

**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**

IN THE MATTER OF THE PROPOSED )  
ADOPTION OF NEW RULES BY THE )  
PUBLIC SERVICE COMMISSION OF )  
WYOMING RELATING TO THE ) GENERAL ORDER NO. 72  
IMPLEMENTATION OF A WYOMING )  
UNIVERSAL SERVICE FUND PURSUANT )  
TO W. S. § 37-15-501 )

**APPEARANCES**

Rebecca DeCook and Elaine Bennett, Denver, Colorado

for AT&T Communications, Inc. (AT&T)

Paul J. Hickey of Hickey, Mackey, Evans, Walker & Stewart, Cheyenne, Wyoming

for U S WEST Communications, Inc. (U S WEST)

Andrew D. Crain, Denver, Colorado

for U S WEST Communications, Inc. (U S WEST)

Alexander K. Davison, Patton & Davison, Cheyenne, Wyoming

for wyoming.com

Bruce S. Asay, Associated Legal Group, Cheyenne, Wyoming

for the Independents

Elizabeth Zerga, Herschler, Freudenthal, Salzburg, Bonds & Zerga

for McLeodUSA

David Lucero and Stephen G. Oxley, Cheyenne, Wyoming

for Wyoming Public Service Commission Staff

HEARD BEFORE

CHAIRMAN STEVE ELLENBECKER

DEPUTY CHAIR KRISTIN H. LEE

COMMISSIONER STEVE FURTNEY

Deputy Chair Lee presiding

**ORDER**

**(Issued August 4, 1998)**

This matter is before the Wyoming Public Service Commission (Commission) upon its own motion regarding issues raised by AT&T Communications relating to the operation of the Wyoming Universal Service Fund. The Commission initially considered these issues at its open meeting held on January 13, 1998. The Commission subsequently held hearings on January 28 and March 20, 1998, and having considered the issues and evidence presented by the parties, and applicable Wyoming law, and otherwise being fully advised, hereby finds and concludes:

**PROCEDURE AND PARTIES**

1. On January 13, 1998, the Commission considered the following issues related to the Wyoming Universal Service Fund at its regularly scheduled open meeting, to wit:
  - a. Should the Commission initiate a rulemaking proceeding clarifying the assessment language found in section 500(p) of the Commission's Procedural Rules and Special Regulations? Further, should the Commission, through this rulemaking proceeding, address the issue of whether or not Internet Service Providers should be required to contribute to the fund?
  - b. Should the Commission proceed to modify the formulas associated with the fund calculations in the manner suggested by AT&T?
  - c. Should the assessment level be increased to avoid requiring the fund manager to borrow additional funds to cover further distribution shortfalls?
2. The above issues came before the Commission at the request of AT&T Communications, Inc. and through the Universal Service Fund Task Force.
3. The Commission set these matters for public hearing on January 28, 1998, pursuant to its Procedural Order Setting Emergency Hearing.
4. The Commission subsequently issued a second Procedural Order Continuing Hearing on March 6, 1998, which provided for the continuation of the hearing on March 20, 1998.
5. Numerous parties participated in these proceedings before the Commission. The parties participating were AT&T Communications, U S WEST Communications, Inc., wyoming.com, Allwest Communications, Chugwater Telephone Company, Dubois Telephone Exchange, Project Telephone Company, Range Telephone Cooperative, RT Communications, Silver Star Telephone, Union Telephone Company, Tri-County Telephone, TCT WEST, McLeod USA, and the Wyoming Public Service Commission Staff.
6. Notice of the hearings held in this docket on January 28, 1998, and March 20, 1998, was given as required by law.

**SUMMARY OF THE EVIDENCE**

7. Elaine Bennett, AT&T Government Affairs Assistant Vice-President for Wyoming testified that the current methodology to adjust for Federal Universal Service Fund receipts in calculating the Wyoming Universal Service Fund distributions should be substantially adjusted. (TR. Vol. 1. P. 26). Ms. Bennett testified that the current methodology as it relates to consideration of the Federal Universal Service Fund results in lowering the threshold for qualification for

