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Spirit of Service™

May 19, 2006

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Adoption of Rules Regarding Eligibility Certification and Reporting Requirements for Eligible Telecommunications Carriers Case No. RM 06-001

Dear Ms. Van Gerpen:

Enclosed for filing are the original and ten copies of Qwest Corporation's Comments in the above-referenced matter.

Very truly yours,

Jason D. Topp

JDT/bardm

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2006, the original and 10 copies of the foregoing **QWEST CORPORATION'S COMMENTS** was served upon the following party:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and copies sent electronically or via U.S. mail, addressed to the following:

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SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Rules Regarding Eligibility Certification and Reporting Requirements for Eligible Telecommunications Carriers	**Docket No. RM 06-001**
QWEST CORPORATION'S COMMENTS	

Qwest Corporation ("Qwest") files the following comments in this matter:

Introduction

This Rulemaking was commenced to address proposed rule changes that will set forth the requirements for telecommunications carriers to be designated as eligible telecommunications carriers (ETCs) and to set forth requirements for carriers previously designated as ETCs to obtain the certification necessary to continue to receive federal high-cost support.

In the proposed rulemaking, the Commission proposes to adopt new regulations similar to those proposed by the FCC in the *ETC Order*[1]. Some of these rules are appropriate, others less so. In evaluating these proposed rules, the Commission should evaluate the purpose for such rules: to make sure federal USF support is used for the intended purposes. As set forth in more detail below, some of the proposed rules do not effectively meet these purposes, or unnecessarily duplicate other requirements already

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[1] *FCC Report and Order, In the Matter of Federal-State Joint Board on Universal Service, released March 17, 2005, in CC Docket No. 96-45, FCC Release No. FCC 05-46 (the "ETC Order")*

existing in state or federal law. Qwest's comments to specific requirements are set forth below.

Comments on Specific Rule Proposals

Proposed Rule 20:10:32:52

Qwest proposes that the rule be revised to require filing of reports by August 1 of each year. Qwest proposes a filing date of August 1 because it believes that will provide information to the Commission in sufficient time to allow reporting to the Federal Communications Commission (FCC) and because it believes an August 1 reporting date will provide for a clearer picture of the construction requirements for the next year. The proposed June 1 date is in the early part of the current year construction season and the needs and demand for upgrades and extensions change too much to require the earlier filing date.

Proposed Rule 20:10:32:43.02
Proposed Rule 20:10:32:54 (1)

Qwest believes proposed rules 20:10:32:43.02 and 20:10:32:54 (1) are problematic and may be counterproductive. The proposed rules pose several problems, which are discussed below.

First, although the proposed two-year planning horizon proposed by the Commission is far more reasonable to today's telecommunications marketplace than the FCC's proposal[2], dependable plans for future activity depend on a predictable distribution of support, and federal high-cost support is often unpredictable. Qwest requests that, if this section is included in the Commission's final rules, the planning period should be reduced to one year.

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[2] 47 C.F.R. § 54.209(a) (1)

Current federal high-cost support distribution methods do not provide any reasonable expectation as to the future amounts to be received, because, at least for large ILECs like Qwest, they are based on the cost of providing service in a particular state (as estimated by an FCC computer model) as compared to the national average cost of providing service. In future years, depending on the nationwide distribution of line counts and the then-current federal high-cost fund distribution methodology, Qwest's federal high-cost support for South Dakota could change. Qwest has no control over these factors, and accordingly cannot accurately plan its investment of those funds if received.

Any planning requirements should have the same certainty that funding distributions do – and since funding distributions are uncertain, any plans based on those distributions will also be uncertain. Since the purpose intended for the federal USF is for the provision, maintenance, and upgrading of facilities and service for rural consumers, Qwest expends more than just capital additions in providing universal service. Additionally the Company considers both the amount of USF support as well as future customer demand, revenue, and associated expenses as it expends it capital funds. Moreover, as noted above, inaccurate projections about future investment could actually be counterproductive. This uncertainty further counsels reducing the period for which future investment plans are required to a maximum of one year.

Second, carriers often do not plan investment on a wire center basis. Investments are often planned that have statewide, or even region-wide benefits. For example, a carrier could add equipment or construct a transport facility that will help improve reliability and quality of service for rural consumers, even though the equipment may be located in an urban location or even in another state. Requiring reporting of planning at the wire center level provides a disincentive to carriers to implement system-wide service improvements that can not specifically be attributed to specific wire centers. To avoid such improper skewing of investment, more useful information would be obtained by requiring plans to be submitted only at the statewide level.

