

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Line-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**PETITION FOR RECONSIDERATION
OF
WYOMING TELECOMMUNICATIONS ASSOCIATION**

The Wyoming Telecommunications Association (“WYTA”), which represents local exchange telephone companies located in whole or part in the State of Wyoming, hereby petitions pursuant to Section 1.106 of the Commission’s Rules for reconsideration of that portion of the Commission’s *Report and Order and Further Notice of Rulemaking*, FCC 11-161, released November 18, 2011 (“*Order*”) in the captioned proceeding that adopts and discusses new Section 54.313(a)(10) of the Commission’s Rules.¹

¹ The current version of Section 54.313(a)(10) requires recipients of high-cost support to provide: “Beginning April 1, 2013. A letter certifying that the pricing of the company’s voice services is no more than two standard deviations above the applicable national average urban rate for voice services, as specified in the most recent public notice issued by the Wireline Telecommunications Bureau and Wireless Telecommunications Bureau;”

Although critical terms of this regulation are undefined and require clarification, it appears that existing Wyoming local service rate structures and regulation will preclude many Wyoming local exchange carriers (“LECs”) from making the requisite certification described in that section even when such ambiguities are resolved. As a result, in a state such as Wyoming where federal support is still necessary to fund voice services and where circumstances exist that the Connect America Fund (CAF) is designed to address (*i.e.*, consumers do not have access to broadband and there are no unsubsidized competitors), local exchange carriers may be denied essential federal support. Consequently, the Commission is requested to modify Section 54.313(a)(10) on reconsideration: (a) to recognize expressly that certain state statutes and regulation have resulted in local exchange carriers charging “basic local residential telephone service rates” more than two standard deviations above the “applicable national average urban rate for voice service”; and (b) to permit recipients of high-cost support to certify, in the alternative, that the rates for their voice services comply with applicable state statutes and/or regulation.

A. Meaning of “Pricing of the Company’s Voice Services”

Neither in new Section 54.313(a)(10) nor in the discussion of it in Paragraph 592 of the *Order* does the Commission define or describe the term “pricing of the company’s voice services.” Instead, companies are left with many unanswered questions. Is the self-certifying recipient of high-cost support supposed to compare its basic local residential voice service rate with the “two standard deviation” ceiling? Or, does the applicable “voice services pricing” also include business rates and/or some combination of additional line item charges such as federal subscriber line charges, mandatory extended area service charges, per-line federal and/or state universal service contributions, state E911 charges, and/or state telecommunications relay

service charges? What “pricing of the company’s voice services” does a self-certifying recipient use for comparison with the “two standard deviation” ceiling when it offers: (a) local measured service; (b) different or banded monthly local service rates in various portions of its study area; (c) bundled local and long distance voice service; and/or (d) bundled voice, Internet access and video services?

In new Section 51.915(b)(11) of the Rules, the Commission explicitly defined and detailed the specific “Rate Ceiling Component Charges” that must be included in the calculation of the \$30 Residential Rate Ceiling applicable to price cap carriers. The Commission also defined the components in the “urban rate floor” requirement at Paragraph 238 of the *Order* and new Rule 54.318(f). The *Order* does not contain a similar definition, discussion, or listing of the components of the “pricing of the company’s voice services” for purposes of the required Section 54.313(a)(10) self-certification. Likewise, neither the pre-*Order* nor the post-*Order* version of Part 54 of the Rules contains a definition or clarification of the terms “pricing,” “pricing of voice services” or “pricing of the company’s voice services.”

Hence, on reconsideration, the Commission should define and describe the term “pricing of the company’s voice services” so that self-certifying recipients of high-cost support know exactly what price components must be compared with the “two standard deviations above the applicable national average urban rate” standard.

**B. State Law Precludes Most Wyoming Local Exchange Carriers
From Making the Required Section 54.313(a)(10) Certification**

Even when the term “pricing of the company’s voice services” is clarified, the LEC rate structures adopted by the Wyoming Legislature and the Wyoming Public Service Commission

(“Wyoming PSC”) will preclude many Wyoming LECs from making the “two standard deviation” self-certification required by the current version of Section 54.313(a)(10).

