demonstration of a service quality problem,
10 OTA's recommendation to harm the public interest by siphoning funds from beneficial projects
11 to achieve "parity for parity's sake" will not serve the public interest. OTA's recommendation
12 should be denied for that reason alone.

13 OTA attempts to justify its recommendation by pointing to a handful of other
14 states in which wireless ETCs have been subjected to quality of service standards, while failing
15 to mention that these represent the exception, not the rule. If this Commission is going to follow
16 the lead of other state commissions, then it should look no further than its neighbor to the north.
17 Attached as Appendix A is a copy of the memorandum of the "ETC Rulemaking Team" of the
18 Washington Utilities and Transportation Commission ("WUTC") to the Commissioners dated
19 February 24, 2006 regarding Docket No. UT-053021. In that docket, the Washington
20

21 ⁴ In his reply testimony Mr. Wolf stated that, "A consumer should not receive a lower quality of
22 service simply because they are served by a competitive ETC . . ." Nowhere, however, does
23 Mr. Wolf introduce any record evidence to show that wireless ETCs are in fact delivering a
24 lower quality of service than ILECs in Oregon. Arguably, wireless service is far superior, given
25 that it works throughout a large geographic area, rather than just within a premise. Indeed,
26 recent FCC industry surveys indicate the opposite. In March 2005, for example, the FCC
released a report of informal consumer complaints showing that, even though America now has
more wireless subscribers than wireline subscribers, wireless service generated fewer than half
the number of complaints as wireline service. *Report on Informal Consumer Inquiries and
Complaints, Fourth Quarter Calendar Year 2004* (rel. March 4, 2005) at p. 9. Moreover, no
OTA witness ever addressed the cost impact on wireless ETCs of complying with Mr. Wolf's
recommendations.

1 Independent Telephone Association (“WITA”)⁵ argued that the WUTC should hold wireless
2 ETCs to many of the wireline service quality standards contained in Wash. Admin. Code Chapter
3 480-120. *See* Appendix A at 31. After receiving the Staff’s memorandum and
4 recommendations, the Washington Commission voted to issue a “CR 102” notice and stated an
5 intention to adopt the draft rules reflected in attached Appendix A. *See* CR 102 Notice,
6 Appendix B hereto. Although the rules are not yet final, the CR 102 notice and proposed rules
7 reflect that the Washington Commission has effectively rejected WITA’s argument that wireline
8 service quality standards should be applied to wireless ETCs. The proposed Washington rule
9 merely requires wireless ETCs to commit to comply with the CTIA consumer code for wireless
10 service, as Staff, RCC, and USCC recommend in this docket. Appendix A at 18.

11 Ignoring the proposed Washington rules, OTA first cites an Arizona
12 recommended order regarding an ETC application by Western Wireless. *See* Appendix A to
13 OTA Opening Brief. OTA overlooks the fact that Western voluntarily accepted the application
14 of certain service quality rules as recommended by the Staff of the Arizona Commission. *Id.*,
15 ¶ 48. Thus, lacking any explanation of what evidence or negotiations were behind this
16 uncontested proposal, the draft Arizona order provides no meaningful guidance for this
17 Commission in light of the extensive record in this docket against OTA’s recommendations.

18 Second, OTA cites the Minnesota Public Utility Commission decision rejecting
19 an application for ETC designation by Nextel Partners. Appendix B to OTA Opening Brief.
20 Again, the Minnesota order provides no support for OTA’s recommendation to impose on
21 wireless carriers—in a top down fashion—service quality rules that were designed for a wireline
22 networks. Rather, the Minnesota order merely required that if Nextel refiled its application⁶ it
23 should provide a copy of a customer service agreement with a description of its dispute
24

25
26 ⁵ WITA is the Washington equivalent of the OTA.

⁶ Which it was entitled to do since denial of its application was without prejudice.

1 resolution policies, network maintenance policies, procedure for resolving service interruptions,
2 and similar information to bolster its own claim “to provide high quality of services.”

3 We are constrained to note that OTA’s reference to the Minnesota decision is
4 significantly outdated, as Minnesota has since adopted rules governing the designation and
5 recertification of carriers seeking federal high-cost support.⁷ Rather than adopt service quality
6 rules or retrofit existing wireline rules on wireless ETCs, the PUC simply adopted the FCC’s
7 guidelines with some modifications.⁸ Regarding service quality, the new rules track the FCC’s
8 guidelines by requiring ETCs to commit to follow the CTIA Consumer Code and to demonstrate
9 that they will satisfy “applicable” consumer protection and service quality standards. Notably,
10 the Minnesota PUC did *not* promulgate new service quality rules applicable to wireless ETCs,
11 nor did it make any wireline rules apply to wireless ETCs. This is a far different approach from
12 what OTA recommends in this case, which is to impose one-size-fits-all rules.

13 Oklahoma is apparently the only state out of 50 that has actually adopted service
14 quality rules for wireless ETCs as OTA recommends here.⁹ If the mere fact that one state has
15 adopted rules consistent with OTA’s recommendations were persuasive, then the fact that 49
16 other states apparently have not adopted such rules would logically be many times more
17 persuasive. In fact, we are aware of at least two states – Missouri and West Virginia – that
18 initially considered proposals to adopt detailed ILEC-style service quality rules for wireless
19 ETCs but ended up rejecting such proposals, opting instead to follow the FCC’s recommendation
20 to accept a commitment to adhere to the CTIA Consumer Code and report the number of

21 ⁷ In the Matter of Possible Changes to the Commission’s Annual Certification Requirements
22 Related to Eligible Telecommunications Carriers’ Use of the Federal Universal Service Support,
23 Docket No. P-999/M-05-741 (July 21, 2005); In the Matter of a Commission Investigation to
24 Consider Adopting the Federal Communications Commission’s Standards for Designating
25 Eligible Telecommunications Carrier, Docket No. P-999/M-05-1169 (Oct. 31, 2005).

24 ⁸ Specifically, it required a two-year network improvement plan and permitted reporting
25 network improvements on a service-area basis rather than by wire center.

25 ⁹ RCC and USCC are not aware of any state other than Oklahoma that has adopted rules such as
26 OTA recommends. If such other rules existed, no doubt OTA would have brought them to the
Commission’s attention, as illustrated by the fact that OTA attempts to bootstrap the Arizona and
Minnesota orders into the equivalent of rules.

1 consumer complaints per 1,000 handsets.¹⁰ It is also noteworthy that the ILEC-style rules
2 ultimately rejected in Missouri had been modeled after the singularly unworkable Oklahoma
3 example OTA now cites.

4 Fourth, OTA claims that “long-term” contracts that wireless consumers enter into
5 as preventing consumers from “voting with their feet.” According to all available statistics,
6 roughly 2% of all wireless consumers change carriers each month, for a long list of reasons,
7 including lower prices, better coverage, more desirable features, and customer service.¹¹ That
8 statistic hardly supports OTA’s unsupported allegation that contracts are preventing consumers
9 from choosing their carrier of choice. In the ILEC world, other than consumers who (1) move
10 away, or (2) choose wireless service as a substitute, there is no such thing as customer choice.
11 Particularly in rural areas, consumers of wireline service have no ability to choose an alternative,
12 simply because the *quantity* of service (i.e. cell sites) is not sufficient to enable that choice. In
13 terms of a barrier to consumer choice, so-called “long-term” contracts are nothing compared to
14 the problems rural consumers face when confronted with monopoly ILEC service.

15 As predicted, OTA notes that Mr. Otto admitted that RCC has internal service
16 quality standards that parallel some of the Commission’s service quality rules.¹² OTA Opening
17 Brief at 7-8. OTA admits, however, that the standards are different. *Id.* Moreover, OTA admits

18 ¹⁰ In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible
19 Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund
20 Support, Case No. TX-2006-0169, Final Order of Rulemaking (Mo. PSC, March 8, 2006) at p. 2;
21 General Investigation Regarding Certification for Federal Universal Service Funding for Eligible
22 Telecommunications Carriers in West Virginia, Case No. 05-0714-T-GI (May 17, 2005) at p. 7.

23 ¹¹ See, E.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of*
24 *1993, Annual Report and Analysis of Competitive Market Conditions With Respect to*
25 *Commercial Mobile Services, Tenth Report*, WT Docket No. 05-71 (rel. Sept. 30, 2005) at ¶ 149
26 (“Most carriers” report churn of 1.5 to 3% per month).

¹² OTA asserts that Mr. Otto stated “there would be no objection to using some sort of service
request standard and reporting that to the Commission from an operational standpoint.” *Id.*
OTA’s argument implies something far broader than Mr. Otto’s testimony, which was
specifically limited to the six-step process and specifically *excluded* the policy perspective. See
Transcript at 13. As a matter of policy, RCC and USCC strenuously oppose OTA’s
recommendation. Moreover, RCC has had only one request under in the six-step process in
Oregon and it is underway. Transcript at 44-46. Adopting a rule with such limited experience
would be imprudent and unnecessary.

REBUTTAL BRIEF OF RCC & USCC - 7

1 that the Commission cannot simply impose all of its existing service quality requirements on
2 wireless carriers, because they “may need to be modified somewhat.” *Id.* At 3. *See also*,
3 Transcript at 46-48 (Otto).