## Wyoming Universal Service Funding.

8. Ms. Bennett further asserted that the effect of the current distribution of Federal Universal Service Fund dollars across all classes of customers results in subsidizing customers who do not need a subsidy, a reduction in the Federal Universal Service Funding dollars available to those customers who should be subsidized, and creating a greater demand for Wyoming Universal Service Fund distributions than would be necessary if federal dollars were properly targeted. (TR. Vol. 1 P. 29).
9. Ms. Bennett proposed that the Federal Universal Service Fund dollars should be flowed through to customers whose rates are above the bench mark rate. It was her view that this direct flow through should be accomplished before any Wyoming Universal Service Fund distribution is determined. (TR. Vol. 1 P. 31).
10. Ms. Bennett urged the Commission to conclude that the Wyoming Universal Service Fund is not currently serving its intended purpose. She further suggested that the Commission should suspend operation of the fund until a distribution methodology can be corrected through an expedited or emergency rulemaking process. Ms. Bennett further suggested that any company that has received a Wyoming Universal Service Fund distribution in January of 1998, but was later found not to qualify for such funding if distribution formulas or methodologies are revised, should be forced to repay the Wyoming Universal Service Fund.
11. Ms. Barb Allgaier, U S WEST Issues Manager, testified on behalf of U S WEST. Ms. Allgaier stated that U S WEST believes the Wyoming Universal Service Fund is in full compliance with Wyoming statutes and Commission rules. She further stated that AT&T allegations concerning the distribution methodology in current operation of the Wyoming Fund are false. She urged the Commission to reject AT&T's formula changes and to continue the implementation of the Wyoming Universal Service Fund. (TR. Vol. 1 P. 153).
12. Ms. Allgaier also stated that U S WEST believed that the Commission has the inherent authority to increase the current assessment level to an adequate level based upon demands that currently exist on the Wyoming Universal Service Fund. Ms. Allgaier further testified that the Federal Universal Service Funding received by U S WEST had been considered at the time existing prices were established. She further noted that the benefit of the State funding flows directly to end use customers pursuant to Rule 500(q)(iii). (TR. Vol.1 P. 162).
13. Ms. Allgaier also responded to the AT&T suggestion that the current Wyoming Universal Service Fund should be suspended. In this regard she noted that a suspension would result in direct harm to customers who would no longer see credits on their bill for Wyoming Universal Service Funding. She also noted that a suspension would effectively operate as a penalty upon those companies that have undertaken to re-balance their rates to recover TSLRIC. A suspension would also penalize companies who have invested in infrastructure, which is specifically encouraged in the 1995 Wyoming Telecommunications Act. (TR. Vol. 1 P. 164).
14. Ms. Allgaier urged the Commission to reject the recommendation of AT&T and amend its prior order increasing the assessment level as may be necessary to fund current and anticipated distributions. (TR. Vol. 1 P. 167).
15. Mr. David Clark testified on behalf of the following independent telephone companies, Allwest Communications, Chugwater Telephone Company, Dubois Telephone Exchange, Project Telephone Company, Range Telephone Cooperative, RT Communications, Silver Star Telephone and Union Telephone Company. Mr. Clark stated that he intended to address the issues raised by AT&T. He specifically stated that it was the opinion of the Independent Companies he represents that the current assessment level must be increased in order to meet current and anticipated demands upon the Wyoming Universal Service Fund. (TR. Vol 2 P. 12). Mr. Clark also observed that changes to the Federal Universal Service Fund are pending and are likely to be implemented in 1999 which may result in further consideration of the current Wyoming Universal Service Fund. Mr. Clark proposed that the Commission retain the current Wyoming Universal Service Fund system for 1998. Mr. Clark stated that he believed Internet providers should be required to fund the Wyoming Universal Service Fund. He stated his view that Section § 37-14-104(a) of the Wyoming Telecommunications Act includes Internet Service Providers.
16. Mr. Donald Jackson testified on behalf of Tri-County Telephone Association and TCT West. (TR. Vol. 2 P. 86).
17. Mr. Jackson stated that in his opinion AT&T failed to understand that Federal Universal Service Funding in large

measure results from changes in actual costs and increases in the Federal Universal Service Fund are intended to partially support those higher costs not to offset State support. (TR. Vol. 2 P. 89).

18. Mr. Jackson further stated that the effect of the AT&T proposal in his view would constitute a taking under the Fifth Amendment of the United States Constitution. He stated that to require a direct flow through of Federal support in order to reduce or negate State support would effectively confiscate the Federal Universal Service Fund from the company that had received such support. (TR. Vol. 2 P. 90).

19. Mr. Jackson also testified that the Independent Companies on whose behalf he appeared strongly recommended that the Commission increase the assessment level in order to assure funding levels necessary to accomplish the Legislature's intent in establishing the Wyoming Universal Service Fund.

