

2. **Recommendation:** **The Legislature and the Commission should not choose one technology over another as they develop policy.** This will permit market forces to determine which technology or technologies will attract customers and the growth and profits which go with them.

**Legislative Action:** There are many new telecommunications technologies introduced to the market every day. It is important the legislation on universal service not favor one technology over another.

3. **Recommendation:** **Washington should adopt a forward-looking cost methodology for determining the level of universal service support for non-rural carriers and use embedded costs for those rural carriers where it does not impede competition or introduction of new technology.** The use of forward-looking economic costs will promote competitive entry, efficient investment and technological innovation. This methodology promotes the purposes of the Telecommunications Act of 1996, including increased competition, reduced regulation, lower prices and higher quality of service and the deployment of new technology.

**Legislative Action:** The Commission has authority to use forward-looking cost methodology for universal service.

4. **Recommendation:** Washington should require contributions from the same telecommunications carriers as the FCC, including private service providers which sell or lease capacity. This option provides the broadest list of providers without attempting to include internet service providers. We recommend inclusion of private service providers which sell or lease capacity. This capacity is made available in the same market where common carriers make available their services to the public. Private service providers contributing to the universal service support mechanisms will have no competitive edge over common carriers making the same contributions based on sales of identical services.

**Legislative Action:** The legislature must give the WUTC authority to create and operate a universal service fund if this recommendation is to be implemented.

5. **Recommendation:** Washington should base assessments for contributions to universal service on gross revenues net of payments to other carriers. This option is competitively neutral because all carriers, wholesale and retail, large, small or specialized, contribute on the same basis. It does not advantage vertically integrated companies. This option avoids double counting; contributions are required only when value is added and when activity on the telephone network is increased. It is easy to administer for large and small companies alike because carriers already collect the information necessary to make the calculations.

**Legislative Action:** The legislature must give the WUTC authority to create and

operate a universal service fund if this recommendation is to be implemented.

6. **Recommendation:** Washington should support all telephone lines and determine support by subtracting average revenue per line from the cost of each line. This recommendation supports the status quo. It will promote efficiency and increased deployment of new telecommunications services without disrupting the services already in place in households and businesses in Washington.

**Legislative Action:** The legislature must give the WUTC authority to create and operate a universal service fund if this recommendation is to be implemented.

7. **Recommendation:** Washington should contract with a neutral, third-party for design, operation and administration of a universal service fund. This should be accomplished through a competitive bid process which excludes interested parties.

**Legislative Action:** The WUTC needs statutory authority to contract for operation of the fund by a neutral, third party.

8. **Recommendation:** Washington should not establish a public interest pay phone program. There is no evidence at present that there is an insufficient number of pay phones or that pay phones necessary for public safety are lacking. The WUTC should track complaints, if any, regarding the lack of pay phone service and should work with local governments in helping them identify and satisfy their public interest

communications needs.

**Legislative Action:** No action is needed.



## INTRODUCTION

### Washington Has History of Supporting Universal Service

Preservation of universal service is not new policy in Washington. The Legislature enacted a policy to “preserve affordable universal telecommunications service” in 1985.<sup>1</sup> Much of the federal Telecommunications Act of 1996 mirrors the policy enacted in Washington more than ten years ago. In addition to preserving affordable universal service, our state’s policy is to advance efficiency and availability of telecommunications services; ensure that customers pay only reasonable charges; ensure that non-competitive telecommunications services do not subsidize the competitive services; promote diversity in the supply of services and products in the market; and permit flexible regulation of competitive telecommunications companies and services.<sup>2</sup> This report and recommendations, although addressing primarily the new federal law, will promote the twelve-year-old goals that guide Washington’s regulation and, increasingly, deregulation of telecommunications services.

