

Farmington and the *Navajo Times* and set a deadline for filing motions to intervene of December 2, 2005. On November 18, 2005, the Hearing Examiner issued a Procedural Order requiring SWC to publish the Commission's Order in a newspaper of general circulation in the State of New Mexico on the ground that the subject matter of Sacred Wind's Applications involves a matter of general public interest.

On December 5, 2005, SWC filed affidavits of publication indicating the Order had been published in the following: *The Navajo Times*; *The Albuquerque Journal*; *The Daily Times* published in Farmington; and *The Independent* published in Gallup.

On December 22, 2005, Sacred Wind filed a Petition for Variance or Waiver of Provisions of 17 NMAC Section 11.10.24 and Request for Expedited Consideration asking the Commission to waive certain requirements for applications for eligible telecommunications ("ETC") designation set forth in 17.11.10.24.A(4) and 17.11.10.24.A(11) NMAC ("Petition for Waiver" or "Petition").

Also, on December 22, 2005, Sacred Wind filed a Motion for Letter of No Opposition to Federal Communications Commission's Consideration of Waiver Request and Request for Expedited Consideration ("Motion for Letter").

On January 10, 2006, Sacred Wind filed its Amendment to Phase B Application for Certificate of Operating Authority, Public Convenience and Necessity and Designation as an Eligible Telecommunications Carrier and Related Approvals asking to withdraw its request to be designated as an

*incumbent rural telecommunications carrier pursuant to NMSA 1978, Section 63-9H-5 (1999) and, in lieu of that request, SWC asks the Commission to find that SWC is a rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines pursuant to the Rural Telecommunications Act of New Mexico, NMSA 1978, Section 63-9H-1 to 14 (as amended through 2005).*

The following filed motions for leave to intervene in this matter, which were granted: the New Mexico Exchange Carrier Group ("NMECG"); and the Attorney General of the State of New Mexico ("AG").

In addition to the testimonies filed with the Applications, the following filed testimony in this matter: Messrs. Badal and Romero filed supplemental testimony on behalf of SWC and Mr. Badal filed rebuttal testimony; Michael S. Ripperger, Chandan Choudhary and Susan E. Oberlander filed direct testimony on behalf of Staff and Mr. Ripperger also filed response testimony; and Nita A Taylor filed direct testimony on behalf of Qwest.

The following appearances were entered at the January 11, 2006 public hearing:

**For Sacred Wind**

Carol A. Clifford, Esq.

**For Qwest**

George Baker Thomson, Esq.

**For the Attorney General**

Brian Harris, Esq.

**For NMECG**

William P. Templeman, Esq.

**For Staff**

Joan T. Ellis, Esq.  
Ashley C. Schannauer, Esq.

NMECG's attorney asked to be excused at the commencement of the hearing, and his request was granted.

The following witnesses appeared and were examined at the hearing:

**For Sacred Wind**

Mr. John W. Badal  
Mr. Calvert Garcia  
Mr. David P. Aspenson  
Mr. Charles W. Hedelius  
Mr. Ben A. Romero  
Mr. Gil Arviso

**For Qwest**

Ms. Nita A. Taylor

**For Staff**

Mr. Michael S. Ripperger  
Mr. Chandan Choudhary  
Dr. Susan E. Oberlander

Vice-Chairman Jason Marks and Commissioner Linda Lovejoy attended portions of the hearing.

At the hearing, the following person requested and was granted the opportunity to comment pursuant to 17.1.2.26.F NMAC: Mr. Wilson Ray, President of the Huerfano Chapter of the Navajo Nation. In addition, the Hearing Examiner took administrative notice of public comments presented during the hearing in Case No. 05-00181-UT, *In the Matter of a Notice of Inquiry into Qwest Corporation's Rural Extension Fund*, reflected on pages 5 to 36 of the August 22, 2005 transcript. Those comments included comments of President Joe Shirley, Jr., president of the Navajo Nation and officials from the Navajo Nation Council, Eastern Agency Land Commission, Navajo Nation Telecommunications Regulatory Commission, Navajo Eastern Land Commission, and the Casamero Lake, Huerfano, Rock Springs, Bread Springs, Torreon and Nagheezi Chapters.

