

a \$30.00 connection charge. The majority of Sacred Wind's customers will also be eligible for the Tribal Lifeline rate of \$1.00 per month, with no connection fee. Sacred Wind representatives state that SWC is committed to informing and educating its customers regarding the Tribal Lifeline program and other telephone payment assistance programs.

(iv) 17.11.10.24.A(5) NMAC: Five Year Plan.

Sacred Wind has developed a five-year plan for the growth of the company. Mr. Badal's testimony discusses the expansion of Sacred Wind's telecommunications network and plans for increasing telephone penetration and the availability of advanced services in its service area. Mr. Hedelius's Direct Testimony<sup>7</sup> discusses the construction plans for expansion of the network and Mr. Aspenson's Exhibit DPA 2<sup>8</sup> projects the revenues necessary to achieve this expansion during the five-year period. Support from the federal USF is a significant component of those revenues. Sacred Wind has met the requirement of 17.11.10.24.A(5) NMAC.

(v) 17.11.10.24.A.(6): Emergency Services

Sacred Wind's ability "to remain functioning in emergency situations" is the subject of Mr. Hedelius's Direct Testimony.<sup>9</sup> Mr. Hedelius testified that all electronic equipment will be deployed in a redundant mode to meet reliability standards for telecommunications providers. Sacred Wind's equipment and facilities will be protected with back-up generators, security fencing and

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<sup>7</sup> SWC Exhibit 9.

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

<sup>9</sup> SWC Exhibit 9.

appropriate grounding practices. Sacred Wind has met the requirement of 17.11.10.24.A(6).

(vi) 17.11.10.24.A(7): Consumer Protection and Service Quality Standards

Mr. Badal testified that Sacred Wind will satisfy any current or future consumer protection and service quality standards adopted by the Legislature or the Commission. Sacred Wind has met the requirement of 17.11.10.24.A(7) NMAC.

(vii) 17.11.10.24.A(8): Local Usage Plans

Sacred Wind plans initially to use Qwest's tariffs and service offerings, therefore, its local usage plans should be identical to those offered to Qwest's customers in the proposed service area. Sacred Wind has met the requirement of 17.11.10.24.A(8) NMAC.

(viii) 17.11.10.24.A(9): Equal Access

Mr. Badal testified that like Qwest, Sacred Wind will provide equal access to all its customers in its service area. He stated that this will be true whether or not any other ETC in the designated area relinquishes its designation. Sacred Wind meets the requirement of 17.11.10.24.A(9).

(ix) 17.11.10.24.A(10): Customer Choice

Mr. Badal testified that Sacred Wind will offer its Navajo customers services that have not been available before. He stated that by offering service in areas previously unserved and under-served, Sacred Wind will be increasing the choices available to those customers. In many areas that Sacred Wind will

serve, the only service available today is unreliable cellular telephone service. Sacred Wind intends to offer these customers more reliable, full-time service from their homes. Sacred Wind has met the requirement of 17.11.10.24.A(10) NMAC.

(x) 17.11.10.24.A(11): Size of the Fund

Mr. Badal believes that designation of SWC as an ETC will have a minimal impact on the size of the federal USF. SWC estimates that its draw on the fund will be less than half of one percent of the total amount of the federal USF. The impact of SWC on the size of the state USF is not relevant at this time as SWC is not asking for state support presently. The requirement that it demonstrate the impact of its designation on the size of the New Mexico fund should be waived.

(xi) 17.11.10.24.A(12): Advantages and Disadvantages of Service Offerings

Sacred Wind has offered testimony about the advantages of its proposed service offerings. These include its planned use of state-of-the-art technology to provide secure and redundant services to unserved and under-served communities. Sacred Wind plans to use technologies best suited to the communities to be served, which share the following characteristics: geographic remoteness, low population density, rights-of-way issues and lack of commercial power sources. Sacred Wind intends to offer service comparable to those offered in urban areas at comparable rates. Sacred Wind has met the requirement of 17.11.10.24.A(12) NMAC.

(xii) 17.11.10.24.A(13): Offering of Services Throughout

*the Designated Service*

Area

Through its five-year plan, referenced above, Sacred Wind indicates its willingness to offer service throughout its designated service area within a reasonable timeframe. Sacred Wind's represents that its primary goal is to establish universal service to New Mexico residents within the Eastern, Ft. Defiance and Shiprock Agencies within five years.

**b. 17.11.10.24.D: Additional ETC Designation**

Mr. Badal believes that the public interest supports designation of Sacred Wind as an ETC even though Smith Bagley has also received this designation. Smith Bagley is not an incumbent rural telecommunications carrier and, therefore, does not serve as a carrier of last resort. When Sacred Wind purchases the Sale Territory from Qwest, and receives approval from this Commission of its Applications in this case, Sacred Wind will replace Qwest as the only incumbent ETC serving this area. Sacred Wind will assume all obligations of an ILEC, including the responsibility to have its rates, terms and conditions regulated by the Commission.

