Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Regulatory Requirements	)	CC Docket No. 01-337
for Incumbent LEC Broadband	)	
Telecommunications Services	)	

REPLY COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION
(March 26, 2002)

The Wyoming Public Service Commission (WPSC) hereby submits its Reply Comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking regarding its Review of Regulatory Requirements of Incumbent LEC Broadband Telecommunications Services (Notice). The WPSC is the agency of the State of Wyoming that has jurisdiction to regulate, *inter alia*, intrastate telecommunications companies serving in Wyoming. As such, the WPSC is an interested party in this proceeding.

In its Notice, the Commission asks for a wide variety of information on broadband services, and generally asks parties to share thoughts on how to regulate and foster the development of this market. Specifically, the Commission asks how it can "best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation."[1] This is the policy issue that the WPSC will focus on in these Reply Comments.

We note that many of the initial comments filed in this proceeding are from partisan incumbent providers in the industry, who seek complete and immediate deregulation of the market, or from their competitors and potential competitors who seek to retain regulatory constraints and burdens for as long as possible. While each of these polarized positions may have some merit, we believe that the question of whether to regulate or deregulate may not be the most productive way to approach the issue of promoting the deployment of broadband services in both rural and urban areas. We think that the key to successful broadband deployment may lie in the *type* of regulation that is practiced, rather than whether or not regulation is part of the picture.

As described in the Notice,[2] current regulatory practices tend to focus on rate and tariff regulation. These regulations tend to classify carriers as dominant or non-dominant and then

[1] Paragraph 7 of the Notice in CC Docket No. 01-337, released December 20, 2001.

[2] Paragraphs 35 – 37 of the Notice.

determine the amount of rate regulation that is appropriate for that category of carrier. However, price regulation, or the lack thereof, may make no difference in the speed or scope of deployment of a new service or in the development of new and innovative technologies. Whether it is done in a regulated or unregulated environment, raising prices may inhibit customers from taking the service because of price sensitivity; and lowering prices may drive marginal competitors from the market, also inhibiting the broad deployment of the service. Thus, concentrating on price regulation may be the wrong way to encourage broadband services that are not yet widely deployed or available ubiquitously in urban and rural areas.

We believe that the imposition of standards relative to making the current voice-based telecommunications network ready to support advanced services would do more to allow for the wide deployment of advanced services than would either stringent rate regulation or total rate deregulation. Thus, we encourage the Commission to strengthen and enforce the network standards that already exist, and then to allow the market to develop the specific services. This idea has been advocated before. It appears, for example, in the federal Telecommunications Act of 1996 itself (the federal Act) and in the recommendations of the Rural Task Force on Universal Service.

As the WPSC has emphasized in many of our prior universal service funding comments to the Commission, Section 254(b)(2) of the 1996 states that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation." This gives the Commission the clear direction that it needs to support a requirement that carriers build telecommunications infrastructure that can accommodate the provisioning of advanced services over that network, whether or not advanced services (such as broadband) are currently being provided in each service area. Making the network accommodate the provision of advanced services, will help to develop a level competitive playing field which lends itself to reasonable prices for the advanced services in question. In such a case, the cost of the advanced service would simply be incremental to the cost of the basic network, and would not develop as a costly and completely separate duplication, for instance, of the existing voice network, which is, with few exceptions, is already ubiquitous.

This principle of "access to advanced services" and building the base network that can allow for the universal access envisioned by the federal Act was expanded upon by the Rural Task Force in its Recommendation, released September 29, 2000. Specifically, the Rural Task Force recommended:[3]

> a. Universal service funding should support plant that can, either as built or with the addition of plant elements, when available, provide access to advanced services. State commissions could facilitate this infrastructure evolution and may make an exception for carriers with functional but non-complying facilities. [Footnote omitted]

[3] Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, Released September 29, 2000, pages 23-24.

b. Telecommunications carriers should be encouraged by regulatory measures to *remove infrastructure barriers relating to access to advanced services.* [Emphasis added.]

c. The federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services. Specifically, to remain "sufficient" under the 1996 Act, the fund should be sized so that investment in rural infrastructure will be permitted to grow. [Footnote omitted.]

While we will continue to advocate for funding sufficient to allow for and encourage adequate infrastructure investment in rural America, in these Reply Comments we have suggested a different and very necessary focus. We believe that this piece of the regulatory process should work on engineering and network construction standards, rather than on rates. This will allow for the development of a competitively neutral and universal baseline network in both rural and urban areas. Telecommunications carriers, be they regulated or unregulated, incumbent or new, voice or cable, wireless, wireline or something else, can, building on that baseline, make rational and effective decisions on whether to actually *offer* advanced services in an area, on the basis of market demands and customer desires -- the criteria of a healthy competitive marketplace. This baseline network would allow supplemental advanced services to be more reasonably priced and thus available to more people in all areas of the nation.

Admittedly, building this competitively neutral basic network may require universal service support in some areas. However, as cited above, the federal Act envisioned such support for this kind of improved *network* (i.e., for "access") but not for the actual advanced services or broadband offerings themselves. We believe that the broadband offering itself is a competitive service, and should be treated as such, with the marketplace bearing the cost of these services. However, the federal Act clearly recognizes that, if the base network that is needed to offer these services is not supported in certain rural areas, the network will never be built. The cost of the underlying network itself could inhibit the construction of the underlying network, were it not for federal and state support for the needed investment.

We do not agree with those who suggest that additional or guaranteed earnings levels are needed to give shareholders the incentive to invest in the new advanced-services network. We also do not agree with those who advocate that any federal or state support for this underlying network go to the companies and their shareholders. In Wyoming, we clearly advocate that the support must go to the customers on whose behalf the higher cost investment is made.[4] We believe this practice should continue for any support for the network enhancements needed to make advanced services available. This universal service approach to support is not one-sided;

[4] Section 500(j) of the WPSC's Procedural Rules and Regulations states:

> Each company's incremental amount of Federal Universal Service Fund receipts resulting from changes in the company's high cost loop fund support shall also be credited, monthly, to the bills of customers on a per line basis. The amount of the credit for each of the customers shall be computed, and authorized by the Commission, in a manner consistent with federal receipt of such funds. The total amount of this credit shall equal the difference between the amount of Federal Universal Service Funds most recently used in the computation of rates.

and it would carry out the policy of the federal Act. It would benefit the customers; and it would, in turn, also help to defray the costs of the companies making the improvements.

In summary, we believe the market should be allowed to decide which services should be offered in specific areas, and that competitors should be allowed to decide if they want to offer advanced services in those areas. We urge you not to limit the types of services that can be offered or by whom they can be offered in a specific area, and that you act to make it possible to offer these services on reasonable terms and at reasonable rates. This is best accomplished by developing the underlying network to allows for the offering of advanced services throughout all parts of the United States. We urge you to adopt the Rural Task Force's recommendation on Advanced Services, as cited above. This is the right incentive for advanced services deployment and the right use of the federal universal service funding. It carries into effect the policy of the federal Act. It allows for the proper balance of competition, regulation, and advanced service deployment sought in the Notice.

Respectfully Submitted,

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Chairman	Deputy Chair	Commissioner