4 If OTA were serious about its recommendation, it should have proposed a specific
5 draft of standards in its opening testimony so that an adequate record could have been developed
6 on the specific recommendations. Instead, OTA merely throws out hints and suggestions and
7 leaves it to the Commission to craft an entire framework of wireless ETC service quality rules in
8 its order. This is not an effective way to develop rules. The Commission, in drafting its final
9 order, would be left to guess exactly what it is that OTA wants. Moreover, the Commission does
10 not have an underlying record developed that is needed to accurately gauge the impact its rules
11 would have on various wireless carriers. OTA’s recommendation should be rejected on
12 procedural grounds as well as for the lack of any substantive support.

13 The far better course is to adopt the RCC/USCC proposal and continue to monitor
14 overall service quality going forward. We strongly believe that the most critical component of
15 service quality is service *quantity*. The addition of plant, in the form of new cell sites, will
16 improve service quality far more than any rule this commission could develop, given that each
17 wireless company in the state must either provide consumers with quality service or risk losing
18 them.

19 3. Should the same requirements apply to applications for designations in rural and
20 non-rural ILEC service areas?

21 RCC and USCC stand on their opening brief on this issue and have nothing
22 further to add by way of rebuttal.

23 4. Should the same requirements apply regardless of the type of support (traditional
24 high-cost, interstate access/common line, low-income) that the ETC will receive?

25 There does not appear to be any meaningful substantive disagreement among the
26 parties on this issue, except that Qwest continues to argue that carriers receiving only IAS

1 support should be treated differently. This argument is discussed further below in connection
2 with Issue III A. 4.

3 **B. WHAT SPECIFIC CRITERIA SHOULD THE COMMISSION ADOPT TO**
4 **DETERMINE WHETHER DESIGNATION OF A COMPETITIVE ETC IS IN**
5 **THE PUBLIC INTEREST, AS REQUIRED BY SECTION 214(E)(2) OF THE**
6 **TELECOM ACT?**

7 1. Should the Commission adopt the criteria proposed by the FCC in the *ETC Report*
8 *and Order*?

9 As noted in the RCC/USCC Opening Brief, the parties are mostly in agreement
10 that the Commission should adopt the public interest criteria used by the FCC in its *ETC Report*
11 *and Order*. See, e.g., Exhibits RCC-USCC/1, Wood/26; Staff/1, Marinos/55-56; OTA/1,
12 Wolf/16-17; and Verizon/2, Fulp/2. The primary issue in dispute is OTA's recommendation that
13 a "creamskimming test" be required in rural ILEC areas. RCC and USCC agree with Staff's
14 recommendation that the Commission dispense with a "creamskimming" test as a public interest
15 criterion in the designation of CETCs. See Staff/1, Marinos/62 and Staff/4, Marinos/19-20.

16 The RCC/USCC Opening brief addresses this issue at length and will not be
17 repeated here.¹³ However, there are a few arguments in OTA's Opening Brief that warrant
18 comment.

19 First, OTA's reliance on the Nebraska, Nevada and Idaho commission orders
20 cited in its brief is misplaced. None of these orders found that creamskiimming was actually
21 occurring, but merely that there may be a *potential* for creamskiimming. As Mr. Wood notes in
22 his reply testimony:

23 Given the fact that no documented cases of actual "creamskiimming" have been
24 found, the issue continues to consume an inordinate amount of attention in
25 designation proceedings and rulemakings. As Ms. Marinos correctly points out,
26 "fear that rural ILECs will somehow be harmed is a CETC serves only a portion
of their study area has little basis in reality", and "under the current support
system for rural carriers, it is difficult to see how a rural ILEC's financial

¹³ RCC/USCC Opening Brief at pp. 10-12.

1 condition would be significantly impacted if another carrier, a CETC, were also
2 to receive support in the same area.”¹⁴

3 As explained at length in the RCC/USCC Opening brief, there remains no hard evidence to
4 support OTA’s claim that creamskimming is a real threat or a viable business plan for a CETC.
5 Exhibit RCC-USCC/1, Wood/30. The record instead demonstrates that there is little
6 correspondence between the FCC’s density-based creamskimming test and actual cost variations.

7 Mr. Wood provided a regression analysis based on a cost study performed by Citizens
8 Telecommunications Company that was produced in a discovery response by OTA to
9 RCC and USCC. The regression analysis showed that in the wire centers studied only
10 about 40% of the variation in total cost can be explained by differences in line density.
11 Thus, even assuming that population density corresponds to line density, the FCC’s
12 creamskimming analysis is really of very little use, particularly considering that no
13 examples of creamskimming can be documented by OTA. The Commission Staff
14 witness agreed with RCC and USCC.

15 *See* Staff/4, Marinos/19-20.

16 Second, with regard to Nebraska , OTA again relies on outdated case law of
17 questionable continued validity. In the 2004 Nextel case, the PSC largely based its
18 creamskimming analysis not on the applicant’s FCC-licensed service area, but on radio
19 frequency coverage maps provided by the applicant. Finding that the company had failed to
20 show specific plans for expanding its network, the PSC concluded that its coverage would not
21 extend beyond the more densely populated areas. This stood in stark contrast to the FCC’s
22 approach, which considers the area for which the applicant is *requesting designation*, not the
23 area over which it provides signal coverage at the time of application.¹⁵

24 In a more recent decision, issued several months after the release of the FCC’s
25 *ETC Report and Order*, the Nebraska PSC issued an order granting ETC status to N.E. Colorado

26 ¹⁴ RCC-USCC/4, Wood/42.

¹⁵ *See Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1578 (2004)(“*Virginia Cellular*”)(“[F]or reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a *wireless carrier's license* covers. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.”)(footnote omitted, emphasis added).

1 Cellular, Inc. d/b/a Viaero Wireless.¹⁶ In that case, the company similarly did not provide signal
2 coverage in large portions of rural ILEC study areas. In contrast to the Nextel order, however,
3 the PSC based its creamskimming analysis on a comparison of relative population densities
4 inside and outside the applicant's requested ETC service area, not its current signal coverage
5 area.¹⁷ By granting ETC status to Viaero in these circumstances, the PSC effectuated a policy
6 shift regarding creamskimming which was more in line with the FCC's approach. Had the PSC
7 applied the FCC's creamskimming test in the Nextel case, the PSC's creamskimming analysis
8 would have yielded a different result. Thus, OTA's creamskimming arguments do not find
9 support in Nebraska case law.

10 Third, the rural ILECs whose study areas were at issue in the Nevada proceeding
11 had not disaggregated their support below the study area level. Because RCC and USCC
12 advocate targeting support to the wire center level, the referenced Nevada case is inapposite here.

13 To our understanding, Idaho remains one of only two states that have not yet
14 designated a CETC anywhere within the state, some ten years after the 1996 Act. Their
15 regulatory posture has not encouraged competitors to invest there, leaving Idaho consumers
16 funding carrier networks in nearby states, and more important, Idaho's wireless consumers
17 largely subsidize wireline networks in the state. We think any example that has dampened
18 consumer benefit serves to make the RCC/USCC case for sensible regulation.

19 In this proceeding, Staff, RCC and USCC all advocate that the Commission
20 require the ILECs disaggregate to the wire center level. The FCC has previously acknowledged
21 that the disaggregation rule effectively eliminates the creamskimming issue, stating:

22
23 Rural telephone companies, however, now have the option of disaggregating and
24 distributed in a manner that ensures that the per-line level of support is more

25 ¹⁶ N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, Application No. C-3324 (Oct. 18,
26 2005)("Viaero Nebraska Order").

¹⁷ See *id.* at p. 11.

1 closely associated with the cost of providing service. Therefore, any concern
2 regarding “creamskimming” of customers that may arise in designating a service
3 area that does not encompass the entire study area of the rural telephone
company has been substantially eliminated.¹⁸

4
5 Thus, OTA’s reliance on these state proceedings is misplaced.¹⁹

6 The FCC’s more recent conclusion that disaggregation may not fully eliminate
7 creamskimming concerns, quoted in OTA’s Opening Brief, is a vague statement which makes
8 little sense, and should not dissuade the Commission from adopting the Staff position.
9 Moreover, OTA’s claim that the FCC’s ruling in March of 2005 was based on a “much more
10 complete record” indicates it could not have read the FCC’s record. We have been unable to
11 find a single ILEC having presented any evidence before the FCC to demonstrate any actual
12 creamskimming effects. As Mr. Wood explains, the FCC adopted this conclusion based on no
13 record evidence, and appears to contradict itself in the same order when it concludes that
14 creamskimming is unnecessary in non-rural incumbent territories because their support is
15 distributed to the wire center level based on forward-looking cost models.²⁰

17 Mr. Wood also examined at length the FCC’s rationale for the difference between
18 its conclusions relating to non-rural and rural ILECs and concluded that the reasons the FCC
19 cites are removed when a rural ILEC disaggregates support to the wire center level.
20

21 ¹⁸ See, *Petitions for Reconsideration of Western Wireless Corporation’s Designation as an*
22 *eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration*, 16
FCC Rcd 19144, 19149 (2001).