In 2007, the Wyoming Legislature amended the state’s Telecommunications Act to require the reduction of intrastate switched access rates and to offset access revenue losses by permitting incumbent LECs to rebalance their basic local residential telephone service rates at higher levels. In addition, in order to cause minimal impact to the rates consumers pay, incumbent LECs are permitted to reduce residential local exchange service rates that are otherwise above a Wyoming state benchmark via credits from the Wyoming Universal Service Fund (“Wyoming USF”) as well as federal universal service mechanisms. Specifically, Section 37-15-203(j) of the Wyoming Statutes (copy attached as part of Exhibit 1) required originating and terminating intrastate access charges to be reduced to three cents (\$0.03) per minute by January 1, 2010 (with a possible extended transition to January 1, 2012, under certain limited circumstances), and permitted LECs to request corresponding annual revenue neutral incremental increases to “noncompetitive essential service prices” (i.e., basic local residential telephone service rates) to offset the anticipated losses in revenue from the switched access rate reductions. Sections 37-15-501(c) and (d) and 37-15-502(a)(iii) of the Wyoming Statutes (copy also attached as part of Exhibit 1) allow LECs to receive Wyoming USF support and permit the basic local telephone service rates of customers located in areas with relatively high rates for essential services to be credited for the per-line amount received by their LEC. These “high rate” areas were defined as those where local service rates exceed one hundred thirty percent (130%) of the weighted statewide average essential local exchange service prices. The Wyoming PSC will provide Wyoming USF support only to a carrier in areas where the price of local telephone service meets or exceeds the applicable 130% benchmark.

For the current July 1, 2011 to June 30, 2012 fiscal year, the Wyoming USF 130% benchmark is \$33.46. During the previous two fiscal years, the benchmark was \$32.09 (July 1, 2010 to June 30, 2011) and \$32.57 (July 1, 2009 to June 30, 2010). Wyoming LECs that receive support from the Wyoming USF cannot charge basic rates below the benchmark and keep their Wyoming USF, but will lose their Wyoming USF in any area where their basic rates are below the benchmark.

It is WYTA's information and belief, based upon informal discussions with the FCC staff, that the upper bound rate that is two standard deviations above the "applicable national average urban rate for voice service" is approximately \$27.33 at this time. Whereas that rate ceiling will need to be calculated for 2012 prior to the initial filing of the Section 54.313(a)(10) certification in 2013, it is not likely to significantly exceed \$30.00.

Attached as Exhibit B is Table 7 from the Wyoming PSC's *Telecommunications in Wyoming* report (February 2010), which lists the basic local residential telephone service rates of Wyoming's thirteen LECs.² Three of the smaller LECs (TriCounty Telephone, Chugwater Telephone, and All West Communications) serving high-cost areas have basic local residential telephone service rates in excess of \$44.00 per month before the Wyoming USF credits are applied. Other LECs (Union Telephone, Dubois Telephone, Embarq/United, and Teton Telecom) have rebalanced monthly rates over \$30.00 that also are likely to exceed the "two standard deviation" ceiling. Still other LECs (RT Communications and TCT West) have rate bands in certain outlying portions of their study areas that exceed \$30.00 per month, and that consequently may preclude a "two standard deviation" certification.

² The listed rates remain accurate as of December 2011, except for the rate of Dubois Telephone which has recently increased to \$31.76 per month.

