

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

In the Matter of the)
Federal-State Joint Board)
on Universal Service)
)
Petition of the Wyoming Public Service)
Commission for Waiver of Filing Deadline)
for Rate Comparability Certification)
Pursuant to 47 C.F.R. §54.313(d)(3))

CC Docket No. 96-45

PETITION FOR WAIVER OF RATE COMPARABILITY FILING DEADLINE

Christopher Petrie
Secretary and Chief Counsel
Wyoming Public Service
Commission
2515 Warren Avenue, Suite 300
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cpetri@state.wy.us

(February 13, 2008)

Summary

The Wyoming Public Service Commission (WPSC) was required by 47 C.F.R. 54.316 to file its 2008 Residential Rate Comparability Certification by October 1, 2007, to assure payment of High Cost Model support for the first quarter of 2008 to eligible non-rural incumbent local exchange carriers. The certification was not filed until December 26, 2007.

The WPSC relied upon inaccurate information provided by a member of its staff and was thus unaware of the untimely filing of its 2008 Residential Rate Comparability Certification. This resulted in the ineligibility of seven otherwise eligible non-rural incumbent local exchange carriers to receive High Cost Model support for the first quarter of 2008. The WPSC believes that absent the requested waiver of the filing deadline, \$3,309,876 of High Cost Model support for the first quarter of 2008 will be unavailable to these otherwise eligible carriers, and ultimately, their customers. WPSC learned of this situation only upon being alerted by one of the affected carriers.

The WPSC hereby petitions the Federal Communications Commission (Commission) for a waiver of the October 1, 2008, deadline provided in 47 C.F.R. 54.313(d) for filing the WPSC's 2008 Residential Rate Comparability Certification to allow payment of High Cost Model support to affected Wyoming carriers for the first quarter of 2008.

DISCUSSION

Good Cause Exists for a Waiver of the Filing Deadline Imposed by Section 54.313(d)

Section 1.3 of its rules permits the Commission to waive any of its rules, in whole or part, for good cause shown.¹ Such an exercise of its discretion is warranted where the facts make strict compliance inconsistent with the public interest. In many cases, the Commission has granted waivers to accept late filings resulting from inadvertence or mistake.

Rather than being bound to precisely apply its rules, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore"² Such considerations justify the grant of the waiver requested by the WPSC in this instance.

Events Preceding this Petition

On October 1, 2007, the WPSC filed a letter issued September 28, 2007, certifying that seven non-rural incumbent local exchange carriers and ETC's serving lines in the service areas of non-rural incumbent local exchange carriers in Wyoming "as being eligible to receive federal universal service support funds for the upcoming year." The carriers certified by this letter included: Advanced Communications Technology, Qwest Corporation (Qwest), Silver Star

¹ 47 C.F.R. 1.3

² *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Communications (Silver Star), Union Telephone Company d/b/a Union Cellular, VCI Communications and Alltel Communications (formerly Western Wireless). (This letter is attached hereto as "Exhibit A.")

On October 12, 2007, the WPSC was assured by its staff member assigned to manage the preparation and filing of the 2008 Residential Rate Comparability certification that all FCC and Universal Service Administrative Company (USAC) filing deadlines (October 1, 2007) related to 2008 ETC eligibility had been met and confirmation of the required filings had been received.

On December 20, 2007, the Chairman of the WPSC was presented with and signed a letter to Commission Secretary Marlene Dortch and USAC Vice President Karen Majcher certifying that due to Wyoming's cost-based rates and other factors, Wyoming's rural residential rates are not reasonably comparable to the nationwide urban rate benchmark. (This letter is attached hereto as "Exhibit B.")

On February 12, 2008, the WPSC learned that Silver Star received a letter dated January 25, 2008, from USAC informing Silver Star that "as the WPSC provided a certification to the FCC and USAC after October 1st, Wyoming eligible telecommunications carriers (ETCs) are not eligible to receive High Cost Model (HCM) support pursuant to § 54.309 for the first quarter of 2008." The WPSC subsequently received a copy of a similar letter from Qwest. (These letters are attached as "Exhibit C" and "D," respectively.)

