

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

**Comments of the Wyoming Office of Consumer
Advocate
On
Further Notice of Proposed Rulemaking**

(Submitted January 12, 2004)

The Wyoming Office of Consumer Advocate (WOCA) hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking (Further Notice). In its Further Notice the Commission seeks comment to further develop the record on specific issues that relate to the rate review and expanded state certifications process. The Commission also seeks comment on the its proposal to make available additional targeted federal support for high-cost wire centers in states that implement explicit universal service mechanisms. In our comments, we focus on issues of affordability and comparable rates, while providing real Wyoming experiences that are meant to remind the Commission of the impact of its policies.

The WOCA is an interested party in this proceeding. Created in 2003¹, the WOCA is charged with representing the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. In our role of representing the public interest of Wyoming citizens, we are keenly interested in the preservation of the national telecommunications system, particularly in rural communities; the advancement of universal service, particularly in low-density states; and the affordability of telecommunications service, particularly in high cost areas.

¹ The WOCA was created in 2003 with the passage of legislation enacting W.S. § 37-2-401 through 404. While the WOCA is a newly created entity, it is not unfamiliar with the issues raised in the Further Notice. The members of the WOCA, former members of the staff of the Wyoming Public Service Commission, have been responsible during the past 9 years for assisting with the development and implementation of the Wyoming Universal Service Fund, the transition from monopoly to competitive ready telecommunications markets, and recommendations regarding the repricing of telecommunications services to move from implicit to explicit subsidies. Members of the WOCA have also actively met with the Joint Board, the Commission, and the Rural Task Force on federal universal service fund issues.

Wyoming has told its story many times in comments before the Commission². We thank the Commission for listening³ and for continuing to look for ways to improve the federal universal service fund such that it will meet its federal mandate.⁴ The proposals contained in the Further Notice simply are another step in that continuum of improvements. Clearly, we appreciate any opportunity to request further federal funding to assist Wyoming customers and providers as they continue to work toward the provision of ubiquitous, quality service at affordable rates. And, while we support many of the concepts contained in the Further Notice, our position should not be misconstrued to suggest that we believe that the Commission has now reached federal universal service fund nirvana. It has not. There is still work to be done.

The Further Notice is wide ranging in the information it seeks and the questions it asks. However, the WOCA focuses its comments on the following issues:

- Should states be required to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and state actions to achieve comparability of urban and rural rates?
- How should state requests for further federal action be treated and what should be required with the submissions?
- Should additional federal funds be made available to encourage states to implement explicit universal service mechanisms, without regard to their achievement of rate comparability?

We appreciate that the Commission understands and recalls the actions that Wyoming has taken during the last nine years to move from a monopolistic telecommunications structure to an environment that is ready and welcoming of competition.⁵ We did not wait for competition to come to restructure rates, change implicit subsidies to explicit subsidies, and deaverage local rates based on cost and density. Rather, *we prepared for and invited competition*. However, this has not come without a cost to Wyoming customers.

² For a recent summary of the Wyoming story and competitive pricing activities, see Comments of the Wyoming Public Service Commission on the Joint Board Recommended Decision, filed December 20, 2002, in CC Docket No. 96-45.

³ We appreciate that in its Further Order, the Commission has noted several real Wyoming situations and prior comments and expressions of concern.

⁴ The first universal service principle spelled out in the federal Act (at Section 254(b)(1)) is that "Quality services should be available at just, reasonable, and affordable rates."

⁵ Or, as the Commission states at paragraph 144 of its October 16, 2003 Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order in CC Docket No. 96-45: "The Commission commends the Wyoming Commission for implementing procompetitive policies by deaveraging rates and eliminating implicit subsidies. We recognize that Wyoming is in a unique position as the only state with significant rural territories that has implemented such policies."

It is for this reason that it is important that the Commission adopt many of the principles contained in its Further Notice. The Commission should look for all ways possible to continue to enhance its review and enforcement of the comparability standard contained within the federal Telecommunications Act of 1996.⁶ Additional funding should be made available to the companies (and thus customers) in high cost areas especially when a determination has been made the costs and rates in those areas are beyond the reasonable range of comparability with urban areas. And finally, states that have attempted efforts of self-help through the development and implementation of explicit support mechanisms, such as state universal service funds, should have some special recognition when it comes to receiving federal help in keeping rates affordable.

