

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Schools and Libraries Universal Service ) CC Docket No. 02-6  
Support Mechanism )

**COMMENTS OF**  
**QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) hereby submits its Comments in response to the Wireline Competition Bureau’s (“Bureau”) *Public Notice* regarding proposed revisions to FCC Forms 472, 473 and 474.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

Qwest does not object to most of the changes proposed by the Bureau. However, Qwest believes that some of the detailed certifications applicable to service providers should be revised or eliminated. While the Bureau’s goal of combating waste, fraud and abuse is laudable, some of the proposed service provider certifications are flawed in important ways. In particular, the certifications in the Form 472, Billed Entity Applicant Reimbursement (“BEAR”) form, should be limited to matters concerning the applicant and reimbursement addressed by that form. Inclusion of broader certifications in that form is unnecessary and burdensome. Furthermore, some of the certifications proposed by the Bureau establish requirements that either are not reflected in the Federal Communications Commission’s (“Commission”) rules or are inconsistent with those rules. To the extent the Commission wishes to adopt new obligations on service providers, it should do so through the normal rulemaking process.

---

<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Proposed Revisions to FCC Forms 472, 473 and 474*, CC Docket No. 02-6, Public Notice (March 1, 2005) (“*Public Notice*”).

I. The Commission Should Eliminate Any Certifications In The Form 472 Concerning The Service Provider's General Policies

The Bureau proposes to include six service provider certifications in the new Form 472. The first four certifications properly address matters regarding the reimbursement sought by the applicant submitting that form, such as the remission of discounts to the applicant and receipt of funds from the applicant. In contrast, the fifth and sixth certifications (Certifications E and F) have only a tangential relationship to the applicant and its reimbursement. Rather, these certifications primarily concern the service provider's general compliance with policies regarding the disclosure of persons subject to relevant criminal and civil judgments and the retention of documents related to the schools and libraries support mechanism. These certifications have no place in the Form 472. The sole purpose of the BEAR is to ensure that the applicant is entitled to the reimbursement that it is seeking. It is inappropriate to include general certifications in this form.

To the extent these certifications are needed, they should be included only in the Form 473, which is filed annually, and not in the BEAR.<sup>2</sup> Because the BEAR is transaction-specific, Qwest processes literally thousands of these forms each year. The form is typically signed on Qwest's behalf by a Service Delivery Coordinator, who has no direct knowledge of the matters addressed in Certifications E and F. If these certifications remain in the BEAR, Qwest will have to develop new processes to ensure that a person signing a BEAR is in a position to make these certifications. The expense and burden of developing such processes is unwarranted, given that

---

<sup>2</sup> For the reasons discussed in the next section, a portion of the certification regarding criminal and civil judgments should be eliminated from the Form 473 as well.

the Commission can include any necessary certifications regarding Qwest's general policies in the Form 473.<sup>3</sup>

II. The Bureau Should Eliminate Any Certifications That Impose Obligations That Are Not Reflected In, Or Are Inconsistent With, The Commission's Rules

The Bureau must also avoid establishing any new substantive legal requirements in the guise of certifications, particularly to the extent those new requirements conflict with current Commission rules. It appears that a number of the proposed certifications fall into this category, including the requirement to investigate and report persons subject to criminal or civil judgments arising from participation in the schools and libraries support mechanism, the duty to charge the applicant its lowest rates and ensure that those rates are competitive with the rates generally paid for similar services and equipment in the local community, and prohibitions on rewards of any type to an applicant, disclosure of bids to competitors, and inducement of others to submit or not submit a bid for purposes of restricting competition.

Because these certifications would impose legal requirements that are not found in the Commission's rules, or are inconsistent with those rules, the certifications should be omitted from the new forms. Such requirements should be imposed, if at all, through the Commission's normal procedures for adopting new substantive rules. Failure to do so will result in rules that are vague and ambiguous, and therefore not reasonably and fairly enforced by the Commission.

---

<sup>3</sup> The new Form 472 also requires service providers to certify that the applicant has paid for the services referenced in Column 14 of that form. *See* Proposed Form 472 at 4 (Block 4, Certification D). In some cases, a service provider may need additional information from the applicant in order to make this certification. Some applicants have many billing telephone numbers. Because the BEAR does not identify the billing telephone numbers associated with the reimbursement sought by the applicant, it may be difficult for the service provider to link the proposed reimbursement with particular payments made by the applicant. The Commission should clarify in the instructions for the BEAR that the applicant is required to supply the service provider with additional information, such as the associated telephone numbers, that is necessary to allow the service provider to make Certification D.

