BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET UT-970345
	)	
UNITED STATES CELLULAR	)	FOURTH SUPPLEMENTAL ORDER
CORPORATION, et al.	)	
	)	ORDER AMENDING PRIOR ORDER
For Designation as an Eligible	)	DESIGNATING UNITED STATES
Telecommunications Carriers	)	CELLULAR CORPORATION AS AN
	)	ELIGIBLE TELECOMMUNICATIONS
	)	CARRIER
. . . .	)	

I. Introduction

1   On March 20, 2008, United States Cellular Corporation (U.S. Cellular) petitioned for an exemption "from the second sentence of WAC 480-122-020."[1] That sentence provides that "[e]very eligible telecommunications company (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475." Because WAC 480-122-020 does not require wireless carriers such as U.S. Cellular to participate in the Washington Telephone Assistance Program (WTAP), the exemption U.S. Cellular seeks is unnecessary. However, to address any ambiguity, we will treat U.S. Cellular's petition for an exemption as a request to amend our Third Supplemental Order in this docket granting U.S. Cellular's designation as an eligible telecommunication carrier to clarify that U.S. Cellular is not required to participate in the WTAP.[2]

II. Discussion

2   On January 27, 2000, the Washington Utilities and Transportation Commission (Commission) entered its Third Supplemental Order in this docket. In that Order, the Commission required U.S. Cellular to "begin discussion with the Department of

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[1] *In the Matter of the Petition by United States Cellular Corporation For Exemption From Participation In The Washington Telephone Assistance Program As Required By WAC 480-122-020*, at 7, Docket UT-080517 (March 20, 2008).

[2] Third Supplemental Order Granting Petition for Designation as an Eligible Telecommunications Carrier, *In the Matter of the Petition of United States Cellular Corporation et. al for Designation as Eligible Telecommunications Carriers*, Docket No. UT-970345 (January 27, 2000).

Social and Health Services for participation in the Washington Telephone Assistance program and to participate in that program as soon as it is administratively possible."[3]

3   U.S. Cellular's petition states that because of the Department of Social and Health Service's (DSHS) interpretation of the WTAP statutes, that agency will not reimburse U.S. Cellular for offering the discounts to recurring service and initial connection charges that are required of local exchange telephone service providers under the WTAP program. As such, U.S. Cellular states that, if it were required to offer telephone assistance rates and discounts required by WAC 480-122-020, it would suffer an unreimbursed shortfall that wireline carriers offering the WTAP discounts do not face.

4   WAC 480-122-020 states that "[e]very eligible telecommunications company (ETC) must offer the telephone assistance rates and discounts *in accordance with* RCW 80.36.410 through 80.36.475." (Emphasis added.) The phrase "in accordance with" means that eligible telecommunications companies are required to participate in the WTAP only to the extent the WTAP statutes mandate participation by certain companies or for certain services.

5   We agree with DSHS that the WTAP statutes apply only to wireline telecommunications companies and not to wireless carriers such as U.S. Cellular. RCW 80.36.410 states the Legislature's "concerns about the ability of low-income persons to continue to afford access to *local exchange telephone service.*" (Emphasis added.) Accordingly, RCW 80.36.420 makes WTAP assistance available to participants of various DSHS programs. The statute further states that "assistance" under the WTAP consists of three components: (1) a discount on service connection fees of fifty percent or more; (2) a waiver of deposit requirements on local exchange service, and (3) a discounted flat rate service for local exchange service. The Commission establishes "a single telephone assistance rate for all local exchange companies operating in the state of Washington."   RCW 80.36.460 reiterates that the duty to provide WTAP assistance rests with "local exchange companies."

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[3] *Id.,* ¶ 65.

6   In a similar vein, RCW 80.36.430(1) states that the WTAP shall be funded by a telephone assistance excise tax on all "switched access lines," as defined in RCW 82.14B.020: namely, "the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office." The tax, not to exceed fourteen cents per month, is applied equally to all residential and business access lines and paid by the ratepayer, and transferred to the telephone assistance fund administered by DSHS. RCW 80.36.430(2) further provides that local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, and that DSHS shall disburse money from the fund to the local exchange companies as reimbursement. Finally, RCW 80.36.450 limits reimbursement to "one residential switched access line per eligible household."

7   Thus, the WTAP statutes refer consistently to "local exchange companies," "local exchange telephone service," and "switched access lines," in describing the applicability of the WTAP, the amount and types of assistance under the WTAP, and obligations of companies under the WTAP. Wireless companies, referred to as "radio communications service companies," in the statutes, are not referenced at all in the WTAP statutes, nor are wireless facilities mentioned (in contrast to "switched access lines"). If the Legislature had intended the WTAP statutes to apply to wireless companies, it could easily have done so, but it has not. It is clear that the WTAP statutes apply only to wireline communications and companies.

8   Because the WTAP statutes do not mandate participation by wireless companies, the Commission's rules do not mandate such participation, either. We therefore decline to grant the exemption that U.S. Cellular requests. Instead, to address any possible ambiguity regarding the application of WAC 480-122-022 to U.S. Cellular, we will treat U.S. Cellular's petition for an exemption as a request to amend our order granting U.S. Cellular's request for designation as an eligible telecommunications carrier.[4] The amendment will clarify that, as a wireless carrier, the relevant statutes do not require U.S. Cellular to participate in the WTAP, nor do we require U.S.

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[4] RCW 80.04.210. We note that the Commission committed an error of law in paragraph 65 of the Third Supplemental Order in requiring U.S. Cellular to work with the DSHS and to participate in the WTAP as a condition of its ETC status.

Cellular to offer its customers WTAP discounts as a condition of its eligible telecommunications carrier designation by this Commission.

ORDER

THE COMMISSION ORDERS:

9   (1)   The petition for exemption United States Cellular Corporation filed with the Commission on March 20, 2008, in Docket UT-080517, is deemed a request to amend the Commission's Third Supplemental Order in Docket UT-970345 granting ETC designation.

10   (2)   United States Cellular Corporation's request to amend the Commission's final order in Docket UT-970345 is granted to clarify that, as a wireless carrier, the relevant statutes do not require United States Cellular Corporation to participate in the WTAP, nor is United States Cellular Corporation required to offer its customers WTAP discounts as a condition of its eligible telecommunications carrier designation by this Commission.

11   (3)   The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective May 14, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner