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Filed Via Electronic Regulatory Filing (ERF) System

February 15, 2006

Ms. Christy Zehner, Secretary to the Commission
Public Service Commission of Wisconsin
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

**RE: Objection to Universal Service Fund Assessment by Cheqtel
Communications, Inc. and Request for Refund, Docket 1065-UO-100**

Dear Ms. Zehner:

On behalf of the Wisconsin State Telecommunications Association I submit for filing in the above-referenced docket the following documents:

- Request for Intervention By the Wisconsin State Telecommunications Association
- Testimony of William C. Esbeck

Copies of this filing are also being sent to Joyce Mahan Dingman at the Public Service Commission, Kiesling Associates and Cheqtel Communications, Inc. and its attorney.

If you have any questions or problems with this filing, please contact me at (608) 256-8866 ext. 23 or by email at brybarik@wsta.info.

Sincerely,

/s/ Brian J. Rybarik
Brian J. Rybarik (SBN 1047401)
Legal Counsel and
Manager of Regulatory Affairs

cc: Joyce Mahan Dingman (via email)
Dave Carter, Cheqtel Communications, Inc. (via email)
Scott Girard, Kiesling Associates (via email)
Scott Nicastro, Weld, Riley, Prenn & Ricci (via email)

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Objection to Universal Service Fund Assessment
by Cheqtel Communications, Inc. and Request for Refund

1065-UO-100

**REQUEST FOR INTERVENTION BY THE WISCONSIN STATE
TELECOMMUNICATIONS ASSOCIATION**

The Wisconsin State Telecommunications Association, Inc. (“WSTA”), pursuant to Wis. Stat. § 227.44(2m) and Wis. Admin. Code § PSC 2.21(1) and (2) requests that the Public Service Commission of Wisconsin (the “Commission”) grant this request to intervene in Docket 1065-UO-100.¹ In support of this request to intervene, WSTA states:

1. WSTA is a Wisconsin non-stock corporation in good standing with the Wisconsin Department of Financial Institutions. WSTA’s principal place of business is 121 East Wilson Street, Suite 102, Madison, WI 53703.

2. WSTA is a trade association representing the interests of telecommunications providers throughout the state of Wisconsin. Included in WSTA’s membership is every Incumbent Local Exchange Carrier (“ILEC”) in the state.

3. WSTA’s purpose is more concretely identified in the WSTA Bylaws, which state, in part:

¹ Simultaneous with this request for intervention, WSTA is filing the direct testimony of William C. Esbeck for the Commission’s consideration. Regardless of the Commission’s decision on this request for intervention, the WSTA’s direct testimony may be considered in this docket under Wis. Admin. Code § PSC 2.20(2), which allows testimony from a person who is not a party. WSTA also plans to have a representative present at the February 16th hearing.

The object and purpose of this Association shall be to encourage, develop, foster and stimulate the growth and represent the mutual interest of telecommunications companies of the State of Wisconsin; to promote uniformity and efficiency in the accounting, operating, maintenance, construction, insurance and public safety practices therein; to cooperate with any national group whose purposes are similar to the foregoing; to advise and inform said members of state and federal regulatory bodies' rules, regulation and requirements; represent the interests of its members before regulatory, legislative and other governmental bodies and to promote good public relations.

WSTA Bylaws, Article III.

4. Cheqtel Communications, Inc. (“Cheqtel”) is affiliated with an ILEC, Chequamegon Telephone Cooperative, Inc. (“Chequamegon”). Chequamegon is a member of the WSTA.

5. Annually, every ILEC in the state must file a report with the Commission, in a form prescribed by the Commission, which accounts for all business transacted by the company. Wis. Stat. § 196.06. Among other information, ILECs must report their “Assessable Revenues for Universal Service Fund Assessment Purposes” (“Assessable Revenue”). See e.g., *2004 Annual Report of Chequamegon Communications Cooperative, Inc.*, Utility No. 1070, p. 43 (April 29, 2005). Assessable Revenue includes only intrastate revenue and is the basis for determining a company’s payment into the state Universal Service Fund (“USF”). Wis. Stat. § 196.218(3)(a)3m.; Wis. Admin. Code § PSC 160.18(3) (“Telecommunications providers shall be assessed on the basis of their gross intrastate operating revenues from telecommunications services.”)

6. On December 22, 2005 Cheqtel filed an objection to the USF assessment billed by the Commission. *Universal Service Fund Payments Refund Request*, Cheqtel Communications, Inc., Utility No. 1065, Docket 1065-UO-100 (December 22, 2005) (the “Application”). Cheqtel believes that it initially reported its assessable revenues

incorrectly and therefore its USF contribution is incorrect and excessive. *Application* at 1.

7. On February 8th, 2006 the Commission issued a *Notice of Proceeding and Hearing* in Docket 1065-UO-100 (“*Notice*”) to consider the objection filed by Cheqtel Communications.

8. In the *Notice*, the Commission seeks testimony on Cheqtel’s application and request for a refund. *Notice* at 1. Specifically, the *Notice* states: “If the Commission allows the requested refund, applicant’s monthly USF payments would be reduced by \$1,459.” *Id.* (emphasis added). The underlined portion of this sentence could have several interpretations. One interpretation is that the Commission is seeking verification that Cheqtel did in fact error in its annual report and that the numbers reported in the *Application* are accurate. Another interpretation is that, even if everything in the *Application* is true, the Commission may still deny the *Application*, in its entirety, for policy reasons.

9. An outcome whereby the *Application* is denied for policy reasons would establish a precedent that could affect all ILECs in the state.

