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

In the Matter of	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

PETITION FOR RECONSIDERATION OF THE NINTH REPORT & ORDER AND EIGHTEENTH ORDER ON RECONSIDERATION

Comes now the Wyoming Public Service Commission (WPSC) on behalf of the citizens of Wyoming and respectfully asks the Federal Communications Commission (Commission) to reconsider its decision in its Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service.*

WYOMING

The WPSC is statutorily charged under the Wyoming Telecommunications Act of 1995 to "ensure essential telecommunications services are universally available to the citizens of this state while encouraging the development of new infrastructure, facilities, products and services."[1] Additionally, the Wyoming Act directed that:

> (a) Services provided by a telecommunications company that provides noncompetitive services shall be priced such that the service's revenues from sale of the service recover the total service long-run

[1] W.S. § 37-15-102.

incremental cost of providing that service. . . [2]

Under this charge, the WPSC entered an Order in July, 1999, which directed U S WEST Communications, Inc. (U S WEST), Wyoming's only non-rural telecommunications company, to price its local exchange service above a price floor which is based on a total service long-run incremental cost pricing model (TSLRIC). The effect of this pricing of local exchange service is that all embedded subsidies have been removed so all economic barriers to entry (except capital investments) have been eliminated from U S WEST's service territory. The removal of barriers to competition and the development of competition for local services is one of the goals of the Wyoming Telecommunications Act, as well as the primary goal of the federal Telecommunications Act of 1996.

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[2] W. S.§ 37-15-402.

The theoretical goals of both the Wyoming and the federal Acts have been met. However, Wyoming is a high cost state, and the prices for local service that customers must pay are far above the national average. In 1998, the national average residential monthly charge for local service in urban areas was $13.77.[3] As of October 1, 1999, U S WEST's weighted average residential rate in Wyoming exceeded $28. Based on the TSLRIC model, using a base rate area and three rural zones, the resulting prices, before taxes, surcharges, or high cost support, for Wyoming's U S WEST customers are: $23.10 per month for the base rate area; $38.60 per month for Zone 1; $48.60 per month for Zone 2; and $69.35 per month in Zone 3.

[3] Table 8.4 of the Statistics of Communications Common Carriers issued by the Federal Communications Commission.

The currently available federal universal service fund support is then targeted to high cost customers, in the following graduated manner: none of the federal support is provided to base rate area customers; Zone 1 customers currently receive $2.00 per month as a direct bill credit; Zone 2 customers currently receive $6.50 per month as a bill credit; and Zone 3 customers receive a bill credit of $12.25 per month. These amounts are subject to change as the federal high cost support changes.[4] Wyoming targeted high cost support by rural distance zone. This work was completed prior to the issuance of the FCC decision which suggests the targeting of high cost support by wire center rather than rural zones outside the base rate area. Wyoming intends to request a waiver regarding the way the targeting occurs, as allowed by the Commission's order[5], and hopes to work with the Commission on an appropriate resolution of these targeting differences.

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[4] The current federal USF bill credits are based on the current level of support provided to U S WEST in the amount of about $4.4 million. This is the amount that U S WEST would continue to receive under the "hold harmless" provision. Any reduction in this amount would also reduce the amount of support provided directly to high cost customers, increasing the portion of the bill paid by the customer.

[5] See paragraph 76, Ninth Report & Order and Eighteenth Order on Reconsideration in CC Docket No. 96-45.

Any remaining support comes from the Wyoming universal service fund. Support is provided to Wyoming customers whose basic local service rate exceeds 130% of the statewide weighted average rate. Currently, given that Wyoming has eliminated implicit subsidies for more than 80% of its ratepayers and has moved to forward looking, cost-based rates, a residential customer's rate must exceed $34.81 before the threshold for support from the Wyoming universal service fund has been reached![6] Clearly, even with an explicit state universal service fund in place[7], combined with targeting of all currently available federal support, Wyoming customers pay well above the national average, failing the comparability test[8] that is critical to rural, high cost states, such as Wyoming.