Also on February 12, 2008, the WPSC discovered that on December 26, 2007, a member of its staff transmitted the 2008 Residential Rate Comparability Certification letter to the FCC and USAC by e-mail, including an apology and explanation for the missed filing deadline. It stated:

attached is the required filing for 2007. I apologize for missing the deadline, I have been out of the office off and on the last few months I have never missed a filing deadline before As in the past two years, because of the lack of federal support to Qwest in its high cost rural areas, the Wyoming Commission does not conclude and certify its rural residential rates are comparable to the nationwide urban rate benchmark. hard copies to follow shortly. let me know if there are any questions or comments.

No member of the WPSC or its staff, other than the sender, was aware of the existence or content of this e-mail message until its discovery on February 12, 2008.

Further on February 12, 2008, the WPSC discovered in the files of its staff member a letter from USAC dated October 18, 2007, which informed the WPSC that the 2008 Residential Rate Comparability Certification had not been received by USAC. The letter indicated that the "WPSC may petition the FCC for waiver of the October 1, 2007 certification filing deadline for rate comparability to enable non-rural Wyoming carriers to receive forward looking support for first quarter of 2008." (This letter is attached as "Exhibit E.")

The ineligibility of the above-named non-rural carriers to receive High Cost Model support in the first quarter of 2008 has resulted from an inadvertent failure of the WPSC to timely file the 2008 Residential Rate Comparability Certification due to reliance on inaccurate representations by a member of its staff. Unless corrected, this ineligibility will result in a significant detriment to a several ETC's and their Wyoming customers. This result would be contrary to the purposes of the Universal Service Fund and the public interest.

CONCLUSION

As explained above, the WPSC's failure to file its 2008 Residential Rate Comparability Certification by the October 1, 2007, deadline and subsequent failure to petition the Commission for a waiver of that filing deadline until now was the result of inadvertence or mistakes attributable to the WPSC and its staff. However, the WPSC reasonably believed that the required certification had been filed on a timely basis.

The WPSC has reassigned all matters related to Eligible Telecommunications Carrier certifications, Residential Rate Comparability certifications, and will immediately implement a strict internal chain of supervision to prevent any future failures to meet related deadlines.

The grant of the waiver requested herein will serve the public interest; prevent impairment of the ability of the seven carriers eligible to receive High Cost Model support, but for the untimely filing of the WPSC 2008 Residential Rate Comparability Certification to serve their high-cost customers; and otherwise advance the goals of the Universal Service Fund.

Wherefore, the WPSC prays that the Commission:

1. Grant the WPSC a waiver of the 2008 Residential Rate Comparability Certification deadline imposed by 47 C.F.R. 54.313(d)(3);
2. Authorize USAC to issue all appropriate support payments to the effected non-rural ETCs, including any retroactive payments, for the first quarter of 2008; and
3. Grant such other relief as might be necessary and proper to mitigate any detrimental results of the untimely filing of the WPSC 2008 Residential Rate Comparability Certification.

Respectfully submitted,

WYOMING PUBLIC SERVICE COMMISSION

By:



Christopher Petrie, Chief Counsel
Wyoming Public Service Commission
2515 Warren Ave., Suite 300
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THE STATE

OF WYOMING

DAVE FREUDENTHAL
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CHEYENNE, WYOMING 82002

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COMMISSIONERS

KATHLEEN "CINDY" LEWIS, Chairman
STEVE OXLEY, Deputy Chairman
MARY BYRNES

September 28, 2007

HARRY IVEY
Commission Administrator
CHRISTOPHER PETRIE
Secretary and Chief Counsel

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Karen Majcher
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

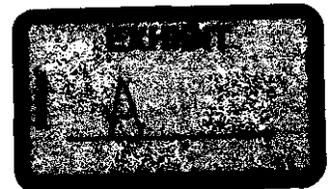
RE: Certification of Federal High Cost Support for Wyoming's Non-Rural Local Exchange Carriers and Eligible Telecommunications Carriers (ETCs) Serving Lines in the Areas of Non-Rural Local Exchange Carriers Pursuant to 47 C.F.R. § 54.313 (CC Docket No. 96-45)

