**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| In the Matter of: | ) | |
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| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
| | ) | |
| Establishing Just and Reasonable Rates For Local Exchange Carriers | ) | WC Docket No. 07-135 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing an Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |
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**COMMENTS OF THE**
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Pursuant to the Public Notice released on August 3, 2011, in these dockets (Public Notice), the Washington Utilities and Transportation Commission (WUTC or Washington Commission) provides the following comments.[1]

[1] Under state law, the WUTC represents the interests of the state of Washington for purposes of presenting comments to the FCC. *See* RCW 80.01.075 (granting the WUTC "the authority . . . to initiate and/or participate in proceedings before federal agencies where there is at issue the authority, rates or practices for transportation or utility services affecting the interests of the state of Washington, its businesses and general public . . . .").

## INTRODUCTION AND SUMMARY

The WUTC appreciates the Federal Communications Commission's (FCC or Commission) recognition that states should have a significant role in the reform of the federal universal service and intercarrier compensation mechanisms. The Washington Commission nevertheless shares the concerns expressed by the National Association of Regulatory Utility Commissions (NARUC) that preemption of state commission authority in these areas is neither necessary nor prudent. The WUTC also appreciates the comprehensive analysis included in the plan authored by the State Members of the Joint Board on Universal Service, which calls for a continuing strong state role in a number of key areas. Federal and state regulators each have important obligations and responsibilities to protect consumers of telecommunications and related services, and the FCC should not sacrifice or abandon state commission experience and expertise in the mistaken belief that consistency and national uniformity require unilateral Commission action.

The WUTC joins other state commissions in urging the FCC to maintain or even enhance an effective and meaningful federal-state partnership in reforming universal service and intercarrier compensation. The federal Telecommunications Act of 1996 (Act)[2] has been most successful in bringing the benefits of a more competitive market to consumers when the FCC and state commissions have exercised their respective strengths – the Commission establishing national standards and state regulators implementing those standards in the context of the often unique circumstances that exist in their jurisdictions. There is no reason to depart from that model now. To the contrary, the scope and scale of the universal service and intercarrier

[2] 47 U.S.C. §§ 201, *et seq.*

compensation reform the FCC is contemplating can be successfully implemented only through the effective cooperative efforts of federal and state regulators.

Specifically, the WUTC recommends that the FCC respect the division of responsibility Congress established in the Act and ensure that states have the same authority to make universal service determinations under the reformed plan the Commission ultimately adopts as states currently have. The FCC should also work with state commissions to reform intercarrier compensation, rather than unilaterally impose reductions to intrastate access charges and require states to find a way to offset these reductions. Finally, the Commission should avoid inevitable unintended consequences and should refuse to assume jurisdiction over all voice services as a means of reforming intercarrier compensation.

## DISCUSSION

### A. States Should Have the Same Authority to Make Universal Service Determinations under the Reformed Plan the FCC Ultimately Adopts as States Currently Have under the Act.

The Public Notice cites prior comments submitted by the WUTC and other state commissions that "propose an ongoing role for states in monitoring and oversight over recipients of universal service support."[3] While the Notice solicits "comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite[s] comments on other suggestions,"[4] the WUTC believes that these areas fall short of describing the key elements of an effective federal-state partnership.

The specific examples listed in the Public Notice would relegate state commissions to the fringes of FCC universal service decision-making, authorizing states only to make ancillary

[3] Public Notice at 5.

[4] *Id.*

determinations on broadband deployment in particular areas and extensions into new areas. Particularly problematic is the suggestion to limit the states to being copied on company filings with the Commission and to "collect[ing] information regarding customer complaints" without the authority to investigate and resolve complaints and other issues. Such a limitation would undermine the states' well-established role in protecting their citizens and overseeing regulated company operations within their borders. More significantly, the result would be public confusion and frustration, misleading consumers to believe that they could seek redress of their issues from the state commissions when, in reality, states would do nothing more than act as complaint collection and transfer points for the FCC.

Congress in the Act has already established the respective responsibilities of the FCC and state commissions. The FCC, in conjunction with the Federal-State Joint Board, establishes rules and "policies for the preservation and advancement of universal service"[5] and oversees administration of the federal universal service fund. States designate the carriers eligible to receive federal universal service support,[6] and they are also authorized to "adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."[7] This Congressional delineation of authority recognizes the strengths of each agency and allocates responsibility accordingly. The FCC has the expertise and authority to establish national standards while state commissions are in the best position to implement those standards – and to the extent necessary adopt additional requirements – in a manner that best suits the specific conditions in each state.

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[5] 47 U.S.C. § 254(b).

[6] *Id.* § 214(e).

[7] *Id.* § 254(f).