The Commission has repeatedly recognized that the Universal Service Fund and intercarrier compensation are “hybrid state-federal programs” and that the states need to remain “key partners” as these programs evolve (*Order*, para. 15). With respect to new Section 54.313(a)(10), states share the Commission’s interest in maintaining affordable customer rates in high-cost areas, but some states have adopted different approaches to address the different circumstances they face. Wyoming is an “early adopter” state.³ When Wyoming determined to undertake intrastate access reform, it permitted Wyoming LECs to charge higher local residential telephone service rates (sometimes in the \$40 to \$80 per month ranges), and at the same time established a Wyoming state USF to provide support in the form of credits that reduce the effective net monthly rates paid by consumers to a state USF benchmark (currently \$33.46). Whereas these listed price sheet rates and net rates have enabled rural Wyoming consumers to continue receiving quality services at affordable rates, neither the listed price sheet rate nor the net rate appears to permit most Wyoming LECs to provide the “two standard deviation” certification required by Section 54.313(a)(10). Yet the Wyoming consumers whose rates are supported by the Wyoming USF mechanism are many of the same consumers who live in high cost areas and to whom the FCC purports to want to provide support. It makes no sense to deny or reduce support to these consumers simply because the FCC opted for a “two standard deviation” certification that has been rendered impossible for Wyoming LECs because Wyoming had the foresight to have already made many of the changes intended to be accomplished under the *Order*.

³ See *Early Adopter States’ Joint Recommendation*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109; GN Docket No. 09-51; and CC Docket Nos. 01-92 and 96-45 (September 15, 2011). See also Letter of James H. Lister to Marlene H. Dortch, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109; GN Docket No. 09-51; and CC Docket Nos. 01-92 and 96-45 (September 20, 2011).

WYTA does not believe that this certification problem is confined to Wyoming, but rather that it is likely to surface in other “early adopter” states that have previously reformed intrastate access charges and rebalanced local service rates. The problem can be simply and effectively resolved by modifying Section 54.313(a)(10) to offer alternate certification options. Specifically, recipients of high cost support should be permitted to certify either: (a) that their local residential voice service rate (as ultimately defined and clarified) is no more than two standard deviations above the applicable national average urban rate for voice service; or (b) that their capped, tariffed or price-listed local residential voice service rates and rate structures (including net rates, after USF credits, as implemented in Wyoming) are at or below the rates that have been approved or allowed to take effect by their state commission, or that are otherwise authorized under the law of their state. The proposed alternative certification will not increase the amount of federal high-cost support that would otherwise be distributed to any LEC making such a certification. In addition, such alternative certifications will be readily familiar to and able to be evaluated by the relevant state commission when it reviews the certifying LEC’s Section 54.313 report in preparation for making its own Section 54.314 certification.

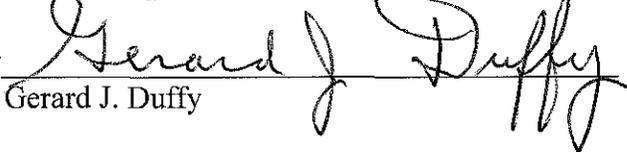
Conclusion

The WYTA urges the Commission, on reconsideration, to modify Section 54.313(a)(10) as follows:

Beginning April 1, 2013. A letter certifying that the “pricing of the company’s voice services” (as defined in Section 54.5) either (a) is no more than two standard deviations above the applicable national average urban rate for voice services, as specified in the most recent public notice issued by the Wireline Telecommunications Bureau and Wireless Telecommunications Bureau; or (b) is a capped, tariffed or price-listed rate (or part of a rate structure) that has been approved or knowingly allowed to take effect by the state commission having jurisdiction over the company or that is otherwise authorized under the laws of the governing state.

These dual certification options will advance the federal and state interests in maintaining affordable customer rates in high-cost areas, while appropriately recognizing that “early adopter” states and others have adopted different approaches to address the different circumstances they face and that the LECs in those states should not be penalized by their resulting inability to make certain types of certifications. In addition, the WYTA requests that the Commission define and describe the term “pricing of the company’s voice services” for Section 54.313(a)(10) purposes so that self-certifying recipients of high-cost support know exactly what rates, rate components and rate structures are encompassed by their certification. It presumes that such definition will be consistent with the components of the national average urban rate for voice services, will constitute the net price (after application of any per-line USF credits) actually paid by consumers, and will exclude additional line items such as federal subscriber line charges, mandatory extended area service charges, per-line federal and/or state universal service contributions, state E911 charges, and/or state telecommunications relay service charges.⁴

Respectfully submitted,
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⁴ For example, Section 54.5 could be modified to add: “*Pricing of the company’s voice services.* The term “pricing of the company’s voice services” shall mean a carrier’s basic monthly rate or rates for stand-alone voice telephone service that are charged to and paid by its residential service customers in its various exchange areas, after any state-implemented credits are applied and not including any additional line items such as federal subscriber line charges, mandatory extended area service charges, per-line federal and/or state universal service contributions, state E911 charges, and/or state telecommunications relay service charges.”

