

**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**

IN THE MATTER OF THE ADOPTION )  
OF RULES AND REGULATIONS )  
REGARDING UNIVERSAL SERVICE ) DOCKET NO. 90072-XR-01-18  
ELIGIBILITY AND DISTRIBUTIONS ) (RECORD NO. 6652)  
TO CARRIERS USING WIRELESS )  
TECHNOLOGIES )

**ORAL OR WRITTEN DATA, VIEWS  
OR ARGUMENTS FILED BY:**

BRUCE S. ASAY, Cheyenne, Wyoming, for  
Range Telephone Cooperative, RT Communications,  
Dubois Telephone Exchange, Chugwater Telephone  
Company and Union Telephone Company  
(Independent Companies)

MARY THRONE, Cheyenne, Wyoming for  
Qwest Corporation  
(Qwest)

ELIZABETH ZERGA, Cheyenne, Wyoming, for  
Western Wireless Holding Company (Western Wireless)

**HEARD BEFORE**

CHAIRMAN STEVE ELLENBECKER  
DEPUTY CHAIRMAN STEVE FURTNEY  
COMMISSIONER KRISTIN H. LEE

Commissioner Lee Presiding

**ORDER ADOPTING RULES AND REGULATIONS REGARDING UNIVERSAL SERVICE FUND  
ELIGIBILITY AND DISTRIBUTIONS TO CARRIERS USING WIRELESS TECHNOLOGY  
(Issued December 31, 2001)**

This matter is before the Commission upon its consideration of the adoption of new rules and regulations relating to Wyoming Universal Fund distribution eligibility for carriers using wireless technologies. The Commission, having reviewed its files, applicable law, as well as the oral and written data, views and arguments filed, with regard to this matter, hereby FINDS and CONCLUDES:

**PROCEDURAL FINDINGS**

1. This proceeding was initiated, pursuant to the provisions of W.S. § 37-15-502 which provides for Wyoming Universal Service fund distribution eligibility for carriers using wireless technologies.
2. On May 16, 2001, the Commission sent a letter to all telecommunications companies operating within the state of Wyoming. This letter advised these companies of the Commission's intention to adopt new rules and regulations regarding Wyoming Universal Service Fund distribution eligibility for carriers using wireless technologies. This letter also requested that all interested companies file initial comments and proposed rule language on or before June 20, 2001.
3. On June 20, 2001, counsel for Western Wireless and Qwest filed proposed rules and comments. The Commission considered these comments their associated and proposed rule language

when compiling its initial set of proposed rules and regulations.

4. On July 24, 2001, the Commission notified the Governor of its intention to adopt new rules and regulations relating to Wyoming Universal Service Fund distribution eligibility for carriers using wireless technologies. On July 27, 2001, the Commission received authorization, from the Governor's Office, to proceed.

5. On August 3, 2001, the Commission issued a Notice of Intent to Amend Rules and Regulations and Procedural Order Setting Public Hearing, as well as a Draft Statement of Reasons for the Promulgation of Amended Rules and Regulations. These documents, as well as a copy of the proposed rule amendments, were delivered to the Governor's Office, the Attorney General's Office, the Legislative Service Office, the Secretary of State's Office, and mailed to all interested parties. Though these proposed rules are amendments to the Commission's existing Wyoming Universal Service Fund rules, they constitute new rules as defined by Chapter 1, Section 2(b)(ii) of the Secretary of State's Rules on Rules.

6. Beginning August 9, 2001, the Commission's Notice of Intent to Amend Rules and Regulations and Procedural Order Setting Public Hearing was published once per week for two consecutive weeks in the legal notice sections of the Rock Springs Rocket-Miner, the Gillette News Record, the Casper Star Tribune and the Wyoming Tribune-Eagle. During this same period of time, public service announcements were aired five times per week for two consecutive weeks on Wyoming Public Radio.

7. Pursuant to the Notice of Intent to Amend Rules and Regulations and Procedural Order Setting Public Hearing, a public hearing was held, with regard to this matter, on September 17, 2001. The Commission scheduled this hearing, on its own motion, absent a request for such hearing pursuant to the provisions of W.S. § 16-3-103(a)(ii)(A). At the conclusion of the hearing, the comment period was extended through October 3, 2001.

8. Pursuant to provisions of W.S. § 16-4-410, et seq., public deliberations were held, with regard to this matter, on October 8, 2001.

