

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition by

RCC Minnesota, Inc. For Exemption From
Participation In The Washington
Telephone Assistance Program As
Required By WAC 480-122-020

Docket No. _____

PETITION

INTRODUCTION

1 Petitioner, RCC Minnesota, Inc., d/b/a Unicel, and its operating subsidiaries (collectively hereafter, “RCC”)¹ file this petition pursuant to WAC 480-07-370(b) with the Washington Utilities and Transportation Commission (“WUTC” or “Commission”), for exemption from the provision of WAC § 480-122-020 that requires that every eligible telecommunications company offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475² (“WTAP Statutes”). The reason for this petition is that there is an apparent inconsistency between the Commission and the Department of Social and Health Services (“DSHS” or “Department”) regarding interpretation of the term “local exchange company” as used in RCW 80.36.420(3)(a).

IDENTITY OF PETITIONER AND PETITIONER’S REPRESENTATIVE

2 The petitioner’s name and address is:

¹ At the time of designation, RCC’s d/b/a was Cellular One.

² Which define the Washington Telephone Assistance Program, or “WTAP.”

RCC Minnesota, Inc., d/b/a Unicel
Attention: Mr. Steven B. Otto
USF Program Manager
3905 Dakota Street SW
Alexandria, MN 56308
E-mail: stevebo@unicel.com
Phone: (320) 808-2479

3 Petitioner's attorney is:

Brooks E. Harlow
Miller Nash LLP
600 Union Street, Suite 4400
Seattle, WA 98101-2352
E-mail: brooks.harlow@millernash.com
Phone: (206) 777-7406

RELEVANT STATUTES AND COMMISSION RULES

4 The statutes and rules relevant to this petition include: RCW 80.01.040, 80.04.160,
80.04.210, 80.36.410 through 80.36.475; and WAC 480-07-110 and 480-07-370.

FACTUAL BASIS FOR PETITION

5 RCC is a wireless communications carrier that has been designated by the
Commission as an "eligible telecommunications carrier" ("ETC")³ in certain geographic
areas of the state of Washington. RCC received its designation on August 14, 2002. Order
Granting Petition For Designation As An Eligible Telecommunications Carrier, *In the Matter*
of the Petition of RCC Minnesota, Inc., Docket No. UT-023033.

6 The only mention of "Lifeline" service in RCC's designation order states, "RCC must
provide Lifeline service consistent with 47 C.F.R. § 54.405." Although the provision in
WAC 480-122-020 from which RCC seeks exemption had been adopted earlier in the year in
which the Commission issued its order designating RCC as an ETC, the designation order

³ *But see*, Note 6, *infra*, re "ETC" definition.

made no mention of WTAP participation. RCC did not participate in the rulemaking docket which adopted WAC 480-122-020's current provision and was unaware in 2002 that a Commission rule required all ETCs to participate in WTAP. RCC's understanding at the time was that it was not possible for RCC to participate in WTAP at that time, due to the position of DSHS.

7 RCC, as an ETC in Washington is eligible to receive certain federal subsidies from the Federal Universal Service Fund ("FUSF"). Although states are empowered to designate carriers as ETCs, the FUSF is largely administered according to the dictates of federal law. Federal law requires that ETCs must offer "Lifeline" support assistance to qualified low income telephone subscribers.⁴

8 Under the federal scheme, there are four "tiers" of Lifeline support.⁵ Tier 1 and Tier 2 support is generally available to all qualifying customers in states where the carrier has been designated as an ETC. *Id.* Tier 1 and Tier 2 support is funded from the FUSF. RCC participates in and offers the discounts provided under Tiers 1 and 2 in Washington. Tier 4 support is an additional federal Lifeline support of up to \$25 per month available to eligible low income residents of tribal lands. RCC also offers Tier 4 support to qualified subscribers in Washington.

9 Under the federal scheme, Tier 3 support is an additional amount of federal Lifeline support equal to one-half the amount of any "state-mandated" Lifeline support. *Id.* RCC does not offer Tier 3 support in Washington because, under the DSHS interpretation, there is

⁴ 47 C.F.R. § 54.405.

⁵ 47 C.F.R. § 54.403.

no “state-mandated Lifeline support” for wireless carriers. RCC does not offer Tier 3 discounts because it would not be reimbursed by the FUSF nor DSHS.

10 In 2007, as part of a review of its federal and state lifeline participation, RCC noted the provision in the Commission’s rules that require every “eligible telecommunications company”⁶ to offer the telephone assistance rates and discounts in accordance with WTAP Statutes.⁷ This discovery caused RCC to investigate whether DSHS had recently changed its position to allow participation by wireless carriers in WTAP. Discussions with DSHS revealed that the Department’s position had not changed.

11 Discussions culminated in correspondence dated January 30, 2008, from RCC to the DSHS seeking confirmation of its positions, as follows: (1) that wireless carriers should follow the federal program (Tiers 1, 2 and 4), only, for providing discounts and receiving reimbursements from USAC; (2) that WTAP is not able to reimburse wireless carriers for the state portion of Tier 3; and (3) that WTAP is not able to provide WTAP reimbursements under the current statute. A copy of the January 30th letter is attached hereto as Exhibit A.

