

Agenda Date: July 11, 2001
Item Number: 2C

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
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Beth Redfield, Acting Assistant Director for Policy

Recommendation:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) in Docket UT-003074 with the Office of the Code Reviser, in order to revise Chapter 480-122 WAC, Telephone Assistance Program.

Background:

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. Both DSHS and the Commission have rules in place. The Commission's rules have not been substantially altered since their adoption in 1990; however, they were reviewed in 1998 in response to the Governor's Executive Order (97-02).

The WTAP program also administers the federal Lifeline and Link Up programs. The combined state and federal programs provide discounted rates for monthly basic local exchange service and service connection fees for WTAP participants.

In the period of time since Commission adoption of WTAP rules, many changes have taken place in telecommunications. First, Congress passed the Telecommunications Act of 1996. Another change is the presence of many more local exchange service providers since the passage of the enabling legislation in 1987, as well as substantial changes in wireless service.

Process:

Commission Staff has had several meetings with DSHS representatives of the WTAP program to discuss the status and concerns of our rulemaking. Staff continues to work closely with DSHS representatives on our rules. DSHS conducted a concurrent rulemaking regarding their WTAP rules (388-273 WAC). Their rules were adopted April 9, 2001.

The Commission held a workshop on October 10, 2000, for interested parties to discuss potential changes to 480-122 WAC. After this discussion, draft language was prepared and sent out for comment on January 9, 2001. After review of the comments and internal discussions, Commission Staff prepared a Small Business Economic Impact Statement (SBEIS) questionnaire, along with a request to comment. The SBEIS questionnaire and request to comment were sent to over 600 telecommunications companies on April 17, 2001. Fifteen companies responded by the due date of May 4, 2001, and one additional response was received on May 21, 2001. The questionnaire prompted little substantive comment. A majority of the responses came from startup companies that felt they did not have the experience or knowledge to answer the questions or determine the fiscal impact. Of the five companies who filled out the SBEIS questionnaire, only two responded that the rule changes would have any monetary impact. Both companies indicated the cost resulted from the preparation and filing of a price list – for one the cost was minimal, for the other the cost was \$1,000.00. Based on the information received by the respondents, the impact of WTAP rule changes is negligible.

Issues and Recommendations

- Eliminate benefit rules that are a duplication of the DSHS's rules. Currently, the Commission has rules in 480-122 that are duplicative of DSHS's rules which pertain directly to the benefits and eligibility of WTAP participants. Staff recommends WUTC rules should pertain only to requirements related to local exchange company participation.
- Require competitive local exchange carriers (CLECs) with 100 or more residential customers to offer WTAP. RCW 80.36.420 (3)(a) states, "The Commission shall establish a single telephone assistance rate for *all local exchange companies* operating in the state of Washington. . ." Staff recommends all LECs that meet the above criteria be required to offer WTAP so that low income customers will be able to participate in the competitive market for local exchange service, and ensure that ILECs and CLECs have equal responsibilities placed upon them.

WAC 480-122-010 Definitions.

The draft language eliminates the references to the benefits a WTAP participant receives, and the eligibility requirements for receiving WTAP - the rule has been modified to define the program. Additional language has been added to the definition of a switched access line for clarification of the application of the excise tax. Definitions of radio communications company and eligible telecommunications carrier (ETC) have also been added because the terms are used in WAC 480-122-020.

WAC 480-122-020 Washington telephone assistance program rate.

The draft language includes the requirement that ETCs offer the assistance rate as mandated in RCW 80.36.410 - 475. The most significant change being proposed is to require non-ETCs serving 100 or more residences participate in the WTAP program. Language permitting wireless carriers that are not ETCs to offer WTAP is also proposed. The language is permissive with respect to wireless because it is not clear the statute applies to wireless carriers.

Staff held several meetings to establish an equitable threshold for CLECs to be required to offer WTAP that would not hinder competition in the residential local exchange market. Staff derived the 100 or more access line threshold by looking at the number of residential lines provided by the smallest ETC. (Hat Island Telephone serves 97 customers).

If CLECs are required to offer WTAP, those CLECs that typically offer only a high-end, bundled package of services will either have to develop a basic offering, the cost of which is covered by the WTAP reimbursement, or provide the more expensive package and receive reimbursement that may not cover the cost. (We recommended to DSHS that their WTAP rules provide reimbursement to any company equal to the reimbursement level available to the ILEC serving in the geographic area).

WAC 480-122-030 Connection fees

This section is being repealed because it relates to a benefit and falls under DSHS's authority.

WAC 480-122-040 Deposit waiver

This section is being repealed because it relates to a benefit and falls under DSHS's authority.

WAC 480-122-050 Other charges

Staff recommends no change to this rule.

WAC 480-122-060 Telephone assistance excise tax.

The WTAP statute does not permit collection of the excise tax on "wireless" access lines. The change clarifies that only wireline LECs must collect the excise tax. The rule also eliminates a set excise tax rate, and allows for the flexibility to vary the rate within the statutory amount of fourteen cents by order, at the request of DSHS.

WAC 480-122-070 Recovery of costs

This section is being repealed because it relates to the administration of the program and falls under DSHS's authority.

WAC 480-122-080 Accounting

Staff recommends no change to this rule.

WAC 480-122-090 Administration

This section is being repealed because it relates to the administration of the program and falls under DSHS's authority.

Outreach

Public Counsel has requested an outreach requirement. ETCs must "publicize the availability of lifeline service in a manner reasonably designed to reach those likely to qualify for service," 47 C.F.R. 54.405(b). Staff has held two workshops that have provided ETCs with information that will assist in complying with the FCC rule, as required by ETC designation orders. At this time, Staff does not recommend an outreach rule; it may recommend alterations to ETC orders if necessary to ensure compliance.

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Conclusion:

Staff recommends that the Commission direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) in Docket UT-003074 with the Office of the Code Reviser, in order to revise Chapter 480-122 WAC, Telephone Assistance Program.

Attachment