

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE FUNDING)
REQUIREMENT AND PROPOSED) DOCKET NO. 90072-48-XO-21
ASSESSMENT FACTOR FOR THE) (RECORD NO. 15684)
JULY 2020 TO JUNE 2021 FISCAL)
YEAR OF THE WYOMING)
UNIVERSAL SERVICE FUND)

ORDER DENYING MOTION TO COMPEL

(Issued October 19, 2021)

1. This matter is before the Wyoming Public Service Commission (Commission) upon Union Telephone Company's (Union) *Motion to Compel (Motion)*, requesting the Commission Compel responses to interrogatories served on the Range Telephone Cooperative, Inc., Silver Star Telephone Company, Inc. d/b/a Silver Communications, Dubois Telephone Exchange, Inc., Tri County Telephone Association, All West Communications, Inc., RT Communications, Inc. (Rural Companies).

2. The Commission having reviewed Union's Motion to Compel, Rural Companies *Response and Opposition to Union's Motion (Opposition)* and *Response to Union's First Data Requests with Updated Supplement*, having heard oral arguments by the respective counsel for Union and the Rural Companies at the Commission's prehearing conference on October 14, 2021, its files regarding this matter, applicable Wyoming telecommunications law, Rules of Civil Procedure and otherwise being fully advised in the premises, FINDS and CONCLUDES:

3. Union Filed its *Motion* on October 12, 2021, stating, *inter alia*, that the Rural Companies response to Union's *First Set of Data Requests* was defective in that the Rural Companies objected to a number of the interrogatories.

Interrogatory No. 3:

4. Union requested that "[f]or the years 2011-2020 please provide the following for each Group D (W.S. 37-15-501(d) company..." and provided a list of data to be provided. The Rural Companies objected to the request on grounds of relevancy and being overly burdensome.

5. Union states in its *Motion* that the information is relevant in that it would allow "the Commission to review the Intervenor's accounting in this proceeding by looking at the HCLS each carrier received prior to adopting A-CAM and ensure that the carriers are not receiving a double recovery for HCLS and A-CAM. Further Union does not believe its request to be overly burdensome. Union acknowledged that the request would burden the Rural Companies, but believed the burden to be reasonable. Union reminded the Commission "that in the 2020 USF proceeding the Commission required Union to perform and provide to the Commission Staff and parties a "Cost Study" that required Union to expend a great amount of time and resources."

6. The Rural Companies filed their *Opposition* on October 14, 2021, objecting to Interrogatory No. 3, asserting the information sought is not relevant and would be extremely

burdensome to produce. Specifically, Liz Zerga, Counsel for the Rural Companies stated that the disclosure is more than simply filing annual cost studies for the requested years. Ms. Zerga stated that the request would result in weeks of compiling thousands of data points.¹

7. W.R.C.P. Rule 28(b) provides the scope and limits on discovery, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Additionally, a Commission is required to balance the interests of the burden in the party to produce information with benefit to be gained from such information. *Aland v. Mead*, 2014 WT 82, ¶24, 237 P.3d 752, 762 (Wyo. 2014).

8. The Motion to Compel is denied as to Interrogatory No. 3. Union’s hopes to use the information to illustrate that some of the Rural Companies have received duplicate support in the past because of potential overlap between High-Cost Loop Support (HCLS) and Alternative Connect America Cost Model (ACAM) funding. The issue of duplicate support underlying the request information is not relevant to the matter before the Commission. The Commission lacks any authority to provide a remedy for Federal Support that may have been distributed in error. Further, given the procedural schedule, the request is overly burdensome to the parties and the Commission. Granting the *Motion* would unnecessarily delay the proceedings in this matter.

Interrogatory Nos. 4 & 5:

9. Union requested the Rural Companies provide any work papers prepared by their witnesses Jason Hendricks and Nathan Weber for exhibits they sponsored. The Rural Companies objected to the request on the grounds that the request was “vague and overbroad.”

