

STATEMENT OF SCOPE

Public Service Commission of Wisconsin (Docket 1-AC-251)

Rule No.: PSC 160

Relating to: Revisions to Wis. Admin. Code ch. PSC 160

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only): N/A

2. Detailed description of the objective of the proposed rule:

The objective of this rulemaking is to revise the existing Wis. Admin. Code ch. PSC 160 (PSC 160), Universal Service Support Funding and Programs. This program is commonly referred to as the Universal Service Fund (USF).

First, this rulemaking will revise PSC 160 to conform with the Federal Communications Commission's (FCC) third Lifeline Modernization Order¹. (Lifeline Order) issued on April 27, 2016. The Lifeline Order modified the list of programs that qualify individuals for federal Lifeline support and, in particular, removed state-specific programs and income eligibility criteria for federal Lifeline support. In addition, the FCC also created a National Verifier for Lifeline eligibility verification. On February 15, 2018, the Public Service Commission of Wisconsin (Commission) issued an Order that established interim Wisconsin Lifeline guidelines pursuant to Wis. Admin. Code § PSC 160.01(2)(a). This rulemaking will put PSC 160 in compliance with recent FCC guidance.

¹ Third Report and Order, Further Report and Order, and Order on Reconsideration, Lifeline and Link Up Reform and Modernization, FCC 16-38, 31 FCC Rcd. 3962 (2016).

Second, this rulemaking will revise PSC 160 to conform with 2017 Wisconsin Act 59 (Fiscal Year 2017-19 Budget) and 2017 Wisconsin Act 136. This rulemaking will incorporate budgetary items from these Acts, update references to relevant Department of Administration appropriations, and clarify assessment and budget processes.

Third, this rulemaking will revise PSC 160 to clarify procedures for the Two-Line Voice Carry-Over (2LVCO) program. Due to changes in telecommunications markets and lower provider participation in federal programs, customers who require a second line for transmitting captioning of incoming voice communications are finding it increasingly difficult to find providers who can provide that second line under the USF 2LVCO program. This rulemaking would allow all providers that are technologically capable (this would exclude mobile wireless providers) to participate in the program and to offer the discounted second line to those hearing-impaired individuals who need the captioning. Additionally, this

rulemaking would simplify the amount of discount to a single amount statewide whether applied to an analog, digital or broadband service for the 2LVCO program.

Last, this rulemaking will revise PSC 160 to allow for Telecommunications Equipment Purchase Program (TEPP) vouchers to purchase equipment to access the internet for the Deaf. The current four TEPP voucher categories in PSC 160.071(1m)(L)(2.) do not cover individuals who are deaf. Modern telecommunications options allow the use of mobile devices for deaf individuals to use video transmission and American Sign Language (ASL) to communicate directly with other deaf individuals and with hearing individuals through Video Relay Service.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Commission has promulgated PSC 160 to govern the administration and funding of the USF. Here, revisions to PSC 160 are required as a result of the FCC's Lifeline Order and the Wisconsin Legislature's 2017 Wisconsin Act 59 and 2017 Wisconsin Act 136. Therefore, no alternative policies are applicable.

In terms of the 2LVCO and TEPP voucher programs, providing universal service is a dynamic issue as technology changes. The Commission considers changes to the rules to reflect changing circumstances. Here, this rulemaking will expand provider eligibility for participation and simplify and clarify procedures for the Two-Line Voice Carry-Over (2LVCO) program. It will also allow individuals who are deaf to use Telecommunications Equipment Purchase Program (TEPP) vouchers to purchase equipment to access the internet for communication via American Sign Language (ASL).

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

This rule is authorized under Wis. Stat. §§ 196.02(1) and (3), 196.218(3)(c), (4u), (5)(b), and (5m), and 227.11.

Wisconsin Stat. § 196.02(1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Wisconsin Stat. § 196.02(3) grants the Commission specific authority to promulgate rules.

Wisconsin Stat. § 196.218(3)(c) authorizes the Commission to "designate by rule the classes of providers or other persons subject to par. (a) and the required rates of contribution for each class." Wisconsin Stat. § 196.218(4u), relating to the TEPP, states that the "[C]ommission shall promulgate rules establishing requirements and procedures for awarding grants under this subsection." Wisconsin Stat. § 196.218(5)(b), relating to the uses of the USF dollars, states that the "[C]ommission shall promulgate rules to determine whether a telecommunications provider, the customers of a telecommunications provider or another person shall be assisted by the universal service fund for any use under par. (a) 1. and 4." Wisconsin Stat. § 196.218(5m) states that the "[C]ommission shall review and revise as appropriate rules promulgated under this section."

Wisconsin Stat. § 227.11(2) authorizes agencies to promulgate administrative rules.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Commission estimates that approximately 275 hours of employee time will be required to develop these rules.

6. List with description of all entities that may be affected by the proposed rule :

All telecommunication providers may be affected by changes to PSC 160.

7. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule :

There is both a state USF and a federal USF. The state and federal funds and programs are complementary rather than duplicative.

“Eligible Telecommunications Carriers” (ETCs) are designated by the Commission and are, thereafter, eligible for funding from the federal USF and for certain funding from the state USF. ETC status was created by the FCC, and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, state commissions are responsible for designating eligible providers as ETCs²

² 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

Designation as an ETC is required if a provider is to receive federal USF funding. ETC designation is also required to receive funding from some, but not all, state universal service programs. The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules.³ The 1996 Telecommunications Act states that, “A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”⁴ A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999). Therefore, while states must examine the federal requirements, they are allowed to create additional requirements. Wisconsin has done so.

³47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a).

⁴47 U.S.C. § 254(f).

The federal USF provides funding to ETCs that are found to serve high-cost areas. That funding is to be used to help cover the costs of expanding infrastructure into those areas. Doing so should help ensure that rates in those areas stay lower since rates need not provide all the funds for that expansion. The Wisconsin USF provides reimbursement to providers that offer credits to customers when rates are higher than as designated in s. PSC 160.09.

The federal USF also includes Lifeline and Link-Up programs to assist low-income customers. The Wisconsin Lifeline and Link-Up programs are structured to complement the federal program and to take advantage of the available federal Lifeline and Link-Up funds.

The federal USF assessment applies to all carriers, including wireless carriers, and is assessed based on interstate revenues. The state USF assessment applies to all providers, including wireless providers, and is assessed based on intrastate revenues. Wisconsin exempts certain providers from assessment, such as those with under \$200,000 in intrastate revenues.

8. Anticipated economic impact of implementing the rule :

While it is difficult to predict the expected financial impact before the rule is written, at this time it is expected to be moderate.

Contact Person:

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Dated at Madison, Wisconsin, the 1st day of November, 2018.

A handwritten signature in black ink that reads "Steffany Powell Coker". The signature is written in a cursive, flowing style.

Steffany Powell Coker
Secretary to the Commission