### Universal Service Promotes Democracy, Commerce and Community

Preservation and advancement of universal service has been Washington’s policy for over a decade because it serves the interests of citizens and the state.<sup>3</sup> Public

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<sup>1</sup> RCW 80.36.300

<sup>2</sup> *Id.*

<sup>3</sup> It was the state’s *de facto* policy to promote universal service long before enactment of RCW 80.36.300 in 1985.

health and safety are promoted by universal service. Safety, in particular, is promoted now that we have 911 and E911 services. Education is also promoted now that most students of all ages have quick access to all the knowledge the internet has to offer. Universal service also makes access to the network more valuable because each person can reach everyone on the system rather than a limited number of their fellow citizens. In this respect, universal service is a tool for promoting democracy. It also promotes commerce, for universal service permits us all to have access to a much greater marketplace than is even afforded by cars and good roads. Finally, in an era when people travel and relocate for work, universal service helps maintain family communication--preserving service to the high-cost customer who lives at the end of a remote road helps maintain the communication necessary to sustain family and community life.

### Preparation of Report

This report was prepared with the assistance of telecommunications providers, their institutional customers, representatives of state and local government and members of the public. Invitations were sent to over 500 people inviting them to attend an initial meeting in July, 1997.<sup>4</sup> At that meeting, attended by representatives of the telecommunications industry, business users, government organizations and public counsel<sup>5</sup>, the process for preparing the report was

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<sup>4</sup> Wireless telecommunications companies, which are not regulated by the WUTC, were not represented at the July meeting. Subsequent to the meeting staff succeed in contacting representatives of wireless companies.

<sup>5</sup> The Public Counsel Section of the Washington Attorney General's Office was created by the legislature in 1983 to represent the interests of consumers in utility regulatory proceedings, with an emphasis on residential and small business customers.

discussed. In August and September, WUTC staff traveled to the facilities of three telephone companies, including two in Eastern Washington, and had individual meetings with those who attended the initial meeting in July. Representatives of state and local government were contacted at this time. Finally, before preparing the report, the Commissioners held a public meeting in Coulee Dam to solicit comments from the public.<sup>6</sup> Approximately 50 people attended and most shared their opinions on the definition of basic telecommunications services.

When the first draft of the report was completed, it was distributed to those interested parties who participated in the July meeting and took part in discussions during August, September and October. Their comments helped to shape the final report; however, there is little, if any, industry-wide consensus on any issue and this report does not represent any views other than the Commission's.

### Scope Of Report

The 55th Legislature passed Substitute Senate Bill 6046 (Chapter 404, Laws of 1997), which requires this study of universal service and lists the topics to be included.<sup>7</sup> Those topics are: (1) a recommended definition of basic service for telecommunications; (2) an analysis of the range of potential telecommunications carriers, including wireless; (3) an analysis of the proper cost methodologies for

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<sup>6</sup> Prior to passage of the legislation which required this report, the WUTC had already held one public forum on universal service. "Market or Mandate: Meeting Telephone Customers' Needs in a Competitive Era" was held in Seattle on April 22-23, 1996 and was attended by approximately 100 people.

<sup>7</sup> The title of the bill is "AN ACT Relating to a study by the utilities and transportation commission on universal telecommunications service."

determining universal service funding; and (4) options for generating and disbursing universal service funding.

Those four topics will be covered in the report. In addition, in order to explain the effects of federal decisions on state authority, the report will begin with information about the universal service requirements of the TCA and the FCC Report and Order concerning universal service. The report will not include information about the discounts and subsidies for schools, libraries and rural health care providers. Those discounts and subsidies are very important to Washington, but they are almost entirely controlled by the FCC and there is considerable information available elsewhere.<sup>8</sup>



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<sup>8</sup> See "Getting Connected in Washington State: A Guide to Federal Universal Service Fund Discounts and Subsidies for Schools, Libraries and Rural Health Care Providers" at <http://www.wa.gov/dis/discountinfo/> and also see, generally, the FCC website at <http://www.fcc.gov/>

## THE FEDERAL TELECOMMUNICATIONS ACT OF 1996

### Congressional Action

Congress passed the Telecommunications Act of 1996 (TCA) “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>9</sup> The TCA delegated to the Federal Communications Commission (FCC) and the states the responsibility of implementing the Act. Some of the responsibility is given solely to the FCC, some solely to the states, and some responsibilities are shared. Preservation and advancement of universal telecommunications service are the shared responsibility of the FCC and the states.<sup>10</sup>

The TCA prescribes how competitive long distance companies and monopoly local telephone companies can compete in each other’s markets and requires the FCC and states to implement the legislation. In addition, the Act requires that universal service--affordable access to the telephone network for all--be maintained where competition would not otherwise sustain affordable service.