10. Union makes no clear indication in its *Motion* as to the purpose the information will serve in the proceeding. Bruce Asay, Counsel for Union stated at the prehearing conference that the information would serve as a tool to test the credibility of Mr. Hendricks and Mr. Weber. In response to the Rural Companies objection, Union sent a clarifying letter defining work papers as, “those documents that Mr. Hendricks [and Mr. Weber] used to prepare [their] final product and conclusion including any iterations, tests, summaries, correspondence, schedules, memoranda, or calculations that were used to prepare [their] opinion.”

11. The Rural Companies renewed their objections to Union’s requests in their *Opposition*, arguing the request was vague, ambiguous, and overbroad. Specifically, the Rural Companies believe that Union seeks drafts prepared by Mr. Hendricks of his single sponsored exhibit which is his direct testimony. As to Mr. Weber’s testimony, the Rural Companies claim the request is vague, ambiguous, and overbroad. The Rural Companies assert that much of the information sought is protected by the attorney-client privilege.² Further, the Rural Companies stated in their *Opposition* that the information is protected by W.R.C.P. Rule 26(b)(3) as trial preparation materials. Lastly, the Rural Companies believe that the Commission should not compel

¹ The Rural Companies attached signed affidavits to its *Response to Union’s First Data Requests with Updated Supplement*.

² The Rural Companies assert that the broadness of the request may include information protected by attorney client privilege, asserting that Mr. Weber is also protected by attorney client privilege. *See, United States v. Nobles*, 422 U.S. 225, 328-39, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975).

responses to the later iteration of the Interrogatories, which were not timely. Union provided clarification thirteen days after its receipt of the Rural Companies' objection which was after the discovery deadline.³

12. W.R.C.P. Rule 26(b)(3) protects documents and tangible things that are prepared in anticipation of litigation. However, those materials are discoverable if: "(i) they are otherwise discoverable under Rule 26(b)(1); and (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means."

13. W.R.C.P. Rule 26(b)(4)(B) extends protection to draft reports and disclosures. The rule protects "drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded."⁴

14. Union's *Motion* is denied for Interrogatories Nos. 4 & 5. Union's request is vague and overly broad; it seeks information protected under the W.R.C.P. To the extent Union requests that drafts, those documents are shielded from discovery without exception. Further, Union's interrogatories remain vague, overbroad, and the request is untimely. Union stated that it knew, upon receipt that the Rural Companies' responses, that they contained objections. Rather than seek to clarify immediately, Union waited thirteen days before attempting to resolve the dispute with the Rural Companies.⁵ Union's concerns stem back to last year's WUSF proceeding, yet it waited 60 days into the discovery period to seek information from the Rural Companies. With Union's timeline for discovery and the date set for the public hearing in mind, it is unlikely that Union would be able to make any meaningful use of the information. Additionally, the Commission would not have adequate time to review the disclosed information and give it the weight it deserves. Union chose to wait late into the discovery period to seek information from the Rural Companies and delayed working through the objections to refine the request; it must now live with the consequences of those actions.

IT IS THEREFORE ORDERED:

1. Pursuant to action taken by the Commission's appointed hearing officer at the prehearing conference on October 14, 2021, Union Telephone Company's *Motion to Compel* is denied.

2. This *Order* is effective immediately.

³ The deadline for all parties to complete discovery was September 23, 2021. *See*, the Commission's *Scheduling Order* issued on July 14, 2021, and the Commission's *Amended Scheduling Order* issued on October 6, 2021.

⁴ *Aland v. Mead* cited in ¶ 7 above is also applicable to the dispute between the parties for interrogatories 4 & 5.

⁵ The Commission's scheduling order issued on July 14, 2021, provides that "[p]arties should resolve discovery disputes among themselves. Failing in this, the parties shall bring the disputed discovery matters immediately to the attention of the Commission as pleadings with any documentation reflecting the dispute."

MADE and ENTERED at Cheyenne, Wyoming, on October 19, 2021.

PUBLIC SERVICE COMMISSION OF WYOMING



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