



PUBLIC NOTICE

Federal Communications Commission
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DA 06-934
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**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF SELECTED
ASSETS OF QWEST CORPORATION BY
SACRED WIND COMMUNICATIONS, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-82

**SACRED WIND COMMUNICATIONS, INC. AND QWEST CORPORATION SEEK WAIVER
OF THE STUDY AREA BOUNDARY FREEZE AS CODIFIED IN PART 36, AND
SACRED WIND COMMUNICATIONS, INC. SEEKS WAIVER OF
SECTIONS 36.611, 36.612, 54.301(b), 54.305, 54.314(d), 54.903(a), 69.2(hh), 69.3(e)(6) AND
69.3(e)(11) OF THE COMMISSION'S RULES**

**SACRED WIND COMMUNICATIONS, INC. SEEKS WAIVER OF THE COMMISSION'S STAY
OF THE PROVISION OF ENHANCED LIFELINE AND LINK-UP SUPPORT TO CUSTOMERS
ON NEAR-TRIBAL LANDS**

PLEADING CYCLE ESTABLISHED

CC Docket No. 96-45, WC Docket No. 03-109

Comments Due: May 11, 2006
Reply Comments Due: May 18, 2006

On March 30, 2006, Qwest Corporation ("Qwest") and Sacred Wind Communications, Inc. ("Sacred Wind") (collectively the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,¹ requesting authority for Sacred Wind to purchase selected assets used in the provision of domestic telecommunications services from Qwest.² Applicants have also filed a joint petition for waiver of the study area boundary freeze as codified in the Appendix-Glossary of Part 36 of the Commission's rules.³ Sacred Wind also seeks related waivers of sections 36.611, 36.612, 54.301(b),

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² Counsel for Sacred Wind filed a supplement to the application on April 13, 2006.

³ 47 C.F.R. § 36 App. (defining "study area").

54.305, 54.314(d), 54.903(a), 69.2(hh), 69.3(e)(6), and 69.3(e)(11) of the Commission's rules.⁴ Finally, Sacred Wind seeks a waiver of the Commission's stay of the provision of enhanced Lifeline and Link-Up support to customers of near-Tribal lands.⁵

Sale of Assets Application: Applicants assert that this transaction is entitled to presumptive streamlined treatment under sections 63.03(b)(1)(ii) and (iii) of the Commission's rules. With respect to section 63.03(b)(1)(ii), Sacred Wind is not a telecommunications provider.⁶ With respect to section 63.03(b)(1)(iii), the proposed transaction involves only the transfer of the local exchange assets of an incumbent LEC by means other than an acquisition of corporate control.⁷

Qwest, a Colorado corporation, offers wireline telecommunications services throughout its 14-state region, including Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The following entities or individuals own a 10% or greater interest in Qwest: Philip F. Anschutz (16.1%); Investment Adviser Subsidiaries of Legg Mason, Inc. (13.8%); Capital Research and Management Company (15.1%); and FMR Corp. (13.3%).

Sacred Wind, a New Mexico corporation, does not offer any telecommunications services. The following individuals, each U.S. citizens, own a 10% or greater ownership interest in Sacred Wind: Walter Maki (16.25%); John W. Badal & Adriana Badal (15.5%); Gil Arviso (12.5%); and Richard & Margaret Story (11.66%). No other individuals or entities own a 10% or greater ownership interest in Sacred Wind.

Qwest and Sacred Wind entered into an Agreement for Purchase and Sale of Telephone Assets (the "Agreement") as of October 6, 2005. Pursuant to the Agreement, Sacred Wind agreed to acquire, among other things, certain of the assets of Qwest used in connection with the provision of wireline telecommunications services within New Mexico in a service area largely defined by the geographic boundaries of those portions of the Navajo Nation Reservation within New Mexico and the adjacent near-Reservation Tribal lands. This territory comprises Sacred Wind's service area (the "Sacred Wind Service Area"), as determined by the New Mexico Public Regulation Commission in its order authorizing Sacred Wind to provide service.⁸ These assets include limited network facilities, including access lines and customer contracts. No switching equipment or central office equipment are included as part of the Agreement. Sacred Wind will also assume certain liabilities. Upon receipt of required regulatory

⁴ 47 C.F.R. §§ 36.611-612, 54.301(b), 54.305, 54.314(d), 54.903(a), 69.2(hh), 69.3(e)(6), and 69.3(e)(11).