Following the hearing, SWC, Qwest, the AG, and Staff filed their Joint Proposed Recommended Decision on January 26, 2006. On February 21, 2006, the Hearing Examiner issued a Recommended Decision in this case. On March 7, 2006, a Joint Waiver of Exceptions and Motion to Supplement Recommended Decision was filed by Sacred Wind, Qwest, the AG, and Staff requesting that certain findings of fact and conclusions of law and decretal language be incorporated in the decision and a corrected recommended decision be issued. The motion also indicated the parties waived the right to file exceptions to such a recommended decision. The motion stated that intervenor NMECG joins to the extent the parties waived exceptions and does oppose the motion to supplement the recommended decision.

## **DISCUSSION**

Sacred Wind is a New Mexico corporation incorporated in 2004, with the stated purpose of providing telephone and telecommunications services. Sacred Wind's representatives state that Sacred Wind's proposed network is designed to serve certain areas of the Navajo Nation and to mitigate the difficulties associated with installation of wireline facilities in remote, sparsely populated areas. SWC plans to use the latest telecommunications technology such as Fixed Wireless Local Loop ("FWLL") and Radio Frequency systems to minimize the need for the placement of landline facilities.

Sacred Wind and Qwest have negotiated an Asset Purchase Agreement ("Agreement"), which will be executed dependent upon the following: 1) issuance of approvals by the Commission of the Applications and the interim tariffs Sacred Wind proposes to file when the Commission approves the Applications; 2) approval of SWC's and Qwest's joint application to the Federal Communications Commission ("FCC") seeking domestic Section 214 authorization for transfer of control; and 3) approval by the Rural Utilities Service of the United States Department of Agriculture ("RUS") of SWC's loan application.

SWC's proposed acquisition of Qwest's assets, network facilities, certain liabilities, customers and service territory on the Navajo Nation (the "Sale Territory") includes the following Qwest exchanges: Farmington West, Farmington Main, Aztec/Bloomfield, Albuquerque West, Grants Main, Fort Wingate, Thoreau (Gallup East) and Gallup Main. These exchanges include all

or portions of 29 Navajo Chapters – 21 Chapters with Navajo homes mapped within Qwest's service territory -- but will not include the facilities within the municipalities listed above. The Chapters wholly or nearly wholly within this area are To'hajiilee, Baca/Prewitt, Iyanbito, Thoreau, Church Rock, Huerfano, and Nageezi. The Chapters that have a lesser portion of geography included within this area are Red Rock, Rock Springs, Tsayatoh, Manuelito, Nenahnezad, and Upper Fruitland. Chapters with only a small number of homes within a minor portion of geography included in this area are White Horse Lake, Casamero Lake, Mariano Lake, Pinedale, Little Water, Coyote Canyon, Bread Springs, and Pueblo Pintado. Even smaller portions of eight other Chapters, though with no homes yet to be found in the Sale Territory, are also a part of the purchase agreement. Those Chapters are: Counselor, Torreon, Twin Lakes, Smith Lake, White Rock, Hogback, Sanostee, and Nahodishgish.

There were 2,316 access lines within the Sale Territory as of the date of the Agreement in the Sale Territory: 1,970 residential lines, 274 business lines and 72 public telephone lines. A boundary map of the proposed Sacred Wind service territory was submitted into the record.<sup>2</sup>

To meet its responsibilities to the Commission and its current customers in its pending sale of telephone assets on the Navajo Nation to Sacred Wind, Qwest filed its Notice of Proposed Discontinuance of Service on October 31, 2005, supported by the Direct Testimony of Nita A. Taylor, filed on December 15, 2005. Qwest proposes a transfer of a portion of its service territory to Sacred

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<sup>2</sup> SWC Exhibit 7, Rebuttal Testimony of Badal, Ex. RJB 3.

*Wind, assuming that the Commission grants the appropriate approvals and certifications.*

Sacred Wind initially sought approval to serve the community of Rincon Marquez currently served by Citizens/Frontier; however, Sacred Wind was unable to obtain an affidavit from that company agreeing to the transfer of this service territory, and therefore, Sacred Wind withdrew this request at the hearing.