20. Mr. Steven Mossbrook testified on behalf of wyoming.com, an Internet Service Provider. (TR. Vol. 2 P. 137). Mr. Mossbrook stated his opinion that Internet services should not be considered as telecommunications services under Wyoming law and thereby subject to assessment for Universal Service Funding. He stated that based upon Federal law the provisioning of Internet service is an information service and not a telecommunications service. He concluded therefore that it would be wrong to allow State law to conclude that Internet services are telecommunication services. (TR. Vol. 2 P. 141).

21. Ms. Denise Kay Parish testified as a member of the Wyoming Public Service Commission Staff. (TR. Vol. 2 P. 170).

22. Ms. Parrish analyzed the issue of modifications to the Universal Service Fund as proposed by AT&T in considerable detail. Specifically, Ms. Parrish developed detailed schedules reflecting the impact on the statewide average resulting from receipt of Federal Universal Service Funds. Ms. Parrish concluded, based upon her analysis that it is not in the public interest for the Commission to suspend the Wyoming Universal Service Fund at this point in time. She specifically stated that there are customers actually receiving money from the fund and it would cause chaos in the system to suspend the fund at this time.

23. Additionally, Ms. Parrish suggested that it would not be in the public interest to engage in emergency rulemaking based upon the AT&T proposal. Ms. Parrish recommended that the Commission engage in a rulemaking in the near future on the general issue of what telecommunication services should be subject to Universal Service Funding assessment. Ms. Parrish specifically reserved from this suggested rulemaking, however, Internet Service Providers. She testified that the issue of whether or not Internet Service Providers are subject to Wyoming Universal Service Funding obligations may require statutory clarification.

24. Ms. Parrish specifically urged the Commission to take up the issue of the assessment itself for surcharge in the immediate future. Ms. Parrish also suggested that the Commission consider flowing through to customers any incremental addition to the level of Universal Service Funding that Wyoming telecommunications companies may presently be receiving.

## **FINDINGS AND CONCLUSIONS**

25. The Commission has jurisdiction to consider the matters at issue herein pursuant to the provisions of the Wyoming Telecommunications Act of 1995, W.S. §§ 37-15-101, et seq. Proper public notice of this matter was given and a hearing was properly conducted in compliance with the provisions of the Wyoming Administrative Procedure Act, applicable regulatory law and the Commission Rules.

26. AT&T has failed to persuade the Commission that an emergency situation exists with relationship to the consideration given Federal Universal Service Funds receipts in determining a telecommunications company's entitlement to Wyoming Universal Service Fund distributions. Internet Service Providers are not currently subject to assessment for Universal Service Fund purposes under the relevant provisions of W.S. §§ 37-15-101 and 104.

27. The current assessment of the Wyoming State Universal Service Fund is inadequate to meet current and anticipated distributions from the Fund and the Commission has therefore agreed to undertake increasing the current assessment

level at its earliest opportunity following the conclusion of hearings in this docket on the 20<sup>th</sup> day of March, 1998. In this regard, the Commission did increase the Universal Service Fund assessment level at its next regularly scheduled open meeting on March 24, 1998, at which time the Commission increased the assessment level from 1% to 2%.

28. The Commission believes that the Universal Service Fund Task Force should continue to review and consider all relevant issues attendant to the operation, funding, and distribution of the Wyoming Universal Service Fund.

NOW THEREFORE, it is hereby ordered that:

1. The Commission finds no reason to engage in any emergency rulemaking as a result of the issues brought before it by AT&T Communications, Inc.
2. Internet Service Providers are not currently subject to the Universal Service Funding requirements of the Wyoming Telecommunications Act of 1995.
3. The Commission increased the assessment level on telecommunication services subject to Universal Service Funding requirements at its regular open meeting held on March 24, 1998, and subsequently issued its order increasing the assessment on March 24, 1998, based upon the evidence it considered in these proceedings and at its regularly scheduled open meeting of March 24, 1998.

This Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming this 4<sup>th</sup> day of August, 1998.

PUBLIC SERVICE COMMISSION OF WYOMING

STEVE ELLENBECKER, Chairman

KRISTIN H. LEE, Deputy Chairman

STEVE FURTNEY, Commissioner

(SEAL)

ATTEST:

IVAN H. WILLIAMS, Assistant Secretary