One way to view universal service is the collision of market-based competition and

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<sup>9</sup> Quotation of the title of the act, Public Law 104-104, 110 Stat. 154 (originally S. 652), approved February 8, 1996.

<sup>10</sup> See 47 U.S.C. 254 in general and, particularly, 47 U.S.C. 254(f).

service by government mandate. Where these two concepts collide, it will be up to regulatory agencies to reconcile their differences in a manner that ensures citizens continue to have telecommunications service for just and reasonable rates and that telephone companies receive compensation sufficient to sustain development of competitive alternatives for customers.

The FCC has issued a Report and Order approximately 800 pages in length detailing how they intend to preserve and promote universal service.<sup>11</sup> The Washington Utilities and Transportation Commission (WUTC), as it carries out its responsibilities to preserve and advance universal telecommunications service,<sup>12</sup> will make decisions based on the TCA, the FCC Report and Order, existing state law and any new legislation which may be enacted in 1998.

#### Section 254 of the Telecommunications Act of 1996

Section 254 of the TCA is the primary section of law concerning universal service.<sup>13</sup> The section includes:

- (1) the activities to be undertaken by the FCC;
- (2) the principles upon which the FCC shall base its policies for the

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<sup>11</sup> First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

<sup>12</sup> Jurisdiction between the FCC and the states has been the subject of considerable litigation since the early part of the century. In general, the FCC has jurisdiction over interstate telecommunications and the states have jurisdiction over intrastate telecommunications, but with exceptions as the result of both legislation and judicial decisions.

<sup>13</sup> 47 U.S.C. 254

- preservation and advancement of universal service;
- (3) a definition of universal service;
  - (4) a requirement that all telecommunications carriers shall contribute support to universal service;
  - (5) restrictions on the use of universal service support;
  - (6) a grant of authority to states to preserve and advance universal service and a requirement that telecommunications carriers contribute to support it;
  - (7) a requirement that interexchange rates<sup>14</sup> for subscribers in rural and high cost areas be no higher than those for urban subscribers;
  - (8) a requirement that states and the FCC ensure that universal service rates are just, reasonable, and affordable; and
  - (9) a prohibition against the use of services that are not competitive to subsidize those that are.<sup>15</sup>

### FCC Activities

Congress required the FCC to take two actions intended to lead to rule making

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<sup>14</sup> Interexchange rates are long distance toll rates charged for state-to-state calls (over which the FCC has jurisdiction), in-state interLATA calls and certain in-state intraLATA calls. LATA stands for Local Access and Transport Area, a term coined in the decree divesting AT&T of local telephone service. In the break-up of AT&T, remaining bell operating companies (BOCs) were restricted to supplying local telephone service and toll service within small regions known as LATAs. Competition in long-distance was promoted by this restriction on the BOCs' ability to provide long distance; all consumers would have to engage MCI, Sprint, the remaining AT&T or another interexchange carrier to call long distance, that is, across LATA lines. A major purpose of the TCA is to permit BOCs to enter the interLATA market when there is competition in local telephone service. See United States v. AT&T, 524 F. Supp. 1336 (D.D.C. 1981). See also United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

<sup>15</sup> This section also contains the provisions relating to discounts and subsidies for schools, libraries and rural health care providers, which will not be covered by this report. See n.8, above.

which would define the services to be supported by federal universal service support mechanisms and a timetable for implementation. The first activity was the establishment of a Federal-State Joint Board<sup>16</sup> to make recommendations to the FCC on rules necessary to implement section 214(e) and section 254.<sup>17</sup> The Joint-Board recommendations were published in November 1996, and covered all the topics relevant to universal service.<sup>18</sup> The second action was to promulgate rules to implement many of the recommendations of the Joint Board.<sup>19</sup> This was accomplished in May 1997, and included guidance to the states on their actions necessary to create a coherent program of universal service administered by both the FCC and the states.<sup>20</sup>

### Universal Service Principles

Subsection (b) of 47 U.S.C. 254 lays out the principles upon which the FCC is to

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<sup>16</sup> The Federal-State Joint Board on Universal Service consisted of three of the five Commissioners of the FCC and four state Commissioners. Washington was represented on the Joint Board by Sharon Nelson, then Chairman of the WUTC.