Dear Ms. Dortch and Ms. Majcher:

The Wyoming Public Service Commission (WyPSC) hereby submits, pursuant to 47 C.F.R. § 54.313, its annual certification to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.313 requires the appropriate state regulatory authority to annually certify those non-rural incumbent local exchange carriers and eligible telecommunications carriers serving lines in the areas of non-rural incumbent local exchange carriers within their jurisdiction for purposes of receiving federal universal service fund support.

For the 2007 annual certification process, the WyPSC applied the requirements and guidelines of WyPSC Rule Section 514 to the ETCs in Wyoming jurisdictional to it. The annual reporting requirements and guidelines contained in WyPSC Rule Section 514 were modeled after the FCC's *ETC Report and Order* adopted February 25, 2005, in CC Docket 96-45, FCC 05-46 and the WyPSC's own annual certification processes and rulemaking proceedings conducted during 2004, 2005 and 2006 for Wyoming's ETCs. The annual reporting requirements for previously designated ETCs in Wyoming became effective August 17, 2006.

Attached to this submission is a letter (PSC Letter Number 07-150) that staff of the WyPSC sent to each ETC subject to its jurisdiction for 2007. This letter and its attachments detail the requirements and responsibilities placed upon the WyPSC in



conducting the annual certification process for each previously designated ETC serving designated areas within Wyoming. Rule Section 514 provides each carrier the opportunity to verify they continue to offer the nine supported services and functionalities required for designation as an ETC under the federal Telecommunications Act of 1996 and the Code of Federal Regulations, throughout their designated service areas within Wyoming. The WyPSC has also obtained from its jurisdictional non-rural incumbent local exchange carriers and ETCs serving lines in the areas of non-rural incumbent local exchange carriers, their respective signed affidavits setting forth how federal universal service support funds have been used, and how they will be used during the applicable 12-month period for which support funds are being requested. The respective affidavits, additional documentation and detailed support from each ETC jurisdictional to the WyPSC will be made available to you upon request.

As the state regulatory authority with jurisdiction to regulate, *inter alia*, the intrastate activities of telecommunications companies serving in Wyoming, the WyPSC hereby certifies the following non-rural incumbent local exchange carriers and ETCs serving lines in the service areas of non-rural incumbent local exchange carriers, as being eligible to receive federal universal service support funds for the upcoming program year:

Carrier	Study Area Code
Advanced Communications Technology	519004
Qwest Corporation	515108
Silver Star Communications	519001
Union Telephone Company d/b/a Union Cellular	519905
VCI Company (Lifeline and Linkup Programs only)	519006
Alltel Communications (formerly Western Wireless)	519002
Alltel Communications (formerly Western Wireless)	519007

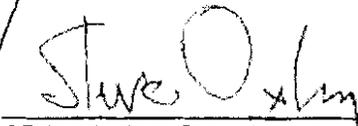
Western Wireless (WWC Holding Company), now known as Alltel Communications, was previously designated by the FCC as an ETC in certain non-rural service areas of Qwest Corporation within Wyoming in the FCC's *Memorandum Opinion and Order* in CC Docket 96-45, DA 00-2896, adopted December 22, 2000. ETC status was granted to Western Wireless by the FCC in that proceeding (SAC 519002) because the WyPSC did not, at that time, have the requisite authority to grant ETC status to wireless providers. The WyPSC now has the statutory authority to designate wireless providers as ETCs and did so during 2005 in the case of the petition filed by Western Wireless for ETC designation by the WyPSC (SAC 519007) in additional non-rural service areas of Qwest Corporation in Wyoming – the Cody and Powell, Wyoming exchanges (wire centers).