9. At the Commission's regularly scheduled open meeting held on October 11, 2001, Deputy Chairman Furtney requested the scheduling of additional deliberations with regard to this matter. These additional deliberations were held on October 12, 2001.

### **PROCEDURAL CONCLUSIONS**

10. This rule making proceeding was properly initiated pursuant to the provisions of W.S. § 16-3-103.

11. Proper notice of this rule making proceeding was provided pursuant to the provisions of W.S. § 16-3-103(a)(i). Such notice was correct in content, form, timing and distribution.

12. A public hearing was held with regard to this matter. All interested persons were offered a reasonable opportunity to submit data, views or arguments, orally or in writing, pursuant to the provisions of W.S. § 16-3-103(a)(ii).

13. The public hearing, with regard to this matter, was held in compliance with the provisions of the Wyoming Administrative Procedure Act, W.S. § 16-3-101 et seq., and all other applicable requirements.

### **AMENDED SECTION 500(g) SUBSTANTIVE FINDINGS**

14. The amendments to Section 500(g), as originally proposed, add language to include the line counts associated with qualifying wireless universal service offerings in fund related computations.

a. The primary reason for the proposed amendments to this rule is to provide for the inclusion of the line counts associated with qualifying wireless universal service offerings in the

computations relating to the statewide average local service rates. Currently, the line counts of all concurrent local exchange carriers are included in these computations. Qualifying wireless universal service offerings must be included in order to maintain consistency and competitive neutrality.

b. W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-501(d) provides that “a telecommunications company shall receive funds under this section to the extent that its local exchange rates, after consideration of any contributions from the federal universal service fund, exceed one hundred thirty (130) percent of the weighted statewide average local exchange rates.” Consequently, the establishment of a methodology by which fund related calculations are to be made is within the scope of the Commission’s jurisdiction.

15. During the comment period, the Independent Companies proposed to make Section (g) more consistent with Section (h) by eliminating the term “wireless companies”, stating that the provision was for essential service, regardless of whether it is provided by wireless or wireline providers. In its place, the Independent Companies proposed additional language which states that wireless companies requesting state or federal universal service certification or funds, should have the same requirements as any other provider of essential services. The Independent Companies proposed that the service should be defined as the service and not by the technology that is used to provide it.

16. The Commission declined to adopt the language proposed by the Independent Companies. The Commission believes that the distinction between wireless and wireline providers is relevant and should remain in the proposed rule amendments.

17. During the comment period, Qwest stated that it is not appropriate to include wireless subscribers in the statewide average rate calculations. In support of its contention, Qwest stated that it does not believe that wireless service falls under the statutory definition of essential telecommunications service. Consequently, Qwest stated that it was not the intent of the legislature to define a wireless service, which is eligible for Wyoming Universal Service Fund support, as an essential service. Qwest also recommended that the term “lines” be replaced with the term “universal service offering.”

18. The Commission declined to adopt the revisions proposed by Qwest. As previously stated, the line counts of all concurrent local exchange carriers are currently included in the statewide average rate computations. Qualifying wireless universal service offerings must be included in order to maintain consistency and competitive neutrality. The Commission also declined to replace the term “lines” with the term “universal service offering.” However, in an effort to clarify and refine the language contained within the rule proposal, the Commission, on its own motion, replaced the term “wireless universal service offering lines” with “subscribers taking supported wireless service.”

19. During the comment period, Western Wireless proposed the inclusion of a reference to W.S. § 37-15-502. Further, Western Wireless proposed to eliminate references to “wireless carriers.” The Company also proposed language which would, for purposes of statewide average rate calculations, utilize wireless rates which are net of federal and state universal service fund contributions.

20. The Commission chose to include a reference to W.S. § 37-15-502 in the proposed rule. The Commission declined, however, to eliminate references to “wireless carriers.” Wyoming Universal Service Fund distribution eligibility, for wireless carriers, is granted under statutory authority separate and apart from that of wireline carriers. The Commission believes that maintaining the distinction, within its rules, is appropriate. The Commission also declined to include the language which would utilize rates net of federal and state universal service fund contributions for purposes of calculations relating to statewide average rates. The Commission has determined that wireless carriers must meet the 130% eligibility threshold established by W.S. § 37-15-501. To the extent that wireless companies are held to the same eligibility standard as wireline carriers, consistency must be maintained between wireless and wireline rates when statewide average rate calculations are made.