#### **STATEMENT OF LAW**

Pursuant to the New Mexico Telecommunications Act, NMSA 1978, Sections 63-9A-1 through 63-9A-20 (1985, as amended through 2004) (the "Act"), the Commission adopted 17.11.5 NMAC (1996), a rule imposing registration requirements for local exchange telecommunications services within the State of New Mexico ("the LEC Rule"). The LEC Rule provides that an entity holding a certificate of public convenience and necessity ("CCN") may discontinue its services only after ensuring continued quality of service and protection of consumer interests by notifying the Commission of (i) the number of customers affected, (ii) the form of notification to be given to each customer, (iii) the procedures for handling any customer deposits and outstanding debts to local exchange carriers or other carriers prior to and after discontinuance of service, and (iv) the arrangements made for alternative service for the entity's local exchange service customers.

**17.11.5.17 NMAC.**

The Act requires a telecommunications company seeking to provide intrastate public telecommunications services within this state to obtain from

the Commission a certificate demonstrating that the operation "is in the present or future public convenience and necessity." NMSA 1978, Section 63-9A-6(B). The Commission has the discretion under the Act to determine "when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, . . . and the commission may attach to the exercise of such rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require . . . ." NMSA 1978, Section 63-9A-6(C).

The Rural Telecommunications Act, NMSA 1978, Section 63-9H-1 to 63-9H-14 (1999, as amended through 2005) (the "Rural Act") requires a telecommunications company seeking to provide rural public telecommunications service in the state to obtain a certificate of public convenience and necessity ("CCN"). Under the Rural Act, the Commission is to consider a number of factors in determining whether to issue a CCN to provide rural public telecommunications services. These factors include (1) whether the applicant has sufficient financial resources to provide the proposed telecommunications services properly and continuously; (2) whether the applicant has competent and experienced management and personnel to provide the proposed telecommunications service; (3) whether the applicant is willing and able to conform to all applicable laws and the rules of the commission applicable generally to providers of telecommunications; and (4) whether any exemption, suspension or

modification is available to any provider of the subject service in the subject area.

The LEC Rule further provides that no local exchange service may be offered in the state without a certificate of financial and technical competency ("CFTC") and a certificate of operating authority ("COA") from the Commission. To obtain a CFTC, an applicant must demonstrate that: (1) its financial resources will "support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests," (17.11.5.10.B(1) NMAC); and (2) possesses the technical competence to provide the local exchange services (17.11.5.10.B(2) NMAC). To obtain a COA, an applicant must demonstrate that its proposed services will: "(1) ensure continued quality of service; (2) preserve and advance universal service; (3) safeguard the rights of consumers; (4) protect the public health, safety and welfare; (5) protect the public interest; and (6) provide service at rates that are just and reasonable." 17.11.5.12.A NMAC.

## **STATEMENT OF THE FACTS**

### **A. Applicants**

Qwest Corporation is a Colorado corporation authorized to do business as a foreign corporation in the State of New Mexico. Qwest is a certificated provider of "public telecommunications service," as defined in NMSA 1978, Section 63-9A-3.

Pursuant to a CCN issued by the Commission, Qwest owns, operates and controls plant and facilities in New Mexico through which it currently provides public telecommunications services to customers in New Mexico.

Sacred Wind was incorporated in New Mexico in 2004, and established to provide telecommunications services. A certificate of good standing issued June 17, 2005, is attached to Sacred Wind's Applications, Phase A. SWC currently holds no certificate to provide telecommunications services in the State of New Mexico. SWC represents the following: it is not authorized to provide telecommunications services in any other state; it has neither been denied an application nor had a pre-existing certification revoked in any other state; and no formal complaint or enforcement proceeding has been initiated by any state against SWC.

**B. Discontinuance of Service by Qwest**

In 2005, SWC and Qwest negotiated the Agreement that provides that SWC will purchase Qwest's assets, network facilities, certain liabilities and service territory on the Navajo Nation. According to the testimony of Mr. Badal, the Agreement provides that all liabilities, responsibilities and obligations relating to customer advances and deposits are to be assumed by Sacred Wind at closing. In this Agreement, Qwest agrees to sell its properties within the Sale Territory to Sacred Wind for a price agreed to by both parties. Those properties involve the copper and any fiber distribution, extensions and drops, the Network Interface Devices (NID) and any inside wire of homeowners who have subscribed to a Qwest Linebacker service. They also include poles, conduit, and

*pedestals, cross boxes, and splice boxes within the relevant Chapters and* twenty-two meet points where Sacred Wind's distribution intersects with Qwest's feeder. Mr. Badal testified that the Agreement includes provisions for the relief of all held orders located within the Sale Territory through Sacred Wind's assumption, with Commission approval, of a portion of Qwest's Rural Extension Fund ("REF") assets and rural extension obligations. Finally, the Agreement includes, for a fee, switching, outside plant, and Operating Support Systems (OSS) work to be carried out by Qwest for Sacred Wind until Sacred Wind constructs its own central office and backbone and installs and operates its own such OSS systems.