A. Requirement To Investigate And Report Criminal Violations And Civil Liabilities

Both the proposed Form 472 and Form 473 include a new certification regarding persons who have been subject to civil or criminal judgments arising from their participation in the schools and libraries support mechanism.<sup>4</sup> Qwest does not have a problem with the first sentence of these certifications, which simply acknowledges that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program.<sup>5</sup> The second sentence is a different story, however. The certification in the proposed Form 472 requires service providers to “institute reasonable measures to be informed, and . . . notify USAC should [the service provider] be informed or become aware that [the service provider] or the applicant listed in this Form 472, or any person associated in any way with [the service provider] or the applicant, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.”<sup>6</sup>

This is a new legal requirement that is not reflected in the Commission’s rules. Section 54.521 of the Commission’s rules sets forth detailed procedures regarding suspension and debarment from the schools and libraries program of persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism.<sup>7</sup> This rule was adopted by the Commission two years

---

<sup>4</sup> Proposed Form 472 at 4 (Block 4, Certification E); Proposed Form 473 at 2 (Block 2, Certification 15).

<sup>5</sup> See 47 C.F.R. § 54.521.

<sup>6</sup> Proposed Form 472 at 4 (Block 4, Certification E). The second sentence of the certification in the proposed Form 473 would impose a similar requirement on service providers.

<sup>7</sup> See 47 C.F.R. § 54.521.

ago in the *Second Report and Order*.<sup>8</sup> The Commission directed the Bureau to make “any necessary changes to FCC forms, including a notification that a person convicted of or held civilly liable for the conduct specified [in the *Second Report and Order*] shall be suspended and debarred absent extraordinary circumstances.”<sup>9</sup> The Commission did not establish, or direct the Bureau to establish, any requirements for a service provider to monitor and disclose to USAC any relevant civil and criminal judgments -- particularly of its schools and libraries customers and other “persons” associated with the service provider. The Commission certainly did not require service providers to “institute reasonable measures to be informed, and . . . notify USAC” that the service provider, an applicant, or “any person associated in any way” with the service provider or applicant has been subject to criminal conviction or civil liability arising from their participation in the schools and libraries program.

Because of the way in which this requirement is being adopted, *i.e.*, as part of a certification on a form, the requirement is woefully ill-defined. Neither the proposed forms or the accompanying instructions explain what types of “measures to be informed” are “reasonable.” The certification’s reference to “any person associated in any way” with the applicant is similarly broad and undefined. To the extent the Commission were going to impose this requirement on service providers, it would be obligated to provide sufficient clarity so that service providers can understand -- prior to an audit or an enforcement action -- exactly what is expected of them. This requirement is also inimical to the relationship of trust that should be fostered between a service provider and its customers. For these reasons, the Commission should eliminate the certification requirement from the new forms.

---

<sup>8</sup> *In the Matter of Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202, 9224-28 ¶¶ 64-77 (2003) (“*Second Report and Order*”).

B. Requirement For Service Providers To Charge Their Lowest Rates And To Ensure That These Rates Are Competitive With Rates Generally Paid For Similar Services And Equipment In The Local Community

If the proposed Form 473 is adopted, a service provider would be required to certify that its rates “for goods and services provided pursuant to the program are its lowest and are competitive with the rates generally paid for similar services and equipment in the local community.”<sup>10</sup> The requirement for a service provider to offer its “lowest” rates pursuant to the program is not found in the Commission’s rules. On the contrary, the rules contain a different standard. Section 54.511(b) requires a service provider to charge schools and libraries that are no higher than the “lowest corresponding price,” which is defined as “the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.”<sup>11</sup> In the *Universal Service Order* and *Fourth Order on Reconsideration*, the Commission explored what it means for a school or library to be “similarly situated” to other customers of the service provider, and how “similar services” should be defined.<sup>12</sup> These nuances are ignored in the proposed certification.

The certification’s requirement that the service provider’s rates be “competitive with the rates generally paid for similar services and equipment in the local community” is also absent from the Commission’s rules. Indeed, the Commission has placed responsibility on schools and libraries to ensure that they are paying competitive rates for the services and equipment they

---

<sup>9</sup> *Id.* at 9228 ¶ 76.