#### **AMENDED SECTION (g) CONCLUSIONS**

21. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .” W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-501(d) provides that “a telecommunications company shall receive funds under this section to the extent that its local exchange rates, after consideration of any contributions from the Federal Universal Service Fund, exceed one hundred thirty (130) percent of the weighted statewide average local exchange rates.” Consequently, the establishment of a methodology by which fund related calculations are to be made is within the scope of the Commission’s jurisdiction.

22. W.S. § 37-15-401 grants the Commission the power to promulgate rules and regulations necessary for it to carry out its statutorily granted powers, which include, pursuant to the provisions of W.S. § 37-15-501, the administration of the Wyoming Universal Service Fund.

23. The proposed amendments to Section 500(g) serve their intended purpose, and their adoption is consistent with the public interest.

### **AMENDED SECTION 500(h) SUBSTANTIVE FINDINGS**

24. Section 500(h), as originally proposed, was a new rule provision which required wireless companies seeking fund support eligibility to file price schedules, including terms and conditions of service, associated with their qualifying universal service offerings. Proposed Section 500(h) also contained language stating that no price or price change would be effective until filed with the Commission.

a. The primary reason for the rule, as proposed, was to give the Commission access to all information which would be necessary in order to determine support eligibility. This requirement related only to qualifying universal service fund offerings. The Commission was not, through the provisions of this proposed rule, attempting to assume pricing authority over wireless rates or terms and conditions of service.

b. W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” W.S. § 37-15-502 provides that “[t]elecommunications 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. [§] 37-15-105 may establish eligibility to receive universal service fund distributions in an amount to be determined by the [C]ommission. . . .” W.S. § 37-15-501(a)(iv) grants the Commission the ability to impose additional support eligibility criteria that is “necessary to further the stated intent of W.S. § 37-15-102.”

25. During the comment period, it was suggested that the language, as proposed, constituted an unlawful attempt, by the Commission, to assert regulatory authority over the prices as well as the terms and conditions associated with services which are otherwise exempted from regulation pursuant to the provisions of W.S. § 37-15-104.

26. The Commission, though not intending to assume pricing authority over wireless rates or terms and conditions of service, has agreed to eliminate this rule provision, as originally proposed.

### **AMENDED SECTION 500(h) CONCLUSIONS**

27. W.S. § 37-15-104 provides that “. . . telecommunications service does not include and the provision of this title do not apply to: . . . telecommunications services using radio spectrum, cellular, or other wireless technology. . . .” Given this clear, statutory mandate, the Commission declines to adopt Section 500(h) as proposed.

28. With the elimination of amended Section 500(h), the sequential numbering of the remaining rule provisions will revert back to its original form.

### **AMENDED SECTION 500(i) (NOW SECTION 500(h)) SUBSTANTIVE FINDINGS**

29. The proposed amendments to Section 500(i) (now Section 500(h)) contain additional language which limits the amount of support which may be received by a wireless carrier to the amount which is otherwise available to a wireline carrier.

a. The primary reason for the proposed amendments to this rule provision is to limit the amount of support that a wireless carrier may receive for a given customer in a given geographic area. Such a limitation is necessary in order to administer the fund in a competitively neutral manner.

b. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .”

30. During the comment period, Western Wireless proposed the inclusion of an affirmative statement acknowledging that the support which an incumbent receives would be fully portable to any competitive carrier. Western Wireless further proposed changes to the language which clarifies that the rule is not intended to preclude carriers from receiving universal service support should the carrier begin offering universal service mid-period.

31. The majority of the Commission declined to adopt the revisions proposed by Western Wireless. The majority of the Commission believes that the clear language of W.S. § 37-15-502, through its reference to eligibility pursuant to W.S. §37-15-501, requires wireless carriers to meet the 130% eligibility threshold in order to receive distributions from the Wyoming Universal Service Fund. The Wyoming Supreme Court has stated that it will, in interpreting statutes, first look to the language of the statute. If the language is clear and unambiguous, the Court will not turn to the rules of statutory construction, nor will it attribute another meaning to the statute. Rather, the Court will give the statute effect according to its plain and obvious meaning. Amoco Production Co. v. Hakala, 644 P.2d 785 (Wyo. 1982.) Consequently, the majority of the Commission finds that the amount of support received by an incumbent may be portable to a competitive carrier, including a wireless carrier, only if the competitive carrier has rates which exceed 130% of the weighted statewide average local exchange rates.