Based upon the representations in the affidavits submitted by these carriers, the review and examination of the additional documentation and support required by WyPSC Rule Section 514 to be filed by carriers, the WyPSC certifies these identified

carriers will use the federal universal service support funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with the requirements and mandates of Part 54 of the Code of Federal Regulations and consistent with 47 U.S.C. § 214(e). This includes all elements and components of High Cost Model (HCM) support. Based on the affidavit and other documentation filed by VCI Company, VCI only utilizes its designation as an ETC to participate in federal low income support programs (Lifeline and Linkup) and VCI does not seek or receive federal high cost support.

Sincerely,


KATHLEEN A. LEWIS, Chairman


STEVE OXLEY, Deputy Chairman


MARY BYRNES, Commissioner



THE STATE OF WYOMING

DAVE FREUDENTHAL
GOVERNOR

Public Service Commission

HANSEN BUILDING, SUITE 300 2515 WARREN AVENUE CHEYENNE, WYOMING 82002
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COMMISSIONERS

KATHLEEN "CINDY" LEWIS, Chairman
STEVE OXLEY, Deputy Chairman
MARY BYRNES

December 20, 2007

HARRY IVEY
Commission Administrator
CHRISTOPHER PETRIE
Secretary and Chief Counsel

Marlene H. Dortch
The Honorable Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A306
Washington, DC 20554

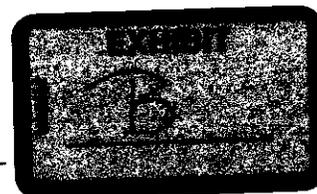
Ms. Karen Majcher – Vice President
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

RE: Residential Rate Comparability Certification for Wyoming's Non-Rural
Incumbent Local Exchange Carrier Serving in Rural Areas within Wyoming
Pursuant to 47 C.F.R. § 54.316
(CC Docket No. 96-45)

Dear Secretary Dortch and Ms. Majcher:

The Wyoming Public Service Commission (WPSC) hereby submits, pursuant to 47 C.F.R. § 54.316, its residential rate comparability certification to the Federal Communications Commission (FCC) and to the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.316, **Rate comparability review and certification for areas served by non-rural carriers**, requires state commissions to annually review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide. Qwest Corporation (Study Area Code 515108) is the only non-rural incumbent local exchange carrier in Wyoming and Qwest also serves in the rural areas of the state. 47 C.F.R. § 54.316 further requires the WPSC to certify to the FCC and the USAC whether rates are reasonably comparable pursuant to the universal service principles contained in section 254(b)(3) of the federal Telecommunications Act of 1996.

This residential rate review and certification is pursuant to the FCC's expanded certification process contained in the FCC's *Order on Remand, Further*



Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-249 released October 27, 2003 (commonly referred to as the *Remand Order*). The nationwide urban rate benchmark equals the most recent average urban rate plus two weighted average standard deviations. The average urban rate and standard deviation are found in the most recent *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* published by the Wireline Competition Bureau of the FCC. For this certification, the nationwide urban rate benchmark is **\$34.83** per month.

Exhibit 1 to this filing is a presentation of the Basic Service Rate Template for Wyoming as more fully described in the Joint Board's Recommended Decision, in paragraph 86 of the FCC's *Remand Order* and as contained in Appendix F to the *Remand Order*. This Exhibit presents, in detail, the residential rate data for the most rural areas (Rural Zone 3) within Wyoming as required by the *Remand Order* and 47 C.F.R. § 54.316. This Exhibit shows these rural residential customers, served by the Wyoming non-rural incumbent local exchange carrier, pay a monthly rate of **\$44.07**, or **127 percent (127%)** of the nationwide urban rate benchmark. Because of the manner in which federal support is targeted, residential customers located in Rural Zone 1 and Rural Zone 2 also pay the monthly rate of **\$44.07**. One hundred percent (100%) of the federal high cost support received by Qwest in Wyoming is reflected as an explicit and direct bill credit to its rural customers. Based on these facts, the methods in which the average urban rate was calculated and the rate comparison requirements of the *Remand Order*, the Wyoming Commission must conclude its rural residential rates are not reasonably comparable to the nationwide urban rate benchmark. Another factor impacting the rate comparison is the continued presence of substantial amounts of implicit subsidies in local rates constituting the average urban rate and the nationwide urban rate benchmark.

