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(Plus all the volunteer
help we can get)

June 23, 1997

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

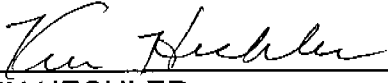
AGENCY: Public Service Commission

RULE: New Rule, Series 24, "Rules & Regulations for Discounted Telecommunications Services"

DATE FILED AS AN EMERGENCY RULE: June 12, 1997

DECISION NO. 4-97

Following review under WV 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.



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**EMERGENCY RULE DECISION
(ERD 4-97)**

AGENCY: Public Service Commission
RULE: New Rule, Series 24, "Rules & Regulations for Discounted
Telecommunications Services
FILED AS AN EMERGENCY RULE: June 12, 1997

- par. 1 The Public Service Commission (PSC) has filed the above new rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 PSC filed this emergency rule with supporting documents with the Secretary of State June 12, 1997 and is not required to file with the LRMRC..

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

par. 8 (B) Statutory Authority -- WV Code §24-1-7 reads in part:

The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter... Provided that no such rule or regulation shall be effective unless promulgated pursuant to the provisions of §§29A-3-1 through 29A-3-10 of this code: Provided, however, That no such rule or regulation shall become effective until 60 days after its final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the PSC shall not be subject to the legislative rule-making review procedures established in §§29A-3-11 through 29A-3-15 of this code.

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

par. 10 (C) Emergency -- WV 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 PSC are as follows:

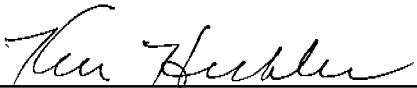
The proposed emergency rule establish a procedure whereby schools and libraries can receive discounted intrastate telecommunications services. The Federal Communication Commission (FCC) has established a fund, capped at 2.25 billion dollars annually, to provide discounts ranging from 20% to 90% of pre-discount 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 would 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 services established by the FCC.

The proposed rule creates a program whereby schools and libraries 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 interstate telecommunications.

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).

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). . . "time limitation" and to prevent substantial financial harm to the public.

par. 14 This decision shall be cited as Emergency Rule Decision 4-97 or ERD 4-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Public Service Commission, the Attorney General and the Legislative Rule Making Review Commission.



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