23 ¹⁹ With regard to the Idaho order cited by OTA, two of the three affected rural ILECs had not
24 disaggregated support. The other ILEC, Citizens Telecommunications of Idaho, had, in fact,
25 disaggregated its support to the wire-center level. Nonetheless, the PUC concluded that “even
though [the applicant] will be serving the lower cost areas . . . it would still receive USF support
26 based on the incumbent’s total cost, including the high cost areas.” OTA Opening Brief at App.
F, p. 18. Given that the Idaho commission’s findings are erroneous, OTA’s reliance on
conclusions issuing from that finding is misplaced.

²⁰ RCC-USCC/1, Wood/31 (quoting *ETC Report and Order* at ¶52)

1 While I fully agree with the FCC’s conclusion that the disaggregation of support
2 at the wire center level effectively eliminates even the potential for
3 creamskimming in areas served by non-rural ILECs, it is unclear why the
4 disaggregation of support in rural ILEC areas would not achieve the same result.
5 The FCC has identified two distinctions that it believes are important: (1) in
6 non-rural areas, “support is targeted at the wire center level based on relative
7 cost, thereby calculating high-cost support on a more granular basis,” and (2) the
8 non-rural mechanism “uses a forward-looking cost model to distribute support to
9 individual wire centers.” These distinctions exist if, but only if, the rural ILEC
10 has *not* chosen to disaggregate support.²¹

11 OTA’s example purportedly demonstrating the possibility of a “windfall” is rebutted by
12 simply answering the question OTA posits in its brief, namely, “why should the support to a
13 CETC double after the fact of designation as an ETC just because of disaggregation?”²² Because
14 the CETC, at the time of designation, was being under-subsidized in the ILECs’ high-cost areas.
15 For the same reason, CETC support in *low-cost* areas should be reduced after the fact as a result
16 of disaggregation. The entire purpose of disaggregation is to more accurately target support to
17 high-cost areas so as to accomplish two objectives: (1) reduce or eliminate subsidized
18 competition in areas that are low-cost to the ILEC, and (2) increase the subsidy available to
19 competitors in areas that are high-cost to the ILEC so as to provide competitors with the
20 appropriate incentive to build facilities in rural areas.

21 OTA would have the Commission blindly follow the FCC, even where the FCC’s
22 recommendation is not well-reasoned. The entire purpose of this proceeding, however, is for the
23 Commission to determine *which*, if any, of the FCC recommended criterion to follow when it
24 acts under its independent authority pursuant to Section 254 of the Act. While many of the
25 FCC’s recommendations have merit and should be adopted by this Commission, the

26 ²¹ RCC-USCC/1, Wood/32.

²² OTA Opening Brief at 16.

1 creamskiimming test is not one of them, especially if the Commission accepts Staff’s
2 recommendation to require rural ILECs to disaggregate support to the wire center level.²³

3
4 2. Should the criteria differ between designations in rural and non-rural ILEC
5 service areas?

6 But for the issue of whether to apply a creamskiimming test to ETC designations
7 in rural ILEC study areas (which is addressed fully under Issue II.B.1., above), the parties appear
8 to be in general agreement that the criteria should otherwise be the same.

9 3. Should the Commission require an ETC to include entire ILEC wire centers in its
10 service area, regardless of the boundaries of its licensed area?

11 The parties appear to agree that an ETC should include entire ILEC wire centers
12 in its ETC service area, provided that applicants for ETC designation will be afforded an
13 opportunity to “demonstrate how granting an exception would serve the public interest in that
14 specific instance.” Staff/4, Marinis/21, *see also*, TR at 155. The parties also appear to agree
15 that this rule should be applied prospectively only. Staff has expressly recognized this fact and
16 has clarified that, if the Commission accepts its recommendation, it would not apply the new
17 requirement retroactively. TR at 154. No other party has raised any objection.

18 4. Whether and to what extent the Commission should require incumbent local
19 exchange carriers to disaggregate and target support in a different manner, as
20 permitted by 47 C.F.R. § 54.315(c)(5).

21 **Reply to OTA:**

22 In its zeal to avoid disaggregating support, OTA overstates its case on every
23 point. First, OTA baldly claims “that the Commission does not have *any* basis from the record in
24 this proceeding to make a decision whether incumbent local exchange carriers should be required
25 to disaggregate.”²⁴ To the contrary, there is extensive evidence in the record from which to make
26 such a determination, including the testimony and reply testimony of the Commission’s Staff and

²³ The fact that the Commission has applied a creamskiimming test in past ETC designation proceedings (*See* OTA Opening Brief at 12) is similarly irrelevant in this docket, where the Commission is considering on a comprehensive basis which criteria it should apply.

²⁴ OTA Opening Brief at 13.

1 that of RCC/USCC witness Wood.²⁵ The Commission’s orders must be supported by substantial
2 evidence.²⁶ Oregon courts have interpreted this standard to mean that the reviewing court will
3 not substitute its judgment for that of the Commission so long as there are sufficient findings and
4 conclusions to enable the court to determine that the reasoning is rational.²⁷ The record on this
5 issue in this proceeding includes ample detailed testimony on the issue for the Commission to
6 make the findings needed to rationally conclude that disaggregation should be ordered
7 immediately. Such a determination would withstand judicial scrutiny under the substantial
8 evidence test. OTA’s claims that the record is insufficient are simply wrong.

9 OTA next claims that no “cost-benefit” analysis has been presented to the
10 Commission and that the only benefits that have been described “are perhaps a general benefit of
11 being able to address creamskimming.”²⁸ This assertion completely ignores the Staff and
12 RCC/USCC testimony regarding the benefits of disaggregation, including the fact that
13 disaggregation sends the correct economic signals to encourage CETCs to expand into higher
14 cost areas, where universal service funds and competition are most sorely needed.²⁹

15 OTA also claims the record is insufficient regarding the costs of disaggregation.³⁰
16 To the contrary, the record contains substantial evidence regarding the costs of performing
17 disaggregation studies. For example, Mr. Wood prepared a representative disaggregation study
18 in approximately two hours, using an Excel spreadsheet and relative cost factors derived from
19 existing cost proxy model results. RCC-USCC/4, Wood/47. OTA, on the other hand, could
20 provide no quantification of the costs of preparing disaggregation studies, other than unsupported
21 rumor that “some ILEC somewhere” paid \$100,000.00 for a disaggregation study. *Id.* OTA’s
22 testimony of Mr. Mason describes one way to do a disaggregation study, but surely not the only

23 ²⁵ See generally, RCC/USCC Opening Brief at 13-16.

24 ²⁶ ORS 756.598(1).

25 ²⁷ See *Pacific Northwest Bell Telephone Company v. Katz*, 116 Or. App. 302, 841 P.2d 652, 653-
654 (1992).

26 ²⁸ OTA Opening Brief at 13-4.

²⁹ See Staff/1, Marinos/67-68, and RCC-USCC/1, Wood/38.

³⁰ OTA Opening Brief at 14.

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1 way. Mr. Wood’s very simple methodology demonstrates that the actual costs in each wire
2 center are irrelevant; it is the relative cost factors, which can be derived from existing data, that
3 matter. OTA’s failure to supply credible evidence to support its claims regarding the costs of
4 disaggregation does not mean the record is insufficient on this issue. Far from it, the only part of
5 the record that is insufficient is any record evidence or data supporting OTA’s theory that
6 disaggregation must be done in an overly complicated manner. The Commission can and should
7 order disaggregation using Mr. Wood’s proposed *inexpensive* method.³¹

8 OTA also misses the point in arguing that proxy models have been rejected for
9 use in determining federal universal service support for rural carriers.³² No one in this docket is
10 recommending use of proxy models for determining rural ILEC support levels. Instead, Mr.
11 Wood has recommended using proxy models to determine only the relative cost factors between
12 wire centers.³³ Again, OTA’s Opening Brief overstates its case in claiming that there “is no
13 basis” for concluding that proxy models are adequate for use in determining these relative cost
14 factors.³⁴ In fact, Mr. Wood provided extensive testimony on the reasonableness of using proxy
15 models for this purpose, and concluded based on his review of the models that:

16 . . . it appears the models consistently err by overstating the cost to provide
17 service in the lowest density areas. If this is the case, my illustrative method of
18 disaggregation may result in per-line support in the higher-cost wire centers that
19 is slightly higher than it should be, and per-line support in the lower-cost wire
20 centers that is slightly lower than it should be. This bias is not problematic for
21 two reasons. First, this approach remains well within the §54.315 requirement
22 that the disaggregated support “must be reasonably related to the cost of
providing service for each disaggregated zone.” Second, this amount of error, to
the extent that it exists, can be considered as additional protection against the
possibility of “creamskimming.” A carrier serving only the lower cost areas will
receive even less support than the cost of those areas would otherwise dictate.

23 ³¹ Mr. Mason’s conjecture regarding the complexities of an accurate disaggregation study,
24 quoted in OTA’s Opening Brief at 16-17, is simple exaggeration which misses the point. The
25 steps Mr. Mason describes would only be needed if one were trying to determine the absolute
level of funding, not relative costs for disaggregation purposes.

26 ³² *Id.*

³³ See RCC-USCC/4, Wood/47.

³⁴ OTA Opening Brief at 15.

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1 Similarly, a carrier's incentive to invest in the higher cost areas would be
2 enhanced by the level of per-line support available in those areas.³⁵

3 OTA appears to believe that "sufficient record evidence" means evidence in support of an OTA
4 position. Expert testimony from intervenor witnesses that contradicts OTA's positions cannot be
5 ignored, however. Contrary to OTA's claims, there is more than ample evidence upon which the
6 Commission can and should order rural ILECs to disaggregate to the wire center level.