Exhibit 1

37-15-203. Price regulation of noncompetitive essential services.

(a) Prices for telecommunications services which have been determined by the legislature or the commission to be noncompetitive essential telecommunications services shall be regulated by the commission in accordance with this section. The prices for noncompetitive essential telecommunications services of any local exchange company may be adjusted downward at the company's discretion. Except as provided in subsections (e), (f), (h) and (j) of this section, prices for noncompetitive essential telecommunications services shall be subject to a maximum determined by the commission. The initial maximum shall be the local exchange company's price of noncompetitive essential telecommunications services as of July 1, 2006. A local exchange carrier may increase its price for noncompetitive essential telecommunications services to the level of the maximum set under this subsection without approval of the commission as required under subsections (f) and (g) of this section.

(b) Repealed By Laws 2007, Ch. 142, § 2.

(c) Repealed By Laws 2007, Ch. 142, § 2.

(d) Repealed By Laws 2007, Ch. 142, § 2.

(e) A local exchange company may seek approval to make revenue neutral adjustments, considering only revenue from noncompetitive essential telecommunications services, to the price of noncompetitive essential telecommunications services to reduce or eliminate differences in the price of noncompetitive essential telecommunications services in different portions of its service area. A local exchange company shall not use adjustments under this section to increase receipt of state universal service funds or increase switched access prices. This subsection shall not apply retroactively.

(f) A local exchange company may seek approval to increase the price of noncompetitive essential telecommunications services, including switched access charges, based on:

(i) Changes in the local calling area as approved by the commission;

(ii) Changes in access charges as approved by the commission;

(iii) Other changes affecting noncompetitive essential telecommunications services; or

(iv) Increases in the cost of providing telecommunications

services. □ The increases shall be judged on the overall federal gross domestic product price index published by the United States department of commerce, bureau of economic analysis unless the applicant demonstrates that specific cost increases are disproportionately affecting the cost of providing their noncompetitive essential services.

(g) □ Any requested price change under subsections (b) through (f) of this section, including revenue neutral changes, that may result in an increase in the price of noncompetitive essential telecommunications services is subject to review and determination by the commission, after notice and opportunity for hearing.

(h) □ The prices of any local exchange company may contain provisions for incentives for improvement of the company's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. □ Any local exchange company may apply to the commission for incentives and innovative or nontraditional price regulation, including price indexing. The commission shall issue a final order approving, modifying or rejecting any application made under this subsection within one hundred eighty (180) days of the filing date of the application with the commission. □ If no order is issued by the commission within the one hundred eighty (180) day period, the application shall be deemed approved as filed. □ If during consideration of an application for regulation under this subsection, the commission materially alters the plan as filed in the application, the applying local exchange company may notify the commission in writing, at any time, but not later than sixty (60) days after any final commission order on the application, that it elects not to be price regulated as approved by the order. □ The local exchange company's prices shall then be regulated as they were prior to the application until such time as a new application is filed, approved and accepted.

(j) □ Unless as otherwise directed under federal law, noncompetitive switched access shall not be priced above three cents (\$.03) per minute after January 1, 2010. □ Prices for noncompetitive switched access which exceed three cents (\$.03) per originating and terminating minute shall be reduced to three cents (\$.03) per minute on or before January 1, 2010. □ Any telecommunications company which must reduce noncompetitive switched access prices under this subsection shall, on or before January 1, 2010, submit a proposed plan to the commission, identifying the amount of intrastate switched access revenues and access lines in the years until the date of filing, to reduce switched access prices in annual increments to meet the requirements of this subsection, and a request for corresponding annual revenue neutral incremental increases to noncompetitive essential service prices to offset the anticipated loss in revenue

