



Dora
Department of Regulatory Agencies

Public Utilities Commission

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May 10, 2012

FILED VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., Room TW-B204
Washington, D.C. 20554

NOTICE OF EX PARTE COMMUNICATION

Re: *Ex Parte* Filing, WC Docket No. 11-42; WC Docket No. 03-109; CC Docket No. 96-45; WC docket No. 12-23

Dear Ms. Dortch:

On Tuesday, May 8, 2012, Lynn Notarianni, John Scott, and Susan Travis, Staff of the Colorado Public Utilities Commission (CoPUC) and David Nocera, CoPUC counsel, participated in a teleconference with Jonathan Lechter and Kimberly Scardino of the Wireline Competition Bureau. We discussed several aspects of the CoPUC's April 6, 2012 Petition for Waiver filed in the above dockets.

Staff explained that since 1990, the CoPUC, in conjunction with the Colorado Department of Human Services (DHS), has administered both federal and state low-income telephone assistance programs in Colorado. The parameters and eligibility requirements of both the federal and state programs are contained in state statute, specifically §4-3.4-101, C.R.S., *et seq.* Until recently amended, 47 C.F.R. §54.409(a) specified that consumer eligibility for federal



Lifeline support in Colorado was to be determined utilizing the criteria established by the state for state eligibility. Thus, the Colorado legislature enacted §40-3.4-105 which prescribes the eligibility requirements for both federal and state support under Colorado's coordinated Low Income Telephone Assistance Program (LITAP).

Staff discussed that as the result of the recent amendments to 47 C.F.R. §54.409, minimum federal eligibility requirements are set forth in federal law and are no longer dependent upon state criteria. This creates the possibility that a state like Colorado could now administer two separate programs, with different eligibility criteria and separate processes for receiving federal or state support. Regardless, before the federal eligibility requirements of the Lifeline and Link Up Reform and Modernization Report and Order (FCC12-11) (Report and Order) can be implemented in Colorado, in either a coordinated or separate fashion, the state legislature must amend state statute to change the criteria. As explained in the CoPUC's Petition for Waiver, the earliest this can occur is in the 2013 legislative session. Thus, the CoPUC believes it has shown good cause for its waiver request. It is worth noting that the current eligibility requirements in Colorado are similar in many respects to the new uniform eligibility criteria.¹

Even if one assumes that no state law changes are needed to adopt the federal uniform eligibility criteria in Colorado, Staff explained its position that the public interest is not best served by requiring Colorado to establish and administer a separate federal eligibility program for some interim period. Until Colorado can enact new legislation, there is no way to "synch" the state eligibility criteria with the uniform criteria, which would create the need for this dual regime. Therefore, a number of advantages to administering one coordinated program could be lost by such an approach. Additional time, resources and money would be needed to administer two separate programs. If an eligible telecommunications carrier cannot determine a prospective subscriber's program-based eligibility for Lifeline by accessing the DHS database, the carrier must obtain and review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the new uniform eligibility requirements. Likewise, if the DHS database is not updated to include the new uniform eligibility requirements for re-certification, carriers are required to obtain a signed certification from the subscriber that the customer meets the criteria

¹ The standalone income, Federal Public Housing Assistance and National School Lunch Program are uniform eligibility criteria that do not currently apply in Colorado. DHS does not currently have data for Federal Housing and School Lunch participants.

for Lifeline service. This self-certification is insufficient to detect fraud or prevent ineligible customers from enrolling in the Lifeline program, which may impact the fund. In addition, Colorado consumers are likely to be confused by the differences in qualifying criteria and what could amount to two separate processes by which the carriers, the CoPUC and DHS determine eligibility and administer the programs.

Finally, it was explained that the CoPUC believes the public interest is best served by the granting its Petition for Waiver. Between now and the July 1, 2013 expiration of the waiver, stakeholders in Colorado will have time to consider all of the issues implicated by the Report and Order and to develop a well reasoned strategy for moving forward. It will allow the federal and state programs to remain in synch until it is determined how best to implement the federal mandates in Colorado in a cost effective and efficient manner. It will also allow time for legislative changes to be considered in the normal deliberative process of a full legislative session.

This letter is being filed electronically. Please contact me if you have questions or concerns on this matter.

Respectfully,

/s/ John T Scott
Fixed Utilities - Rate Financial Analyst
Colorado Department of Regulatory Agencies
Public Utilities Commission

cc (via e-mail): Jonathan Lechter
Kimberly Scardino