The WUTC takes seriously its universal service responsibilities under the Act. The Washington Commission adopted detailed rules to implement and enhance FCC universal service requirements to best suit the needs of Washington consumers.[8] Along with other state commissions, the WUTC also responded to the Commission's call for more oversight and accountability under the Section 214(e) process for eligible telecommunications carriers (ETCs) and strengthened the WUTC's rules in many important respects. The WUTC carefully scrutinizes each application for designation as an ETC and imposes additional carrier-specific requirements where, in its view, additional requirements are necessary to ensure that the requesting carrier will properly serve the area in which it seeks to obtain universal service support.[9] The WUTC also devotes substantial resources to monitoring carriers' compliance with the state and federal requirements the Washington Commission is charged with enforcing. As part of the annual recertification process, Washington ETCs submit detailed financial and network deployment information for WUTC review. Neither the FCC nor any interested party has put forth any compelling justification to reallocate to the federal jurisdiction what have been state functions or otherwise to abandon the federal-state partnership the Act mandates for the preservation and advancement of universal service.

The FCC, therefore, should comply with Sections 254 and 214 of the Act when determining the states' role in implementing the plan that the Commission ultimately adopts to reform federal universal service funding. ETCs under any revised plan for federal universal service support thus would continue to apply for designation and monitoring by state commissions. Indeed, the FCC has no alternative if the Act provides the legal grounds on which

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[8] *See* Wash. Admin. Code Chapter 480-123.

[9] *See, e.g., In re Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, WUTC Docket UT-093012, Order 03 (June 24, 2010).

the Commission bases the action it takes. Even if the FCC departs from the Act, however, and adopts revised universal service funding based on other legal grounds, the Commission should retain the existing federal-state partnership for universal service issues. That aspect of universal service needs no reform, and the foundation that Washington and other states have laid for making and overseeing universal service determinations will maximize the opportunities for success of whatever plan the Commission adopts.

### B. The FCC Should Not Adopt at this Time Any Requirement that States Offset Commission-Mandated Intrastate Access Charge Reductions.

The Public Notice seeks comment on whether the FCC should "provid[e] states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions."[10] The WUTC recommends that the Commission not adopt such a requirement, at least at this time, both for principled and practical reasons.

Just as the FCC should work in a meaningful partnership with the states to reform universal service funding, so too should the Commission revise intercarrier compensation rates in conjunction with state commissions. Intrastate rates for telecommunications services, including access charges and other forms of intercarrier compensation, have been and remain the purview of state commissions, which are in the best position to determine whether those rates are fair, just, reasonable, and sufficient.[11] The WUTC recognizes the potential benefits of moving to

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[10] Public Notice at 11.

[11] State commissions are uniquely positioned to develop the factual record necessary to make these types of determinations. The WUTC, for example, recently conducted a series of workshops in Docket UT-100562 to explore the issues regarding establishment of a potential state universal service fund or intrastate access charge replacement mechanism. Unilateral federal action would effectively negate such efforts.

a more uniform system of intercarrier compensation, including both interstate and intrastate traffic. The WUTC, however, is also mindful of the impacts of such a shift on the carriers who provide telecommunications services in Washington, particularly the incumbent local exchange carriers (LECs). The FCC and state commissions should both be involved in determining the goals of intercarrier compensation and how best to achieve those objectives.

If the FCC is determined to act unilaterally, however, it should take full fiscal responsibility for such action. FCC-mandated reductions in intrastate access charges should be offset by *federal* universal service or other *federal* funding sources. The FCC should not expect to simply require a reduction to intrastate access charges and leave to state commissions the task of determining how to pay for such reductions. Not only would that mean that states would have to find a way to implement a determination they had no part in making but at least some states could find it difficult, if not impossible, to do so.

Washington provides an apt example. The WUTC has taken significant steps to reduce intrastate access charges through rulemaking,[12] complaints,[13] and merger proceedings,[14] but the Washington Commission is limited in its ability to go further. The WUTC cannot establish a state universal service funding mechanism without express authorization from the Washington

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[12] Wash. Admin Code 480-120-540.

[13] *See, e.g., Verizon Select Services, Inc., et al. v. United Tel. Co. of the Northwest, d/b/a Embarq*, WUTC Docket UT-081393, Order 05 (Nov. 13, 2009) (approving settlement agreement reducing originating and terminating intrastate access charges).

[14] *E.g., In re Joint Application of Qwest Communications International Inc. and CenturyTel, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.*, WUTC Docket UT-100820, Order 14 (March 14, 2011) (conditioning approval of the transaction, in part, on a reduction in intrastate access charges). The Commission should be aware, however, that CenturyLink has challenged this condition in federal district court, putting into question both the WUTC's approval of the transaction and the Washington Commission's authority to reduce intrastate access charges through that type of proceeding.

legislature.[15] The only option that may be available to the WUTC would be to authorize companies to increase other intrastate rates to generate the revenues lost through access charge reduction.