<sup>17</sup> Section 214(e), or 47 U.S.C. 214(e), concerns the designation of eligible telecommunications carriers. An eligible telecommunications carrier (ETC) is a carrier designated by a state commission that may receive federal universal service support in exchange for a willingness to serve all customers in its service area and which advertises its services in media of general distribution. The FCC required states to make initial designations of ETCs prior to January 1, 1998 as a prerequisite to continued federal support. The WUTC made designations necessary to ensure that companies in Washington entitled to receive funds in 1998 would be eligible for those funds. Designation of ETCs will continue as competition increases.

<sup>18</sup> Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996).

<sup>19</sup> The FCC followed the recommendations of the Joint Board in large part, but did differ on some significant topics which are noted later in the report. Not surprisingly, topics on which the WUTC diverges from the FCC are often those topics where the FCC diverged from the recommendations of the Joint Board.

<sup>20</sup> First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

base its policies for the preservation and advancement of universal service . There are seven principles, with the seventh one added by the FCC as permitted by the Act.<sup>21</sup>

1. Quality service should be available at just, reasonable and affordable rates.
2. Access to advanced telecommunications and information services should be provided in all regions of the Nation.
3. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
4. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
5. There should be specific, predictable and sufficient

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<sup>21</sup> See 47 U.S.C. 254(b)(7).

Federal and State mechanisms to preserve and advance universal service.

6. Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services[.]
7. Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.<sup>22</sup>

#### Definition of Universal Service

Subsection (c) provides a definition of universal service. "Universal service is an evolving level of telecommunications services that the Commission [FCC] shall establish periodically under this section." The subsection requires the FCC to consider, at a minimum, four things when it defines basic services to be supported by federal universal service mechanisms. They are the extent to which telecommunications services--

- (1) Are essential to education, public health, or public safety;

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<sup>22</sup> This additional principle is consistent with the recommendations of the Joint Board. See ¶ 47, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

- (2) have, through the operation of market choices by carriers, been subscribed to by a substantial majority of residential customers;
- (3) are being deployed in public telecommunications networks by telecommunications carriers; and
- (4) are consistent with the public interest, convenience and necessity.

From this definition and the principles described immediately above, the FCC developed a list of basic services to be supported by federal universal service support mechanisms.<sup>23</sup> That list of services will be discussed later in the report, as will the importance of that list to decisions to be made in Washington.

### Telecommunications Carrier Contributions

Subsection (d) requires that every telecommunications carrier that provides interstate telecommunications service contribute to the mechanisms established by the FCC to preserve and advance universal service. Contributions are to be on an equitable and nondiscriminatory basis and made to support mechanisms which are specific, predictable and sufficient to ensure universal service. Providers whose contribution would be *de minimis* may be exempted and other providers may be required to contribute if the public interest requires.<sup>24</sup>

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<sup>23</sup> The term "universal service support mechanism(s)" is used throughout the TCA rather than "support funds" because, as will be described later, some of the support for universal service does not involve an explicit transfer of money between carriers or from carriers to a fund and then distribution to other carriers.

<sup>24</sup> The FCC interpretation of this section will result in contributions from, among others, wireless providers but not from information (internet) service providers. This will be covered in more detail later in the report. See ¶ 772 to 800, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

### Restriction on Use of Universal Service Support

Subsection (e) states carriers that receive universal service support shall use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The support should be “explicit” and “sufficient” to maintain and advance universal service.<sup>25</sup>

### Grant of Authority to States

States are given authority to “adopt regulations not inconsistent with the [FCC’s] rules” in order to create specific, predictable and sufficient support mechanisms to preserve and advance universal service in their respective state. Every telecommunications carrier which provides intrastate service must contribute on an equitable and nondiscriminatory basis. State definitions and standards may not “rely on or burden” federal universal service support mechanisms.