### **AMENDED SECTION 500(i) (NOW SECTION 500(h)) CONCLUSIONS**

32. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .” W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-501(d) provides that “a telecommunications company shall receive funds under this section to the extent that its local exchange rates, after consideration of any contributions from the Federal Universal Service Fund, exceed one hundred thirty (130) percent of the weighted statewide average local exchange rates.” The Commission believes that the clear language of W.S. § 37-15-502, through its reference to eligibility pursuant to W.S. §37-15-501, requires wireless carriers to meet the 130% eligibility threshold in order to receive distributions from the Wyoming Universal Service Fund. Consequently, the Commission is prohibited from including the support portability provisions requested by Western Wireless.

33. W.S. § 37-15-401 grants the Commission the power to promulgate rules and regulations necessary for it to carry out its statutorily granted powers, which include, pursuant to the provisions of W.S. § 37-15-501, the administration of the Wyoming Universal Service Fund.

34. The amendments to Section 500(i) (now Section 500(h)), as originally proposed, serve their intended purpose, and their adoption is consistent with the public interest.

#### **AMENDED SECTION 500(j) (NOW SECTION 500(i)) SUBSTANTIVE FINDINGS**

35. The proposed amendments to Section 500(j) (now Section 500(i)) contain additional language making the existing mid period revision provisions applicable to qualifying wireless universal service offerings.

a. The primary reason for the proposed amendments to this rule is to extend the applicability of the mid period adjustment rule provisions to qualifying wireless universal service offerings.

b. W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .”

36. During the comment period, Western Wireless proposed additional language that would clarify that this section does not constitute price regulation.

37. The Commission is aware that it lacks the authority to assert pricing regulation over the services offered by Western Wireless and other carriers using wireless technologies. The Commission does not believe that the proposed revisions to this rule attempt to assert pricing regulation over such services. Consequently, the Commission determined that inclusion of the additional language proposed by Western Wireless is not necessary.

38. Consistent with changes made to other provisions of these rules, the Commission, on its own motion, replaced the term “wireless universal service fund offering” with “supported wireless service.”

#### **AMENDED SECTION 500(j) (NOW SECTION 500(i)) CONCLUSIONS**

39. W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .” Consequently, the establishment of a methodology by which mid period revisions to a company’s rates are to be made is within the scope of the Commission’s jurisdiction.

40. W.S. § 37-15-401 grants the Commission the power to promulgate rules and regulations necessary for it to carry out its statutorily granted powers, which include, pursuant to the provisions of W.S. § 37-15-501, the administration of the Wyoming Universal Service Fund.

41. The proposed amendments to Section 500(j) (now Section 500(i)) serve their intended purpose, and their adoption is consistent with the public interest.

#### **AMENDED SECTION 500(q) (NOW SECTION 500(p)) SUBSTANTIVE FINDINGS**

42. Amended Section 500(q) (now Section 500(p)) contains additional language which includes references to W.S. § 37-15-502 and wireless universal service offerings.

a. The primary reason for the proposed amendments to this rule is to incorporate

qualifying wireless universal service offerings into the distribution provisions of the rule.

b. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .”

43. During the comment period, Western Wireless proposed that a new Section be created out of what was Section 500 (p)(ii). Western Wireless proposed that the former Section 500 (p)(ii) be extracted and applied to all carriers that receive universal service support. Western Wireless’ proposed new section would require companies to show the universal service support received for each customer as a separate line item credit on the customers bill unless a specific waiver is requested and granted by the Commission.

44. The Commission declined to adopt the proposal offered by Western Wireless. The Commission clearly intends for all companies receiving Wyoming Universal Service Fund support to list the amount of support as a separate line item, on each affected customer’s bill, unless a specific waiver is requested and granted by the Commission. The Commission believes that the rule, in its existing form, accomplishes this goal. Consequently, the Commission believes that the proposal offered by Western Wireless is not necessary.