Should states be required to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and state actions to achieve comparability of urban and rural rates?

In its Further Notice, the Commission asks whether states should be required to file data such as business rate levels (in addition to or compared to residential rate levels); rate detail on residential, non-rural rates (urban rates) served by non-rural carrier; or the status of state universal service funds. The Commission asks whether this data would be burdensome to the states, and whether it would be helpful in a continuing review of rate comparability. While the WOCA suggests that the Commission gather some additional data during the annual certification process, we urge that the additional data be focused on the state's movement toward competition and the impact that such actions have had on its local service rates.

In its Further Notice, the Commission uses Wyoming as an example of a state that no longer uses business rates as a means to subsidize residential rates.⁷ We think that this is a prime example of competitive data that is important to consider when determining the level of urban/rural price comparability, *and leading to the determination of appropriate support levels*. Along this line, the Commission could add to the competitive data list: averaging or deaveraging of local service rates; elimination of implicit subsidies in access rates by moving them toward cost; price restructuring and competitiveness of intrastate toll rates; and implementation of state universal service funding mechanisms.

The federal Telecommunications Act of 1996 was intended to move the telecommunications industry to competition and allows regulators to recognize that

⁶ As found at Section 254(b)(3) of the Act.

⁷ Paragraph 110 of the Further Notice states, "For example, because Wyoming, unlike many other states, has rebalanced its single-line business rates to levels equivalent to residential rates, Wyoming's residential rates no longer rely on implicit support flows from its business rates, and its business customers pay lower rates than they would in a state that relied on such implicit support flows."

competition in their regulatory actions, as the telecommunications market clearly moves away from its monopoly starting point.⁸ It is within this context that the universal service fund standards are established. It is also within this context that the Commission should examine both the affordability and comparability of rates. If it finds that rural rates are not comparable to the urban rates (for instance, because they are more than two standard deviations outside of the national average urban rate) it would be important to know why. Is it because of changes in the allocations among services? Is it because of changes in modeling techniques that are used to determine the forward looking costs? Is it because of loss of customers to competitors? Each of these reasons may result in the same need for support to keep rates affordable, but it may also be important for the Commission to know whether the federal funds are being used to support monopoly or competitive services and markets. This may also assist in long run planning, for both the industry and regulators, of whether this need is likely to be transitional or more of a permanent need.

The Wyoming Office of Consumer Advocate offers that the quality and context in which the numeric data is derived may be as important as the rate comparisons themselves. However, the Commission is well advised to be cautious not to make the data collection simply a fishing expedition, as the states are already burdened with regulatory obligations and reviews, with limited time and resources.

How should state requests for further federal action be treated and what should be required with the submissions?

In its Further Notice, the Commission asks for comment on the procedures that should be used to process state requests for further federal action, including the timing of such requests and the showings that should accompany them. The Further Notice also asks what type of federal action should be available if a state makes an appropriate showing that urban/rural rate comparability is lacking.

As to the timing of the state requests, we agree that requiring the filing of any state requests at the time of the expanded certification will promote administrative simplicity.⁹ Based on our experience with the more simple certification process that is currently in effect, states will be focused on the issue of comparability, use of federal funds, rate affordability, and the need to keep service readily available to a broad range of customers. We also agree that it would be appropriate to require some update from the state on an annual basis, but the update should not have the same required showing as that accompanying the original request for additional federal funding or other federal action.

As for the showing that should accompany a state's initial request for further federal action, it is reasonable for the state to have an obligation to show the need for the

⁸ The Wyoming Telecommunications Act of 1995 is similar in its purpose, that is, to move the market toward competitive status while still preserving affordable rates for essential, basic services.

⁹ See Further Notice at paragraph 115.

additional action – especially when that request is for additional federal universal service funding. However, the showing hurdle should not be excessively burdensome. We believe the showing that Wyoming has made during the past several years in our comments filed with the Commission, as well as discussions with the Joint Board and the Rural Task Force, is a reasonable starting point for a state showing for a need for additional funds. A full discussion of the Wyoming story, along with the description of changes in rates, the passage of pro-competitive legislation, a description of our universal service funding, a copy of our affordability studies, and similar, previously provided information should be adequate to show why Wyoming (or other similarly situated high-cost states) is unable on its own to keep rates affordable at the same time that markets are being readied for competitors. A showing of any more than this would be burdensome and unnecessary. A lesser showing may be adequate, but each situation should be addressed based on individual state facts and circumstances. Rather than implementing burdensome, one-size-fits-all rules, the Commission should allow the states some discretion. The Commission can always ask for more information as needed – rather than imposing impossible standards up front. On the other hand, the state should not insult the integrity of the process by simply asking for a handout without showing a need and the purpose of the request.