### Interexchange Rate Equality

Subsection (g) of the TCA requires that interexchange rates for interstate calls be the same for urban and rural customers. The FCC has already taken action to implement this requirement.<sup>26</sup> A call from Colville to Kansas City should cost no

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<sup>25</sup> The word “explicit” has generated considerable comment and many commenters point, erroneously, to subsection (e) and the word explicit as support for their position that state universal service must be supported by a state mandated (or permitted) end-user charge which appears as a separate item on customers’ bills, as is the case with the federal \$3.50 subscriber line charge (SLC). However, subsection (e) governs only *federal* universal service support mechanisms. This will be an important point later in the report where recommendations for support mechanisms are discussed.

<sup>26</sup> See First Report and Order, In the Matter of Access Charge Reform, CC No. Docket 96-262 (May 16, 1997)

more than a call from Spokane to Kansas City; that one originates in a high-cost area and the other in a low-cost area should make no difference.<sup>27</sup>

#### Just, Reasonable and Affordable Rates

Subsection (i) requires that the States and the FCC ensure that universal service is available at rates that are just, reasonable, and affordable.<sup>28</sup>

#### Changes to Federal "Lifeline" Program Prohibited

Subsection (j) prohibits changes to the Federal Lifeline Assistance Program. The Lifeline program provides assistance to low-income customers who otherwise would find it difficult to pay for local telephone service. Washington has the Telephone Assistance Program which serves the same purpose and takes advantage of federal funds available through the Lifeline program.<sup>29</sup> The FCC has proposed increasing the amount of federal support available to offset customer local telephone service bills from \$5.25 to an amount not to exceed \$7.00 per customer.<sup>30</sup>

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<sup>27</sup> Washington has similar provisions. See RCW 80.36.180-190.

<sup>28</sup> Section 201(b) of the Telecommunications Act of 1934 requires that "All charges...be just and reasonable", but not "affordable" as found in 47 U.S.C. 254(i). The Section 201(b) requirement can be traced from the original Interstate Commerce Act, 24 Stat. 379 (1887) and common law. At common law, common carriers were prohibited from discriminating against persons or places and could not give preferences. See Paglin, Max D., ed., A Legislative History of the Telecommunications Act of 1934, New York, Oxford University Press, 1988. In Washington, the WUTC is to ensure that "...rates...shall be just, fair, reasonable and sufficient..." RCW 80.36.080.

<sup>29</sup> See RCW 80.36.410-475. N.B. This program is set to expire on June 30, 1998.

<sup>30</sup> The additional \$1.75, or a portion thereof, depends on a one-to-one state match. See ¶ 350-53, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997). If Washington were to match federal funds, the federal portion of support would be \$7.00 per month.

### Prohibition Against Subsidy of Competitive Services

Subsection (k) prohibits the use of non-competitive services to subsidize services which are competitive. The FCC and states are also required to establish cost allocation rules, accounting safeguards and guidelines to ensure that supported services bear no more than a reasonable share of the joint and common costs of facilities used to provide supported, basic services.<sup>31</sup>



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<sup>31</sup> The FCC has determined that the interstate share of high-cost support should be 25 percent, with states responsible for 75 percent. The percentage of federal support corresponds to the present interstate allocation for separations and is based on the work of the Separations Joint Board. The FCC relied on four principles when it chose 25 percent; the four principles were "(1) ensure the permanent protection of universal service; (2) provide certainty to all parties; (3) be administratively workable; and (4) be fair and equitable to all parties." See Jurisdictional Separations Procedure, Second Recommended Decision and Order, CC Docket 80-286, 48 Fed. Reg. 46556 (Oct. 13, 1983) and ¶ 269-71, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

## DEFINITION OF BASIC SERVICES

### The FCC Definition of Basic Services

The FCC has defined basic services to include:

- 1) Single-party service;
- 2) Voice grade access to the public switched network;
- 3) Support for local usage;
- 4) Dual tone multi frequency signaling (touch-tone);
- 5) Access to emergency services (911);
- 6) Access to operator services;
- 7) Access to Interexchange services;
- 8) Access to directory assistance; and
- 9) Toll limitation services.