According to testimony in the case, prior to closing on the sale transaction, the Agreement obligates Qwest to provide telecommunications services in the ordinary course of business and to make no material changes to the business. Also, the Agreement provides for transition service agreements, which should ensure a smooth transition of ownership and operations. The parties have also agreed to negotiate interconnection agreements. The Agreement requires Qwest to transfer any customer deposits and advances to Sacred Wind. Sacred Wind will assume all liabilities, responsibilities and obligations related to them. Sacred Wind states that it recognizes that the question of any transfer of REF monies will be addressed by the Commission in a separate proceeding.

On October 31, 2005, Qwest filed its Notice of Proposed Discontinuance of Service ("Notice"). On December 16, 2005, Qwest filed the Direct Testimony

of Nita A. Taylor<sup>3</sup> supporting the Notice and providing additional information relevant to that Notice. Ms. Taylor states that the amount of customer deposits affected by the transaction with Sacred Wind is \$1,405. Qwest states that the public interest would be served by transfer of the Sale Territory to Sacred Wind as Sacred Wind can serve this area more economically, thereby increasing the penetration rates in the territory. At hearing, Ms. Taylor stated that Qwest is willing to work with Staff on the timing and the content of the customer notification to avoid customer confusion about the transfer of operations.

**C. Approvals Sought by Sacred Wind**

In addition to the relief requested in its Motion for Letter of No Opposition and Petition for Waiver, Sacred Wind seeks the following relief in its Applications, Phases A and B: (1) a finding that the public convenience and necessity require issuance of a CCN to Sacred Wind to provide rural public telecommunications services within the Sale Territory, which certificate shall become effective upon the closing of the Agreement; (2) a CFTC, a COA and CCN pursuant to law; (3) a finding that SWC is a rural telecommunications company serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Act; (4) designation as an Eligible Telecommunications Carrier ("ETC") in its operating area pursuant to the federal the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and state law; (5) a finding that is in the public interest for Sacred Wind to be designated as an ETC for purposes of receiving support from the federal universal service fund ("USF"); (6) upon designation of SWC as an ETC, certification to the FCC and the Universal

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<sup>3</sup> Qwest Exhibit I.

*Service Administrative Company (USAC) that all universal service high-cost support received by SWC will be used in a manner consistent with the Act; and (7) statements of support, encouragement and endorsement of Sacred Wind's filed applications and petitions with the FCC requesting waivers of federal rules.*

**D. Services to be Provided by Sacred Wind**

Mr. Romero testified that SWC's customer base will be primarily residential households. Sacred Wind anticipates that the vast majority of its new facilities will provide service to additional residential households. SWC intends to offer the following services: Single party local exchange service with local usage; access to emergency services, operator services, directory assistance and interexchange services; toll limitation services; custom calling features, including Caller ID, Voice Messaging, Call Waiting, and Conference Calling; Long Distance; dial-up Internet access at 64 Kbps; high speed Internet access at 256+ Kbps; and Navajo-oriented Internet Service Provider ("ISP") service. SWC represents that all calls between customers located within Sacred Wind's Service Territory will be considered local calls. Sacred Wind will partner with an ISP for the delivery of Internet services over the wireline and FWLL access lines serving customers.

**E. Provisioning Method and Facilities Description.**

SWC proposes to serve its customers using both copper wire infrastructure purchased from Qwest and expanded by SWC, and a new FWLL network on a single IP platform along with extensive Radio Frequency ("RF") facilities. Initially, wireline customers of Qwest will be served with wireline

facilities; new customers will be served with a hybrid of wireline and wireless facilities. SWC will be expanding its central network and backbone as it expands its distribution and extension plant to serve new customers and new unserved areas. SWC plans to use FWLL and Voice over Internet Protocol (VoIP) to extend services to remote areas on and off the reservation. Where there is existing telecommunications plant, serious effort will be utilized to maintain and upgrade the plant in accordance with the right of way agreement entered into between Sacred Wind and the Navajo Nation.