FCC ORDER

The result of the Commission's *Ninth Report and Order* is that Wyoming's federal high cost support for U S WEST ***is reduced!*** Naturally, we are astonished at the results of the model and the FCC decision. These results are contrary to the intent of Congress and the clear reading of the 1996 Act. Under section 254(b)(3), a section of terrific familiarity, rural, insular and high cost areas should have access to telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are *reasonably comparable* to rates charged for similar services in urban areas[9]. Congress must have had Wyoming and other

[6] It is estimated that the subscriber line charges, taxes, and surcharges add an additional $5 to $10 per month just for dial tone service.

[7] The Wyoming universal service fund currently provides support of more than $8,000,000 annually to Wyoming local exchange customers. This has been computed to equal more than 4% of Wyoming's intrastate revenues of about $187,000,000.

[8] 1996 Telecommunications Act, Section 254(b)(3).

[9] We note that the FCC threshold for receiving support is based on 135% of the national average cost per line, not the average urban cost. The inclusion of non-urban area costs in this

rural states, similarly situated, in mind when it drafted this section of the 1996 Act.

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averaging raises the benchmark above what is intended by the clear reading of the Act.

Equally important is the sufficiency provision found at Section 254(b)(4). This states that the federal and state support mechanisms should be "specific, predictable, and sufficient" such that they "preserve and advance universal service." As further discussed below, the Commission *presumes*[10] that the states will have sufficient resources to pick up whatever piece of high cost support is needed to keep rates affordable and penetration rates high. We will show that this is not the case in Wyoming.

The results of the Commission's order are directly contrary to the intent of Section 254(b)(3) and Section 254(b)(4) and we respectfully ask that the Commission grant this Petition for Reconsideration. We offer below alternatives, any one of which would remedy the Commission's *Ninth Report and Order*, such that it would meet the comparability and sufficiency objectives of Congress as stated in the 1996 Act.

AVERAGING VERSUS DEAVERAGING

For Wyoming customers, the most devastating portion of the Commission's *Ninth Report and Order* is the decision to average costs across the study area, rather than providing support at the wire center level. This is also the portion of the decision that is the most surprising, given the prior orders of the Commission. Starting with the Commission's May 7, 1997, *Report and Order*, one of the key elements of a forward looking cost model was to be its ability to ". . .deaverage support calculations to the wire center serving area at least, and if feasible, to even smaller areas. . ."[11] This deaveraging concept has always shown through the Commission's discussions of universal service

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[10] See paragraph 57 of the Ninth Report and Order, CC Docket No. 96-45.

[11] Paragraph 250, Item 10, of the May 7, 1997, Report and Order in CC Docket No. 96-45.

support.

Two years later, the Commission continues to ask for comments on deaveraging, and in the process, provides some of the best supporting reasons to adopt deaveraging at something less than the study area level. In its *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45,* adopted May 27, 1999, the Commission states:

> As competition places downward pressure on rates charged to urban, business, and other low-cost subscribers, we believe that support deaveraged to the wire center level or below may ensure that adequate support is provided specifically to the subscribers most in need of support, because the support reflects the costs of specific areas.[12]

The Commission continues to express its concerns along this same line when it asks for comment on the following specific issue:

> We seek specific comment, however, on the extent to which competition is likely to place steadily increasing pressure on implicit support flows from low-cost areas and the extent to which this pressure suggests that we should deaverage support in the implementation of our new mechanism.[13]

Even in the *Further Notice of Proposed Rulemaking in CC Docket No. 96-45,* adopted May 27, 1999, the Commission notes, ". . . the Joint Board recommended that the Commission should estimate the total support amount necessary in those areas considered to have high costs relative to other areas."[14] How does averaging higher and lower cost areas support the concept of supporting those areas "considered to have high costs relative to other areas?" The answer was clear to the

[12] Paragraph 103, Seventh Report and Order in CC Docket No. 96-45.