#### **AMENDED SECTION 500(q) (NOW SECTION 500(p)) CONCLUSIONS**

45. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission. . . .” W.S. § 37-15-501(b) provides that “[t]he [C]ommission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. . . .” Further, W.S. § 37-15-501(d) provides that “a telecommunications company shall receive funds under this section to the extent that its local exchange rates, after consideration of any contributions from the Federal Universal Service Fund, exceed one hundred thirty (130) percent of the weighted statewide average local exchange rates.” Consequently, the establishment of a methodology by which fund related distributions are to be made is within the scope of the Commission’s jurisdiction.

46. W.S. § 37-15-401 grants the Commission the power to promulgate rules and regulations necessary for it to carry out its statutorily granted powers, which include, pursuant to the provisions of W.S. § 37-15-501, the administration of the Universal Service Fund.

47. The proposed amendments to Section 500(q) (now Section 500(p)) serve their intended purpose, and their adoption is consistent with the public interest.

#### **AMENDED SECTION 500(r) SUBSTANTIVE FINDINGS**

48. Proposed Section 500(r) was a new provision which incorporated, into the Commission’s Wyoming Universal Service Fund rules, the wireless support eligibility criteria found in W.S. § 37-15-502.

a. The primary reason for proposed Section 500(r) is to incorporate, by reference, the statutorily imposed eligibility criteria of W.S. § 37-15-205.

b. W.S. § 37-15-502 provides that “[t]elecommunications 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 [C]ommission provided that: (i) [t]he telecommunications company will offer and advertise all universal service fund supported services throughout the entire local exchange area; (ii) [t]he telecommunications company will provide unlimited local calling throughout an entire local exchange area for a flat fee; (iii) [t]he 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) [t]he company and services meet such additional criteria, if any, the [C]ommission determines are necessary to further the stated intent of W.S. [§] 37-15-201. . . ."

49. During the comment period, Western Wireless proposed that a different Section 500(r) be created in order to define portability. The proposed new section would serve to define the amount of distribution a company, which is eligible for universal service support, would receive.

50. The Commission eliminated the provisions of proposed Section 500(r). To the extent that these provisions are contained within W.S. § 37-15-502, their inclusion in the rule provision is not necessary.

51. With regard to the Western Wireless proposal to define portability, within the provisions of Section 500(r), the Commission declined to do so. For the reasons stated in paragraph 20, above, the concept of portability which was advocated by Western Wireless is inappropriate and would constitute a violation of the provisions of W.S. § 37-15-501 and W.S. § 37-15-502. Consequently, a rule provision defining portability, in the manner requested by Western Wireless, would be inappropriate.

### **AMENDED SECTION 500(r) CONCLUSIONS**

52. W.S. § 37-15-502 contains the statutory eligibility criteria which was reiterated in this proposed rule provision. Given that the restatement of this criteria, in rule form is unnecessary, the Commission declines to adopt Section 500(r) as proposed.

### **SECTION 500(s) (NOW SECTION 500(q)) SUBSTANTIVE FINDINGS**

53. Proposed Section 500(s) (now Section 500(q)) is a new provision which establishes, as unlimited, the amount of minutes of use of exchange service provided free of charge, to end users, as part of a wireless universal service offering.

a. The primary reason for proposed Section 500(s) to establish the amount of minutes of use of exchange service to be provided free of charge to end users as required by W.S. § 37-15-103(a)(xvi)(A)(II).

b. W.S. § 37-15-103(a)(xvi)(A)(II) states that the term local usage is "an amount of minutes of use of exchange service, prescribed by the [C]ommission, provided free of charge to end users."

54. During the comment period, Qwest proposed to eliminate Section 500(s) since it believed its provisions to be duplicative of Section 500(r)(ii).

55. The Commission declined to eliminate this rule provision as suggested by Qwest. The Commission does not believe that this provision is duplicative of that contained in Section 500(r)(ii). However, as noted above, the Commission has declined to adopt Section 500(r), therefore the Qwest's assertion that the provisions are duplicative, is without merit.

### **SECTION 500(s) (NOW SECTION 500(q)) CONCLUSIONS**

56. W.S. § 37-15-103(a)(xvi)(A)(II) provides that services designated for Wyoming Universal Service Fund support shall include "an amount of minutes of use of exchange service, prescribed by the [C]ommission, provided free of charge to end users." W.S. § 37-15-502(a)(ii) requires that carriers using wireless technologies shall provide "unlimited local calling throughout an entire local exchange area for a flat fee." Proposed Section 500(q) provides consistency between these two statutory provisions.