7 **Reply to Staff and Verizon:**
8

9 While RCC, USCC and Staff are in complete agreement that the Commission
10 should order rural ILECs in Oregon to disaggregate support to the wire center level, Staff
11 recommends that the Commission issue an order in this docket that makes a finding that
12 disaggregation is needed and that it open a new docket to consider the quantitative details
13 surrounding disaggregation.³⁶ While Verizon admits that it is not directly impacted by the
14 Staff's disaggregation proposal, it similarly argues that the record in this docket is insufficient
15 for the Commission to order disaggregation at this time.

16 RCC and USCC state, unequivocally: A further docket regarding disaggregation
17 is unnecessary. The record in this proceeding demonstrates that there is a very simple way for
18 rural ILECs in Oregon to determine the relative costs of providing service from one wire center
19 to the next.³⁷ The record also shows that this method provides a relatively inexpensive means for
20 rural ILECs to perform a disaggregation study, a cost that is far outweighed by the benefits of
21 disaggregation.³⁸ Accordingly, RCC and USCC urge the Commission to issue an order in this
22 proceeding directing the rural ILECs in Oregon to disaggregate immediately, utilizing the
23 simplified disaggregation methodology described in Mr. Wood's testimony. As Mr. Wood
24

25 ³⁵ RCC-USCC/4, Wood/48-49.

26 ³⁶ See Staff's Opening Brief at 10.

³⁷ See RCC-USCC/4, Wood/47-49.

³⁸ *Id.*

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1 testified, it would be reasonable for the Commission to provide the rural ILECs 30 days from the
2 issuance of the Order in this docket to file disaggregation plans.³⁹ The cost of disaggregation for
3 *all* parties as well as the Commission will be significantly increased if yet another docket is
4 opened regarding disaggregation. Whether or not to disaggregate was an issue clearly delineated
5 on the issues list. The parties to this docket were on notice that the Commission would decide
6 this issue in this proceeding. The record contains sufficient evidence for the Commission to
7 order disaggregation now. The Commission should not further delay introducing the benefits of
8 disaggregation to Oregon – a new docket for disaggregation is unnecessary.

- 9 5. Should the Commission adopt an upper limit on the number of ETCs that can be
10 designated in any given area? Any party proposing adoption of an upper limit
11 should explain its proposal in detail, including the legal basis for its position.

12 RCC and USCC, as well as Staff, have thoroughly briefed this issue in their
13 opening briefs. The high level arguments on this issue set forth in OTA’s Opening Brief (at 17-
14 18) are fully addressed in the RCC/USCC Opening Brief and Staff’s Opening Brief. No further
15 argument is required in the Reply Brief. Placing an artificial cap on the number of ETCs would
16 be duplicative, unnecessary and anti-competitive. The Commission should adopt Staff’s
17 recommendation.

18 **III. ANNUAL CERTIFICATION OF ETCs**

19 **A. WHAT SPECIFIC REQUIREMENTS SHOULD THE COMMISSION ADOPT** 20 **FOR THE ANNUAL RECERTIFICATION OF ETCs?**

- 21 1. Should the Commission adopt any, or all, of the FCC reporting requirements
22 proposed in the *ETC Report and Order*?

23 There does not appear to be any substantive disagreement among the parties on
24 this issue. The parties generally agree that the Commission should adopt the FCC reporting
25 requirements proposed in the *ETC Report and Order*, with some modification. The principal
26 modification is reporting on the network improvement plan, to correspond to the modifications to
the plan pursuant to Issue II A. 1. Additionally, Staff, RCC, and USCC filed substantial

³⁹ *Id.* at 49.

1 testimony and briefing to clarify the complaint reporting requirements. Although Staff's
2 Opening Brief characterized the issue as "muddled," based on a question about flexibility in the
3 categories of complaint reporting at the hearing, RCC and USCC continue to believe that there is
4 substantive agreement among the parties.

5 As RCC witness Otto noted, the four complaint reporting categories proposed by
6 Staff are essentially the same as RCC reported in 2005. See Exhibit RCC/3, Otto/4-5. The
7 question directed to Ms. Marinos about "flexibility" was intended to accommodate the
8 possibility that USCC and possibly other wireless ETCs might use slightly different categories
9 than RCC used in 2005. Additionally, in the future RCC might change its systems such that a
10 different categorization of complaints might be more appropriate, efficient, and/or beneficial to
11 provide. Staff continues to hold open the door for such flexibility, noting in its Opening Brief
12 that if a carrier did not fit precisely within the four categories it could "obtain approval from
13 Staff to use different categories, prior to filing the annual certification reports." Thus, RCC and
14 USCC believe this issue as essentially resolved.

15 2. Should the Commission adopt other reporting requirements?

16 With the exception of a dispute between Staff and Verizon regarding ILEC ETC
17 reporting requirements relating to advertising of supported services and Lifeline services, the
18 parties appear to be in agreement on the additional reporting requirements that should apply to
19 the annual recertification process. RCC and USCC agree with Staff's recommendation, provided
20 that the additional conditions be applied to the annual recertification reporting requirements of
21 all ETCs, including the rural ILECs. Accordingly, RCC and USCC urge the Commission to
22 require ILEC ETCs to abide by the same advertising reporting requirements as do CETCs.

23 3. Should the same reporting requirements apply to all types of ETCs – ILEC ETCs
24 and competitive ETCs?

25 RCC and USCC recommend *generally* that the Commission apply the same
26 annual recertification reporting requirements to all ETCs, including the ILECs. This issue is

1 comprehensively addressed in the RCC/USCC Opening Brief. It is important to clarify the
2 RCC and USCC position on this issue, as the opening briefs of the other parties suggests some
3 misunderstanding.

4 The record in this case demonstrates that the reports provided by ILECs for other
5 purposes do not include the information that is directly relevant to the ETC recertification
6 process, namely, “how the ETC actually used the support money it received during the past
7 year.” See Staff/1, Marinos/58. Verizon was candid enough to admit that the PUC’s Form O
8 that it files “was not designed to provide” information about “how much universal service
9 support was received and how the support was used to improve service quality, coverage, or
10 capacity.” Exhibit RCC/7 Similarly, Form I “does not provide an upfront accounting of how the
11 funds are going to be used, but simply confirms that a given level of total cost was incurred.”⁴⁰
12 This is the type of information that RCC and USCC contend the ILEC ETCs must also be
13 required to file annually with the Commission. This is not “parity for parity’s sake”, but instead
14 a recognition that the Commission cannot certify to the FCC that any carrier is using support in
15 compliance with the law without this type of information. RCC and USCC are not asking the
16 Commission to require ILECs to necessarily file a two-year build out plan. However, the
17 Commission should require ILEC ETCs to file sufficient information for the Commission to
18 determine: 1) how much USF was received in the preceding year, 2) how that support was spent
19 on the supported services, 3) how much USF is expected for the next year, and 4) how the ILEC
20 anticipates it will use that support on the supported services as required by law.⁴¹

21 4. Should the same reporting requirements apply regardless of the type of support
22 (traditional high-cost, interstate access/common line, low-income) received by the
23 ETC?

24 Qwest, Verizon, and OTA continue to argue that carriers receiving IAS and ICLS
25 support should not have to file reports with the states. RCC and USCC support the Staff’s

26 ⁴⁰ RCC-USCC/4, Wood/59.

⁴¹ See RCC-USCC/4, Wood/60-61.

1 position on this issue, because all ETCs should be held accountable for their use of universal
2 service funds. The Commission is in a much better position than the FCC to ensure that carriers
3 receiving IAS and ICLS support are using funds properly. Arguments that IAS and ICLS are not
4 “high cost” support are simply wrong. Both IAS and ICLS support programs represent universal
5 service support that has been moved from the “implicit” (i.e., hidden within carrier access
6 charges) to the “explicit” (i.e., out in the open in a universal service fund). As such, it is subsidy
7 that must be accounted for. OTA’s statement that OUSF support is simply a dollar for dollar
8 reduction of access charges completely sidesteps the reality that it is in fact a dollar for dollar
9 reduction of *universal service support* that OTA members were receiving within access charges,
10 but are now receiving in an explicit program. While OTA boldly argues that its members should
11 not have any responsibility for such universal service support, we can’t imagine that OTA would
12 argue that CETCs need not report how they are using that portion of their support which is IAS
13 or ICLS.⁴²

14 This Commission should follow the recommendation of its Staff and the lead of
15 the WUTC in requiring annual report information from all carriers regarding all types of USF
16 support, including IAS and ICLS. As the WUTC noted, “the Commission concludes that it has a
17 responsibility to determine whether all federal high-cost funds are used properly in Washington.”
18 *See Appendix A at 26.* Indeed, the most extensive discussion in the WUTC memorandum was
19 regarding whether to require reporting of information about total federal high-cost support
20 provided to Washington ETCs versus only requiring reporting about the portion of federal high-
21 cost support that requires WUTC certification. *Id.* At 1.