Finally, any requirement to submit plans of future investment must be accompanied by measures to carefully protect that information from competitors. If carriers' plans to invest in a certain system or community are known, competitors might avoid those areas, or might plan to implement their own systems in year one if they know another carrier is not planning to invest in a particular area during the two-year planning horizon. In such an event, carriers might modify their investment plans, and service quality would suffer. Future plans are probably the most sensitive of competitive information, and should be treated with appropriate protection. Any rules adopted should therefore include strict confidentiality and secrecy provisions, so that competitors cannot learn each other's future plans.

Proposed Rule 20:10:32:54 (2) (4)

Qwest believes that proposed rule 20:10:32:54 (2) is unnecessarily duplicative of the requirement of Commission Rule 20.10.33.28 and federal requirements. Carriers, including ETCs, are already required to provide detailed information regarding outages to the FCC. In *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*), the FCC imposed outage reporting requirements on carriers. These requirements are also comprehensive, and are ultimately transmitted to the Department of Homeland Security. There is no useful purpose served by duplicating these existing outage and service interruption reporting requirements. Moreover, outage reporting requirements do not provide assurance that federal high cost funds are being spent for intended purposes. They simply provide information about outages, which could result from a number of factors. Accordingly, proposed Rule 20:10:32:54 (2) should not be adopted.

Proposed rule 20:10:32:54 (4) related to annual filing requirements of the number of complaints per 1,000 handsets or lines is redundant and unnecessary. The Commission is aware of the number and nature of Commission complaints filed against carriers – both formal and informal. Under the proposed rule, carriers would merely restate information already known by the Commission. Merely taking the number of complaints, dividing it by 1,000 and then resubmitting it back to the Commission adds no value and is, by itself, an irrelevant indicator and should not be adopted.

Proposed Rule Revisions

Suggested revisions to the proposed rules as discussed above are set out in the redline version attached to these comments as Appendix A.

Conclusion

Qwest appreciates the opportunity to comment on these rules, and looks forward to the opportunity to discuss them with the Commission. Qwest recognizes that it is important for those entrusted with distributing FUSF high-cost funds to know that the support is needed and is being used for its intended purposes. Any rules adopted toward this end, however, must be carefully examined to make sure they are useful and fair. Qwest also requests that the Commission make the changes suggested in these comments.

WHEREFORE Qwest requests that, for the reasons set out above, the Commission revise the proposed rules as described in these comments and as reflected on Appendix A, prior to their adoption.

DATED this 19th day of May, 2006.

QWEST CORPORTATION

By: ______________________

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Qwest Proposed Rule Revisions

20:10:32:43.02 Submission of a two-year plan. An applicant requesting designation as an eligible telecommunications carrier shall submit a ~~two~~one-year plan that describes with specificity proposed improvements or upgrades to the applicant's network ~~on a wire center by wire center basis,~~ throughout its proposed designated service area. Each applicant shall demonstrate the following ~~on a wire center by wire center basis~~ for its proposed designated service area:

(1) How signal quality, coverage, or capacity will improve due the receipt of high cost support;

(2) The projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high cost support;

(3) The specific geographic areas where the improvements will be made; and

(4) The estimated population that will be served as a result of the improvements.

If an applicant believes that service improvements ~~in a particular wire center~~, in its proposed designated service area are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

20:10:32.52 Annual certification requirements for designated eligible telecommunications carriers. Consistent with 47 C.F.R. §§ 54.313 and 54.314 (January 1, 2006), an eligible telecommunications carrier shall request the commission to file an annual certification with the Universal Service Administrative Company and the Federal Communications Commission stating that all federal high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. An eligible telecommunications carrier shall file its request for annual certification with the commission on or before August 1~~, 2006 and June 1 of~~ each year~~ thereafter~~. Failure of an eligible telecommunications carrier to file by the deadline may result in the commission's inability to provide certification to the Universal Service Administrative Company and the Federal Communications Commission by the October 1.

20:10:32:54. Certification requirements. In its annual certification filing, each eligible telecommunications carrier shall provide the following to the commission:

(1) A progress report on its ~~two~~one-year service quality improvement plan, including maps detailing its progress toward meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be supplied at ~~the wire center level~~ the designated service area:

~~(2) Detailed information on any outage as that term is defined in 47 C.F.R. §4.5 (January 1, 2006), of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes. The outage must potentially affect at least ten percent of the end users served in a designated service area, or a 911 special facility, as defined in 47 C.F.R. § 4.5(e) (January 1, 2006). Information on the outage must include:~~

~~(a) The date and time of onset of the outage;~~

~~(b) A brief description of the outage and its resolution;~~

~~(c) The particular services affected;~~

~~(d) The geographic areas affected by the outage;~~

~~(e) The steps taken to prevent a similar situation in the future; and~~

~~(f) The number of customers affected;~~

~~(4) The number of complaints per 1,000 handsets or lines~~