Mr. Romero testified that the unlicensed RF equipment will primarily be used to aggregate subscribers to a central radio site, equivalent to the "last mile" of telephone plant. It will also be used to gather smaller radio sites into larger radio sites that would be the equivalent of a wire center. Licensed RF equipment will be utilized to major radio sites requiring more bandwidth and FCC protection of spectral capacity. These sites would connect all of the major radio sites back to a central office for switching and access to the Public Switched Telephone Network (PSTN). Mr. Romero stated that the major radio sites will also collect transmission circuits from wired digital carrier circuits where it exists, eliminating the need for multiple physical interconnections with Qwest for either dial tone or DS-1 connections. Sacred Wind plans to deploy a class 5 switch, a hybrid IP/TDM, to interface to the PSTN utilizing traditional interface circuits. Sacred Wind plans to deploy IP-based telephony services in conjunction with the Class 5 switch to offer differentiated services throughout their customer base. IP-based trunking of voice services, IP PBX functions, and IP voicemail are to be among

the services offered. Mr. Romero testified that carrier grade operational practices will be followed throughout the installation and operation of the network. Additionally, carrier grade equipment will be deployed in segments that are critical to operation of the telephone system as a whole, including buildings, switching equipment, major radio sites and carrier locations.

Mr. Romero testified that interconnection to the PSTN will be through Qwest using standard TDM interfaces. The interconnection will be accomplished either through fiber optic or licensed microwave radio equipment. If redundant connections to the PSTN prove to be economically and technologically viable, SWC will deploy them.

**F. Sacred Wind's Qualifications for CFTC**

**1. Financial Qualifications**

Mr. Badal testified that Sacred Wind has no operating history as a telecommunications provider. Sacred Wind represents that it has obtained financing to assist with the acquisition of the Sale Territory and for initial operation and plant construction. According to Mr. Badal, Sacred Wind plans to implement a funding plan that includes several sources of capital: (1) Sacred Wind has obtained or will obtain significant financing from private parties; (2) Sacred Wind is preparing its application to obtain financing from RUS; (3) Sacred Wind will apply for federal USF and will seek a waiver to accelerate USF support; and (4) Sacred Wind is pursuing several government grants. Mr. Badal testified that most important to SWC's success is the approval of a loan application by the RUS to cover SWC's first five years' of capital expansion.

An executive summary of Sacred Wind's Business Plan is attached to Mr. Badal's Phase A Direct Testimony<sup>4</sup> as JWB Exhibit 2. An overview of Sacred Wind's capital investment targets and loan requirements for expansion of its network is shown at JWB Exhibit 3 to this testimony. Also attached to this testimony is the following: *pro forma* Operating Expense Estimates for the three phases of SWC's proposed installation and expansion of its network; *pro forma* quarterly Balance Sheets and Income Statements for years 2006 through 2011; and a *pro forma* Cash Flow Statement for current year and years 1 through 5 of operation. These exhibits are accompanied by a notarized verification of Mr. Badal, the person within the SWC charged with financial responsibility for the company, attesting that the financial information provided is a true, correct and accurate as required by 17.11.5.10.B(2) NMAC.

Sacred Wind has updated the financial information and statements filed with the Applications, Phase A, through the testimony and exhibits of its accountant, David P. Aspenson, C.P.A., filed with SWC's Applications, Phase B.<sup>5</sup> Mr. Aspenson, of Kiesling Associates LLP, was retained by SWC to develop financial reports and analysis in support of SWC's Applications. He compiled financial statements from SWC's inception on August 9, 2004 through August 31, 2005, based on the company's books and records, and presented several reports, which he states conform to GAAP standards, summarizing Sacred Wind's projected earnings and cash flows for the period May 1, 2006 through December 31, 2009. Mr. Aspenson also calculated times interest earned ratios (TIER) and

<sup>4</sup> SWC Exhibit 3 (confidential) and SWC Exhibit 4 (redacted).

<sup>5</sup> SWC Exhibit 8.

debt service coverage ratios (DSC) for Sacred Wind. Mr. Aspenson concluded that the *pro forma* balance sheets, income statements and other financial information presented by Sacred Wind to the Commission show that Sacred Wind will be financially capable of providing continuous and reliable local exchange service in its service territory.