10. All ILECs have an interest in insuring that their annual reports reflect their proper assessable revenue which, in turn, determines the level of assessment the company provides to the USF. Establishing a precedent that will preclude companies from correcting errors to their annual reports will negatively affect both the procedural and substantive rights of ILECs in Wisconsin.

11. Where an entity's substantial interests may be affected by a Commission decision, the entity is entitled to intervene in the proceeding if they file a timely motion to intervene. Wis. Admin. Code § PSC 2.21(1) and (3).

12. WSTA has an interest in protecting the substantial interests of its member companies that are at issue in this docket. The Wisconsin Court of Appeals recently determined that trade associations have standing to bring issues before a court when the association can show that any of their members are affected by the action. *See Metropolitan Builders Ass'n of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, ¶ 14, 282 Wis. 2d 459, 698 N.W.2d 301; *see also id.* at n. 3 (noting that the decision is consistent with federal law, which allows associations to be involved in cases on behalf of members when the interests the association seeks to protect are germane to the association's purpose).

13. WSTA also meets the standards for permissive intervention under Wis. Admin. Code § PSC 2.21(2). WSTA's involvement will promote the proper disposition of the issues in this docket because it will offer the views of the ILECs in the state. Additionally, given the fact that WSTA's interest is limited to the policy issues in this docket, WSTA's involvement will not impede the timely completion of this docket.

14. WSTA's motion is timely under the requirements in Wis. Admin. Code § 2.21(3).

For the foregoing reasons, WSTA respectfully requests that the Commission grant intervention in this docket and to include WSTA in the service list for this docket. In the alternative, WSTA respectfully requests amicus status in this proceeding pursuant to Wis. Admin. Code § PSC 2.20(3) and that WSTA's testimony be considered under this status.²

Dated this 15th day of February, 2006.

WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

By: /s/ Brian J. Rybarik

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² To the extent WSTA's request for involvement in this docket is granted, this request will also serve as WSTA's Notice of Appearance as required by Wis. Admin. Code § PSC 2.22.

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**Objection to Universal Service Fund Assessment
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1065-UO-100

DIRECT TESTIMONY OF WILLIAM C. ESBECK

February 14, 2006

1 **Q. Please state your name, employer, position and business address?**

2 A. I am William C. Esbeck, Executive Director of the Wisconsin State Telecommunications
3 Association. The Wisconsin State Telecommunications Association is located at 121
4 East Wilson Street, Suite 102, Madison, Wisconsin 53703.

5 **Q. Will you describe your company?**

6 A. The Wisconsin State Telecommunications Association, commonly referred to as the
7 WSTA, is a non-profit trade association representing telecommunications providers doing
8 business in the state of Wisconsin. Established in 1910, the WSTA serves as a voice for
9 the telecommunications industry in matters of interest before legislators, regulators and
10 the public. Currently, we represent 83 local incumbent telephone carriers (“ILECs”),
11 which is all of the ILECs in the state, 32 Internet Service Providers (“ISPs”) and 10
12 wireless carriers.

13 **Q. How long have you served as the WSTA Executive Director?**

14 A. I have served as the WSTA Executive Director since July of 2002.

15 **Q. Please describe your general responsibilities in your current position.**

16 A. As Executive Director, I am involved in the day-to-day activities of the association and
17 have first-hand knowledge of all of the WSTA’s major legislative and regulatory
18 activities. Additionally, I have relationships with our member companies and am
19 generally aware of the regulatory activities of WSTA members companies.

1 **Q. Do you have remarks generally about the issues in this docket?**

2 A. The issues in this docket are wide ranging. There are very specific issues relating to the
3 accuracy of the numbers in Cheqtel Communication, Inc.'s annual report and their
4 application to change their universal service assessment. Those issues must be addressed
5 by Cheqtel and their representatives. I offer no opinion as to the accuracy of the revenues
6 reported by Cheqtel in their annual report or in this docket. However, underlying those
7 issues is the question of whether, in general, companies should be allowed to seek USF
8 refunds when they discover errors in their annual reports. It is my opinion that it is
9 essential for telecommunications providers in the state to know they have an avenue
10 through which to seek corrections when a mistake is made in an annual report that affects
11 an assessment paid by the company.

12 **Q. What do you think the Commission should focus on in this docket?**

13 A. The Commission's role in this docket should be focused on verifying the figures in the
14 applicant's annual report and application. If those figures are verified to be accurate,
15 there is no reason for the Commission to deny a request for reduced payment into the
16 Universal Service Fund and the request for a refund of amounts overpaid into the fund.

17 **Q. What other options does the Commission have?**

18 A. According to the Notice in this docket, the Commission may deny the request, although
19 the grounds for a denial are not clear to me.

20 **Q. If the Commission denied Cheqtel's request on policy grounds, how would that**
21 **outcome affect WSTA members?**

22 A. If the Commission denies this application for a reason other than the accuracy of the
23 Applicant's figures, the outcome would be significant for WSTA members. This

1 outcome would negatively affect WSTA members because it would establish a precedent
2 under which the Commission could deny requests for corrections to reporting errors. I
3 think everybody can understand that periodic mistakes are going to happen. Indeed, it is
4 my experience that companies do not make a habit of overstating their assessable
5 revenue. When those mistakes happen, companies must have an avenue to correct any
6 errors. The process for correction needs to be applied consistently regardless of the
7 company and amount at stake.

8 **Q. Are you aware of other situations where mistakes were found in annual reports?**

9 A. This is the first instance of which I am aware of an annual report error being the subject
10 of a hearing at the Commission.

11 **Q. Does that conclude your direct testimony?**

12 A. Yes, it does.