The Commission should also consider some parameters for addressing objections to the special state request and for judging the reasonableness of the request. These parameters may include a look at where the state's rates are relative to the Commission's established comparable rate benchmark, the size of the state universal service fund, and the level of earnings of the provider. However, it should not be reasonable for a party to object to the special request on the sole basis that granting the special state request would increase the size of the federal universal service fund. The party objecting should be required to show that the additional funding would be detrimental or burdensome in a meaningful way to those carriers and customers who pay the federal support.

As to the types of federal action to which the Commission should be open, this too should not be limited by a one-size-fits all standard. While Wyoming (and several other states) have been focused on a monetary solution to the joint affordability and competition problem, other entities may be concerned about different aspects of universal service funding with alternative solutions (e.g., an exemption from open interconnection agreements, a waiver from ETC mandates, etc.) The Commission should not prematurely limit the request that a state might make.¹⁰ It should simply ask for comment and responses to whatever request is made, such that the Commission can then weigh the benefits and detriments of any creative solution, before ruling on it. Furthermore, while the WOCA is reluctant to suggest a definitive time frame in which the decision on the request must be made, the Commission should use due care to assure that years do not pass without a decision on these individual, specific state requests.

¹⁰ Several years ago, the Wyoming Public Service Commission suggested that Wyoming be used as a limited test case to reexamine the type of support to be provided to high cost states that have been willing to move prices in preparation of competition. This is the sort of unique proposal that should be considered on an individual basis, without restriction or preemption at this time.

Finally, the Commission proposes that one of the actions taken might be additional targeted federal support at a set percentage of estimated forward-looking wire-center costs in excess of two standard deviations above the *average cost per line*.¹¹ We agree that the support should be on a wire center basis, for this is the way to truly identify and provide for the highest cost customers.¹² However, we urge the Commission to think in terms of a set percentage that is much higher than the five percent to twenty-five percent for which numbers are provided in the Further Notice, especially when the numbers show such a wide difference between the average costs and average rates.¹³ It would be a travesty to provide such minimal additional support for exchanges that have already been identified as some of the highest cost areas in the nation.

For example, the GAO data, contained in Appendix C of the Further Notice, shows that at least one of the non-MSA regions of Wyoming has rates of \$57.38. This is \$16+ more than the proposed rate of \$40.85 – the threshold that identifies when an area is of such high cost that it warrants additional support.¹⁴ Looking at it another way, the Wyoming rate is forty percent above the level at which costs are identified to be problematic enough to support additional federal funding. Yet, based on the examples in the proposal, the providers and customers in these areas would be granted no more than an additional twenty-five percent of federal support. At the twenty five percent level, that means only about \$4 per month in extraordinary federal support – leaving the additional \$12 to be funded by Wyoming users.¹⁵

While we do not mean to appear ungrateful, and we are appreciative of any additional support that we may be able to receive under the Further Notice, we must continue to question the sufficiency of the federal fund when rate levels continue at levels much higher than those already deemed by regulators to be extraordinarily costly. Furthermore, Commission may have underestimated the size of Wyoming customer' bills in adding \$8.78 per residential line for subscriber line charges, taxes and other fees, particularly when the federal subscriber line charge alone is now \$6.50.¹⁶ A typical set of

¹¹ See Further Notice, paragraph 122.

¹² For several years, the Wyoming Public Service Commission argued that all non-rural, high-cost support should be computed and provided on a wire center basis, but to no avail. The Wyoming Office of Consumer Advocate continues to agree with the earlier offered Wyoming position, as costs among Wyoming exchanges can vary by as much as several hundred dollars per month per line.

¹³ The Further Notice indicates at paragraph 41 that two standard deviations above the national average urban rate is \$32.28 while paragraph 123 indicates that two deviations above the average cost per line would be \$40.85, a difference of 26%.

¹⁴ See paragraph 123 of the Further Notice.