12 In a letter dated February 29, 2008, the DSHS responded, confirming RCC’s understanding. According to DSHS:

[T]he Department’s position [is] that the Washington Telephone Assistance Program does not reimburse wireless carriers. Although wireless carriers are sometimes designated as eligible telecommunications carriers by the Washington Utilities and Transportation Commission, the Department does not consider

⁶ In WAC 480-122-010, the Commission’s rule defines the term “ETC” to be a “eligible telecommunications carrier.” For purposes of this petition, RCC assumes that the terms “eligible telecommunications carrier” and “eligible telecommunications company” were intended to be used interchangeably in WAC Chapter 480-122. In so doing, RCC is not waiving any argument it might raise in any other proceeding.

⁷ The current requirement was adopted in 2002. See General Order No. R-492, Order Amending and Repealing Rules Permanently (Dkt. 003074, Jan. 8, 2002).

wireless carriers eligible for reimbursement under RCW 80.36.450. The Department's position is that RCW 80.36.450 applies only to residential land line providers.

Letter from Dori Shoji, Interim Director for Division of Employment and Assistance Programs, Department of Social and Health Services (Feb. 29, 2008)(footnotes omitted), attached hereto as Exhibit B. RCC understands that the DSHS does not consider wireless carriers to come under the term "local exchange company" as used in RCW 80.36.420(3)(a), and therefore interprets the WTAP Statutes as excluding wireless ETCs from WTAP.

STANDARD FOR CONSIDERATION OF PETITION

13 According to WAC 480-07-110, the Commission may grant an exemption from one of its rules if, "application of the rule would impose undue hardship upon the requesting person, of a degree or kind different from hardships imposed on others similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule." As discussed below, this standard is met because under the current DSHS interpretation of the WTAP Statutes, the DSHS will not provide the reimbursements to wireless carriers that are necessary to cover the costs of the WTAP's discounts to low income telephone subscribers.

EXPLANATION OF REASON FOR EXEMPTION REQUEST

14 Here, RCC would suffer an undue hardship if it were required to offer the discounts required by the WTAP statutes because the DSHS will not reimburse RCC for the discounts. RCC's service plans start at a monthly rate of \$35.00 in Washington.⁸ For eligible Lifeline subscribers, if DSHS allowed wireless carriers to participate in WTAP, RCC could receive

⁸ This is the lowest rate plan that offers unlimited "local" calling.

reimbursement of up to \$10.00.,⁹ from the FUSF, plus up to \$19.00 from WTAP, enabling it to charge Lifeline eligible customers the required \$8.00 rate. *See* RCW 80.36.140 and *In re Department of Social and Health Services*, Order No. 1, Docket No. UT-031033 (July 24, 2003). However, because RCC only receives \$8.25 from the FUSF and no state reimbursement, it is only able to discount its lowest priced rate plan to \$26.75. If it were to discount the rate further, it would suffer a shortfall that wireline carriers do not face. In addition carriers participating in WTAP must offer a discount on service initiation fees of 50% or more under RCW 80.36.420(1). Since it would receive no reimbursement for service connection fees either, RCC faces this additional potential loss if it were forced to comply with the WTAP statutes under WAC 480-122-020.

15 Under the next prerequisite for exemption, the degree of hardship imposed on RCC is greater because similarly situated persons—all wireline ETCs, but primarily ILECs—can receive reimbursement from WTAP for offering the discounts whereas RCC cannot. WAC 480-122-020 would treat all ETCs the same in requiring their participation in WTAP. In contrast, the DSHS draws a distinction between wireless ETCs, such as RCC, and wireline carriers, such as Qwest and Verizon.

16 Finally, the effect of applying the rule would be contrary to the underlying purpose of the rule, which is to encourage carriers to offer Lifeline assistance to qualified low income residential telephone subscribers by ensuring that carriers will recover the shortfall between their regular rates and the WTAP rates as well as their expenses from the WTAP program.

⁹ Under Tiers 1, 2, and 3.

Imposing a requirement that RCC offer the discounts when it is unable to receive the reimbursement would thus be contrary to the underlying purpose of the rule.

17 Conversely, exempting RCC from participation in WTAP would not be harmful to the purpose of the rule. All ILECs have been designated as ETCs. Thus, Lifeline eligible subscribers can obtain discounted Lifeline service from their serving ILECs, which are required to provide the discounts and (unlike RCC) will be fully reimbursed for the direct cost of the discounts as well as certain costs of administering the program.

RELIEF REQUESTED

18 The Commission should issue an order providing that RCC shall be exempted from the second sentence of WAC 480-122-020. The exemption should be of indefinite duration, as the DSHS has no current plans to revisit its interpretation of the WTAP statutes unless the legislature amends them. The order should provide that the Commission may revisit the exemption at such time as the legislature amends RCW 80.36.410 through 80.36.475, in case such amendments enable wireless ETCs to seek reimbursement for providing WTAP discounts.

CONCLUSION

19 Based on the foregoing, RCC respectfully requests that its petition for waiver be granted as set forth above.

Respectfully submitted this 19th day of March, 2008

Miller Nash LLP

Brooks E. Harlow, P.C.
WSB No. 11843
brooks.harlow@millernash.com
(206) 622-8484

Attorneys for Petitioner
RCC Minnesota, Inc.