⁵ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112 (2000).

⁶ See 47 C.F.R. § 63.03(b)(1)(ii).

⁷ See 47 C.F.R. § 63.03(b)(1)(iii).

⁸ *Matter of the Application of Sacred Wind Communications, Inc. for Certificates of Financial and Technical Competency, Operating Authority, Public Convenience And Necessity and for Designation as an Eligible Telecommunications Carrier and Approval Tariffs*, Case No. 05-00272, Final Order (New Mexico Public Regulation Commission, Mar. 21, 2006).

approvals. Sacred Wind will assume responsibility for the provision of telecommunications services to approximately 2,300 Qwest customers on Reservation and near-Reservation tribal lands in New Mexico.⁹ Sacred Wind and Qwest will, pursuant to applicable Federal and state requirements, certify that they have notified all affected customers in writing of the proposed transfer.

The consideration to be paid by Sacred Wind in exchange for the Qwest assets will be in the form of a purchase price less an adjustment for network expansion necessary to accommodate certain customers whose service orders are currently being held or are pending. The adjustment purchase price is a negative number. Accordingly, Qwest will issue to Sacred Wind a credit for future purchase by Sacred Wind of certain services offered by Qwest. The credit will expire five years from the closing date.

Applicants state that the proposed transaction will serve the public interest because: (1) consumers can expect to see greater penetration of basic local exchange service on the Navajo Reservation and near-Reservation, Tribal lands, which is currently an under-served area; (2) the sale will provide direct benefits to the Navajo Nation by increasing local exchange service and advanced services capability to additional members of the Nation; and (3) the sale will provide economic development opportunities to Native American communities by expanding access to basic and advanced telecommunications services where none exist today.

Study Area Waiver and Related Waivers: The requested study area waiver would permit Qwest to remove from its New Mexico study area 2,300 lines and would permit Sacred Wind to add those lines to its new New Mexico study area. Sacred Wind also requests a waiver of sections 36.611, 36.612, 54.301(b), 54.314(d), and 54.903(a)(3) of the Commission's rules in order that it may receive immediate high-cost loop, local switching and interstate common line universal service support. Additionally, Sacred Wind requests a waiver of sections 69.2(hh), 69.3(e)(6), and 69.3(e)(11) of the Commission's rules in order that it may immediately participate in the National Exchange Carrier Association's pools and tariffs. Finally, Sacred Wind posits that section 54.305 does not apply to this transaction, however, should the Commission find that section 54.305 does apply, Sacred Wind requests a waiver of the rule.

Enhanced Lifeline and Link-Up Waiver: Sacred Wind requests that the Commission waive its stay on the availability of Enhanced Lifeline and Link-Up for rural telecommunications customers on near-Tribal lands.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before May 11, 2006** and **reply comments on or before May 18, 2006**.¹⁰ Unless otherwise notified by the Commission, Applicants are

⁹ Sacred Wind's certificated service area wholly includes seven Chapters and portions of an additional twenty-two Chapters, the local governing structure within the Navajo Nation. Currently there are 110 Chapters officially recognized by the Navajo Nation.

¹⁰ See 47 C.F.R. § 63.03(a).

permitted to transfer the assets on the 31st day after the date of this notice.¹¹ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

¹¹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A103, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Adam Kirschenbaum, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: adam.kirschenbaum@fcc.gov;
- (4) Gary Seigel, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A633, Washington, D.C. 20554; e-mail: gary.seigel@fcc.gov;
- (5) Cathy Carpino, Telecommunications Access Policy Division, Wireline Competition Bureau, , 445 12th Street, S.W., Room 5-A441, Washington, D.C. 20554; e-mail: cathy.carpino@fcc.gov;
- (6) Makysa Moton, Telecommunications Access Policy Division, Wireline Competition Bureau, , 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554; e-mail: makysa.moton@fcc.gov; and
- (7) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information regarding the Sale of Assets Application, please contact Tracey Wilson-Parker at (202) 418-1394, or Adam Kirschenbaum at (202) 418-7280. For further information regarding the study area waiver, the Parts 36, 54, and 69 waivers, and the Enhanced Lifeline and Link-Up waiver, please contact Gary Seigel at (202) 418-0879.

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