

## Report From Agency

### PUBLIC SERVICE COMMISSION OF WISCONSIN

Revisions to Wis. Admin. Code ch. PSC 160

1-AC-251

#### Clearinghouse Rule No. 21-023

#### REPORT TO LEGISLATURE

##### **I. Basis and Purpose of the Proposed Rule**

The objective of this rulemaking is to amend and revise Wisconsin Admin. Code ch. PSC 160, Universal Service Support Funding and Programs. This program is commonly referred to as the Universal Service Fund (USF). Any changes resulting from this rulemaking continue and support the general purposes stated in the statutes.

This rulemaking aligns Wisconsin Admin. Code ch. PSC 160 with Federal Communications Commission's (FCC) federal standards, in particular to conform to the FCC's third Lifeline Modernization Order<sup>1</sup> (Lifeline Order) issued on April 27, 2016. The Lifeline Order modified the list of programs that qualify individuals for federal Lifeline support. In particular, this FCC Order removed state-specific programs and income eligibility criteria for federal Lifeline support. In addition, the FCC created a National Verifier for Lifeline eligibility verification. On February 15, 2018, the Public Service Commission of Wisconsin (Commission) issued an Order ([PSC REF#: 338212](#)) that established interim Wisconsin Lifeline guidelines pursuant to Wisconsin Admin. Code § PSC 160.01(2)(a). Revisions to Wisconsin Admin. Code §§ PSC 160.02 (21), PSC 160.02 (22m), PSC 160.06, and PSC 160.062 align these rules with the FCC federal standards by incorporating the Lifeline National Eligibility Verifier (National Verifier) process to determine Lifeline eligibility. The National Verifier is implemented by the Universal Service Administrative Company (USAC) and the verification process and Lifeline eligibility criteria are codified in 47 CFR Part 54. As such, the revised administrative code provisions cite the applicable sections of 47 CFR Part 54 and the effective date, including 47 CFR §§ 54.400, 54.404, 54.405, 54.407, 54.409, 54.410, and 54.416. The content of these federal regulations has been reproduced in an Appendix 1 to Wisconsin Admin. Code § PSC 160.

Additionally, this rulemaking revises Wisconsin Admin. Code ch. PSC 160 to implement [Executive Order #15](#) providing for the use of inclusive language in Wisconsin Administrative Rules. Wisconsin Admin. Code §§ 160.02 (8), 160.02 (28), 160.02 (29), PSC 160.071 (1m), and PSC 160.071 (6m) have been revised to include inclusive and accurate language for people with disabilities. For example, the following words that describe people with disabilities have been capitalized, such as "Hard of Hearing," "Deaf," "Hearing Disability," "Speech Disability," "Mobility or Motion Disability," "Deaf and Low Vision," and "Blind or Deaf-Blind."

Finally, this rulemaking revises Wisconsin Admin. Code ch. 160 to allow Deaf individuals to use Telecommunications Equipment Purchase Program (TEPP) vouchers to purchase equipment to access the internet. The current TEPP voucher categories referenced in Wisconsin Admin. Code § PSC 160.071

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<sup>1</sup> 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).

(1m) (L) 2. do not include Deaf individuals under PSC 160.071 (1m) (b) 2. 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.

## **II. Summary of Public Comments**

The Commission issued a draft economic impact analysis (EIA) and received one written comment in support of the rulemaking. This comment did not include any specific concerns or issues. No changes to the draft EIA were necessary.

The Joint Committee for the Review of Administrative Rules (JCRAR) requested that the Commission hold a preliminary hearing on the statement of scope. On June 5, 2019, the Commission held the preliminary public hearing. The Commission received one written comment from Wisconsin Bell, Inc., AT&T Communications of Wisconsin, L.P., TCG Milwaukee, Telecorp Communications LLC, Milwaukee SMSA LTD Partnership, Madison SMSA Limited Partnership, American Cellular Corp, and New Cingular Wireless PCS LLC (collectively, AT&T.) AT&T requested two changes to the statement of scope. AT&T requested that the rules incorporate the use of the Lifeline National Eligibility Verifier (National Verifier) to determine Lifeline eligibility. AT&T also requested that the Commission reverse the Wisconsin Legislature's decision to shift dollars from the Universal Service Fund (USF) to the State Broadband Expansion Grant program. The Commission did not revise the statement of scope based on these requests. The Commission determined that the statement of scope appropriately encompassed revisions to Wisconsin Admin. Code ch. 160 to incorporate the National Verifier eligibility process and that the second request fell within the purview of legislative authority.

On April 5, 2021, the Commission held a virtual public hearing to solicit public input on the draft proposed rules. The Commission did not receive any written or oral comments.

## **III. Modifications Made**

No modifications were made to the rule as result of public comments. The Commission did not make changes based on the written comment received at the preliminary hearing on the statement of scope held on June 5, 2019. There were no public comments received related to the public hearing held on April 5, 2021. The changes made to the rule language were those recommended by Legislative Council described in Section VI. and changes to incorporate additional inclusive language for people with disabilities.

## **IV. Appearances at the Public Hearing**

Jim Jermaine from AT&T attended the public hearing on the draft rules but did not make an oral statement.

## **V. Changes to Rule Analysis and Fiscal Estimate**

No changes were made to the fiscal estimate. The Plain Language Analysis section of the rule analysis was slightly revised to include more specific information describing the revisions to sections of Wisconsin Admin. Code ch. PSC 160 and to further describe the use of inclusive language for people with disabilities.