¹⁵ The 75% of this extraordinary need that would be required to come from the Wyoming Universal Service Fund would require an assessment of more than three percent.

¹⁶ See Appendix C of the Further Notice.

charges for a customer located a mile from the central office in Wyoming's largest city, Cheyenne, is currently:

Basic Local Service Fee	\$23.10
Extended Area Calling (within the County)	\$ 0.23
Federal Excise Tax	\$ 0.95
State Tax	\$ 1.27
County Tax	\$ 0.63
Federal Access Charge	\$ 6.50
Federal Universal Service Fund	\$ 0.59
Telephone Assistance (Lifeline) Program Fund	\$ 0.01
Wyoming Universal Service Fund	\$ 0.93
Wyoming Relay Service Fund	\$ 0.06
Emergency 9-1-1 Tax	\$ 0.50
Municipal Charge	\$ 0.47
Federal Number Portability Charge	\$ 0.43
TOTAL	\$35.67

Thus, for a customer in a non-rural area, served by a non-rural carrier in Wyoming's largest municipality, the taxes and fees already exceed \$12.00 and the *lowest basic residential urban bill* in Wyoming exceeds the range of two standard deviations from the national urban rate. Hence, we encourage the Commission to reexamine only supporting five to twenty five percent of the extraordinarily high costs, as it appears to be considering under the Further Notice. We believe a higher level of support is warranted.

As an alternative to considering higher levels of support, the WOCA suggests that support in the five to twenty five percent range be provided on a regular basis to those exchanges with costs that exceed two standard deviations from the national average cost. Then, and only then, would it be reasonable to ask a state to make a special application and showing for federal support that was still required to keep rates at reasonable and affordable levels – and only after consideration of state funding that could be brought to bear on the situation. In this manner, some support would be regularly provided for the exchanges that the Commission has already identified as extremely costly, but the funding would be limited. If additional help were needed, the states would then be obligated to make a showing of the self-help that it had employed and why it was unable to proceed without additional federal assistance. This would continue the federal-state partnership that is anticipated in the federal Act while still not punishing those customers in high cost states by making them choose between a competitive environment and affordable rates.

Should additional federal funds be made available to encourage states to implement explicit universal service mechanisms, without regard to their achievement of rate comparability?

The answer to this question really begins with our discussion in the previous section regarding additional federal actions that might be taken. As indicated above, we recognize that the preservation and promotion of universal telecommunications service requires a partnership among the Commission, the states, and the industry. We also believe that states should engage in self-help as much as reasonably possible, with one of the primary self-help activities being the implementation of a state universal service fund. There should be extra recognition for developing and implementing a state universal service fund.

There is an additional reason for ‘rewarding’ the use of a state universal service fund. In Wyoming, the implementation of the state universal service fund came about specifically as part of an active program to remove implicit subsidies and replace them with explicit subsidies. This was done all as a concentrated effort to *prepare for competition* and create an environment in which competition would be sustainable. We presume that other states may be entering into state funding processes for similar reasons. Preparation for competition underlies the pricing changes that are occurring that are driving the need for additional state and federal support. Absent preparation for, or actual competition, there would be no need for the price changes. Without the price shifts among services and customers, there would be no need for explicit funding mechanisms. A national policy paving the way for competitive telecommunications markets has been set. Thus, as states respond to that national policy, they should receive the help that is needed. Such help was expected to be available through the national policy of a federal universal service fund. Without this ‘carrot’ of a reward through additional federal funding, states have a severely limited incentive to freely comply with the nationally established policy. We agree with the Commission that additional targeted federal support should be made available.

Summary and Conclusion

The Wyoming Office of Consumer Advocate appreciates the efforts that the Commission makes in its Further Notice to additionally address issues for non-rural high cost providers and service areas. While we believe that the proposals discussed in the Further Notice make additional progress toward achieving sufficient funding in order to maintain affordable rates and ubiquitous quality service, our concerns about the comparability of urban and rural rates and the affordability of rates in low density states such as Wyoming persist.

We urge the Commission to continue to examine the issues of universal service funding and rate comparability. We particularly look forward to the Commission establishing another forum to examine support mechanisms for rural providers and encourage the Commission to use such a forum to find ways to close the gap between the support provided to non-rural providers serving rural areas and rural providers serving rural areas.

We look forward to continued opportunities to work with the Commission on these important matters.

Sincerely,

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