The FCC cannot realistically require that incumbent LECs substantially reduce their intrastate access charges solely through rate rebalancing. The Commission, therefore, should not require states to offset any reduction to intrastate access charges unless the states have a meaningful role in determining how, when, and to what extent those rates should be reduced.

### C. The Commission Should Not Attempt to Assume Jurisdiction Over All Aspects of Voice Service to Reform Intercarrier Compensation.

The Public Notice seeks comment on implementation of the proposal to subject voice over Internet protocol (VoIP) access traffic to intercarrier compensation payments, albeit at different rates than the access charges that apply to other access traffic during the first part of the transition. The WUTC supports a requirement that VoIP traffic be subject to intercarrier compensation but opposes any attempt to do so based on a Commission determination that VoIP is an information service or otherwise solely within the FCC's jurisdiction. Such a determination is unnecessary and would have far-reaching negative impacts on state commissions' ability to protect consumers of voice services.

The FCC has yet to determine whether VoIP is a telecommunications or information service. Rather, the Commission has avoided that issue and chosen to incrementally require VoIP service providers to comply with certain requirements that apply to other voice service providers, including E-911, universal service contributions, and the Communications Assistance for Law Enforcement Act (CALEA). Certain plan proponents have advocated that the FCC now

[15] Revised Code of Wash. 80.36.610. To the extent that consumer contribution to any such funding mechanism is considered to be a tax, moreover, Initiative 960 would require a supermajority of two-thirds of the legislature to enact it.

find that VoIP is an information service and, as such, exclusively within the FCC's jurisdiction. Such a conclusion, these parties contend, would enable the Commission to establish the applicable intercarrier compensation rate for VoIP traffic, just as it has for traffic bound for Internet service providers.

The Commission, however, need not find that VoIP is an information service to require that such traffic be subject to intercarrier compensation. Section 251(g) of the Act authorizes the FCC to establish regulations governing exchange access for the transport and termination of telecommunications traffic. If VoIP is a telecommunications service, the Commission could rely on this section to set intercarrier compensation rates for that traffic, even if that traffic originates and terminates within a single state or local access and transport area (LATA). The FCC can adopt the proposal for subjecting VoIP to access charges regardless of whether VoIP is a telecommunications or information service, and thus the Commission need not determine the nature of VoIP as part of this proceeding.

Any FCC determination that VoIP is an information service, however, would have far broader consequences than simply providing the Commission with authority to establish intercarrier compensation rates for such traffic. As an information service, state commissions would be precluded from exercising any jurisdiction over that service or potentially the companies that provide that service. Consumers who use VoIP as the equivalent of traditional landline telephone service could no longer seek redress from the state commission or any other state agency for billing, service quality, or other service-related issues. The result would be to shift the resolution of such complaints from the state agency, which is in the best position to address them, to the FCC, which has neither the expertise nor the resources to take them on.

These concerns are not hypothetical. Comcast is one of the largest providers of voice service in Washington based on the number of subscribers, and that company provisions service as VoIP. Most, if not all, regulated telecommunications companies in this state provision or have affiliates that provide VoIP. Verizon Northwest Inc. (now Frontier Northwest Inc.), the second largest incumbent local exchange carrier in Washington, replaced two of its circuit switches with IP-based switches, and other carriers are doing the same. Companies are increasingly converting their circuit-switched networks to IP-based networks, and if the Commission were to determine that VoIP is an information service, many, if not most, of them would likely seek to discontinue local telecommunications service subject to state oversight in favor of FCC-regulated VoIP service, as Comcast has already done.

Complaints about telecommunications service, however, top the list of complaints consumers make to the WUTC. The Washington Commission received 722 customer complaints in 2010 against regulated telephone companies concerning billing disputes, disconnect threats, quality of service and customer service issues. Similarly, the Consumer Protection Division of the Washington Attorney General's Office received more complaints about telephone companies and service (both landline and wireless) than any other industry on an annual basis from 2001-08, and such complaints for 2009 (the latest year for which the WUTC has such figures) was second only to the number of complaints about collection agencies. The FCC Enforcement Bureau's backlog of cases is already substantial, and adding complaints that are currently filed with state agencies would overwhelm that system to the ultimate detriment of consumers.

The FCC should be mindful of all consequences that will result from its actions, both intended and unintended. The Commission can reform intercarrier compensation without

assuming exclusive jurisdiction over VoIP and therefore should make only those determinations that are necessary to accomplish its goals.

## CONCLUSION

State commissions are indispensable partners in the FCC's efforts to reform universal service and intercarrier compensation. The WUTC strongly recommends that the Commission maintain the Act's prescribed relationship of federal and state regulators by providing states with a meaningful role in the development and implementation of such reform and that the FCC take only the actions necessary for the federal government in this process.

Respectfully submitted,

David W. Danner
Executive Director
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504