## **VI. Response to Legislative Council Rules Clearinghouse Report**

The Legislative Council Rules Clearinghouse submitted comments on March 24, 2021. The comments pertained to: form, style, placement in administrative code; adequacy of references to related statutes, rules, and forms; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Comments related to Form, Style and Placement in the Administrative Code

**Comment 2a.** - *The proposed rule should begin with an introductory clause that is comprised of an enumeration of the rule provisions treated by the proposed order and the nature of the treatment, followed by a relating clause. [s. 1.01, Manual.]*

**Response:** Agree. The proposed rule has been revised to begin with an introductory clause which contains the enumeration of the rule provisions treated by the proposed order and the nature of the treatment, followed by a relating clause.

**Comment 2b.** - *In SECTION 2 of the proposed rule, the agency strikes the phrase “one of”. Is the intent to change the meaning of this provision to mean “all of”? Additional revision could clarify the intended effect of the amendment of s. PSC 160.02 (21) (intro.).*

**Response:** Agree. The Commission has revised the proposed rule language to state “all of” in Section 2.

**Comment 2c.** - *In SECTION 28 of the proposed rule, the order of stricken and underscored text should be reversed.*

**Response:** Agree. The Commission has revised the order of the stricken and underscored text in Section 28.

Comments related to Adequacy of References to Related Statutes, Rules, and Forms

**Comment 4.** - *In SECTION 24 of the proposed rule, which modifies s. PSC 160.062 (4), there are two references to 47 CFR 54.405 (e). It appears that the second reference is unnecessary and should be deleted.*

**Response:** Agree. The second reference to 47 CFR 54.405 (e) has been deleted and stricken in Section 24.

Comments related to Clarity, Grammar, Punctuation and Use of Plain Language

**Comment 5.a.** – *In SECTION 2 of the proposed rule, which modifies s. PSC 160.02 (21) (b), it appears that the language “as of February 8, 2021” is intended to modify the reference to 47 CFR 54.400 (f). However, it could also be understood as modifying the reference to the customer’s income. The agency should consider revising the provision to avoid confusion.*

**Response:** Agree. The Commission has revised the language in Section 2 to avoid confusion regarding the effective date of 47 CFR 54.400 (f).

**Comment 5.b.** – *In SECTION 8 of the proposed rule, the treatment of the word “Deaf” should be indicated as “~~deaf~~Deaf”. Additionally, given the use of title case in that provision, did the agency intentionally avoid use of title case in SECTION 27?*

**Response:** Agree. The Commission has revised the treatment of the word “Deaf” as recommended in Section 8. The Commission did not intentionally avoid the use of title case in Section 27 and has revised the title case for several words and phrases that describe people with disabilities in Section 27, including “Hard of Hearing,” “Severely Hard of Hearing or Deaf,” “Speech Disability,” “Mobility or Motion Disability,” “Low Vision or Deaf and Low Vision,” “Blind and Deaf-Blind.” The title case for “Hearing Disability” and “Speech Disability” has also been revised in Sections 7 and 29.

## **VII. Final Regulatory Flexibility Analysis**

The proposed rule changes will not result in an economic impact on small businesses. There are no new reporting or bookkeeping requirements created under the rules. Existing Universal Service Fund (USF) rules may have an effect on small telecommunications utilities, which are small businesses under Wisconsin Stat. § 196.216 for the purposes of Wisconsin Stat. § 227.114. For the current USF rules, the Commission has already established exemptions and exceptions from the components of Wisconsin Admin. Code ch. PSC 160 which may have an effect on small business, such as an exemption for small telecommunications utilities related to payment of fund assessments under Wisconsin Admin. Code § 160.18 (1). The businesses primarily impacted by the changes in the rule revision are providers who voluntarily apply to be designated as Eligible Telecommunications Carriers (ETCs). The rule revision aligns Wisconsin Admin. Code ch. PSC 160 with rules established by the Federal Communications Commission (FCC) in 2016. The changes in the proposed rules codify existing practices without an associated financial impact. Specialized equipment vendors may be small businesses under Wisconsin Stat. § 196.216 for the purposes of Wisconsin Stat. § 227.114. This rulemaking creates an administrative efficiency that recognizes specialized telecommunications equipment to access the internet and does not impose additional reporting or other requirements on vendors. Therefore, there are no anticipated impacts on these small businesses.

The Commission's fiscal estimate and economic impact analysis determined that the proposed rules will not have an economic effect on small businesses. The Commission sought input from the Universal Service Fund (USF) Council, comprised of members of the telecommunications industry, and solicited public comments from telecommunications carriers and all community-based and public agencies working with stakeholder groups, including W-2 agencies, Aging and Disability Resource Centers (ADRCs), and county and Tribal health agencies.

## **VIII. Response to Small Business Regulatory Review Board Report**

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

## **IX. Wisconsin Environmental Policy Act and Housing Analysis**

The Commission evaluated whether the rules would have an environmental impact and concluded that the rules do not result in any possible significant, adverse environmental or social impacts. Therefore, preparation of an environmental assessment or environmental impact statement under Wisconsin Stat. § 1.11 was not necessary. The Commission completed an evaluation of the potential impact on housing under Wisconsin Stat. § 227.115 and concluded the rules do not impact housing.