In order for a carrier to be eligible to receive federal universal service support, it must offer the nine services listed above. Each service requirement is listed below with more detail. It is important to understand that a carrier need not offer these services; however, the carrier will be ineligible for federal universal service support as of January 1, 1998 if it does not offer these basic services.

### Single-Party Service

The FCC requires that customers have the option to order single-party service. The FCC considers single-party service essential to public health and safety because it

permits access to emergency services without delay. The FCC has also concluded that wireless service meets the requirements of single-party service. However, a carrier is not precluded from offering multi-line service.<sup>32</sup>

### Voice Grade Access to the Public Switched Network

This includes the ability to make and receive calls on the public network at a frequency range between 500 Hertz and 4,000 Hertz.<sup>33</sup> The FCC rejected calls for requiring a greater bandwidth<sup>34</sup> as a basic requirement.<sup>35</sup> One reason for declining to require greater bandwidth (which would permit higher speed transmission of facsimile (FAX) and data) is because to do so would, in the opinion of the FCC, increase the basic cost of telecommunications for all customers. The FCC indicated it will revisit this issue as technology progresses.<sup>36</sup>

### Support for Local Usage

The FCC believes that access to the public switched network is not enough to ensure universal service. In its opinion, a certain amount of use of the network must be supported. An example of supported use is Washington's present

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<sup>32</sup> ¶ 62, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

<sup>33</sup> Hertz (Hz) is a measure of frequency in cycles per second.

<sup>34</sup> Bandwidth is a measure of the range of electrical frequencies a device can carry. A wide band circuit that can carry a television channel, for example, is large enough to carry 1,200 voice telephone channels.

<sup>35</sup> ¶ 63, 64, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

<sup>36</sup> Id. ¶ 64.

requirement that all carriers provide a flat-rate, unlimited local calling option.<sup>37</sup> The FCC has yet to determine how much use should be supported with federal universal service support; it has stated that states are in the best position to determine how much usage should be supported with state universal service supports.<sup>38</sup> In addition, the FCC believes that adherence to the principle of competitive and technological neutrality requires that implementation of this requirement must be done in a way that does not favor wireless over wireline or the reverse.<sup>39</sup>

#### Dual Tone Multi Frequency Signaling (Touch-Tone)

Dual tone multi frequency (DTMF) signaling speeds call completion and carries information necessary to emergency services attempting to identify the origin of calls. The FCC has found that DTMF signaling, or signaling of another nature which meets the same needs, is in the interest of public health and safety, as well as convenience. It has approved wireless out-of-band digital signaling as equivalent to DTMF.<sup>40</sup>

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<sup>37</sup> See RCW 80.04.130(3), prohibiting imposition of mandatory measured service. This prohibition expires June 1, 1998. Unlimited flat-rated calling may be an important requirement for continued work-at-home options offered by many employers.

<sup>38</sup> In the case of extended local calling, the state may find the FCC unwilling to share the additional cost associated with increased support for local usage beyond what the FCC eventually determines it will support.

<sup>39</sup> ¶ 65 to 70, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997). The WUTC does not regulate wireless carriers. Legislation would be necessary to require a flat-rate option for wireless customers.

<sup>40</sup> Id. ¶ 71

### Access to Emergency Services

The FCC will support through universal service support mechanisms the telecommunications network components necessary for access to 911 and E911 service. The FCC noted that wireless companies have already been placed on a schedule to meet earlier FCC requirements to provide 911 service.<sup>41</sup>

### Access to Operator Services

The FCC requires access to automatic or live assistance to arrange for billing or completion of telephone calls. This includes the ability to place collect, third-party billed and person-to-person calls. It does not include busy signal verification and emergency interrupt.<sup>42</sup>

### Access to Interexchange Services

The FCC will support through universal service support mechanisms access to interexchange service of the customer's choice. Among other things, the FCC concluded this serves the public interest, convenience and necessity.<sup>43</sup> The FCC will not, at this time, support *equal* access to interexchange service because it is inconsistent with section 332(c)(8) of the act, which prohibits any requirement that

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<sup>41</sup> Id. ¶ 72-74

<sup>42</sup> ¶ 71, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997). Cf. First Report and Order, Local Competition Order, CC Docket No. 96-98 (1996) at paras. 13, 110 and 111.

