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May 22, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DHHR - Division of Human Services

RULE: Repeal & Replace, 78CSR15, Tel-Assistance Program

DATE FILED AS AN EMERGENCY RULE: May 9, 2002

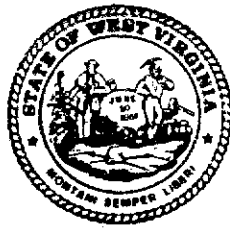
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 10-02

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


JOE MANCHIN, III
Secretary of State

SCANNED



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EMERGENCY RULE DECISION
(ERD 10-02)

AGENCY: DHHR - Division of Human Services
RULE: Repeal & Replace, 78CSR15, Tel-Assistance Program
FILED AS AN EMERGENCY RULE: July 9, 2002

- par. 1 The DHHR - Division of Human Services (DHHR) has filed the above repeal & replace to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DHHR filed this emergency rule with supporting documents with the Secretary of State May 9, 2002 and with the LRMRC May 9, 2002.

par. 7 It is the determination of the Secretary of State that the DHHR has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §24-2C-4 reads:

§24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.

(a) Tel-assistance service shall be made available only to qualified low-income customers who are: (1) Either disabled or age sixty or older; and (2) Social security supplemental security income benefit recipients, aid to dependent children (AFDC) benefit recipients, aid to dependent children-unemployed (AFDC-U) benefit recipients, food stamp recipients or whose total household income is at or below the income level established for social security supplemental security income eligibility. (b) The public service commission shall establish, by rules and regulations, procedures governing the application for and the provision of tel-assistance service and the determination and certification of the revenue deficiency resulting from the provision of tel-assistance service, including, but not limited to, rules and regulations determining both the methods by which telephone utilities shall maintain records pertaining to such deficiency and the methods by which such deficiency shall be calculated. Such rules and regulations shall be promulgated pursuant to section seven, article one of this chapter and adopted within one hundred twenty days of the effective date of this article. (c) The department of human services shall establish, by rules and regulations, procedures to inform persons of their eligibility for tel-assistance service, to assist applicants for tel-assistance service in proving their eligibility therefor, and to determine on a continuing basis the eligibility of persons receiving tel-assistance service and communicate such determinations to the telephone utilities. Initially, such rules and regulations shall be adopted and filed in the state register within one hundred twenty days of the effective date of this article and shall not otherwise be subject to the requirements of chapter twenty-nine-a of this code. Such rules and regulations initially adopted shall become effective immediately upon filing in the state register and remain in effect until supplanted by legislative rules promulgated pursuant to chapter twenty-nine-a of this code. Final approved legislative rules shall be submitted by the department of human services to the legislative rule-making review committee on or before the first day of August, one thousand nine hundred eighty-seven

par. 9 It is the determination of the Secretary of State that the DHHR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare

or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DHHR are as follows:

In 1985, the WV Legislature found that "universal telephone service contributes to the state's economic, social & political integration & development" and is "of utmost importance to the state and its citizens" and established the WV Tel-Assistance Program (WV Code §24-2C-1.) The Tel-Assistance program provides limited telephone service discounts to beneficiaries of 4 specified programs for low-income aged or disabled West Virginians. The DHHR certifies the eligibility of applicants to participating telephone companies & the telephone companies provide the discounts. The Tel-Assistance program promotes universal telephone service by helping low-income customers to access basic service.

In 1996 Congress passed the Telecommunications Reform Act of 1996 authorizing the FCC to implement programs to assist low-income telephone customers as part of the effort to achieve universal telephone service. In May 1997, the FCC adopted regulations to implement the universal service provisions of the Telecommunications Reform Act of 1996. These regulations require all telephone companies in the US receiving universal service support to expand the eligibility guidelines of low-income customers for discounted telephone service. The federal universal service fund covers a large portion of these discounts. Additional federal funding may be obtained by providing state matching funds.

In accordance with the FCC's mandate and the WV PSC's implement order in Case No. 97-151-T-T, every local telephone company in WV filed new tariffs in December, 1997 to expand the eligibility for participation in discount programs. The DHHR regs governing eligibility verification were not changed to be consistent with the expanded Tel-Assistance tariffs. Approximately 100,000 households in WV may be eligible to receive telephone service discounts under the expanded Tel-Assistance tariffs, with the proposed emergency rule. In 2000, the most recent reporting year, only 3,816 households participated in the Tel-Assistance program. The proposed emergency rule will produce an increase in federal funding in WV. During 2001, WV received \$426,000 or only .06% of the total federal universal service funds available for telephone service discounts. Participation on Tel-Assistance should increase not only due to the proposed changes in DHHR rules, but also because of telephone company advertising which is scheduled to commence July 1, 2002. If WV participation in Tel-Assistance were to increase such that it receives its proportional share of federal funds, funding would increase to nearly \$4 million per year, a ten-fold increase.

In addition to the expansion of Tel-Assistance in December 1997, the PSC recently

approved a Stipulation & Agreement in Case No. 01-1031-T-PC among Verizon West Virginia Inc., the Staff of the PSC & the Consumer Advocate Division. Under this agreement Verizon will offer an Enhanced Tel-Assistance Plan to eligible West Virginians in Verizon's incumbent service area beginning July 1, 2002 and ending June 30, 2005. Under the new Enhanced Tel-Assistance Plan, low-income West Virginians will have more options for discounted, low-cost telephone services. Federal universal service funds & Verizon will cover the cost of the Enhanced Tel-Assistance Plan.

To make DHHR regs consistent with existing Tel-Assistance tariffs, and to implement the Enhanced Tel-Assistance Plan for Verizon, existing DHHR rules on certification of eligibility for Tel-Assistance must be amended. DHHR met with Verizon, the PSC staff & the Consumer Advocate Division over the past several months to develop the necessary rule revision which is attached.

Non-emergency legislative rules cannot be proposed & adopted, in accordance with the procedures specified in §29A-3 of the WV Code, in time to allow eligible West Virginians to begin taking advantage of existing Tel-Assistance tariffs and the new Enhanced Tel-Assistance Plan by the commencement date of the new plan, July 1, 2002. Promulgation of this proposed rule as an emergency is necessary to prevent the substantial harm to the public interest that will result in tens of thousands of low-income West Virginians cannot obtain the benefit of telephone service & lower monthly phone bills until final legislative rules are approved in spring of 2003. Basic telephone service is essential for low-income West Virginians to move from welfare to work, for low-income working West Virginians to keep working, and for older & disabled low-income West Virginians to be connected to emergency services & community supports. Further the state & federal monies available to pay for these discounts will be irretrievably lost, causing detriment to the individual customers.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 10-02 or ERD 10-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the DHHR - Division of Human Services, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN III
Secretary of State

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