There are several reasons why the rates are not reasonably comparable, with the main factor being that Wyoming has cost-based rates for its rural areas and no other state does (a fact recognized several times by the FCC in the *Remand Order*). The WPSC has fully implemented the statutory mandates of the pro-competitive Wyoming Telecommunications Act of 1995 (W.S. §§ 37-15-101 through 37-15-502). Relevant sections of the 1995 Wyoming Act are W.S. § 37-15-402 which required cost-based pricing for all retail telecommunications services in Wyoming, W.S. § 37-15-403 which prohibited cross subsidies and eliminated implicit subsidies and W.S. § 37-15-501, which established the Wyoming Universal Service Fund. Qwest now has in place de-averaged cost-based residential rates with all implicit subsidies removed from residential rates and the WPSC has implemented the explicit subsidy support program – the Wyoming Universal Service Fund. The residential rate shown on Exhibit 1 to this certification reflects the truly high cost, rural nature of much of Wyoming.

The WPSC pursued a remedy for this residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the *Remand Order*. On December 21, 2004, the WPSC, along with the Wyoming

Office of Consumer Advocate, filed a *Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier (Joint Petition)*, with the FCC. In the *Joint Petition*, the WPSC provided a summary of the background, circumstances and history of the WPSC's request for additional federal universal service funds. The *Joint Petition* clearly demonstrates Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the *Joint Petition*, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WPSC. That proceeding is currently pending before the FCC.

The WPSC looks forward to working with the FCC, the USAC and all other interested parties in maintaining the Universal Service goals and principles contained in Section 254 of the federal Telecommunications Act of 1996 and achieving residential rate comparability in Wyoming.

Sincerely,



Kathleen A. Lewis
Chairman

cc: Commissioners

Exhibit 1

**Wyoming Public Service Commission
Rate Comparability Analysis
Residential Rate Data
Pursuant to 47 C.F.R. § 54.316**

Residential Customers in Rural Areas of Wyoming Served by the
Non-Rural Incumbent Local Exchange Carrier (Qwest Corp.)

Rate, Surcharges, Credits and Taxes as of July 2007:

Basic Residential Access Line Rate	\$69.35
Federal Universal Service Fund Credit	(\$28.70)
Wyoming Universal Service Fund Credit	<u>(\$8.18)</u>
Net Residential Rate Subject to Mandatory Surcharges and Taxes	\$32.47
Federal Subscriber Line Charge	\$6.50
Federal Universal Service Fund Surcharge	\$0.72
Wyoming Universal Service Fund Surcharge	\$0.72
Telecommunications Relay System Surcharge	\$0.06
Wyoming Lifeline Program Surcharge	\$0.15
E911 Emergency Calling System Tax	\$0.75
Federal Excise Tax	\$1.12
Wyoming State Sales Tax	<u>\$1.58</u>
Total Basic Residential Service Rate to Customer	<u>\$44.07</u>

70006



High Cost Division

January 25, 2008

Chad H. Turner
Silver Star Telephone Company
104101 Hwy 89
Freedom, WY 83120

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FEB 11 2008

Public Service Commission
Wyoming

RE: 2008 Residential Rural Rate Comparability Certification (47 C.F.R. § 54.316)

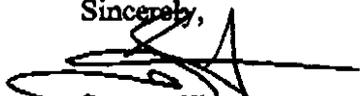
Dear Mr. Turner:

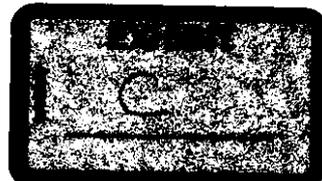
This letter is to inform you that the Universal Service Administrative Company (USAC) did not receive the Residential Rate Comparability Certification from the Wyoming Public Service Commission (WPSC) for areas served by non-rural carriers until December 26, 2007.