22 If this Commission wants a true and accurate picture of the receipt and
23 expenditure of high-cost funds, it can only do so by requiring annual reports for *all* types of high-

24 ⁴² Not surprisingly, in attempting to justify *not* reporting how it is using IAS or ICLS, OTA hides
25 behind its well-worn theme that CETCs do not receive support based on “their own costs”. OTA
26 Opening Brief at 22. How CETCs are supported has nothing to do with the question whether
OTA member companies should be required to demonstrate how they are using support to
benefit consumers.

1 cost support. The Commission cannot be expected to be a full partner in preserving and
2 advancing a universal service with less than half of the information before it.

3 **CONCLUSION**

4 RCC and USCC urge the Commission to adopt by order non-discriminatory ETC
5 certification and annual reporting requirements consistent with the foregoing discussion, the
6 discussion in the RCC/USCC Opening Brief, and the prefiled testimonies of Messrs. Otto and
7 Wood.

8 DATED this 1st day of May, 2006.

9 MILLER NASH LLP

10
11 _____
12 Brooks E. Harlow
13 OSB No. 03042

14 Attorneys for RCC Minnesota, Inc.

15 DAVIS WRIGHT TREMAINE

16 _____
17 Mark P. Trincherro
18 OSB No. 88322

19 Attorneys for U. S. Cellular Corp.

20 Of Counsel:

21 David A. LaFuria
22 Steven M. Chernoff
23 Lukas Nace Gutierrez & Sachs, Chartered
24 1650 Tysons Boulevard
25 Suite 1500
26 McLean, VA 22102

Attorneys for RCC Minnesota, Inc.
And U.S. Cellular Corporation

APPENDIX A

February 24, 2006

TO: Commissioners

FROM: ETC Rulemaking Team

SUBJECT: ETC Rulemaking – Proposed Rules
Docket No. UT-053021

RE: Meeting on March 7 from 2:30 to 3:30

Purpose of Meeting

Produce proposed rules for ETC designation and certification.

Attachment

- Suggested changes to draft rules

Background

Draft rules were reviewed by stakeholders in October and November. Comments exceeded 60 pages and many were very negative. Staff has spent the intervening time developing proposed amendments in response to the comments.

Overview

The suggested changes to the draft rules:

- Contain many of the changes suggested by commenters;
- Eliminate most reporting by wireline companies if an existing rule requires a report, or if an existing rule requires compliance with a rule on the topic covered by the report;
- Reduce by 75% or more the cost of advertising required of ETCs;
- Retain reporting and certification for Qwest and Verizon even though commission certification is not required; and
- Retain reporting and certification for that portion of support received by rural ILECs for which commission certification is not required.

Discussion

This discussion concerns one major issue – whether to require reporting of information about total federal high-cost support provided to Washington ETCs or to require reporting only about that portion of federal high-cost support to Washington ETCs for which UTC certification is essential.

Federal support for Washington now totals in excess of \$105 million per year (projected from 12-05 distributions). UTC certification is essential for receipt of \$30 million. The remaining \$75 million can be self-certified to the FCC by ETCs.

Qwest and Verizon would like to be exempted from this rule. Annually, about \$17 million is distributed to Verizon and about \$2.6 million to Qwest from the federal high-cost fund as a replacement for interstate access support (IAS). While each company had to be designated an ETC by the UTC in order to be eligible to receive this support, state certification is not required for Qwest and Verizon to receive the explicit support that replaced the implicit access support. That is, none of that \$19.6 million must be subject to the rules and certified to the UTC. However, if the use of funds received by Qwest and Verizon is not reported to the UTC under these rules, then the UTC will have no knowledge of how Qwest and Verizon use federal high-cost support.

Rural ILECs would prefer not reporting all of their federal support, although they were not as emphatic on this matter as were Qwest and Verizon. Rural ILECs receive about \$52 million in federal high-cost support. The UTC must certify to the FCC the proper use of \$26 million while rural ILECs may certify on their own behalf the use of the remaining \$26 million received from the category called interstate common line support (ICLS). The draft rules require rural ILECS to report the use of all \$52 million. A report on the use of all \$52 million provides the commission with a complete picture of the companies' use of support.

Wireless companies receive about \$34 million a year in federal high cost support (projected from 12-05 distributions). Approximately \$16 million is IAS and \$9 is ICLS. Only the remainder, approximately \$9 million, requires UTC certification. Wireless companies have not stated they do not want to report on the use of IAS and ICLS. As with the other companies, if the UTC wants a complete picture of the use of federal support in Washington, it must require reporting on all high-cost support.

The FCC in its March 2005 order encouraged states to adopt annual reporting requirements and stated that "state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements." That notwithstanding, the commission could choose not to apply this rule to Qwest and Verizon altogether, as well as not apply it to a portion of rural ILEC and wireless federal high-cost support.

THE FOLLOWING PAGES CONTAIN THE DRAFT RULE CIRCULATED FOR
COMMENTS IN OCTOBER AND NOVEMBER

and

- Each page contains a subsection or subpart with changes
- Stakeholder comments are included on each page
- NOTES appear where necessary to explain suggested amendments
- RESPONSES appear where no change is made

Draft Rule

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WAC 480-123-0010 Definitions. As used in sections 0020 through 0070:

“Applicant” means any person applying to an ETC for new service or reconnection of discontinued service.

▫ NOTE: This definition is fashioned after the definition of an applicant in Chapter 480-120 WAC. ETCs are responsible for serving applicants in their designated service areas. The term applicant is used in draft WAC 480-123-0060(3).

“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 480-123-0020(1)(b) any physical components of the telecommunications network that are used in the transmission of or routing of the services that are supported by federal universal service mechanisms.

- WITA - The definition leaves out some categories of acceptable plant expenditure; ignores, for e.g., that employees need an office in which to work.

- NOTE: This change responds to WITA’s comment. This definition is taken from the federal rule that describes the services supported by the universal service fund. The definition of facilities is used to describe the minimum level of network use by an ETC to qualify for funds; its purpose is to exclude resellers from ETC designation. The amendment limits this definition of facilities that apply in this set of rules to the threshold for designation. Other facilities, such as offices where ETC employees work, may be supported with federal funds so long as the ETC is not just a reseller.

“.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. Planned service interruptions with a duration of less than five minutes that occur between the hours of 12:00 midnight and 5:00 a.m. are not included in this definition.

- RCC & USCC – Insert “voice” so the rule applies only to supported services, voice grade communication.
- WITA – suggests the definition in the draft rule apply to wireless ETCs and that another definition of service outage be drafted for wireline ETCs that would exempt service outages for non-voice service, e.g., voice messaging, inside wire.

NOTE: The addition of “voice” is responsive to the comments of RCC & USCC and WITA. Exclusion of planned service interruptions from the definition is consistent with WAC 480-120-439(5).

“Substantive” means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, specific benefits for customers. ~~Examples of information that will permit an evaluation is~~ For example, information about investments and expenses that will provide, increase, or maintain service quality, ~~increase~~ signal coverage, or ~~increase~~ network capacity, ~~in conjunction with information about~~ and the number of customers that ~~have or will~~ benefit, and how they will benefit from such investments and expenses is sufficient to enable evaluation.

- WITA – “sufficiently detailed” not described.
- WITA – What is “technically specific?” Will a description of the continuation of the same level of service and maintenance of existing facilities meet the requirements of “sufficiently detailed and technically specific?”
- RCC & USCC – Statute and FCC rules require support to be used “for the provision, maintenance, and upgrading of facilities and services for which support is intended.” Focusing annual review only on upgrading and improvement is too narrow...as networks mature, support can be expected to be used more for provision and maintenance of services and less for expansion.

NOTE: The definition is intended to permit the informed discretion on the part of those who must report. The changes respond to the comments of RCC & USCC and WITA by providing examples of information that will enable evaluation by the commission.

WAC 480-123-0020 – Contents of Petition for Eligible Telecommunications

Carriers. (1) Petitions for designation as an ETC must contain:

- (a) a description of the area or areas for which designation is sought;

(b) a statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);

- Public Counsel – Draft rules do not seem to address the FCC's issue that all ETCs may become a provider of last resort for the area for which they are certified. ETCs should have to acknowledge that they may become a provider of last resort.
- WITA – Draft rule is inadequate to meet standards for commitment to serve established by FCC.

RESPONSE: Washington does not have a “carrier of last resort” doctrine. Any carrier operating in an area has a duty to serve if requested to do so by an applicant for service. Even if Washington had a “carrier of last resort” doctrine, there would be no need for acknowledgment because the obligation is not lesser or greater if an ETC is the only carrier or one of many.

Responding to WITA, this subsection paraphrases that statutorily created commitment to serve in 47 U.S.C. 214(e)(1). Carriers may relinquish ETC designation pursuant to 214(e)(4).

(c) a description of how it will provide each supported service;

- WITA – The FCC requires a local usage plan comparable to the one offered by the incumbent LEC. Local usage is not mentioned in draft rules.
- WITA – The FCC requires ETCs to acknowledge that in some circumstances the ETC must be ready to assume the responsibility of providing equal access to long distance carriers.

RESPONSE: The commission chose not to require a local usage plan like the local usage offered by the incumbent LEC because to do so would reduce diversity of service offerings and reduce consumer choice. Diversity of service and consumer choice would be reduced because wireless carriers would not seek ETC designation and wireless carriers would have less money to invest in areas where their service would offer diversity and consumer choice.

