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Re: Case No. WST-T-05-1

Dear Commissioners:

Qwest Corporation ("Qwest") seeks the Commission's indulgence in considering these late-filed comments in response to the Commission's May 27, 2005 Notice of Request for Additional Public Comment in Case No. WST-T-05-1 regarding whether the Commission should adopt new rules with respect to ETC designation in light of the Federal Communication Commission's (FCC) proposed requirements for ETC designation in its recent order.[1]

INTRODUCTION

In the *ETC Order*, the FCC set forth standards it would apply in order to certify and award federal universal service fund ("FUSF") support to federally designated ETCs. The FCC also "encourage[d] state commissions to consider the requirements adopted in this Report and

1 *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*")

Order when examining whether the state should designate a carrier as an ETC,"[2] but "decline[d] to mandate that state commissions adopt our requirements for ETC designations."[3]

Although Qwest will generally address whether the Commission should adopt the FCC's proposed requirements, it would like to state at the outset that it believes that any such requirements, if adopted, should only apply to companies that actually receive FUSF high cost support. Although Qwest does participate in the Federal Lifeline and Link-up programs, it has received high cost FUSF support in Idaho only in northern Idaho and on a relatively modest basis.

Regarding the FCC's proposed requirements, some of the requirements are appropriate, others less so. In evaluating the proposed requirements, the Commission should evaluate the purpose for such requirements: to make sure FUSF high cost support is used for the intended purposes. As set forth in more detail below, some of the proposed requirements do not effectively meet these purposes, or unnecessarily duplicate other requirements already existing in state or federal law. Qwest's comments to specific requirements are set forth below.

COMMENTS ON SPECIFIC FCC REQUIREMENT PROPOSALS

§ 54.202(B)

> <u>Submit a five-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 how signal quality, coverage or capacity will improve due to the receipt of high-cost support; 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; the projected start dated and completion date for each improvement and the estimated amount of investment for each project that is funded by high cost</u>

2 ETC Order, ¶ 59.

3 *Id.*, ¶ 61.

> support; specific geographic areas where the improvements will be made; and 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 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;

This requirement, and the accompanying annual reporting requirement relative to five year plans in § 54.202(B), are not useful, and should not be adopted, for the following reasons: (1) A five-year plan is too long in today's telecommunications marketplace to provide useful information; (2) dependable plans for future activity depend on a predictable distribution of support, and FUSF high-cost support is often unpredictable; and (3) carriers do not typically plan investment at the wire center level, and as a result, requiring planning at the wire center level is both not useful and could skew investments away from their most efficient purposes. Finally, in any event, because investment plans contain the most sensitive competitive information, if any requirements about any future plans are imposed, those requirements should also include provisions that guarantee that such plans are kept confidential and unavailable to any competitors.

First, the five-year time horizon is too long. Today's telecommunications market evolves by the month and by the day. Five years ago, wireless service was far more expensive and far less prevalent than it is today. Few if any cable operators provided telephone service. Voice over internet protocol, or VoIP, existed only in rudimentary form and was not available from commercial providers. Today, wireless services and cable telephony are effectively competing for and even replacing wireline services at ever-increasing rates. VoIP, though in its nascent stages, is widely predicted as yet another effective alternative to traditional wireline telephony. Carrier bankruptcies, mergers, and acquisitions are happening at an accelerating pace. As a result of these and other factors, Qwest does not plan any of its network investments five years out, and expects that few other carriers do.

These realities of the current marketplace mean that any plan a carrier might submit to comply with the proposed requirements would be all but meaningless beyond a year or two. Even submitting such plans with the idea that they would be revised could create false impressions in the minds of the Commission or any person who views the plans. Qwest is concerned that even if plans were submitted with an abundance of qualifying language, carriers might be penalized or criticized if technology or market conditions cause a change in direction. Requiring carriers to submit plans which they have no realistic expectation will be fulfilled serves no legitimate purpose, and the five year time horizon should be reduced to a period of one year.

Second, plans over any time horizon require the planning carrier to have a reasonable expectation as to the amount of FUSF support that might be received over that time horizon. Current FUSF distribution methods do not provide any reasonable expectation as to the amounts received. The receipt of funding can be unpredictable and may not be factored into its previously filed plans. In any given year, depending on the nationwide distribution of line counts and the then-current FUSF high cost fund distribution methodology, a company's FUSF high cost support could evaporate entirely, or increase substantially. Companies have no control over these factors, and accordingly cannot accurately plan their investment of such 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, and therefore minimally useful. 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.

Third, 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 implement information systems that provide its service technicians with more reliable information about technical problems more quickly, and those systems would help improve reliability and quality of service for all customers of that carrier in rural Washington, urban Washington, and other states where that carrier operates. Requiring planning at the wire center level would provide a disincentive to carriers to implement system-wide service improvements that could not easily 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 until year four. In such an event, the carrier planning investment in year four might modify its plans, and service quality would suffer. Future plans are probably the most sensitive of competitive information, and should be treated with appropriate sensitivity. Any requirements adopted should therefore include strict confidentiality provisions, so that competitors cannot learn each others' future plans.

§ 54.209 (2)

> (2) Detailed information on any outage as the term is defined in 47 C.F.R § 4.5, 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 that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (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) 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;

These requirements do not ensure that FUSF support is spent for the intended purposes, and duplicate existing requirements. Federal ETCs and other carriers 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. Duplicating these outage reporting requirements is inefficient and poses compliance burdens for carriers who have to measure and report outages based on several different methodologies.

Moreover, outage reporting requirements do not provide assurance that FUSF high cost funds are being spent for intended purposes. They simply provide information about outages, which could result from a number of factors. Accordingly, these reporting requirements should not be adopted. If the state does adopt outage reporting requirement, they should be consistent with the FCC requirements, including the ability to submit such reports on a confidential basis.

The requirement in subpart 4 also is redundant and unnecessary. The number and nature of Commission complaints already resides at the Commission. Companies would be merely restating 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 is inefficient as it adds no value by itself and, thus, should not be adopted.

CONCLUSION

Qwest appreciates the opportunity to comment on the issues. Qwest recognizes that it is important for those entrusted with distributing FUSF high cost funds to know that that support is needed and is being used for its intended purposes. Any rules adopted towards this end, however, must be carefully examined to make sure they are useful and not duplicative of exiting rules.

Very truly yours,

Mary S. Hobson
Attorney for Qwest Corporation

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