[13] Paragraph 105, Seventh Report and Order in CC Docket No. 96-45.

[14] Paragraph 10, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, Adopted May 27, 1999.

Commission all along. The competitive model demands that support be provided at a level deaveraged below the study area. The WPSC took the Commission at its word for the nearly four years that this model has been in process, relying itself on deaveraging of prices to further the competitive cause.

In addition, the method of averaging all wire centers without consideration of high cost areas within the exchange, fails the sufficiency and comparability tests in Wyoming. We have no doubt, that in many of the states with large urban populations, this method provides adequate funding, but it does not do so in the rural, low-population state of Wyoming. Attached is a schedule that shows the significant difference in funding that Wyoming receives under the averaging method when compared to deaveraging at the wire center level. Under the proposed new support mechanism which includes the averaging method, and without the extra support under the hold harmless provisions, U S WEST in Wyoming receives about $3.3 million annually. This amount would be increased nearly fourfold if the support were to be calculated at the wire center level — an annual increase of more than $9 million. These extra funds would translate into nearly an additional $9 per month for high cost customers[15] that could be used as a bill credit on customers' bills. Even with the $9 per month increase in federal support, Wyoming residential rates would be

[15] Based on FCC provided data, it is computed that Wyoming would have 86,761 high cost, non-rural customers on a deaveraged basis, with 154,436 non-rural customers who would not qualify for federal support.

nearly double the national average residential rate.[16]

Looking further at the distribution of the funds on a deaveraged basis, the Commission can be assured that this would truly be going to high cost customers in Wyoming. According to the Commission staff's own data, there are eight exchanges in Wyoming with fewer than 1,000 lines each, and, in fact, these eight exchanges have a total of only 2,608 lines, comprising just over one percent of the Wyoming non-rural lines. The lines in these eight exchanges have an average monthly cost of about $220 each. If support were provided at the wire center level, these customers would receive nearly 35% of the non-rural federal support in Wyoming. Aren't these the customers that should be getting the high cost support?

Under the hold harmless provisions, more than twenty percent (20%) of U S WEST's residential customers in Wyoming will be paying $34.81. And, if for some reason that we pray never comes to be, the hold harmless provisions were to disappear, Wyoming rates would actually be well above the current level, since this difference would either be paid by customers themselves or through a universal service surcharge that is already approaching five percent. How can rates at this level be deemed to be reasonably comparable to currently charged monthly urban rates in the $13 range? A loss of 25% of the federal funding translates into more than a $3.00 a month increase to Zone 3 customers who already pay nearly $45 (with taxes and surcharges) for dial tone. Where is the comparability? Where is the sufficiency?

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[16] As noted earlier, in 1998, the average residential rate for local service in urban areas was $13.77 before taxes, surcharges, and additional services.

Many have argued with the WPSC that we should discard the competitive model to keep our low, implicitly subsidized rates for as long as possible. But, where does the federal Act say that we should be denied the benefits of competition just because we live in a rural state? Nowhere. In fact, the federal Act prohibits a state, even a rural state, from barring competition.[17] Wyoming has opened its doors to competition; we have set rates to eliminate implicit subsidies; we have reduced access and toll charges; we have deaveraged unbundled elements and local prices; we have targeted federal support to high cost customers; and we have established a large intrastate universal service fund. Now, it is the Commission's turn to recognize that Wyoming did the right thing, but we need help. We ask that you implement support at the wire center level rather than the study area level.

RURAL STATE EXCEPTION

Wyoming offers a second alternative of allowing for a rural state exception, where help is shown to be needed, due to the lack of sufficient intrastate resources. This alternative works well alone, as explained below, or could be easily paired with the above requested deaveraging, if concerns persist regarding the overall size of the fund. In other words, additional parameters could be placed around the deaveraging issue, where, for example, a non-rural carrier would only receive support at the wire center level, if its costs exceed a certain level and the state universal service surcharge exceeded a specified level.

