

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Eligible)
Telecommunications)
Carrier)
(ETCs))
Rulemaking.)
_____)

DOCKET NO. UT-053021

**Fifth Comments of Public Counsel
Attorney General of Washington**

JANUARY 27, 2006

I. INTRODUCTION

The Public Counsel Section of the Washington State Attorney General’s Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission’s (Commission) December 6, 2005, *Notice Extending Date for Consideration of Proposed Rulemaking (CR-102)*.

II. COMMENTS

Draft rule WAC 480-123-0060(7)

In earlier comments submitted regarding this rulemaking, Public Counsel has addressed numerous issues that are important in this rulemaking. In these comments, we will focus our attention on low-income telephone assistance programs and the proposed advertising requirements.

As stated as a general matter in previous comments, Public Counsel supports draft rule WAC 480-123-0060(7). In keeping with earlier comments, Public Counsel commends the Commission for using this opportunity to address the need for increased visibility of discounted

telephone services available to low-income individuals. Furthermore, Public Counsel supports efforts that encourage Eligible Telecommunication Carriers (ETC) to direct resources and attention increasingly and more effectively toward these consumers who could otherwise be excluded from service. In the instances where Public Counsel does not agree with the rules specifically proposed, Public Counsel does support the spirit in which the Commission proposed them.

In particular, Public Counsel supports the concept that there are simple, common sense measures that should be incorporated into the regular business practices of ETCs in order to improve visibility of programs aimed at reaching low-income individuals not already receiving discounted services. These measures—i.e. advertising the assistance programs via posters and fliers made visible and available in the ETC’s payment agencies and offices that are open to the public¹ and sending a bill insert advertising and explaining the program²—are relatively easy, yet direct measures that give the consumers better information about what is available to them. Public Counsel fully endorses these aspects of the draft rules. We also propose that the Commission further study and consider similar common sense practices conducted in other states, such as Kansas, where all local carriers are required to include information regarding the Lifeline program on disconnect notices.³

Despite Public Counsel’s general support for the underlying intent of these draft rules, we are concerned that, as written, some parts of the draft rules could unnecessarily complicate matters, could result in burdensome expenses that are passed along to consumers, and may be

¹ As specified in draft rule WAC 480-123-0060(7)(a)(ii).

² As specified in draft rule WAC 480-123-0060(7)(a)(i).

³ FCC 04-87 WC Docket No. 03-109, Appendix C, *Lifeline/Link-Up State Survey*, released April 29, 2004.

ineffective at reaching the target audience. Public Counsel has the following specific concerns.

First, the draft rules do not provide a clear distinction on two interrelated issues: programs included in the outreach, and the source of funds that will be used to administer these efforts. While this might seem to be a hyper-technical complaint, vague language in the rules could create a legal loophole through which ETCs might deplete the funds that are reserved for other purposes.

The draft rules do not specify which low-income programs are included in this outreach effort (i.e. the federal Lifeline and Link Up programs, Washington Telephone Assistance Program (WTAP) at the state level, and/or programs specific to a particular telecommunications company). This is important particularly in regard to how the proposed rules will interface with existing rules that determine how government low-income assistance programs are administered and funded.

Additionally, it is unclear whether it is the intent of the Commission to encourage ETCs to privately invest in discounted programs for low-income customers, or whether the funds will come from a government resource.

Based on these uncertainties, Public Counsel is concerned that because the state reimburses for administrative and program expenses related to WTAP⁴, telecommunication companies might pass along excessive or inappropriate costs for advertisement and outreach, despite whether that was the original intention of the Commission. In general, Public Counsel is concerned that ambiguous language could render the WTAP fund susceptible to exploitation, and hurt the overall efforts of the program.

Second, Public Counsel believes there should be more focus on whether the proposed measures will achieve the desired outcome. Public Counsel is concerned that the desired outcome may be unattainable because the draft rules do not fully take into account socioeconomic factors that have the potential to restrict the overall effectiveness of the proposed outreach efforts. Furthermore, the draft rules are too dependent upon general assumptions rather than specific evidence regarding the current, as well as the best, methods of outreach.

