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RESIDENTIAL UTILITY CONSUMER OFFICE

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May 8, 1998

Arizona Corporation Commission  
**DOCKETED**

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DOCKETED BY

Commissioner-Chairman Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

RE: Arizona Universal Service Fund Proposed Rule Changes  
Docket No. R-00000-97-0137

Dear Commissioners:

The Residential Utility Consumer Office ("RUCO") offers the following comments on the proposed changes to the Arizona Universal Service Rules ("Rules") (A.A.C R14-2-201 *et. seq.*) which were distributed on April 20, 1998.

General Comments

The existing Rules provide for an ongoing universal service support ("monthly support") based on the difference between a provider's benchmark rate and the cost to provide service to a certain geographic area. The proposed modifications create an additional type of universal service support ("unserved area support") to subsidize the installation of facilities to previously unserved areas. The proposed Rules, however, use the same term "AUSF support" to refer to both monthly support and unserved area support. At times, the use of the same term to describe both types of support creates confusion or unintended results.<sup>1</sup> The use of two separate terms for the different types of support could increase the clarity of the Rules. Where a provision is meant to apply to both types of support (e.g. R14-2-1203(C)'s requirement that a provider receiving support be an "eligible telecommunications provider"), the generic phrase "AUSF support" can be maintained.

<sup>1</sup> For example, proposed R14-2-1203(E) provides that support be repaid to the AUSF upon sale of facilities for which AUSF funding has been received. RUCO believes that this provision is meant to apply only for unserved area support, but the text of the proposed Rule reads as though it also applies to monthly support.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 2

## **R14-2-1201**

### Definition of "High Cost Area"

The proposal offers two alternative definitions for "High Cost Area", yet the term "High Cost Area" does not appear elsewhere in the Rules or the proposed changes to the Rules. If the Commission's intention is that unserved area support be limited to high cost areas, then that requirement should be explicitly stated in R14-2-1202(H). Currently, that section provides that all providers who serve previously unserved areas would be eligible for support, regardless of whether the area was "high cost" or not.

In addition, the alternative proposed definitions of "High Cost Area" include the phrases "benchmark" and "benchmark revenue," and provide definitions for those terms. However, the Rules already have a definition of "Benchmark Rates", which differs somewhat from the definitions set forth in the High Cost Area definition. The term "benchmark" should have only one meaning which is consistent throughout the Rules. If an alternate meaning is necessary, a different term should be used.

### Definition of "Unserved Area"

This proposed definition requires that an "Unserved Area" be outside the certificated area of an incumbent local service provider. With this restriction, the Rules would permit a new entrant local service provider to receive support to serve an unserved area, but would prevent an incumbent provider from receiving support to extend facilities to the same territory. As written, the rule would deter incumbent providers from extending service, while giving an incentive to new entrants to provide service. The Rules should instead provide equal incentives for all local exchange providers to bring service to unserved areas.

## **R14-2-1202(A)**

The additional language proposed in this section appears to conflict with the existing language, which is not deleted by the proposed change. The conflict arises from the definition of "benchmark rates" as currently set forth in R14-2-1201(7). As currently defined, the benchmark rate includes the Commission-approved rate for basic service and one element of access charges--the FCC's Customer Access Line Charge ("CALC"). Other types of access charges (the carrier common line charge and the PICC charge) are not included in the current definition of "benchmark rate."

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 3

The current language in this section provides that the monthly support is based on the difference between the cost to provide service and the benchmark rate. The additional sentence proposed in this section provides that the monthly support is based on the difference between the cost to provide service and the total of the Commission-approved rate and all access charges. If the Commission intends to clarify the method to calculate the amount of monthly support by adding additional access charges as an offset against a local exchange carrier's rates, it may be clearer to amend the definition of "benchmark rate" to include all access charges rather than only the CALC.

RUCO also believes that this section should be clarified to indicate that, if a provider seeks monthly support for an area which received unserved area support, the cost determination for the monthly support should be offset by the unserved area support already provided. Without such a clarification, a provider could double recover for the cost of the facilities required to serve a previously unserved area.

#### **R14-2-1202 (E)**

This section provides that the "support area" for unserved area support is either census block groups, or the entire service area of the provider who is bringing service to an unserved area. The Rules already provide that the "AUSF Support Area" is the geographic area for which a carrier's eligibility to receive support is calculated. One could interpret the new section to mean that a carrier would be eligible for unserved area support for an entire census block group, or its entire service territory, rather than only for the specific area to be served by new facilities in a previously unserved area. RUCO believes that the "support area" for which unserved area support should be calculated is the area served by new facilities which bring service to an unserved area--no more and no less.

