

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

RULE TYPE: LEGISLATIVE; CITE AUTHORITY CODE §§24-1-1, 24-1-7, 24-2-1, 24-2-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: "Rules and Regulations for Discounted Telecommunications Services"

DATE OF PUBLIC HEARING: July 15, 1997 TIME: 9:30 A.M.

LOCATION OF PUBLIC HEARING: PUBLIC SERVICE COMMISSION

HOWARD M. CUNNINGHAM HEARING ROOM

201 Brooks Street

Charleston, West Virginia 25323

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Todd Carden, Executive Secretary

Public Service Commission


P.O. Box 812

Charleston, WV 25323

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

\$4.60

SUMMARY OF THE RULE

The proposed emergency rules, a new Series 24, establish a procedure whereby schools and libraries can receive discounted intrastate telecommunications services.

The Federal Communication Commission (FCC) has established a fund, capped at 2.25 billion dollars annually, to provide discounts ranging from 20% to 90% of pre-discount prices for interstate services, based on the number of disadvantaged students at each school or library, and whether the school or library is located in a rural or urban area. In addition, the FCC concluded that it should also provide federal universal service support to fund intrastate discounts. However, in order for schools and libraries in West Virginia to receive discounts for intrastate telecommunications services, the State must have in place a procedure for such a discount program which is at least equal to the discounts on interstate services established by the FCC.

The proposed rules establish such a discount program for intrastate telecommunications services.

SPECIFIC STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE TO BE FILED AS AN EMERGENCY

As stated in the summary of the rule, the proposed rule creates a program whereby schools and libraries in West Virginia can receive discounts of intrastate telecommunications services. The discounts will be funded from a federal fund capped at 2.25 billion dollars annually, and will be on a first-come, first-served basis. Eligible schools and libraries may begin applying for such discounts, on a first-come, first-served basis, as early as July 1, 1997 for funding to begin January 1, 1998. Thus, it is vitally important for the Commission to have in place emergency rules establishing its program prior to July 1, 1997. Otherwise, schools and libraries in West Virginia may find that their applications for federal funding are too late and will not be eligible for discounts for intrastate telecommunications services.

The federal program and funding was established by the Federal Communications Commission in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997).

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
in the City of Charleston on the 12th day of June, 1997.

GENERAL ORDER 187.13

IN THE MATTER OF

Emergency Rules and Regulations Establishing
Discount Rates for Intrastate Telecommunications
Services for Eligible Schools and Libraries
in Accordance with the Telecommunications Act
of 1996.

COMMISSION ORDER PROMULGATING EMERGENCY RULES

By Order entered January 31, 1997, the Commission initiated a general investigation for the purpose of receiving information and comments from interested persons regarding matters related to the creation of a Universal Service Fund (USF) within the State of West Virginia, consistent the requirements of both the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 to be codified at 47 U.S.C. §§151 et seq. (the Act), as well as West Virginia law. See Case Nos. 97-0103-T-GI and 96-0994-T-PC (Order, Jan. 31, 1997). The Commission bifurcated its general investigation proceedings. The initial phase of the proceedings would focus on the need for and mechanism to establish an interim USF. If the Commission determined it necessary, it would then promulgate emergency rules establishing an interim USF. Assuming a USF is deemed necessary, the second phase would focus on the creation of a final State USF. The Commission established a February 21, 1997 deadline for parties to file initial comments and a February 28, 1997 deadline for parties to file reply comments regarding the initial phase of the investigation proceeding. Numerous parties filed comments in accordance with the Commission-established deadlines.

On May 8, 1997, the Federal Communication Commission (FCC) issued its "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997)(FCC US Order). Section X of the FCC US Order addressed the Act's inclusion of schools and libraries among the explicit beneficiaries of universal service support. See FCC US Order, ¶¶424-607. This portion of the order addressed. The FCC noted that the Act's legislative history indicated that Congress intended to ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the nation. FCC US Order, ¶424.

that West Virginia is a rural state with limited local resources for increased educational system budgets. Moreover, State government and the private sector are making efforts to make use of advanced technologies, including telecommunications and similar services, to provide a better education to the State's students and better access to libraries for the State's citizens.

The FCC established a fund, capped at \$2.25 billion annually, to provide discounts ranging from 20% to 90% of pre-discount prices for interstate services, based on the number of disadvantaged students at each school or library and whether the school or library is located in a rural or urban area. See 47 C.F.R. §§54.500-54.517. In addition, the FCC concluded that it should also provide federal universal service support to fund intrastate discounts. FCC US Order, ¶550. However, the FCC required states to ". . . establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal support for schools and libraries in that state." Id. Thus, in order for eligible schools and libraries in West Virginia to avail themselves of discounted services, funded out of the \$2.25 billion federal fund, the Commission must first adopt a program of discounts for schools and libraries covering intrastate services that is at least generous as the federal discount program. If the Commission establishes such a discount program, the entire program of discounts for West Virginia schools and libraries, for both interstate and intrastate services, will be paid from the federal universal fund. If the Commission fails to adopt such a discount program for intrastate telecommunications services, schools and libraries in West Virginia will not have access to the federal fund. See 47 C.F.R. §54.506(e)(1).