**c. 17.11.10.24.E: Designation as a Federal ETC**

Pursuant to 17.11.10.24.E NMAC, the Commission may approve a petition for designation as a federal ETC in conjunction with a designation of a state ETC. Designation of SWC as an ETC under federal law will serve the overall universal service principles contained in Section 254 of the Act. These principles include: 1) quality services at just, reasonable and affordable rates; 2) access to advanced telecommunications and information services; and 3) access in rural

and high cost areas to telecommunications and information services reasonably comparable to those services provided in urban areas and available at rates reasonably comparable to rates charged for similar services in urban areas. See 47 U.S.C. Section 254(b). Mr. Badal testified that a majority of the consumers within the area where Sacred Wind seeks designation have little or no access to telecommunications services, at any price, let alone rates that are reasonable and comparable to the rest of the country, as required by the Act. With the designation as an ETC under Sections 214 and 254 of the Act, Sacred Wind will be eligible to receive federal USF support and thus will be able to provide universal access to the public telecommunications network at reasonable rates to residents of the Navajo Nation residing in New Mexico. It is in the public interest to designate Sacred Wind as an ETC under federal law.

**2. Sacred Wind Meets the Supported Services Requirement of 47 C.F.R. Section 54.101(a)**

Using wireline and fixed wireless facilities, Sacred Wind represents that it will meet the requirements of 47 C.F.R. Section 54.101(a) in that it will offer the following listed services as an ETC that are supported by federal universal support mechanisms.

**a. Voice-grade access to the public switched telephone network**

Sacred Wind's representatives testified that it will provide voice-grade access to the public switched telephone network at a bandwidth between 300 and 3000 hertz.

**b. Local Usage**

Sacred Wind intends to offer a variety of rate plans that provide local usage consistent with 47 C.F.R. Section 54.101(a)(2). Sacred Wind's representatives testified that SWC will comply with any and all minimum local usage requirements adopted by the FCC. Sacred Wind maintains that it will meet this requirement by providing DTMF (also known as Tone Dialing) in the voice frequency band for call setup to the central office switch and SS7 signaling out of band for trunking.

**c. Dual-tone, multi-frequency ("DTMF") signaling or its functional equivalent**

Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.

**d. Single-party service or its functional equivalent**

Sacred Wind states that it will provide single party service, as that term is defined in Section 54.101 of the FCC's rules.

**e. Access to Emergency Services**

Sacred Wind's representatives testified that its customers will have the ability to reach a public emergency service provider by dialing 911 as required in any universal service offerings. Sacred Wind will also be capable of providing E911 service and will comply with all FCC requirements.

**f. Access to Operator Services**

Representatives for SWC state that access to operator services, that is, any automatic or live assistance provided to a consumer to

arrange for the billing or completion, or both, of a telephone call, can be accessed on Sacred Wind's network by dialing "0."

**g. Access to Interexchange Service**

Sacred Wind's representatives testified that it meets this requirement because it will provide all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements SWC will have with Qwest. Customers will be able to reach their IXC of choice.

**h. Access to Directory Assistance**

Sacred Wind represents that it will meet this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."

**i. Toll Limitation for Qualifying Low-Income Consumers**

Sacred Wind maintains it will provide toll limitation by using its toll blocking capabilities for Lifeline customers once Sacred Wind is designated as an ETC.

With the above showing, and that contained in the testimonies of Sacred Wind's other witnesses, Sacred Wind has provided evidence that it is capable of providing the nine core services throughout its proposed service area, thereby meeting the requirements of 47 C.F.R. Section 54.101(a). Designation of Sacred Wind as a state ETC and federal ETC is in the public interest.

**I. Rural Telecommunications Carrier Designation**

Sacred Wind, in its amendment to the Applications filed on January 10, 2006, seeks Commission designation as a rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Act. The record establishes that the number of access lines to be served by Sacred Wind is below five percent of statewide access lines.

**J. FCC Waivers**

Sacred Wind takes the position that its ability to provide state-of-the-art telecommunications services to residents within its designated service territory is in large part contingent upon the waiver of certain of the FCC's rules. Sacred Wind will seek various waivers of federal rules to gain accelerated access to federal universal service support mechanisms and to participate in National Exchange Carriers Association ("NECA") pools and tariffs. Sacred Wind represents that it will file an application with the FCC that requests the following waivers:

**1. Study Area Definition Waiver**

Sacred Wind maintains that the waiver of the FCC's study area definition is an important component of SWC's planned FCC filing. A study area is a geographic section of an incumbent local exchange carrier's ("ILEC") service area. Study area boundaries are significant because ILECs receive all federal universal service support and participate in NECA tariffs and pools on a study area basis. According to SWC, effective November 15, 1984, the FCC froze all study area boundaries in the country. Therefore, an ILEC must request that the FCC waive the study area freeze prior to creating a new study area, such as in

the case of Sacred Wind, or redefining existing study areas. Sacred Wind must create a new study area, bounded by its certificated service area.