Public Counsel is concerned that one component of the draft rules that could hinder the success of increased outreach is the strong emphasis on print advertising—particularly as focused on newspapers—as a means of reaching the target audience. Low-income individuals have disproportionately lower literacy rates due to lower levels of education and language barriers for recent immigrants and their families,⁵ making it less likely that they subscribe to or regularly read a newspaper. Furthermore, given that the regular cost of a phone bill is difficult for the target population to afford, it is unreasonable to assume that they carry a regular newspaper subscription that could cost between \$15 and \$20 per month.

Public Counsel suggests that the Commission consider print advertising options more precisely aimed to reach the target audience. These efforts might include utilizing resources that are delivered free of charge to all mail customers, such as the weekly grocery advertisements or bulk mailings coupons for local businesses and services. Such advertisements should be provided in several languages. The Commission also might consider a geographically-directed approach, similar to that utilized in Washington, D.C., where outreach is conducted in neighborhoods that

⁵ Harak, Charles and Olivia Bae Wein, *Access to Utility Service*, Boston: National Consumer Law Center, 2004, p. 266.

are home to larger proportions of public benefits recipients.⁶ Outreach might include the use of billboards or advertisements on public transportation in the specific target neighborhoods.

Public Counsel is also concerned that the draft rules too heavily depend on a general assumption that more of the same type of outreach will increase enrollment. Low income telephone assistance programs in Washington, as administered by DSHS, conduct several methods of outreach; still, only 30.36 percent of eligible households participate in the WTAP program.⁷ This low rate of enrollment might indicate that not only is more outreach needed, but also different methods. Public Counsel does not advocate dedicating funds to increased outreach that is not effective. While Public Counsel strongly believes that more should be done, we do not support the notion that more of the same is the best idea, and instead encourage the Commission to consider a dynamic approach to outreach that is more thoughtful and creative, and takes into consideration some of the larger socioeconomic constraints that might hinder enrollment.

Such an effort would be a particularly complicated task requiring the input of many stakeholders. Public Counsel believes this rulemaking effort could benefit from the advice of experts in the administration of social services directed at low-income individuals, and from review of best practices from other states. It would be useful for interested parties to seek the assistance of professional consultants—as is done with other matters before the Commission—who work with the target population and better understand the needs and shortfalls of publicly funded social service programs. Public Counsel would be willing to join in this effort.

In light of the complicated nature of these issues, Public Counsel suggests that consumers

⁶ FCC 04-87 WC Docket No. 03-109, Appendix C, *Lifeline/Link-Up State Survey*, released April 29, 2004.

⁷ *Report to the Legislature: Washington Telephone Assistance Program*, Washington State Department of Social & Health Services, December 2005.

and the public may be served best if this portion of the rulemaking was considered separately from the other aspects. However, Public Counsel urges that separate review of this issue occur with the premise that 1) the delay would expressly be to conduct further research, and 2) that the Commission would return to it at a later date.

However, whether these issues are considered now or at a later date, Public Counsel recommends that the Commission convene a taskforce or work group consisting of local experts and professionals who are familiar with social services for low-income individuals. The goal of improving outreach and enrollment in low-income telephone assistance programs is at the forefront conversation across the nation, and as a result, there are numerous outside resources that could provide useful information for this rulemaking. The Federal Communications Commission (FCC) issued a public notice on January 10, 2006 that the joint Working Group on Lifeline and Link-Up Telephone Services seeks input on the most effective ways to enhance consumer awareness of these programs. Public Counsel recommends that the Commission take part in this process, and draw from the information gathered through the FCC before developing new rules.

The information gained through the FCC's national study, evaluated by experts in light of the specific needs of and conditions across Washington State, would offer considerable insight into how to best develop these rules.

III. CONCLUSION

Public Counsel strongly supports developing rules that would require ETCs to place a greater emphasis on serving individuals eligible for low-income telephone assistance programs. However, Public Counsel encourages the Commission to carefully develop these rules in a manner that will result in an improvement upon the current situation. Pending this broader review, Public Counsel recommends that the Commission at this time adopt both the bill insert requirement and the requirement that ETCs would place posters and information in their offices that advertises low-income assistance programs. In regard to the other proposed rules regarding outreach to unserved low-income individuals, Public Counsel encourages the Commission to consider them and other alternatives as part of a separate continued “CR 101” process as discussed above.