57. W.S. § 37-15-401 grants the Commission the power to promulgate rules and regulations necessary to carry out its statutorily granted powers, which include, pursuant to the provisions of W.S. § 37-15-501, the administration of the Universal Service Fund.

58. Proposed Section 500(s) (now Section 500(q)) serves its intended purpose, and its adoption is consistent with the public interest.

### **ALTERNATIVE PROPOSAL OF WESTERN WIRELESS**

59. Western Wireless proposed that a new Section 500(A) be created for the purposes of establishing eligibility criteria for Wyoming Universal Service Fund support and supported services for wireless carriers. This alternative proposal is consistent with the position advocated by Western Wireless throughout this proceeding.

60. The Commission declined to adopt the alternative proposal offered by Western Wireless. The portability provisions which were advocated by Western Wireless, as described above, were not adopted by Commission. Consequently, the alternative proposal of Western Wireless, due to its consistency with the Company's view of portability, has not be adopted as well.

### **GENERAL FINDINGS AND CONCLUSIONS**

61. During the comment period, the Independent Companies and McLeodUSA stated that they were generally supportive of the proposed rule changes. The Independent Companies and McLeod stated that they opposed the portability proposal as put forth by Western Wireless. (Tr., pp. 118-119.) Qwest also stated that they generally opposed the subsidization of wireless providers at the same level as wireline providers to the extent that wireless providers would be found not be bound by the 130% eligibility threshold. (Tr., p. 17.)

62. As required by W.S. § 16-3-103(d)(i), the proposed amendments to the Commission's Universal Service Fund rules are within the scope of the statutory authority delegated to the Commission by the Wyoming Telecommunications Act of 1995 and W.S. § 37-15-502.

63. As required by W.S. § 16-3-103(d)(i), the proposed amendments to the Commission's Universal Service Fund rules are within the scope of the legislative purpose of the statutory authority delegated to the Commission by the Wyoming Telecommunications Act of 1995 and W.S. § 37-15-502.

64. To date, the proposed amendments to the Commission's Wyoming Universal Service Fund rules have been adopted in substantial compliance with the provisions of the Wyoming Administrative Procedure Act as required by W.S. § 16-3-103(c).

65. Adoption of the proposed amendments to the Commission's Universal Service Fund rules is consistent with the public interest and fully supported by the record of this proceeding.

66. Deputy Chairman Furtney dissented from the majority position of the Commission with regard to the adoption of these amendments to the Commission's Wyoming Universal Service Fund Rules. Deputy Chairman Furtney believes that W.S. § 37-15-102 confers upon the Commission greater flexibility to fashion rules which will better promote the development of competition within Wyoming's telecommunications industry. Deputy Chairman Furtney further believes that the rules adopted, by the majority of the Commission, fall short of promoting competition and allowing incumbent telecommunications companies to develop appropriate competitive responses to competitive pressures.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pursuant to open meeting action taken on December 20, 2001, the following, amended, rule provisions are formally adopted:

Section 500. Telecommunications Universal Service Fund.

(a) All definitions and provisions contained within W.S. § 37-15-103 and W.S. § 37-15-104 are incorporated herein by reference.

(b) The Commission may contract for the services of a Universal Service Fund manager who shall perform routine collection, distribution, and other activities related to the Universal Service Fund, subject to the oversight and direction of the Commission. The manager's compensation and necessary related expenses shall be incorporated into the required funding computations and paid for through funds collected from telecommunications providers. The Commission shall request the services of the Wyoming Attorney General's Office to enforce its Universal Service Fund rules under W.S. § 37-15-401(a)(ii) including initiating civil proceedings against telecommunications providers that violate the universal service fund rules. The selection of the manager shall be subject to all applicable procurement rules of the state of Wyoming.

(c) No later than February 15th of each year, all telecommunications companies shall provide the information required by the Commission and/or the Universal Service Fund manager to properly perform the computations necessary for collection and distribution of the Universal Service Fund. This information may include names and addresses of purchasers of intrastate access from each local telecommunications provider, and names and addresses of pay telephone providers purchasing access to the local telecommunication provider's system, as well as rate and customer data. Specific customer data provided to the Commission and/or the fund manager, under this section, shall be deemed to be proprietary unless otherwise determined by the Commission. The Universal Service Fund manager shall make no request for information from telecommunications companies without first having obtained the approval of the Commission to collect the information.