During the hearing, Commissioner Marks asked Sacred Wind to provide further detail to explain the use of an average revenue per line figure stated in Note D to Exhibit DPA 2<sup>6</sup> prepared by Mr. Aspenson. This average figure was used to calculate "Local Network Services" revenue under "Operating Revenues" at page 4 of DPA 2. In response to this bench request, on January 18, 2006, Sacred Wind filed a narrative explanation of this calculation and spreadsheets provided by Qwest to Sacred Wind from which the average revenue per line was calculated.

Also during the hearing, Commissioner Marks asked witnesses about the viability of Sacred Wind in the absence of approval of transfer of REF monies from Qwest to Sacred Wind. Mr. Choudhary testified for Staff that Sacred Wind's cash flow is still positive even if REF monies are not approved for Sacred Wind.

From the testimony presented, it appears that Sacred Wind's ability to provide service to remote areas of the Navajo Nation is dependent upon receipt of two sources of funding: an RUS loan and federal USF support. Mr. Badal testified that if Sacred Wind does not receive approvals for these funds, it will not assume the obligation to serve Qwest's customers in the Sale Territory: that obligation will remain Qwest's. He stated that Sacred Wind has examined various

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<sup>6</sup> *Id.*

contingencies to make up revenue shortfalls including internal and external funding sources and changes to its construction schedule. Mr. Choudhary testified that Staff had inquired, in discovery, as to Sacred Wind's contingency plans and had satisfied itself that Sacred Wind would remain financially viable if it did not receive support for its operations from various sources by, among other alternatives, seeking internal and external private funding and by extending its construction schedule.

## **2. Technical Competency**

### **a. Management and Personnel**

Sacred Wind's representatives testified it will have a trained staff of experienced technicians, engineers, planners, operations personnel and customer service representatives. Its CEO, Mr. Badal, has 25 years of telecommunications experience including four years as President of Qwest-New Mexico and two years as a consultant designing radio and VSAT satellite systems for rural communities. Its President, Mr. Arviso, has managed an IT systems integration company and the Navajo Housing Authority, among other management positions over a twenty-five year career.

Mr. Badal testified that SWC is supported by telecommunications consultants with over 150 years of telecommunications experience who are retained not only to help develop the business, but to mentor the Navajo employees whom Sacred Wind intends to hire. These consultants include: Mr. Romero, former Vice President of Network Operations of Qwest-New Mexico; Jim Coates, former radio engineer for US West Corporation; Jon Landstrom,

former rural carrier and land acquisition manager for US West; Vera Landstrom, former regulatory manager for US West; and Eunice Kent, former customer care and technical training manager for US West. Mid State Consultants' engineer Chuck Hedelius will assist SWC with its RUS loan application and the installation, development and operation of the system.

Mr. Badal testified that Sacred Wind anticipates hiring seventeen employees at the start, in addition to himself and Mr. Arviso. He estimates that it will hire no fewer than twenty-four employees in its first four years of operation and will hire, under contract, up to sixteen installers for tower construction and antenna placement. He stated that Sacred Wind's goal is to hire qualified bilingual employees. Sacred Wind's management, staff and consultants indicate that SWC will have the technical competence to provide the local exchange services proposed in its Applications.

**b. Interconnection; Back-Office Operations Support Systems; E911**

SWC plans to interconnect its facilities with Qwest's. Mr. Badal testified that Sacred Wind formally initiated interconnection negotiations with Qwest on January 10, 2006. Sacred Wind has asked for the ability to conclude these negotiations by the time it closes on its purchase of Qwest's facilities in keeping with the timelines set forth in 17.11.18.17 NMAC. Staff has acceded to this timeline.

Sacred Wind's representatives testified that it is contracting with Mid America Computer Corporation ("MACC"), to provide billing and collection services. After MACC designs, installs and tests the billing software and Sacred

Wind installs its own switching facilities, customers will be converted to the new Sacred Wind billing system. SWC estimates this transition period to be approximately six to nine months. The new system will offer service order input, tracking, network assignments, billing and collections.

Until Sacred Wind finishes construction of a carrier grade Class 5 switch to service its network, it claims it will purchase 911 service as an unbundled network element ("UNE") from Qwest. Additionally, Mr. Romero testified SWC will comply with all federal E911 requirements. Mr. Romero testified that customers who can presently access 911 service over Qwest's network, and those to be added in the short term to the network by SWC, will be able to access the same 911 service. Once SWC deploys its own switch, it will be the switching point for subscribers fed from several jurisdictional Public Service Answering Points (PSAPs). These include: San Juan County, McKinley County, Sandoval County, Bernalillo County and Cibola County. It is anticipated that SWC will terminate 911 circuits from each of the PSAPs following the established practices of the state of New Mexico. Mr. Romero testified that SWC intends to collaborate with Intrado, Inc. for the maintenance of its 911 database.