from a reduction in switched access prices. The commission shall review the proposal and the facts set forth in the proposed plan to ensure that it is accurate and consistent with this section. The telecommunications company shall satisfy any requests for information by the commission, and shall modify the plan as necessary to conform to the facts the commission finds after investigation to be accurate. Once the commission approves the proposed plan, the noncompetitive switched access and noncompetitive essential service prices proposed in the plan shall go into effect after compliance with W.S. 37-15-204. The commission may authorize noncompetitive switched access prices above three cents (\$.03) per minute for an additional transition period not to exceed two (2) years ending January 1, 2012, only upon a showing that access prices are supported by a current total long-run incremental cost study as defined by W.S. 37-15-103(a) (xiii) based upon data after January 1, 2008. A telecommunications company increasing rates pursuant to this subsection may utilize the universal service fund for eligible access lines as provided in W.S. 37-15-501 and 37-15-502 and commission rule and regulation.

37-15-204. Price schedules.

(a) A local exchange company shall file with the commission, in such form and detail as the commission may require, schedules showing all noncompetitive telecommunications services terms, conditions and prices currently in effect and charged to customers by the company in this state. All prices for new noncompetitive telecommunications services, and any increase in prices for noncompetitive telecommunications services as authorized by the commission pursuant to W.S. 37-15-203, shall be filed thirty (30) days prior to the proposed effective date. No price increase for a noncompetitive service shall be effective unless the customer has been given notice by the provider at least one (1) full billing cycle prior to the proposed increase and the increase has been approved by the commission as required by W.S. 37-15-203. No price or price change is effective until filed in accordance with this section. Prices charged for competitive services shall be in accordance with its price schedule unless a separate contract is negotiated. Prices for generally offered competitive services shall be publicly available on a company's website through the internet, the world wide web or a similar proprietary or common carrier or provided to the commission. Price schedules may be filed in electronic format at the option of the company. For purposes of this subsection, the rules, regulations, policies, practices and other requirements relating to services shall be filed with the commission in such form and detail as the commission may require. Rules, regulations, policies, practices and other requirements relating to competitive services shall be subject to the same requirements under this chapter as the prices of competitive services. Those relating to noncompetitive services shall be subject to the same requirements under this chapter as the prices of

and

(ii) If the city, town or political subdivision does not cure the anticompetitive behavior within ninety (90) days, the commission shall commence a contested case hearing on the complaint, governed by the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq. If, following the hearing, the commission finds that the city, town or political subdivision has violated this section, the commission shall prohibit the city, town or political subdivision from providing any telecommunications service until the violation of this section is remedied.

(f) This section does not apply to any contract entered into prior to July 1, 2007.

ARTICLE 5 - UNIVERSAL SERVICE FUND

37-15-501. Universal service fund created; contributions; administration.

(a) There is hereby established the universal service fund to be administered in accordance with this section. The fund shall be administered by the commission. All telecommunications companies shall contribute to the universal service fund. The dates for contributions to the fund and disbursements from the fund shall be set by the commission, after notice and opportunity for hearing, as necessary to accomplish the objectives of the fund as specified in subsections (c) and (d) of this section. The costs of administering the fund may be included in determining required contributions.

(b) The commission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. The commission shall authorize an additional monthly charge to customers, in the amount specified by the commission, to recover each contributor's required payment to the universal service fund. Any charge related to mobile telecommunications service shall only apply if the customer's place of primary use is in this state as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126. The provisions of the Mobile Telecommunications Sourcing Act shall apply to this subsection.

(c) The commission shall administer the monies in the universal service fund to assist only those customers of telecommunications companies located in areas of this state with relatively high rates for essential services. The commission, after notice and opportunity for hearing, shall determine a reasonable amount and a fair method of distributing monies. The commission may authorize a credit to customer bills, in the amount specified by the commission, to reflect

distributions received by the local exchange company from the universal service fund. □ The commission shall ensure that the method shall promote the emergence of competition in providing local exchange service.

(d) □ In accordance with the method of distribution determined by the commission, a telecommunications company shall receive funds under this section to the extent that its essential local exchange service prices, after consideration of any contributions from the federal universal service fund, exceed one hundred thirty percent (130%) of the weighted statewide average essential local exchange service prices.