<sup>10</sup> Proposed Form 473 at 2 (Block 2, Certification 17).

<sup>11</sup> 47 C.F.R. §§ 54.500(f), 54.511(b).

<sup>12</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9033-34 ¶¶ 488-90 (1997) (“*Universal Service Order*”); *In the Matter of Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 5318, 5400-02 ¶¶ 139-44 (1997). *See also In the Matter of Federal-State Joint Board on Universal Service*, Order, 13 FCC Rcd 14081, 14082 ¶ 4 (Comm. Carr. Bur. 1998).

purchase through the program. In the *Universal Service Order*, the Commission determined that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed of the choices available to them and receive the lowest prices.<sup>13</sup> This makes sense since a service provider generally will not have the information necessary to assess whether its rates are competitive with other providers.

Furthermore, the standards in the certification are vague and ambiguous. Neither the certification or the accompanying explanation explain what it means for a service provider's rate to be "competitive" with other rates in the community. Is a rate competitive if it is 10% higher than comparable rates? 20%? 30%? Similarly, it is not clear what is meant by "local community." Does a service provider have to compare its rates to other providers in the same city as the school or library? The same metropolitan area? The same state? Without such specific guidance, a service provider will have no way of knowing whether it is in compliance with these requirements when it signs the certification. Until the Commission clarifies these details, and explains the relationship of this certification, with its existing rules, the Bureau should eliminate the certification from the new form. If the Bureau believes that such a certification is necessary in the new form, it should modify the certification as follows: "I certify that the rates charged by the service provider listed on this Form 473 for goods and services provided pursuant to the program are no higher than the corresponding lowest comparable prices, as required in section 54.511(b) of the Commission's rules."

C. Requirements Relating To The Competitive Bidding Process

In the proposed Form 473, the Commission proposes three certifications related to the competitive bidding process. All three impose new substantive requirements on service

---

<sup>13</sup> *Universal Service Order*, 12 FCC Rcd at 9029 ¶ 480.

providers. Certification 12 prohibits services providers from giving “a reward of any type to any applicant in return for the selection of this service provider to provide these goods and services,” or from providing “any kickbacks or paid commission to any recipient entity(ies) in connection with the receipt or maintenance of any of the services or equipment.”<sup>14</sup> Certification 19 prohibits a services provider from knowingly disclosing “directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law.”<sup>15</sup> In Certification 20, the service provider would have to certify that “no attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.”<sup>16</sup> While these new requirements may be appropriate in terms of protecting the integrity of the bidding and procurement process, the fact remains that these are new substantive requirements that should be adopted through the formal rulemaking process.

Again, this is not merely a theoretical problem. The requirements in the certifications are so vague that it will be difficult for a service provider to determine whether it is in compliance with the requirements and therefore can truthfully sign the certifications. For example, it is unclear whether Certification 12 would allow a service provider to waive installation charges for schools and libraries, in the same way that it waives such charges for other types of customers when they sign up for service. The other certifications are equally broad and undefined.

There is also a question whether the certifications, and the requirements within those certifications, are necessary. Service providers are subject to a variety of state and federal laws

---

<sup>14</sup> Proposed Form 473 at 2 (Block 2, Certification 12).

<sup>15</sup> Proposed Form 473 at 2 (Block 2, Certification 19).

<sup>16</sup> Proposed Form 473 at 2 (Block 2, Certification 20).

governing kickbacks, commissions, bribery, ethics and procurement. It is unclear how the requirements in the certifications relate to those state and federal requirements.

Given these issues, the Commission should eliminate Certifications 12, 19, and 20 until the Commission has promulgated rules covering the requirements addressed in those certifications.

#### CONCLUSION

For the reasons discussed above, the Commission should adopt the proposals outlined herein.

Respectfully submitted,

QWEST COMMUNICATIONS  
INTERNATIONAL INC.

By: Craig J. Brown  
Blair A. Rosenthal  
Craig J. Brown  
Suite 950  
607 14<sup>th</sup> Street, N.W.  
Washington, DC 20005  
(303) 383-6649

March 22, 2005

Its Attorneys

## CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 02-6, 2) served, via e-mail on Greg Lipscomb in the Telecommunications Access Policy Division, Wireline Competition Bureau at [greg.lipscomb@fcc.gov](mailto:greg.lipscomb@fcc.gov), and 3) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

Richard Grozier  
Richard Grozier

March 22, 2005