#### **G. Sacred Wind's Qualification for COA**

##### **1. Continued Quality of Service**

Sacred Wind's representatives testified that SWC will ensure that customers are better served in the future by adding to the telecommunications services they receive a level of customer service heretofore unseen in Navajo areas. As Sacred Wind disassociates its network from Qwest's switches and

OSS systems, Sacred Wind plans to expand upon the customer services and employ a Windows monitoring OSS system that regularly "pings" the myriad layers of service data for accuracy and can be easily monitored by service representatives trained on Windows. SWC plans that future growth and improvements will incorporate the newest technologies available to provide state-of-the-art facilities and services to its customers. Sacred Wind plans to provide service to areas that Qwest currently does not serve. In addition, the installation and use of FWLL equipment over an IP platform, along with Sacred Wind's own billing and OSS systems, should provide high quality communication services and the latest in communication technology.

## **2. Preserve and Advance Universal Service**

SWC's representatives state that its primary goal is to establish universal service to New Mexico residents within the Eastern, Ft. Defiance and Shiprock Agencies, and that it will be uniquely positioned to meet the residents' needs and requirements. Mr. Badal testified that SWC's marketing efforts will be directed toward assuring that universal service goals are achieved for the Navajo community. He testified that Sacred Wind will publicize the availability of federal Lifeline, Link Up and Enhanced Lifeline and Link Up ("Tribal Lifeline") and state Low Income Telephone Assistance programs in a manner designed to reach those likely to qualify for these services. He testified that Sacred Wind's greater attention to the needs of customers qualifying for Tribal Lifeline, and its expectation to have the majority of customers subscribed under the Tribal Lifeline program, will do more for Navajos' universal service than any other policy

initiative. Sacred Wind also intends to maintain affordable rates for all other customers, with federal USF support.

Sacred Wind represents that it will offer its eligible low-income customers the \$1.00 Tribal Lifeline rate and a toll restriction on service at no charge, and will work with the Commission to reduce any surcharges. Mr. Badal believes that all low-income customers will be able to afford a \$1.00 monthly payment, but many may not afford an additional \$3.00 Subscriber Line Charge, an additional New Mexico USF surcharge, or other surcharges assessed. Rather than risk disconnection, he stated that Sacred Wind will work with each individual customer who may become delinquent in payment on incremental billing.

### **3. Proposed Services to Safeguard the Rights of Consumers**

Mr. Badal testified that Sacred Wind's operations will be specifically designed to safeguard the rights of its customers; the most basic right is access to emergency and basic telecommunications services. He believes the availability of a central office and customer service office on the reservation will enhance customer friendly and responsive service. He stated that Sacred Wind's interim tariffs will address consumer rights in the areas of service discontinuation and installation, and resolution of billing disputes

Mr. Badal testified that Sacred Wind will not discriminate in the provision of local exchange service within its operating area and will provide high quality service on a full-time basis, twenty four hours a day, seven days a week. Mr. Badal testified that Sacred Wind will ensure that employees follow specific company procedures and guidelines about the information they gather from

customers. As it conducts Global Positioning Surveys (GPS) of customers' home locations for its wireless network designs, Sacred Wind represents that it will ensure that any location or descriptive information about customers' home sites are provided only to the Navajo Nation Land Department for its rights of way interests and to Navajo Nation and county law enforcement and emergency response entities.

#### **4. Proposed Services to Protect the Public Health, Safety and Welfare**

Sacred Wind's representatives maintain that it will provide E911 service to areas where wireless phone service is currently more common than landline service. In such areas E911 services are inadequate for several reasons: many homes do not have identifiable home addresses; E911 tracking is often connected to a wireless carrier's point of sale, not a user's home address; and many Navajos subscribe to pre-paid wireless services that may lose transmission ability if pre-payment is not made in a timely manner. Sacred Wind represents that it will also seek to provide advanced telecommunications services to educational and medical facilities not currently available from Qwest and is intent on assisting specific Navajo Chapters with Internet training that will target instruction in preventative medicine and academic research. Mr. Badal testified that SWC will also expand the number of customers subscribing to service at Tribal Lifeline rates.