(e) □ The operation of the universal service fund may be suspended by the commission, based upon a public interest finding, after notice and an opportunity for a hearing, that the fund is not then serving its intended purpose.

(f) □ The commission's decisions under this section shall be subject to the provisions of the Wyoming Administrative Procedure Act.

37-15-502. □ Universal service fund eligibility and distribution to carriers.

(a) □ Telecommunications companies which use cellular, radio spectrum or other wireless technology to provide supported services to customers who are otherwise eligible to receive universal service support pursuant to W.S. 37-15-501, may establish eligibility to receive universal service fund distributions in an amount to be determined by the commission, provided that:

(i) □ The telecommunications company will offer and advertise all universal service fund supported services throughout the entire local exchange area;

(ii) □ The telecommunications company will provide unlimited local calling throughout an entire local exchange area for a flat fee;

(iii) □ The telecommunications company's bill to the customer reflects a credit for the amount of distribution the company receives from the state universal service fund for providing universal service fund supported services to that customer; and

(iv) □ The company and services meet such additional criteria, if any, the commission, after notice and opportunity for hearing, determines are necessary. During its consideration and determination, the commission shall consider technological and competitive neutrality.

Exhibit 2

D. Basic Local Telephone Prices (Rates)

The 2007 Act requirement for intrastate switched access rates of \$0.03 per minute or less prompted several incumbent carriers to decrease switched access rates. The carriers generally balanced those decreases with increased rates for basic local service as allowed by the 2007 Act. Chugwater Telephone Co. rebalanced its rates when it sought and was granted an increase in local telephone rates due to significant new investment in equipment. Union Telephone, RT Communications, Dubois Telephone, and Range Telephone increased their local basic service prices in 2009. Silver Star Communications applied for and received approval to increase basic local service prices. CenturyLink (formerly CenturyTel) and Teton Telecom reduced switched access rates but did not seek increases in basic local rates.

Table 7
Basic Local Residential Telephone Service Rates

Company	rate area	1995	12/31/2009
Qwest	base rate area:	\$14.64	\$23.10
	farthest from base area:	\$24.54	\$69.35*
Union Telephone	base rate area:	\$8.49	\$41.68
	farthest from base area:	\$26.49	\$89.20
CenturyTel of Wyoming	base rate area:	\$10.00	\$15.00
	farthest from base area:	\$17.50	\$28.00
Dubois Telephone	all	\$11.00	\$23.75
Range Telephone	all	\$11.65	\$17.50
RT Communications	Shoshoni & central WY exch:	\$10.04	\$23.99
	farthest from base area:	\$19.94	\$33.89
	Thermopolis & Newcastle:	\$10.78	\$23.89
	farthest from base area:	\$20.68	\$33.89
	Worland exchange:	\$11.51	\$23.99
	farthest from base area:	\$21.41	\$33.89
	Pine Bluffs, Burns, Carpenter:	\$12.98	\$23.99
farthest from base area:	\$22.88	\$33.99	
Embarq/United	Guernsey exchange:	\$7.94	\$35.38
	LaGrange exchange:	\$11.13	\$71.34
	Lingle exchange:	\$11.13	\$71.34
	West Lyman:	\$11.13	\$70.82
	Torrington exchange:	\$11.13	\$26.24
TCT West	Greybull exchange:	\$10.14	\$27.31
	Lovell exchange:	\$10.78	\$30.63
	Basin exchange:	\$10.78	\$31.42
	Frannie & Meeteetse:	\$10.78	\$45.08*
Tri County Telephone	Burlington exchange:	\$6.75	\$44.86*
	all other exchanges:	\$8.25	\$45.08*
Teton Telecom †	all	\$29.65 †	\$31.25
Silver Star Comm.	all	\$16.80	\$26.45 ‡
Chugwater Telephone	all	\$10.50	\$80.76*
All West Communications	all	\$14.25	\$59.52*

* Before applying credits for Wyoming and federal universal service fund support.

† Teton Telecom did not exist in 1995. Earlier price shown is Teton's initial rate.

‡ Effective March 2, 2010.