(d) At such time that contributions to and disbursements from the Universal Service Fund become necessary, the universal service fund shall be audited, by an independent accountant not affiliated with the fund manager, no more frequently than annually and no less frequently than every three years. Expenses related to this audit shall be included in the administrative cost of the fund and shall be incorporated in the required funding computations and paid for through funds collected from telecommunications companies. The independent accountant shall be selected by the Commission under all applicable procurement rules of the state of Wyoming. Once selected, the accountant shall be eligible to perform not more than three (3) consecutive audits.

(e) No later than October 1st of each year, the fund manager shall submit a report to the Commission and to each telecommunications company that contributes to the Universal Service Fund. This report shall summarize the preceding year's activity and shall contain the following:

- (i) a statement of collections and distributions from the Universal Service Fund;
- (ii) a record of total cost of Universal Service Fund administration; and
- (iii) audit reports and recommendations provided by the independent accountant.

(f) The costs incurred by telecommunications companies associated with making payments into the Universal Service Fund shall not be used as an offset to the required contributions and such costs shall not be incorporated into the funding calculation. Reasonable amounts for administrative costs may be treated as an operating expense.

(g) The statewide weighted average local service rate shall be computed by multiplying the number of residential and business access lines, as contained in the definition of essential services found in W.S. § 37-15-103(a)(iv), plus the number of subscribers taking service that meets the criteria of W.S. § 37-15-502 (supported wireless service), by the rate applicable to each line or subscriber, with the product of this computation divided by the total number of access lines, as contained in the definition of essential services found in W.S. § 37-15-103(a)(iv), plus the total number of subscribers taking supported wireless service. The rate to be used in the computation shall include all standard charges associated with each telecommunication company's local service or each wireless company's supported wireless service. Such

charges include, but are not limited to: the local service rate, whether flat rated or measured; touch-tone; as well as zone and mileage charges. The computation of the weighted statewide average local service rate shall exclude bill credits related to prior period Wyoming Universal Service Fund receipts; federally mandated customer access line charges; mandatory extended area service charges; surcharges for 9-1-1; franchise taxes; the telephone assistance program surcharge; and other similar charges or taxes. The manager shall annually compute both the statewide weighted average service rate and each telecommunications provider's local service rate in a consistent manner based on end of calendar year line counts and prices set pursuant to the provisions of W.S. § 37-15-203 or otherwise by a price sheet lawfully filed exclusively under W.S. § 37-15-204, taking into account the classification options available to telecommunications companies under paragraph (h) of this rule. The manager's computation of the statewide weighted average rate shall also include the wireless companies' reported prices for supported wireless services.

(h) Each telecommunications company shall report its rates separately for each distinct geographic area, zone or mileage grouping, or other distinct customer grouping that is applicable because of differences in customer rates. Wyoming Universal Service Fund support payments shall be distributed on the difference between the rate, as calculated in paragraph (g) of this rule, and the 130% benchmark as indicated in paragraph (p) following, except that the support for a supported wireless service will not exceed the amount of per line support that would have been offered to a wireline telecommunications customer in the geographic service area in which the supported wireless service is offered.

(i) Mid period revisions to a telecommunications company's local service rate or to a supported wireless service, for purposes of drawing from the fund, shall only be permitted upon application and approval by the Commission and after a showing of need or special circumstances.

(j) 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 received in the most recent calendar year and the amount of Federal Universal Service Funds most recently used in the computation of rates.

(k) No later than April 1st of each year, the Universal Service Fund manager shall file, with the Commission and with each affected telecommunications company, a report that details the computation of the recommended level of assessment that shall be attributable to a percent of gross retail revenues. This recommended level of assessment shall be based on the computed amounts needed for payment to telecommunications companies, the prior year gross retail revenues, and any over or under collection in the fund from the previous year. Additionally, such charges shall be assessed as a separate line item on each customer's bill unless a specific waiver is requested and granted by the Commission.

(l) No later than May 15th of each year, the Commission shall issue an order stating the Universal Service Fund level of assessment that shall be applicable for the twelve-month period beginning July 1st of each year.