<sup>43</sup> ¶ 76 and 77, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

commercial mobile radio service (CMRS)<sup>44</sup> providers offer “equal access to common carriers for the provision of toll services.”<sup>45</sup> Equal access to interexchange service means that dialing 1+ the telephone number for long distance automatically sends the call via the customer’s presubscribed interexchange carrier (e.g. AT&T, MCI, Sprint) without the necessity of dialing any access codes. As a practical matter, most customers of wireline service have equal access to interexchange service for interstate interLATA<sup>46</sup> and intrastate interLATA calls.

#### Access to Directory Assistance and White Pages Directories

The FCC has concluded that directory assistance is, among other things, necessary for public health and safety and has concluded that it is functionally a telecommunications service. Accordingly, the FCC will support access to directory assistance with universal service support mechanisms.<sup>47</sup>

The FCC has also concluded, however, that white pages directories are not a telecommunications service and has declined to include white pages as a basic service to be supported. The FCC does “encourage” carriers to continue to make

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<sup>44</sup> Commercial mobile radio service is wireless telephone service. See 47 U.S.C. 332(c)(7)(C) and 47 U.S.C. 153(27).

<sup>45</sup> ¶ 78, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

<sup>46</sup> See n.14, *supra*.

<sup>47</sup> *Id.* ¶ 80.

white pages directories available to consumers.<sup>48</sup>

### Toll Limitation Services

The FCC has concluded that toll limitation services, including toll blocking and toll control, are essential to maintaining access to the public network for low-income consumers, and are therefore in the public interest.<sup>49</sup> Toll blocking results in the complete inability to make a toll call that would be billed to the originating number. Toll control would permit a customer to designate a maximum amount of toll expenditure per month which would be monitored by the carrier in real-time and block toll calls after the predetermined amount is reached. The FCC has acknowledged that not all carriers are capable of providing toll limitation services, particularly toll control. Accordingly, it has authorized state commissions to permit those carriers to receive universal service support while they complete upgrades to their switches to provide the service.<sup>50</sup>

### Access to Internet Services

The FCC specifically rejected access to internet services as a basic service to be supported by federal universal service support mechanisms. The FCC noted that voice-grade access usually permits access to the internet. It also drew a distinction

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<sup>48</sup> Id. ¶ 81.

<sup>49</sup> Id. ¶ 82.

<sup>50</sup> The FCC states that this is not the grant of an exception to the requirement but merely “a transitional mechanism.” ¶ 388, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997). See also 47 C.F.R. 54.401.

between telecommunications services, which are supported, and information services, which will not be supported. The FCC concluded that access to the internet is not “essential” as that word is used in section 254(c)(1)(A). In these determinations the FCC was in accord with the Federal-State Joint Board on Universal Service. The FCC anticipates that increasing demand will cause carriers to offer higher bandwidth services to residential customers.<sup>51</sup> The FCC did not address the effect of this decision on business customers.

#### Recommended State Definition of Basic Services

Washington may define basic services to be supported by state universal service support mechanisms. Washington can choose a definition different than the one chosen by the FCC. If Washington requires less, then companies that seek federal universal service funds will nevertheless have to comply with the larger FCC list of requirements. If Washington chooses a list of services greater in scope than the FCC list, then companies that desire to receive both federal and state support will have to provide the greater level of service.

The TCA places some restraint on states’ adoption of an expanded list of basic services. In 47 U.S.C. 254(f) the Act requires that any additional definitions or standards be supported by additional specific, predictable and sufficient support mechanisms “that do not rely on or burden Federal universal service support

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<sup>51</sup> ¶ 83, First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).