The definition of "support area" proposed here creates confusion when the term is used elsewhere in the Rules. For example, the last sentence of proposed R14-2-1203(G) provides that a carrier which receives AUSF support shall be required to serve all applicants in the AUSF support area. If the support area for unserved support were defined to be an area larger than the actual area served by the new facilities, which could be possible if the support area were defined to be a census block group, the provider would be required to serve the entire census block group, but only receive unserved area support for a portion of that area. Surely the Commission does not intend such a result.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 4

RUCO believes that, if it is necessary to define a "support area" for unserved area support, the support area should be the actual area served by the facilities for which unserved area support was received.

In addition, the word "ultimately" should be stricken from the 7th line of this proposed subsection. It is impossible to determine that a methodology is "ultimately" adopted by the Commission, because the Commission could later authorize a different methodology. Striking the word "ultimately" would permit a local exchange provider to provide a cost study based on whatever cost methodology has been adopted by the Commission at the time the cost study is provided.

#### **R14-2-1202(F)**

This subsection addresses the effect of line extension agreements on the calculation of unserved area support. Rather than including an example of one possible application of this policy, the Rule should consist of a sufficiently detailed, but generically applicable, statement of the Commission's policy on the impact of line extension agreements on the calculation of the support amount.

#### **R14-2-1202(G)**

This provision provides that service quality penalties which might result from a carrier's installation of service in an unserved area shall be waived. The Rule goes on to address the specific application of this policy to U S WEST. RUCO believes it is inappropriate to include language in the Rule which provides specific treatment for a particular carrier. Instead, the Rule should state only the general principle, as stated in the first sentence, so that it would apply equally to all similarly-situated local exchange carriers.

#### **R14-2-1202(H)**

In the first sentence, the parenthetical phrase "(having authority to do so from the Commission)" can be omitted, because the phrase which follows it, "authorized to serve residents living in unserved areas," requires that providers be authorized to serve.

As discussed above, the word "ultimately" should be stricken from the second to last sentence.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 5

RUCO also believes that additional protections must be added to the rules to deter abuses of the "advance reimbursement" mechanism proposed to distribute unserved area support. RUCO proposes that the amount of support that a carrier is eligible to receive be disbursed in installments, rather than as a lump sum up front. The Commission's Engineering Staff could determine, for each construction project, the appropriate completion points which, when achieved, could trigger a partial disbursement of the authorized support. This would allow the Commission to oversee more closely the disbursement of unserved area support to insure that funds are utilized for their intended purposes.

#### **R14-2-1203(A)**

The modifications to this section create a mechanism by which a carrier can seek monthly support without filing a rate case. Pursuant to this mechanism, an incumbent provider could make an AUSF filing proposing that all rates other than basic local service rates be adjusted downward, and that the resulting shortfall in its existing revenue requirement be recovered from the AUSF. RUCO strongly objects to this procedure because it is extremely unfair to residential ratepayers and because it is constitutionally improper.

The proposed rebalancing procedure would permit an incumbent provider to lower all its rates for all services except basic local exchange service, and recover the shortfall from all customers through the AUSF surcharge. Customers who take only basic service will see their overall charges increase, because their basic local service rate would remain the same, while their AUSF surcharge would increase in order to fund the revenue shortfall. At the same time, customers who also subscribe to discretionary services may experience overall decreases if their rates are lowered to a greater degree than their AUSF surcharge is increased. This is unfair to customers, especially the low income customers, who take only basic service.

Further, permitting providers to lower rates apart from a full rate proceeding violates the constitutional requirement that the Commission set rates which are "just and reasonable." Rates which fail to meet operating costs plus a reasonable rate of return are not "just and reasonable." Scates vs. Arizona Corp. Comm'n, 118 Ariz. 531, 534, 578 P.2d 612, 615 (App. 1978). When the Commission establishes rates in a rate case, it sets rates which cover costs and are just and reasonable. Decreasing some of those rates, without raising other rates or without the Commission determining that costs have decreased, would result in rates which fail to cover costs. Such rates would violate the Commission's constitutional requirement to set rates which are just and reasonable.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 6

In addition, rebalancing rates without examining a carrier's earnings would permit a carrier which may be overearning to continue overearning while at the same time increasing AUSF surcharges to all customers across the state. Ratepayers should not be required to fund both a carrier's overearnings and increased AUSF surcharges.