Specifically, Wyoming took the Commission at its word when it said, "To the extent a state's resources are deemed inadequate to maintain affordable and reasonably comparable rates, the federal

[17] Section 253(a) of the 1996 Act, "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to

mechanism will provide the necessary support."[18] We also took to heart the Federal-State Joint Board's recommendation that ". . .federal support should be provided to the extent that the state would be unable to support its high cost areas through its own reasonable efforts." [19] Yet, rather than looking at specific state situations, or even allowing for specific state exceptions, the Commission simply presumes that states will be able to fund any high cost needs not funded at the federal level, when it states:

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provide any interstate or intrastate telecommunications service."

[18] Paragraph 3, Seventh Report & Order, CC Docket No. 96-45.

[19] As cited at paragraph 10, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, adopted may 27, 1999.

> We recognize that, irrespective of our policies, the development of competition may place pressure on implicit support mechanisms at the state level. For example, states that use above-cost pricing in urban areas to subsidize below-cost service in rural areas may face pressure to deaverage rates as competitors begin to offer cost-based rates to urban customers. Although this development may compromise states' ability to facilitate universal service using implicit support, it should not compromise states' ability to facilitate universal service through explicit support mechanisms.[20]

We remind you again that Wyoming has deaveraged rates to not only meet competition, but to allow for competition since it is questionable if it would ever come to Wyoming without first eliminating the implicit subsidies. But, where we really take exception to the order is the assumption that states will readily be able to convert their implicit subsidies into explicit subsidies, without an affordability issue, and thus, universal service, issue arising. Once again, many, many non-rural customers in Wyoming are paying nearly $45 for dial tone (including taxes and surcharges) and all Wyoming customers could soon be paying between four and five percent[21] to fund the Wyoming universal service fund. We believe this does compromise our ability to facilitate universal service through

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[20] Paragraph 57, Ninth Report & Order, CC Docket No. 96-45.

[21] Customers currently pay a three percent surcharge on the gross, not net, rate due to a temporary surplus in the fund that is being depleted before raising the level of the surcharge. Thus, a Zone 3 customer may soon pay more than $2 per month to fund the Wyoming universal service fund, in addition to the $34.81 threshold rate, plus $3.50 for the subscriber line charge, plus other taxes and surcharges (relay fund, 9-1-1-, etc.).

explicit support mechanisms.

Interestingly, the next sentence of this same paragraph[22] in the *Ninth Report & Order* seems to leave an opening for the kind of small state exception that we are proposing. This sentence states:

> In addition, we do not believe it would be equitable to expect the federal mechanism — and thus ratepayers nationwide — to provide support to replace implicit state support that has been eroded by competition ***if the state possesses the resources to replace that support through other means at the state level.*** [Emphasis added.]

[22] Paragraph 57.

We do not have such resources. We are already stretched to our limits. Our survey of affordability taken in the Summer of 1997 indicated that customers would only tolerate a local rate that did not exceed $30.[23] We have recently exceeded that level, so we do not yet know how this will impact the penetration level or rural lifestyles. (Will phone service remain widely available in Wyoming?) Therefore, we ask that the Commission expand on this opening left in its order, and develop what we term a "rural state exception." This exception of allowing for additional federal support would apply where a non-rural carrier's average forward looking cost exceeds a designated threshold and where the state universal service fund exceeds a designated percentage. Wyoming recommends that this exception be implemented when a non-rural carrier's average forward looking cost exceeds $30 per month and the surcharge on intrastate revenues exceeds four percent in order to fund the intrastate portion of the universal service fund needs. To quantify this, if the difference between the average non-rural cost per line of $33.68[24] per month and a threshold of $30 were funded, the total would be $10,651,259 annually ($3.68 per line x 241,197[25] lines x 12 months). This amount is not enough to break the national bank, but is of critical importance to Wyoming. This extra $10 million of federal support would require an additional five percent surcharge on all intrastate, jurisdictional revenues (including cellular, paging, pay phones, local, features, and intrastate toll) in Wyoming, whereas it is negligible compared to total interstate revenues.[26]

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[23] Telephone Affordability Study, Summer 1997, by Annemarie Burg, Summer Intern, Wyoming Public Service Commission.