Not only must the Commission establish a discount program for intrastate services for eligible schools and libraries in order to receive federal funding, such a program must also be established quickly. Prompt action by the Commission is necessitated by the FCC's decision to make discounts available for the 1997-1998 school year on a first-come, first-served basis. Moreover, eligible schools and libraries may begin applying for such discounts as early as July 1, 1997, for funding to begin January 1, 1998. See FCC Order, ¶607; 47 C.F.R. §54.507(c)&(d). Commission failure to adopt an intrastate discount program quickly could delay or prohibit West Virginia from participating in at least the first year of the federal universal service support program for schools and libraries. Moreover, the West Virginia Department of Education has indicated that it intends to aggressively pursue federal funding for discounted telecommunication services by July 1, 1997.

In view of the foregoing, the Commission believes that emergency rules establishing a discount program equivalent to the FCC program for interstate telecommunications services should be promulgated, to become effective as soon as possible, in order to allow eligible schools and libraries within the State of West

8. On May 23 and May 30, 1997, the West Virginia Department of Education and the Independent Group, respectively, filed petitions supporting CAD's petition.

CONCLUSIONS OF LAW

1. A discount program for intrastate services for eligible schools and libraries at least equal to the federal discount program established in the FCC's May 8, 1997 order should be established in order to assure eligibility for federal funding of both interstate and intrastate services.

2. Such a program must also be established quickly in order to allow West Virginia schools and libraries to begin applying, by July 1, 1997, for federal universal service support for the 1997-1998 calendar year.

3. It is necessary to promulgate emergency rules to establish a discount program for intrastate services for eligible schools and libraries in order to allow such schools and libraries to begin applying for federal universal service support by July 1, 1997.

ORDER

IT IS, THEREFORE, ORDERED that the emergency rules attached hereto as Appendix A should be filed with the Secretary of State, in accordance with W. Va. Code §29A-3-15.

IT IS FURTHER ORDERED that, on or before July 15, 1997, any interested person may file written comments by mailing such comments to the Public Service Commission, Executive Secretary, 201 Brooks Street, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that, in accordance with W. Va. Code §29A-3-15, a public hearing on the emergency rules attached hereto should be held on July 15, 1997, at 9:30 A.M. in the Howard M. Cunningham Hearing Room, and notice thereof published by the Commission's Executive Secretary, as soon as practicable upon entry hereof, in both the State Register and by publishing a copy of the notice attached hereto once, in a newspaper duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, New Cumberland, Parkersburg, Point Pleasant, Welch, Wheeling and Williamson, and to file proof of publication thereof immediately thereafter.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

GENERAL ORDER NO. 187.13

IN THE MATTER OF

Emergency Rules and Regulations Establishing
Discount Rates for Intrastate Telecommunications
Services for Eligible Schools and Libraries
in Accordance with the Telecommunications Act
of 1996.

PUBLIC NOTICE

By Order entered June 12, 1997, the public Service Commission of West Virginia (Commission) promulgated emergency rules and regulations establishing discount rates for intrastate telecommunications services for eligible schools and libraries in accordance with the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56, to be codified at 47 U.S.C. §§151 et seq., as well as West Virginia law. In its June 12, 1997 Order, the Commission scheduled a public hearing to be held on July 15, 1997, in the Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, West Virginia 25323, at 9:30 a.m. Interested persons may file written comments on or before July 15, 1997, by mailing such comments to: Public Service Commission, Executive Secretary, P. O. Box 812, Charleston, WV 25323.

Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0317
FAX: (304) 340-0372

June 11, 1997

Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0771

Re: Emergency Rulemaking;
New Series 24

Dear Judy:

Attached for your consideration is the new emergency rules which will be Series 24; a Fiscal Note; a brief summary of the Rule; a specific statement of the circumstances which require the Rule to be filed as an emergency; Form No. 1, Notice of Public Hearing; Form No. 7; and a diskette containing the rule.

As indicated in the Statement of Circumstances, it is essential that these rules be in place prior to July 1, 1997 in order for West Virginia schools and libraries to make their requests, on a first-come, first-served basis, with the rest of the States, for discounted telecommunications services pursuant to regulations issued by the Federal Communications Commission. An emergency exists when the promulgation of a rule is required to comply with a time limitation established by federal regulation. Code §29A-3-15(f).

If there is any problems with this filing please bring them to my immediate attention.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Hitt".