A wireless carrier designated by a state commission as an ETC is required to provide access to inter-exchange (long distance) service, but is not required by FCC rule to provide equal access to long distance carriers. All wireless carriers provide calling to the entire nation, and many do so without any additional charge for such extensive long distance calling. In the event a wireless carrier would become the only ETC in a location and a customer requests equal access to long distance carriers, the commission can respond to such a request for equal access when it is made.

(d) a substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;

(e) a statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of ~~telephone assistance~~ Lifeline programs that is reasonably calculated to reach low-income consumers not receiving discounts;

▫ NOTE: What, if any, requirements apply to wireless ETCs with respect to the state telephone assistance program is unclear. It is a legislative matter. Wireless ETCs (as well as others) must offer federal lifeline program discounts.

(f) for wireless petitioners, a general description, including a map in .shp format, of proposed service areas (exchanges) the area with locations of cell sites and shading to indicate where the carrier has customers, plant and equipment, and, for wireless carriers, provides commercial mobile radio service signals;

- RCC & USCC – Please clarify whether wireless needs to identify the area where the ETC has plant and equipment, or only where it provides a signal for service.

- NOTE: The changes respond to RCC & USCC’s request for clarification. The additional changes are included because UTC Staff very recently created electronic maps for those wireline companies with tariff maps. As a result, there is no need to require wireline ETCs to duplicate the maps. We lack the information necessary to create maps for wireless ETCs.

(g) information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch; and

- Public Counsel – should require applicants for ETC status to describe contingency plans for maintaining network infrastructure until normal power and operations are restored.

RESPONSE: ETCs all have contingency plans for operating during power outages. The commission is convinced that ETCs operating under WAC 480-120-411 are prepared for most power outages and that the requirements for wireless ETCs in this subsection will result in those ETCs being prepared for most power outages. In addition, ETCs, and particularly wireless ETCs that usually face three or four competitors, have a market incentive to restore service.

To the extent Public Counsel's comments may be taken as a request to require plans and the ability to recover from a catastrophic failure, the Washington Military Department received Homeland Security funds to prepare for catastrophic disasters. The commission thinks it is better to have one state agency rather than two in charge of policy for recovery from a catastrophe.

(h) information that demonstrates that it will comply with the applicable consumer protection and service quality standards of Chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service, ~~as released Sept. 9, 2003~~ Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-0999.

- Public Counsel - The so-called "consumer Code" provides consumers of cellular service little substance and less value.
- RCC & USCC – Support the CTIA consumer code to protect consumers.

RESPONSE: The commission is following the FCC in adopting the CTIA code.

(2) A company officer must submit the petition ~~The petition must be submitted by a company officer~~ in the manner required by RCW 9A.72.085.

▫ NOTE: Active voice.

WAC 480-123-0030 – Approval of Petitions for Eligible Telecommunications

Carriers. The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-0020, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and if the designation is in the public interest.

- WITA – No discussion of what is the public interest. The FCC has a detailed description how it will evaluate the public interest. WITA recommends the Commission delay moving to a CR-102.
- RCC & USCC – The FCC has twice decided when a public interest test is required and the decisions are diametrically opposed. There is no public interest requirement for designation of ETC to serve where a non-rural company serves.

RESPONSE: ETC designation results in payments of federal support to carriers that will use the funds for the purposes stated in 47 U.S.C. § 254. The change in this section responds to WITA by relating designation to the purposes for which federal funds are provided. With respect to the public interest, the commission determines the public interest when the petition is before the commission at an open meeting. The public interest often depends on facts and circumstances associated with each petition.

WAC 480-123-0040 – Revocation of Eligible Telecommunications Carrier

Designation. ~~The Commission may modify, suspend, or revoke the designation of an ETC if it determines that the ETC is not in compliance with its designation order or this chapter, or is not operating in a manner that is consistent with the public interest.~~

Subject to notice and an opportunity to be heard, the commission may decline to grant annual certification, and may revoke, suspend, or modify a designation granted previously if it determines that the ETC has failed to comply with the requirements of section 47 U.S.C. Sec. 214(e) or any other conditions imposed by the commission.

- WITA – Standard is too open and therefore not consistent with due process standards. No prior notice that conduct may place the status and receipt of funds in jeopardy. WITA recommends the Commission not move to a CR-102. ETCs must be put on notice of what conduct runs afoul of the law and might result in revocation, and the standards for which revocation of ETC status can be effected must provide clear warning of the offending behavior (from 1/27/06 comments).

- RCC & USCC – The rule should be amended to require a complaint or on the Commission’s own motion that notice and hearing will be given. The standard should be “... materially not in compliance...”

▫ NOTE: The change responds to the comments by stating the requirement for notice and hearing. A hearing on compliance will reach the question of materiality raised by RCC & USCC.

WAC 480-123-0050 Annual certification of eligible telecommunications carriers.

(1) Each ETC seeking certification by the commission of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 must request certification by July 31 each year. The ETC must, as a part of the request, certify that it will use federal high-cost universal service fund support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 only if the ETC complies with the requirements in WAC 480-123-0060, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-0070.

WAC 480-123-0060 Annual certifications and reports. Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1 through December 31 of the previous year. A company officer must submit the certifications ~~Certifications must be submitted by a company officer~~ in the manner required by RCW 9A.72.085.

- RCC & USCC – Appropriate that all ETCs held accountable for their use of high-cost funds. The requirements are competitively neutral. Modify to make clear the scope is activity in Washington.

- ◻ NOTE: The changes respond to RCC & USCC and limit the extent of information to Washington and use active voice to describe the submission of the certification.

(1) Report on use of federal funds and benefits to customers.

(a) For an ETC that receives support based only on factors other than the ETC's investment and expenses, ~~The~~ report must provide a substantive description of investments made and expenses paid with ~~federal~~ support from the federal high-cost fund, or, f

~~For ETCs that receive any support based on filings made with the National Exchange Carrier Association (NECA) in its role as a contractor for the Universal Service Administrative Company, the report may consist of copies of all material supplied to NECA to obtain the support received for the relevant twelve-month period in lieu of the substantive description~~ the ETC's investment and expenses, the report must provide a substantive description of investment and expenses the ETC will report as the basis for support from the federal high-cost fund.

~~(b) In addition to the information required in subsection (1)(a) of this subsection, every~~ Every ETC must provide a substantive description of the benefits to consumers that resulted from the investments made and expenses paid with ~~federal support reported pursuant to subsection (1)(a) of this section.~~

- Verizon – Verizon has built its network and requiring information such as “investments made and expense paid with federal support” would provide no new or meaningful information.
- RCC & USCC – The language follows 47 C.F.R. § 54.314(a) and we support it.
- WITA – Apparently proposed in response to WITA's pitch that there are differences between how incumbent's and ETCs receive support. Requirement to provide all material filed with NECA is overkill because there is a very large quantity of information involved. Because ETCs certify to the FCC on their own behalf with regard to monies received as IAS and ICLS, ETCs should not have to report on its use to the UTC.

What information does UTC need to satisfy its role in making ETC certification? Commission not acting in audit capacity; only needs sufficient information to provide confidence that certification is accurate. Recommend changes to permit rural incumbents to report by providing summaries of NECA reports.

Change “federal support” to “federal high-cost support.”

- RCC & USCC – ICLS should be included in reporting because it is explicit support from the fund that replaced implicit support (from 1/30/06 comments).

▫ NOTE: Rural ILEC ETCs and other ETCs receive support based on different financial information. The suggested amendments will result in both types of ETCs reporting

information to the commission about investment during the calendar year preceding the year in which reports are made. At the same time, the elimination of the requirement to provide all NECA reports responds to WITA's comment that less information should be collected. The substantive descriptions (see definition of "substantive description" in 0010) do not require ETCs to provide the amount of information that an audit would require.

Verizon and WITA would like the rule not to apply to receipts from the federal high-cost fund for which each company must self-certify to the FCC (the so-called IAS and ICLS). The memo at the beginning of this document describes the receipts and the issue about whether the commission should request information about IAS and ICLS. The commission concludes that it has a responsibility to determine whether all federal high-cost funds are used properly in Washington.

(2) Local service outage report. ETCs not subject to WAC 480-120-412 and WAC 480-120-439(5) are required to report local service outages pursuant to this subsection. The report must include detailed information on every local service outage lasting at least 30 minutes or longer in duration experienced by the ETC in a , for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a public safety answering point as defined in WAC 480-120-021. The report must include:

- (a) The date and time of onset and duration of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected, including whether a public safety answering point (PSAP) was affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The estimated number of customers affected.

- Verizon – Requires additional reporting that conflicts with outage reporting under WAC 480-120-412. The phrase “potentially affect at least ten percent of the end users” is unclear; subpart (f) is in the past tense.
- Sprint/Nextel – Annual outage reports duplicates existing FCC reporting obligations; market incentives are enough to ensure wireless networks remain in good condition. A wireless company with outages will lose customers and thereby lose support.
- Qwest – Major outage reporting does not provide assurance that USF is spent for the intended purposes. Reports only supply information about outages that could be caused by many things unrelated to use of USF. This report should be eliminated.
- WITA – The rule is not limited to outages of services that are USF supported. Reporting outages that “potentially” affect customers or PSAPs is inconsistent with reporting outages that have already occurred.
- Cingular – this is onerous and conflicts with other FCC reporting. UTC will receive reports of outages that may be a year old. More timely outage information is available from the FCC.
- RCC & USCC – The phrase “potentially affect” is particularly vague; it is confusing. Subpart (2)(f) should be revised to request “estimated” number of customers affected. Always hard to know how many customers are affected, particularly for wireless with mobile customers.