(m) All telecommunications companies realizing intrastate revenue from operations in Wyoming are required to report such gross revenues to the fund manager, and pay into the fund, the assessment amount calculated by multiplying the company's gross revenue, net of any wholesale transactions described in paragraph (n) of this rule, by the applicable assessment rate. Reports of revenue and payments of assessment are required no less often than quarterly. The due date of such reports and payments shall be determined for an individual telecommunications company as follows:

If the assessment amount for the first or second month of the calendar quarter (plus any unpaid assessment amount of \$100 or less from any prior month of the calendar quarter) exceeds \$100, then the report of revenue and payment of assessment amount for such period is due on or before the last day of the

month after the month in which the unpaid assessment amount exceeded \$100. If the assessment amount is \$100 or less, a report and payment is not required, and the unpaid assessment amount shall carry over to the next month. Provided, however, that regardless of the assessment amount, the report of revenue and payment of assessment amount is required on or before the last day of the first month after the end of any calendar quarter in which a telecommunications company realizes any intrastate revenue from its operations in Wyoming.

Assessment amounts not timely paid according to the above stated rule shall be subject to a late payment charge equal to one and one-half percent (1.5%) for each month, or part thereof, that the assessment amount remains unpaid.

(n) The Universal Service Fund assessment rate shall apply only to retail telecommunications service revenues and shall not be applied to revenues associated with wholesale services. For purposes of this section, wholesale services are defined as any service which is resold, with or without additional value-added features, to end users by the purchaser of that service, except that lines purchased and resold by internet service providers shall not be considered wholesale services. Wholesale services include, but are not limited to: switched access; the use of software defined network services for purposes of resale; interconnection for the resale of local services; public access lines used to service pay telephones; lines used to serve radio common carriers; and the use of wide area telecommunications service for the purposes of resale. The Universal Service Fund payment percentage shall also not apply to non-telecommunications services including, without limitation: one-way transmission of radio or television signals for broadcast purposes; billing and collection services; inside wire and premise cable installation and maintenance; directory services; private telecommunications networks; non-voice data services not operated by a company providing local exchange services; and internet services, even if provided by a local exchange company.

(o) Affected telecommunications providers subject to paragraph (k) of this rule include but are not limited to: local exchange companies; competitive access providers; interexchange companies; cable companies providing telephony; cellular providers; wireless providers; commercial radio common carriers; personal communications service providers; pagers; and pay telephone providers. All telecommunications companies, as defined by W.S. § 37-15-103(a)(xi), as well as those companies which provide telecommunications services, as defined by W.S. § 37-15-103(a)(xii), shall report and pay into the fund as provided for in paragraph (m) of this rule.

(p) Distributions from the fund shall be made monthly, beginning October 1, 1998. Pursuant to W. S. § 37-15-501(d) and W.S. § 37-15-502, and consistent with the Commission's administration of the fund as specified in these rules, telecommunications companies shall receive funds to the extent that their local exchange rates or supported wireless service price(s), after consideration of any contributions from the Federal Universal Service Fund, exceed one hundred thirty percent (130%) of the weighted statewide average local exchange rates.

(i) Distributions to telecommunications companies shall equal: the sum of the products resulting from the difference, expressed in dollars, by which each local service rate or supported wireless service price exceeds one hundred thirty percent (130%) of the statewide weighted average local service rate multiplied by the total number of lines or subscribers to which that rate applies.

(ii) Telecommunications companies receiving Wyoming Universal Service Funds shall display the amount of such support, for each affected customer, as a separate line item credit on each affected customer's bill unless a specific waiver is requested and granted by the Commission.

(q) For purposes of this rule, the Commission establishes that the amount of minutes of use of exchange service provided free of charge to end users, as part of the supported wireless service, shall be unlimited.

2. Pursuant to the requirements of the Wyoming Administrative Procedure Act, copies of this order will be provided to the Governor's Office, the Attorney General's Office, the Legislative Service Office, the Secretary of State's Office, and all interested parties.

3. Pursuant to the provisions of W.S. § 16-3-103(d), these rules shall become effective upon being signed by the Governor and filed with the Secretary of State.

4. This Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 31<sup>st</sup> day of December, 2001.

PUBLIC SERVICE COMMISSION OF WYOMING

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STEVE ELLENBECKER, Chairman

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KRISTIN H. LEE, Commissioner

(SEAL)

ATTEST:

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IVAN H. WILLIAMS, Assistant Secretary