Pursuant to 47 C.F.R § 54.316, each state is required to annually review the comparability of residential rates in rural areas of the state served by non-rural carriers to urban rates nationwide and to certify to the Federal Communications Commission (FCC) and USAC as to whether the rates are reasonably comparable. This certification is due to the FCC and USAC annually by October 1st and allows for Universal Service Fund (USF) support to be disbursed to affected non-rural carriers in the first, second, third, and fourth quarters of the subsequent year. Any certification received after the initial due date is processed on a rolling basis withholding quarterly support based on the certification receipt date.

As the WPSC provided a certification to the FCC and USAC after October 1st, Wyoming eligible telecommunications carriers (ETCs) are not eligible to receive High Cost Model (HCM) support pursuant to § 54.309 for the first quarter of 2008. Wyoming ETCs, will, however, be eligible for HCM support beginning second quarter 2008.

If you have any questions regarding this notice, please contact Elizabeth Pertsevoi in the USAC High Cost & Low Income Division at 202-776-0200.

Sincerely,

Sammy Khan
Manager, High Cost Program



**USAC**

Universal Service Administrative Company

High Cost Division

January 25, 2008

Margaret Norsworthy
Qwest Corporation
1801 California Street
Room 650
Denver, CO 80202

RECEIVED

FEB 13 2008

**Public Service Commission
Wyoming**

RE: 2008 Residential Rural Rate Comparability Certification (47 C.F.R. § 54.316)

Dear Ms. Norsworthy:

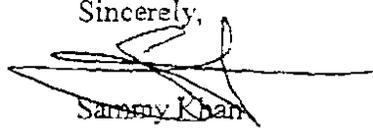
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If you have any questions regarding this notice, please contact Elizabeth Pertsevoi in the USAC High Cost & Low Income Division at 202-776-0200.

Sincerely,


Sarany Khan

Manager, High Cost Program





Craig Davis
Director, High Cost

High Cost & Low Income Division

October 18, 2007


Lead Rate Analyst
Wyoming Public Service Commission
Hansen Building Suite 300
2515 Warren Avenue Cheyenne, WY 82002

RE: 2008 Residential Rate Comparability Certification (47 C.F.R. § 54.316)

Dear Mr. Korber:

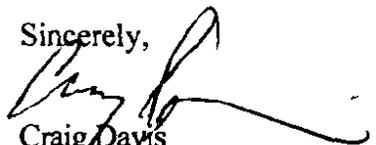
This letter is to inform you that the Universal Service Administrative Company (USAC) has not received the Residential Rate Comparability Certification for Wyoming's non-rural incumbent local exchange carriers (ILECs) serving rural areas within Wyoming due October 1, 2007.

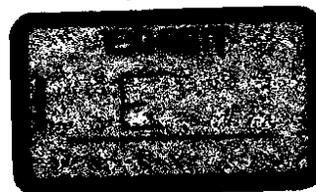
Pursuant to 47 C.F.R § 54.316, each state is required to annually review the comparability of residential rates in rural areas of the state served by non-rural ILECs to urban rates nationwide and to certify to the Federal Communications Commission (FCC) and USAC as to whether the rates are reasonably comparable. This certification is due to the FCC and USAC annually on October 1st and permits forward looking support for non-rural carriers to be disbursed in the first, second, third, and fourth quarters of the subsequent year. Any certification received after the initial due date will be processed on a rolling basis withholding quarterly support based on the certification receipt date and consistent with the schedule found in 47 C.F.R § 54.313(d)(3).

As the Wyoming Public Service Commission (WPSC) did not provide a certification to the FCC and USAC October 1st, the non-rural carriers will not be eligible to receive forward looking support in the first quarter of 2008. However, if the WPSC provides the rate comparability certification on or before January 1st 2008, the affected carriers will be eligible for support beginning in the second quarter of 2008. The WPSC may petition the FCC for waiver of the October 1, 2007 certification filing deadline for rate comparability to enable non-rural Wyoming carriers to receive forward looking support for first quarter of 2008.

If you have any questions regarding this letter, please do not hesitate to call me.

Sincerely,


Craig Davis
Director, High Cost Division



RECEIVED

NOV 09 2007