▫ NOTE: The changes respond to Verizon; it may meet its obligation as it does currently by complying with WAC 480-120-412 and 439(5). Sprint/Nextel states this will duplicate FCC requirements. This requirement is essentially the same as that required by the FCC for ETCs it designates. Qwest states that major outage reports do not provide assurance that USF is spent for the intended purposes. That is correct, but knowledge of major outages that reveals a pattern of problems in high-cost locations could lead to commission action to be certain that federal high-cost support is directed to remedy problems in high-cost locations. WITA states that the rule is not limited to outages of services that are USF supported. The section requires reports on outages in “designated areas,” locations that are associated with ETCs. Cingular states that this report conflicts with reporting to the FCC. As we stated in response to Sprint/Nextel’s statement that this report duplicates FCC requirements, this requirement is essentially the same as that required by the FCC for ETCs it designates. The changes respond to RCC & USCC by replacing “potentially affect” with “estimated” number of customers affected.

(3) Report on failure to provide service. ETCs not subject to WAC 480-120-439 are required to report failures to provide service pursuant to this subsection. The report must include detailed information on the number of requests for service from ~~potential customers~~ applicants within its designated service areas that were unfulfilled for the ~~past year~~ reporting period. The ETC must also describe in detail how it attempted to provide service to those ~~potential customers~~ applicants.

- Verizon – this duplicates and conflicts with existing requirements in WAC 480-120-439(4) that requires reports on a monthly, quarterly and six-month basis.
- Sprint/Nextel – Market forces will resolve any problems with failure to provide service.
- Qwest – Duplicates 480-120-439(4).
- WITA – Suggest using definition of “applicant from 480-120-021.”

▫ NOTE: The changes respond to Qwest’s and Verizon’s comments. The commission has agreed with Sprint/Nextel that in some instances market forces aid in addressing some problems, but in this instance we follow the FCC’s suggestion. In response to WITA, a definition of applicant is included in 0010.

(4) Report on complaints per 1,000 handsets or lines. The report must provide separate totals for the number of complaints concerning local service related issues that the ETC's customers made to ~~the ETC, the commission,~~ the federal communications commission, and or the consumer protection division of the office of the attorney general of Washington attorney general. ~~These totals must be further divided into at least the four categories of complaints: (i) no dial tone and other connection problems; (ii) billing for services not ordered; (iii) inaccurate amounts on bill; and (iv) failure to provide service in a timely fashion.~~ The report must also generally describe the nature of the complaints ~~within each category~~ and outcome of the carrier's efforts to resolve the complaints.

- Cingular – Far more detailed report than FCC's. Cingular does not have ability to run a report with the nature of every call received. Cannot sort complaints. Recommend limiting the report to complaints filed with UTC, FCC or the AG and not require categorization.
 - Sprint/Nextel – Market forces will result in the loss of customers by an unresponsive provider.
 - WITA – “What constitutes a complaint?” Is the reference to Washington Ag only to consumer Protection division? Rather than a report on complaints, certification of compliance with the Commission's quality of service rule should suffice.
 - RCC & USCC – This is the most troublesome provision of the draft rules. Practical problems cannot be overstated; no way of knowing when a call to ETC constitutes a “complaint.” Better to define complaint as formal or informal complaints to the FCC, the attorney general, and the UTC. Categorization of complaints should not be required, but if required it should be limited to complaints concerning voice service and ETCs should report based on their chosen categories.
 - Verizon – The requirement is significantly greater than the FCC's. The suggested categories are too limiting. The UTC already has the appropriate level of information from its customer complaint records. No need for this part of rule.
- NOTE: The changes respond to comments, in part, by eliminating the requirement for ETCs to report on complaints made directly to the ETC. Commenters are concerned about categorizing complaints. Because the rule is changed to require ETCs to report only complaints made to the FCC and the office of attorney general, ETCs may describe complaints with the same general descriptions used by those agencies.

(5) Certification of compliance with applicable service quality standards. Certify that it met substantially the applicable service quality standard found in WAC 480-123-0020(1)(h).

- Verizon – Impossible to determine with which rules the company must comply. “Met” implies perfection and companies cannot meet that standard. Officers would be at risk of swearing the company met an imprecise standard. ETCs that report under 480-120 should not have to certify compliance.
 - Qwest – This duplicates the requirement of 480-120-439 other commission rules on service quality.
 - WITA – This provision is discriminatory. Wireline ETCs must meet very specific service standards and wireless would only have to general requirements. Wireless ETCs have 30 days to respond to complaints under the CTIA Code, but wireline ETCs must respond to complaints in two days. The UTC is creating a competitive advantage for wireless ETCs. The UTC should hold wireless ETCs to many of the wireline requirements in 480-120, or eliminate the 480-120 requirements for wireline ETCs.
- NOTE: Inclusion of substantial addresses the concern of commenters that the draft rule could have been interpreted to require perfection.

(6) Certification of ability to function in emergency situations. Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-0020(1)(g).

- Cingular – The FCC rejected rigid requirements; suggest “has a reasonable amount of back-up power to ensure functionality without external power sources.”
- Qwest – Duplicates the requirements of WAC 480-120-439, 480-120-414, and other Commission rules.
- Verizon – The scope of the certification should be narrowed to back-up power for switches and similar equipment.

RESPONSE: This is a *certification* that the ETC continues to meet the designation requirement associated with functioning in an emergency. The substantive requirements are in 0020(1)(g). Those substantive requirements are similar to those required by the FCC in its ETC designation order and the commission believes the requirements are minimal and reflect industry practices.

Qwest’s comment is that this certification duplicates WAC 480-120-439 and 480-120-414. WAC 480-120-439(5) requires LECs to report on major outages, but 439(5) neither requires LECs to have the capability to function in an emergency as required by WAC 480-120-414, nor does it require LECs to certify that the company has a plan for emergency operation required in 414. Under 414(1)(b), the commission could request a copy of a LEC’s plan for emergency operation; the certification requirement essentially requires LECs (including Qwest) to certify that they have the emergency plan that is subject to request.

(7) Advertising certification; safe harbor, including advertisement on Indian reservations. Certify it has ~~provided the required advertisement, including advertisements reasonably calculated to reach low-income individuals not already receiving discounted services~~ publicized the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service, including residents of federally-recognized Indian reservations within the ETC's designated service area. Such publicity should include advertisements likely to reach those who are not current customers of the ETC.

~~(a) An ETC will be considered to meet the advertisement requirements if at a minimum it:~~

~~————— (i) sends to all customers at least one annual bill insert explaining its services and charges available to low-income customers; ————— (ii) displays a notice of services and charges available to qualified low-income consumers at its payment agencies and its offices open to the public;~~

~~————— (iii) places a notice in the telephone book published by (or on behalf of) the ETC at least ¼ page in size containing information about the services and charges available to qualified low-income consumers;~~

~~————— (iv) advertises its services and charges available to low-income consumers:~~

~~————— (A) by placing a display ads in a daily newspaper, one sixteenth page in size or larger, on four or more occasions in each calendar quarter; or~~

~~————— (B) by placing an ad on a local radio station or television station that runs at least five times a day in general rotation for seven consecutive days in each calendar quarter; and~~

~~————— (v) for an ETC with a geographic service area that includes a reservation or portion of a reservation of a federally recognized Indian tribe, by placing an ad containing information about the services and charges available to qualified low-income consumers living on a reservation in the tribal newsletter, tribal newspaper, or similar publication on two or more occasions in each calendar quarter.~~

- Cingular – UTC should not implement prescriptive rules. FCC has outreach guidelines.
- Sprint/Nextel – Excessive requirements. No objection to annual bill insert and directory notices. Quarterly adds OK; four times a quarter is excessive.
- Verizon – safe harbor is excessive and costly; there is already a requirement for a notice in directories. Verizon already places a notice in more than ten newspapers.

- Advertising Requirements Continued -

- Public counsel – Support generally requirement for improved outreach. However, newspaper advertising may not reach the intended audience. UTC should consider developing a work group to develop a rule with alternative approaches to advertising, e.g., investigate whether notices included in weekly grocery coupon mailers would be more effective for a reasonable cost (from 1/27/06 comments). Should also address concern that carriers would bill WTAP for cost of advertising (from 1/27/06 comments).
 - WITA – Must state that advertising is in each service area or carriers could advertise in only one daily newspaper. Should be permitted to advertise in weekly newspapers. Many rural ETCs do not have a local radio station. Might be more effective to advertise once a year and make information available to social service agencies in the service areas. WITA notes that the requirements related to directories, payment agencies and local offices are discriminatory because they apply only to wireline companies.
 - Citizen’s Utility Alliance – Only 26% of eligible households participate in WTAP. CUA supports advertising requirements to increase enrollment.
 - RCC & USCC – Lifeline customers generate a very low percentage of bad debt and generate significant and reliable revenue. Because of this, wireless carriers motivated to serve WTAP customers and therefore prescriptive advertising requirement unnecessary. USCC provides lifeline service to nearly all households on the reservation, so advertising there is a waste of resources. Rules will discourage resourcefulness and innovation in advertising. Prefer bill message to bill insert. Prefer a requirement for ten ads per calendar quarter in designated service area in the state. Not all tribes accept advertising in publications.
- NOTE: The changes respond to the several commenters who requested the commission not be prescriptive. The changes allow ETCs to fulfill the advertising requirements of 47 U.S.C. § 214(e)(1) and publicity requirements of 47 C.F.R. § 54.405(b) in creative ways. Public counsel raised the concern that carriers would bill the Washington Telephone Assistance Plan (WTAP) fund for the cost of advertising. WTAP informed the commission it has never reimbursed carriers for advertising. We note the requirement to advertise and the federal rule are several years old.