RICHARD E. HITT
General Counsel
(304)340-0317

REH/mh
Enclosure

cc: Charlotte R. Lane, Chairman
24cooper.wpd

150 CSR 24 Public Service Commission Legislative Rule Series 24

FISCAL NOTE

This is a fiscal note issued pursuant to the authority of West Virginia Code §§24-1-1, 24-1-7, 24-2-1, and 24-2-2.

I. Objectives of the Rule

The objective of this Rule is to establish a new series dealing with discounted telecommunications services.

II. Cost of implementing the proposed Rule

There will be no significant implementation costs relating to the establishment of these emergency rules for the State of West Virginia. It can not be determined at this point the cost of implementation on the persons affected by the rules.

III. The effect this measure will have on cost or revenues of State Government.

This rulemaking should have a positive affect on the expenses or revenues of state government in that telecommunications services provided to state funded schools and libraries will be at a lower cost as a result of the discounts.

IV. Economic impact of the Rule on the State or its residents.

Other than the general belief that schools and libraries will receive lower rates for telecommunications services, a quantifiable economic impact on the State and its residents is difficult to predict at this time.

Date: 6-12-97

Agency: West Virginia Public Service Commission

Signature of authorized representative:

Charlotte R. Lane
Charlotte R. Lane, Chairman

FILED

150 C.S.R. 24

JUN 12 4 21 PM '97

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 24
RULES AND REGULATIONS FOR
DISCOUNTED TELECOMMUNICATIONS SERVICES

§150-24-1. General.

1.1. Scope -- These rules govern the procedure for receiving discounted intrastate telecommunications services for eligible schools and libraries as initially established by the Federal Communications Commission (FCC) in its May 8, 1997 "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (Released, May 8, 1997).

1.2. Authority -- West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2.

1.3. Filing Date --

1.4. Effective Date --

1.5. Definitions -- In the interpretation and application of these rules, the Commission adopts and incorporates, as if fully set forth herein, the definitions set forth in 47 C.F.R. §§54.5 and 54.500, attached as Appendix I to the Federal Communications Commission's "Report and Order," in In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 97-157 (Released, May 8, 1997).

§150-24-2. Eligibility.

Eligibility of schools and libraries for a discount on intrastate telecommunications services shall be determined in accordance with 47 CFR §54.501.

§150-24-3. Discount Mechanism.

Discounts on intrastate telecommunications services for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

3.1. Discount Percentages --

The discounts available to eligible schools and libraries for intrastate telecommunications services shall range from twenty percent (20%) to ninety percent (90%) of the pre-discount price for all eligible intrastate services provided by eligible providers, as defined in 47 CFR Part 54, Subpart F. The discounts available to a particular school, library, or consortium of only such entities

shall be determined by indicators of poverty to high cost.

3.1.1. For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. Counties or the State, applying for eligible services on behalf of their individual schools, may calculate the county-wide percentage of eligible students using a weighted average. For example, a county would divide the total number of students in the county eligible for the national school lunch program by the total number of students in the county to compute the county-wide percentage of eligible students. Alternatively, the county could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.

3.1.2. For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved mechanism in the public school district or county in which they are located. If the library is not in a school district then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend. Library systems applying for discounted services or facilities on behalf of their individual branches shall calculate the system-wide percentage of eligible families using, an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities.

3.2. Classification of Schools and Libraries --

Schools and libraries shall be classified as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

3.2.1. Schools and libraries located in metropolitan counties, as measured by the federal Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as urban, except for those schools and libraries located within metropolitan counties identified by census block or tract in the Goldsmith Modification.

3.2.2. Schools and libraries located in non-metropolitan counties, as measured by the Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as rural. Schools and libraries located in rural areas within metropolitan counties identified by census block or tract in the

Goldsmith Modification shall also be designated as rural.

§150-24-4. Matrix.

The matrix attached as "Table A" shall be used to set a discount rate to be applied to eligible intrastate services and facilities purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

§150-24-5. Consortia.

Consortia applying for discounted services or facilities on behalf of their members shall calculate the portion of the total bill eligible for a discount using a weighted average based on the share of the pre-discount price for which each eligible school or library agrees to be financially liable. Each eligible school, county, library or library consortia will be credited with the discount to which it is entitled.

§150-24-6. Application for Funding.

Application for discounts on intrastate telecommunications services provided to schools and libraries under this section shall be made in accordance with 47 C.F.R. Part 54, Subpart F.

§150-24-7. Funding of Discounts.

Funding for discounts on intrastate telecommunications services provided to schools and libraries under this section shall be provided from the federal universal service fund in accordance with 47 CFR Part 54, Subpart F.

TABLE A, 150 CSR 24

SCHOOLS & LIBRARIES DISCOUNT MATRIX	DISCOUNT LEVEL	
HOW DISADVANTAGED?	urban discount	rural discount
% of students eligible for national school lunch program		
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90