

June 13, 2003

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Re: Petition for Gubernatorial Review of Emergency Rule amended WAC 388-372-0035

Dear Mr. Brady:

Pursuant to RCW 34.05.350(3), I have fully reviewed your petition, submitted on behalf of Stan Johnson and Stan Efferding dba Vilaire Communications, the relevant statutes and regulations, and after careful consideration, hereby deny the appeal.

The Department of Social and Health Services (DSHS) filed an emergency rule with the Code Reviser on May 30, 2003. The standard for adoption of an emergency rule is that it be “. . . necessary for the preservation of the public health, safety or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest” (RCW 34.05.350 (1)). My role in review of this petition is to consider only whether these conditions have been met (RCW 34.05.350 (3)). I find that adoption of this rule on an emergency basis was necessary and appropriate.

The Washington Telephone Assistance Program (WTAP) provides telephone services to low income residents of our state. More than 120,000 people currently receive needed assistance through this reduced cost program. The regulations governing this program require DSHS to reimburse the local telephone companies “within available funds” (WAC 388-273-0035). The agency must manage the program in a manner that allows wide access to the program within the revenues provided from the excise tax collected for this purpose. Over the ten-year history of the program DSHS and the Washington Utilities and Transportation Commission (WUTC) have managed the fund both by adjusting the rate that telephone companies can charge the WTAP customer and the reimbursement rate paid by DSHS to these companies.

Currently, the WTAP low-income customer is charged \$4.00 per month for telephone service. DSHS is in the process of asking the WUTC to more than double this monthly charge. More than 70% of the WTAP telephone lines are charged to DSHS at \$5.00 per month. However, in recent months a new trend has developed in the program. Competitive Local Exchange Carriers (CLECs) who purchase telephone line access from incumbent phone companies and then resell the line have entered the Washington market. These companies are required by the WUTC

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to provide WTAP services. However, they have been charging DSHS approximately \$50.00 per month for each telephone line. Between February and May there was a 67% increase in the number of WTAP customers served by CLECs. These disproportionate costs have driven the WTAP fund out of balance. Four CLECs, serving about 10% of the WTAP customers, are now absorbing over 40% of the monthly expenditures. This is simply not sustainable. The excise tax brings approximately \$424,000 into the program each month. Expenditures, prior to adoption of the emergency rule, were approximately \$1.3 million per month. At the current rate of expenditures the WTAP fund will run out of money in July 2003. Emergency action to maintain vital telephone services to 120,000 persons is appropriate and justified.

1. The agency could not reasonably be expected to act sooner. Prior to passage and signature of Substitute House Bill 1624 on May 7, 2003 the WTAP would have ceased existence on June 30, 2003. There are sufficient monies in the fund to operate through the end of this fiscal year. The emergency arose when the program was reauthorized and DSHS had to determine program parameters to maintain fiscal soundness of the program into the future. The bill was signed and WTAP reauthorized on May 7, 2003. It would not have been appropriate for the agency to amend the rules prior to that date.
2. Without this action the fund will be depleted in July 2003. The fund balance shown by the Treasurer's office does not reflect outstanding invoices, and administrative costs to the program. Maintenance of the fiscal integrity of this program into the future is necessary to public safety and general welfare. Restricting the ability of 120,000 low-income persons, many of whom are disabled or have young children in their home, to access emergency services, doctors, social workers, employers and others would be contrary to health, safety and the general welfare.

The petition is denied.

Sincerely,

Gary Locke
Governor

cc: Dennis Braddock, Secretary, Department of Social and Health Services
Marilyn Showalter, Chairwoman, Utilities and Transportation Commission