WAC 480-123-0070 Annual plan for universal service support expenditures.

(1) Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report on:

(a) the ~~expected~~ planned use of federal support related to Washington state that will be received during the period October 1 of the current year through the following September; or

(b) the planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund.

- Verizon – The FCC rule is directed at new ETCs and established carriers with existing networks should not be required to do more than state the funds will be used for intended purposes. Verizon reads the rule to require a very detailed and extensive report. Such detail about operation of an established, extensive network will provide no benefit.
 - Qwest – This rule is excessive and should be limited to recipients of high-cost (as opposed to interstate access) support.
 - WITA – a report on how support will be used does not fit the circumstances of incumbent's that have already invested money as the basis to request support.
 - RCC & USCC – Support this section. This rule only requires forecasting for five quarters, a reasonable length of time.
- NOTE: Verizon states the section will require a very detailed report and it should not be applied to carriers with existing networks. Congress requires federal high-cost support to be used “only for the provision, maintenance, and upgrading of services and facilities for which the support is intended.” The commission believes that “maintenance” includes existing networks. As indicted in the Note to subsection (2), the report must be substantive as that is defined in section 0010. A substantive report need not be “very detailed and extensive.” Qwest distinguishes high-cost support from IAS, but IAS is a category within the federal high-cost fund. The memo at the beginning of this document addresses certification issues related to IAS. The rule responds to WITA by requiring a report on funds already invested in the calendar year before the report for which the ETC expects to use as the basis to request federal support.

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

▫ NOTE: The commission has revised the definition of “substantive” in 0010 which, in turn, clarifies what is expected of ETCs reporting pursuant to this subsection.

(3) As part of the filing required by this section to be submitted in 2007, and at least once every three years thereafter, ~~the report must include a map in .shp format that shows the general location of customers, plant and equipment, and, for a wireless carriers, ETC must submit a map in .shp format that shows the general location~~ where it provides commercial mobile radio service signals.

- Verizon – Requires maps with unprecedented detail. Established wireline networks extend to virtually every premise in an exchange, so no useful purpose is served by mandating that the ETC add details showing customer locations.
- WITA – Object to submission of maps with so much detail. Impossible to show location of every household. Maps are expensive. Maps already submitted of little use. Raises national security issues to show detail of network.

▫ NOTE: The change responds to Verizon and WITA by eliminating the map requirement for wireline ETCs. There is now no need to require wireline ETCs to file maps because UTC staff very recently created electronic maps for wireline companies with tariff maps. We lack the information necessary to create maps for wireless ETCs, so the requirement remains for wireless ETCs.

WAC 480-123-0999 – Adoption by Reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

1. The Cellular Telecommunications and Internet Association’s (CTIA) Consumer Code for Wireless Service.
2. The commission adopts the version in effect on September 9, 2003.
3. This publication is referenced in WAC 480-123-0020 (Contents of Petition for Eligible Telecommunications Carriers).
4. Copies of the CTIA Consumer Code for Wireless Service are available at http://www.ctia.org/wireless_consumers/consumer_code/.

WAC 480-120-399 Access charge and universal service reporting. (1) Intrastate mechanism reporting.

(a) Until legislation creating a new universal service fund is adopted and effective and commission rules to implement the legislation are adopted and effective, each Class A company in the state of Washington and the Washington Exchange Carrier Association, must provide annually:

(i) The actual demand units for the previous calendar year for each switched access tariff rate element (or category of switched access tariff rate elements, both originating and terminating) it has on file with the commission.

(ii) Primary toll carriers (PTCs) must file, in addition to the information required in (a)(i) of this subsection, the annual imputed demand units for the previous calendar year that the company would have had to purchase from itself if it had been an unaffiliated toll carrier using feature group D switched access service (including intraLATA and interLATA, both originating and terminating demand units). For purposes of this subsection, a PTC means a local exchange company offering interexchange service(s) to retail customers using feature group C switched access service for the origination or termination of any such service(s).

(b) The report containing the information required in (a) of this subsection must be filed by July 1 of each year.

(c) Each company providing information required by this section must include complete work papers and sufficient data for the commission to review the accuracy of the report.

~~—(2) **Annual state certification requirements for interstate (federal) mechanism.** Each eligible telecommunications carrier (ETC) in Washington receiving federal high-cost universal service support funds must provide the following to the commission not later than August 31 of each year:~~

~~—(a) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;~~

~~—(b) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the commission order granting it ETC status;~~

~~—(c) A certification that funds received by it from the federal high cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;~~

~~—(d) The amount of all federal high cost universal service fund support received for the calendar year preceding the year in which the filing must be made (this includes, but is not limited to, high cost loop support or "HCL," local switching support or "LSS," long term support or "LTS," interstate access support or "IAS," and interstate common line support or "ICLS");~~

~~—(e) The loop counts on which federal high cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made;~~

~~—(f) The certifications required in (a) through (e) of this subsection must be made in the same manner as required by RCW 9A.72.085.~~

APPENDIX B

[Service Date April 3, 2006]

April 3, 2006

**NOTICE OF OPPORTUNITY TO SUBMIT WRITTEN COMMENTS
ON PROPOSED RULES**

(By Wednesday, May 3, 2006)

and

NOTICE OF PROPOSED RULE ADOPTION HEARING

(Set for Thursday, May 18, 2006, at 1:30 p.m.)

RE: Rulemaking to consider rules for Eligible Telecommunications Carriers,
Chapter 480-123 WAC -- Docket No. UT-053021

TO ALL INTERESTED PERSONS:

This letter is to inform you of the progress made in the commission's rulemaking to consider rules for Eligible Telecommunications Carriers (ETCs), chapter 480-123-WAC. This letter also provides notice of an opportunity to file written comments on proposed rules and participate in the formal rule adoption hearing.

On March 31, 2006, the commission filed a Notice of Proposed Rulemaking (CR-102) in this docket with the Code Reviser. The proposal would add eight sections to chapter 480-123 WAC to address designation and certification of ETCs. The proposal also deletes WAC 480-120-399(2). This action begins the final part of the rulemaking process, which includes a written comment period, a public adoption hearing, and a decision by the commission.

THE COMMISSION GIVES NOTICE of your opportunity to submit written comments on the proposed rules by filing with the Commission Secretary either by electronic transmission as described below, or by physical delivery to 1300 S. Evergreen Park Drive S.W., P.O. Box 47250, Olympia, Washington, 98504-7250, no later than 5:00 p.m., Wednesday, May 3, 2006. The proposed rules, as filed with the Code Reviser, are available for inspection on the commission's web site at www.wutc.wa.gov/053021. The commission will send you a paper copy of the proposed rules or will send the proposal via electronic mail, if you ask. You can also find a memo outlining stakeholder comments and commission responses on the web site listed above.

Electronic copies. The commission asks that you provide your comments in electronic format to improve public access, to ease providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. You may submit comments by electronic mail to the commission's Records Center at records@wutc.wa.gov. Please include:

- The docket number of this proceeding (UT-053021)
- The commenting party's name
- The title and date of the comment or comments

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a 3 ½ inch, IBM-formatted, high density disk, in .pdf Adobe Acrobat format or in Word 97 or later. Include all of the information requested above. The commission will post on the commission's web site all comments that are provided in electronic format. The web site is located at <http://www.wutc.wa.gov/053021>. If you are unable to file your comments electronically or to submit them on a disk, the commission will always accept a paper document.

THE COMMISSION GIVES FURTHER NOTICE of your opportunity to attend the public hearing and make oral comments about the proposal for the adoption of the proposed rules at 1:30 p.m., Thursday, May 18, 2006. This public hearing will be held in the Commission's Hearing Room, Second Floor, Chandler Plaza, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington.

The commission will post information about schedule and other aspects of the rulemaking, including comments, on its web site as information becomes available. If you wish to receive further information on this rulemaking you may

- 1) Call the commission's Records Center at 360-664-1234.
- 2) E-mail the commission at [<records@wutc.wa.gov>](mailto:records@wutc.wa.gov).
- 3) Mail written comments to the address below.

Please refer to Docket No. UT-053021 when contacting the commission to ensure that you are placed on the appropriate service list. The commission's mailing address is:

Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P O BOX 47250
Olympia, Washington 98504-7250

Questions: If you have questions about this Notice, about the rulemaking process, or this rulemaking in particular, you may contact Bob Shirley, Policy Analyst. He may be reached by mail at the address on this Notice, by e-mail at bshirley@wutc.wa.gov or by calling 360-664-1292.

Sincerely,

CAROLE J. WASHBURN
Executive Secretary