#### **5. Proposed Services to Protect the Public Interest**

Mr. Badal testified that the issuance of a certificate to Sacred Wind will protect the public interest because Sacred Wind will provide improved

telecommunications service to the Navajo Nation by substantially expanding the availability of secure and redundant services to residents who have never had a telephone. He believes it is critical that the Navajo Nation receive the same level of telecommunications service that other rural and urban areas of New Mexico have, and that the current level of service to the Navajo people has long been unacceptable. He stated that Sacred Wind will further the public interest by offering innovative services and products to increase the choices available to the Navajo people, and the use of state-of-the-art technology will benefit consumers directly as a result of high quality service.

#### **6. Provision of Services at Just and Reasonable Rates**

Mr. Badal testified that Sacred Wind will initially file with this Commission and utilize certain portions of Qwest's tariffed offerings and that these rates have been determined by the Commission to be just and reasonable or have been approved pursuant to Qwest's Alternative Form of Regulation. Once Sacred Wind establishes its own billing and service ordering systems, and then moves to its proprietary IP platform, Mr. Badal states SWC will be able to offer its own services and rates based on the costs of its own systems; Sacred Wind will seek Commission approval for these new services and rates at the appropriate time. Once Sacred Wind has taken over operation of the network and undertaken its network expansion, Mr. Badal states that SWC may propose rate changes in accordance with the Rural Act.

#### **7. Sacred Wind's Willingness and Ability to Conform to All Applicable Laws**

Mr. Badal testified that SWC is willing and able to conform to the Constitution and laws of the United States, the Constitution and laws of the State of New Mexico including the Commission's rules.

**8. The Existence of Any Exemption, Suspension or Modification**

Sacred Wind states that it is not aware of any specific exemption, suspension or modification available to it at this time.

**H. Eligible Telecommunications Carrier (ETC) Designation**

**1. Requirements of 17.11.10.24 NMAC**

On November 15, 2005, the Commission issued its Final Order in Case No. 05-00211-UT, captioned *In the Matter of a Notice of Inquiry to Develop a Rule to Implement House Bill 776, Relating to Access Charge Reform*. With that Order, the Commission adopted new rules governing the State Universal Service Fund, including rules for the designation of ETCs pursuant 17.11.10.24 NMAC. Sacred Wind and Staff have taken the position in this case that the Commission's earlier rule should apply to its Applications, and that the Commission should not apply these new rules retroactively.

**a. 17.11.10.24.A: Petitions for ETC Designation**

Notwithstanding this stance on the retroactive application of the rule, Sacred Wind has made a showing as to each of the relevant requirements of 17.11.10.24 NMAC for ETC designation, except 17.11.10.24.A(4) and A(11) NMAC, which are the subject of Sacred Wind's Petition for Waiver. 17.11.10.24.A(4) NMAC requires an applicant for ETC designation to "include [in

*its petition for ETC designation] financial and statistical information sufficient for the commission to establish an initial support rate.” 11.10.24.A(11) requires the applicant to “address the impact of designation of the petitioner on the size of the fund.” Sacred Wind addresses each of the other requirements of 17.11.10.24 NMAC.*

(i) 17.11.10.24.A(1): Description of Proposed Service Area

Sacred Wind has filed exchange boundary maps in this case that are sufficient to meet the requirements of 17.11.10.24.A(1) NMAC and 47 C.F.R. Section 54.207.

(ii) 17.11.10.24.A(2): Requirements of Section 214(e)

Pursuant to 17.11.10.24.A(2) NMAC and Section 214(e)(2) of the federal Telecommunications Act of 1996 (the “Act”), Sacred Wind meets the following requirements of 47 U.S.C. Section 214(e)(1)(A) and (B): (1) Sacred Wind will offer the services that are supported by federal universal service support mechanisms using its own facilities; and (2) Sacred Wind will advertise the availability of and charges for such services using media of general distribution. Sacred Wind has also submitted its advertising plan related to the availability of and charge for such services.

(iii) 17.11.10.24.A(3): Public Interest

Sacred Wind's designation as an ETC will serve the public interest by promoting universal service, advancing the quality of service and offering rates that are just and reasonable. Sacred Wind plans initially to offer basic residential service at Qwest's rate at that time; the current rates are \$13.50 per month, with