[24] This figure is taken from the Commission's model and the model output results.

[25] This figure is the number of non-rural lines in Wyoming reflected in the Commission's model.

[26] Table 6.5 of the 1997/1998 Edition of the Statistics of Communications Common

The WPSC believes that a rural state exception (that, of course, would apply to any state that showed that it lacked sufficient resources to meet its intrastate needs) is a viable addition to the Commission's high cost decision. It is consistent with earlier statements that there should be a federal-state partnership. It allows the state to accept as much responsibility as possible without placing an undue burden on customers. It utilizes the Commission's forward looking cost model to promote least-cost, most efficient networks. Most importantly, it passes the comparability and sufficiency tests.

INPUT CONCERNS

In its review of the non-rural cost model, the WPSC has developed concerns about several of the cost inputs, but has not yet had a full opportunity to explore the impact of each of these items, including the fill factors, the operations and maintenance expense factors, and customer location placement (based on non-public data). However, we have a particular concern about the use of 18,000 feet loops. Loop length is a significant driver of costs, and the 18,000 feet length may be longer than reasonable. We believe that this longer loop length may be driving down the average cost of service, especially in a sparsely populated rural state such as Wyoming.

Carriers shows total operating revenues in 1997 of $103,134,290,000. The additional $10 million of funding requested by Wyoming would constitute 0.009 of one percent of these total operating revenues.

We also believe that a loop this long is inconsistent with several other provisions of the 1996 Act. For example, Congress designated that one of the principles of universal service is that "Access to advanced telecommunications and information services should be provided in all regions of the Nation."[27] We believe that many of today's advanced and information services will not be provided over loop lengths of 18,000 feet. Specifically, U S WEST's megabit service, which is an ADSL, high speed digital line, is not offered on loop lengths longer than 15,000 feet with 26 gauge wire, or 18,000 feet with 24 gauge wire. In addition, traditional modem transfer rates appear to become affected in loops of 18,000 feet and greater.

Continuing through the list of universal service principles found in the 1996 Act, access to advanced and information services is again reiterated in Section 254(b)(3), where it is stated:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, ***should have access to telecommunications and information services,*** including interexchange services and ***advanced telecommunications and information services,*** that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. [Emphasis added.]

Again, the comparability standard not only requires reasonably comparable rates but also requires reasonably comparable services, and these are not without a cost. This comparable cost should be reasonably reflected in the forward looking cost model through a loop length that allows customers access to these services without having to subscribe to a special access or private line. We believe that this loop length warrants a further review, and that consideration should be given to the use of a 12,000 feet loop length, rather than the currently modeled 18,000 feet loop.

[27] Section 254(b)(2) of the federal 1996 Telecommunications Act.

CONCLUSION

In summary, the WPSC requests that the Commission grant this Petition for Reconsideration in order to modify its order using one, or more, of the alternative modifications suggested and described above. We appreciate the work that has gone into the Commission's forward-looking cost model and our suggested modifications to the order work within the framework of that model. We believe that our suggested modifications could be implemented without having to further delay the implementation date of the Commission's order.[28] This issue is of critical importance to Wyoming ratepayers and the continued affordability of telephone service in Wyoming. We await your response to this mandated federal-state partnership and repeat our desire to work with you on this most important issue. We ask that you grant this Petition for Reconsideration and provide Wyoming with additional support soon. We have already waited far too long.

Submitted this __ day of December, 1999.

Respectfully Submitted,

STEVE ELLENBECKER
Chairman

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[28] Based on the Nineteenth Order on Reconsideration in CC Docket No. 96-45, we understand that support based on the forward-looking model will now be deferred until the third quarter of 2000. This gives the Commission time to implement the Wyoming suggested changes.