The rule is also vague because it does not set forth any standard as to how much rates should be lowered. The proposed rule requires that all rates, except basic service, be reduced by an equal percentage. There is no restriction prohibiting a carrier from lowering rates to that point that some or all of its rates no longer cover costs. To prevent anti-competitive pricing, Commission rules prohibit competitive providers from decreasing any rate to below TSLRIC. A.A.C. R14-2-1109(A). Similarly, the Commission should not permit an incumbent provider to decrease any rate below TSLRIC in an AUSF rebalancing filing.

RUCO opposes any mechanism to set monthly support which does not require the Commission to review a carrier's overall rate of return. While RUCO does not believe that a traditional rate case is necessarily required, any abbreviated procedure created by the Commission must involve an analysis of a carrier's overall earnings.

#### **R14-2-1203(C)**

The phrase "federal act" in line 5 is not defined. For the sake of clarity, it should be replaced with "Telecommunications Act of 1996."

#### **R14-2-1203(D)**

This section provides that, upon filing of a complaint requesting service in an unserved area, the Commission will determine which carrier is best able to provide service, and will then order that carrier to provide such service.

The proposed Rule raises several procedural questions. As currently proposed, the Rule requires that a complaint be filed. It is not clear against whom an unserved resident should file a complaint. All potential carriers should be a party to the proceeding in which the Commission makes a determination of which carrier is best able to provide service.

In addition, the Rule is silent as to the type of proceeding the Commission will use to determine which carrier is best able to serve. Currently, the Commission requires a hearing for all extensions of certificates. The issues involved in determining which carrier is best able to serve an area is similar to the issues involved in a certificate extension. Therefore, notice and a hearing should be required before the Commission orders any carrier to extend service to an unserved area.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 7

**R14-2-1203(E)**

It is unclear whether, upon the sale of facilities whose installation was subsidized by unserved area support, the amount to be refunded to the AUSF is the amount of the unserved area support which was received, or the entire proceeds of the sale.

**R14-2-1203(G)**

It is unclear whether the procedure outlined in this section will occur at the time a carrier files for a certificate for an unserved area, or at the time the provider files an application for unserved area support. The language seems to suggest that the procedure take place upon the filing for a certificate for an unserved area. However, several CLECs already hold statewide certificates.

The Rule should be clarified to indicate what type of application would trigger the proceedings described.

The Commission should not have the burden to provide notice of an application to serve an unserved area, or an application for unserved area support. Notice of such an application should be provided by the applicant.

This subsection sets out a standard by which the Commission will determine which of two or more carriers should provide service to an unserved area. The standard set forth is "which provider is able to provide the requested service in the most qualified and economically efficient manner," the same standard the FCC has used in its USF rules. 47 C.F.R. § 54.203. In subsection D, a different standard is proposed by which the Commission would determine which carrier should be ordered to provide service ("which carrier is best able to provide such service"). Whenever the Commission is called upon to make a determination between carriers regarding which one should provide service, the standard on which the Commission makes that determination should be the same. The rules should not establish one standard when carriers are volunteering to serve (as in subsection G), and another when they are being required to serve (as in this subsection). The federal USF rules set forth the standard articulated in subsection D. Therefore, RUCO recommends that the language in this subsection mirror the language in subsection D.

**R14-2-1206(F)**

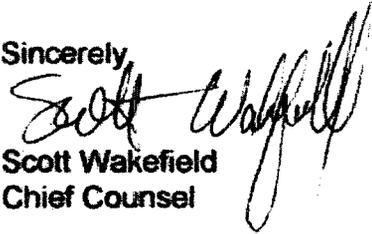
RUCO believes that the revised subsection F may be redundant in light of the first and last sentences of the proposed section R14-2-1203(C). If not, RUCO recommends an alternative which it believes is more clear.

Commissioner Jim Irvin  
Commissioner Renz D. Jennings  
Commissioner Carl J. Kunasek  
May 8, 1998  
Page 8

F. In an area served by a rural telephone company as defined by the Telecommunications Act of 1996, AUSF support shall not be available to competitive providers of basic local exchange service unless the Commission determines that their receipt of AUSF support is in the public interest.

RUCO appreciates the opportunity to provide comments on the proposed changes to the AUSF Rules, and looks forward to further participation in the process of updating the Rules.

Sincerely



Scott Wakefield  
Chief Counsel

cc: Docket Control  
All Parties of Record