

Agenda Date: September 12, 2001
Item Number: 2F

Docket No.: UT-003074, Telephone Assistance Rulemaking

Staff: Kristen Russell, Policy Specialist
Bob Shirley, Telecommunications Analyst
Larry Berg, Administrative Law Judge
Lori Kanz, Consumer Affairs Specialist
Jon Thompson, Assistant Attorney General

Recommendation:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to repeal, adopt, and amend rules in Chapter 480-122 WAC as set out in Attachment A to this memo to be effective on February 28, 2002.

Background and Process:

Legislation was passed in 1987 to create the Washington Telephone Assistance Program (WTAP) to maintain affordability of basic telecommunication service for low income persons, RCW 80.36.410 – 475. The authority for implementation and operation of the WTAP program was given to the Department of Social and Health Services (DSHS) and the Commission - DSHS is responsible for the administration of the program, and the Commission is responsible for establishing a single telephone assistance rate and setting the excise tax rate on switched access lines. The Commission's WTAP rules, Chapter 480-122 WAC, have not been substantially altered since their adoption in 1990. DSHS recently completed a rulemaking regarding their WTAP rules, Chapter 388-273 WAC. Their rules were adopted on April 9, 2001, and effective June 1, 2001. The Commission has had several meetings with DSHS representatives of the WTAP program to discuss the status of our rulemaking and our concerns.

Staff held workshops with interested parties on October 10, 2000, and May 22, 2001, to discuss the potential changes to Chapter 480-122 WAC. A Small Business Economic Impact Statement (SBEIS) questionnaire and request for comments was prepared and sent out on April 17, 2001. The SBEIS questionnaire prompted little substantive comment. The proposed language eliminates benefit rules that are duplicative of DSHS's rules, establishes a threshold for when competitive local exchange carriers (CLEC) are required to offer WTAP discounts, and makes miscellaneous textual changes for clarification.

On August 1, 2001, the Commission filed a notice of proposed rulemaking, (CR-102), with the Office of the Code Reviser, and requested comments on the proposed rule language. The Commission received written comments from the following parties:

Public Counsel,
Qwest Corporation,
Verizon Northwest Inc., and
Low Income Telecom Project (LITE)

Issues:

1. Verizon believes there are gaps and disconnects between DSHS's adopted rules and the Commission's proposed rules regarding the carriers that will participate in the program. Specifically, the phrase "eligible telecommunications carrier" is used differently by DSHS and the Commission in their respective rules. The concern is that the discrepancy could prevent non-eligible telecommunications carriers (ETC) from receiving reimbursement for providing WTAP discounts.

- Commission Staff discussed this issue with DSHS representatives of the WTAP program, and DSHS has agreed to initiate a rulemaking to eliminate the discrepancy. DSHS anticipates that completion of their rulemaking will be no later than February 28, 2002.

2. Verizon also contends that neither DSHS's rules nor the Commission's proposed rules address the potential funding shortfall due to WTAP participation by non-ETCs, thus increasing WTAP costs beyond the statutory funding limit.

- DSHS is aware of our rules, and is comfortable with the funding integrity of the program. They also plan to spend down the fund balance.

3. LITE and Qwest believe that all providers of residential service should be required to offer the WTAP discounts – the threshold language should be removed. LITE proposes that the Commission grant a waiver/exemption of the rule if a carrier shows actual harm from complying with this rule.

- The threshold was chosen so as not to create a disincentive to CLECs from entering the residential market. Once competition develops in the residential market, WTAP clients will have choices that other residential customers have. Staff believes a company with 100 residential customers is one that is committed to the residential market.

4. Public Counsel and LITE recommend that the Commission's rules include outreach requirements.

- The FCC has a rule requiring outreach efforts by ETCs. Staff has opted to hold workshops and evaluate outreach efforts. If companies are not complying, this issue could be addressed in a future rulemaking.

5. Public Counsel and LITE recommend that the Commission's rules include streamlined/automatic enrollment procedures.

- Staff believes this is more properly a DSHS issue.

6. Both LITE and Public Counsel recommend requirements on training company service representatives to effectively identify when customers are requesting WTAP be included in the Commission's rules.

- While Staff agrees that employees should be knowledgeable of the WTAP program, we believe rules specifying the training the company should provide to assure such would be micromanaging the company, and Staff does not agree that such language would be appropriate in the Commission's WTAP rules.

Summary:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to repeal, adopt, and amend rules in Chapter 480-122 WAC as set out in Attachment A to this memo to be effective on February 28, 2002.

Attachment A