According to SWC the FCC traditionally applies a three-prong standard in determining whether a study area waiver is appropriate: 1) the change in the study area boundaries must not adversely affect the federal USF; 2) no state commission having regulatory authority over the transferred exchanges opposes the transfer; and 3) the transfer of exchanges must be in the public interest. To expedite consideration by the FCC of SWC's request for a waiver of the FCC's study area definition, Sacred Wind has asked for two forms of relief from this Commission: a letter of no opposition to be sent from the Commission, or its authorized representative, to the FCC stating that the Commission does not oppose the transfer of exchanges or the creation of the new study area by SWC; and a statement of support for Sacred Wind's Petition for Waiver to be filed with the FCC.

## **2. Other waivers**

### **a. Waiver of FCC's Price Cap Rules to Allow Sacred Wind to Participate in NECA's Interstate Common Line and Traffic Sensitive Pools**

SWC states that Section 61.41(c)(2) of the FCC's rules provides that a non-price cap carrier that acquires access lines from a price cap carrier shall become subject to price cap regulation and must file price cap tariffs within a year. Under this rule, Sacred Wind's acquisition of access lines from Qwest would subject Sacred Wind to price cap regulation. A price cap carrier cannot participate in the NECA pools and tariffs. Participation in NECA would allow

Sacred Wind to avoid the costs of filing and maintaining its own company-specific interstate tariffs. Therefore, Sacred Wind is requesting a waiver from this rule so that it can operate under rate-of-return regulation and thus participate in the NECA pools and tariffs. Sacred Wind's customers should be allowed the benefit of cost savings and lower rates through NECA participation.

**b. Waiver of Sections 47 C.F.R. 36.611 and 36.612 to Allow Sacred Wind to Receive Federal USF Payments upon Commencement of Operations**

Sacred Wind will seek a waiver of 47 C.F.R. Sections 36.611 and 36.612 of the FCC's rules to enable Sacred Wind, as a new local exchange carrier serving formerly unserved and underserved areas of the Navajo Reservation, to receive USF payments immediately upon commencement of operations. Granting such a waiver will reduce Sacred Wind's financial burden and allow Sacred Wind to provide service to previously unserved and underserved portions of the Navajo Reservation as planned rather than delaying plans for growth.

**c. Waiver from FCC's Stay of Enhanced Lifeline and Link Up Support on Near Reservation Lands.**

Sacred Wind will seek a waiver from the FCC's Enhanced Lifeline and Link Up rules to allow residents living on lands deemed by the federal government to be "near reservation" to be eligible for Tribal Lifeline and Link Up discounts. SWC claims that the near reservation areas within Sacred Wind's territory are within Navajo Nation Chapter boundaries and are populated by Navajo families living under the same conditions as their relatives and counterparts on the reservation. The granting of this waiver will permit Sacred

Wind to provide universal service programs to the Navajo people in the Eastern Agency and is consistent with prior FCC decisions according to SWC.

**3. Sacred Wind's Request for a General Statement of Support for All FCC Waiver Requests.**

Sacred Wind has asked the Commission to issue a general statement of support for all of its waiver requests to the FCC, including those stated above.

**K. Right of Way Issues**

Mr. Arviso testified that territory to be served by Sacred Wind will include land owned or managed by the following entities in addition to private land: the Navajo Nation; Bureau of Indian Affairs, Bureau of Land Management, BIA-managed Navajo Allotments, and the State of New Mexico. To resolve right of way issues that Sacred Wind will assume from Qwest, Sacred Wind has negotiated an addendum to the Memorandum of Agreement between Qwest, the Navajo Nation and the BIA. Mr. Arviso explained that under that agreement, right of way liabilities of Qwest will be cured through proper documentation of facilities installations. Additionally, he stated that the asset purchase agreement makes provision for compensation due certain allottees. Sacred Wind intends to pursue a master service line agreement with the Navajo Nation that would eliminate any uncertainty about Sacred Wind's ability to make installations of fixed wireless facilities including service drops for homesite lessees on Navajo Trust Land.

**L. Rural Extension Fund**

SWC is not asking the Commission to make any determination in this proceeding related to its possible eligibility to receive monies from the Rural Extension Fund. Any issues related to SWC's possible receipt of such funds

including the content and timing of any filing, the amount of funds, procedures for applying such funds and parameters for the use of such funds by SWC should be deferred for future consideration.

## **SUMMARY OF THE POSITIONS OF THE PARTIES**

### **A. Staff's Position**

Staff reviewed the Applications, amendment, Motion for Letter and Petition for Waiver. Staff further reviewed the testimony submitted in the proceeding, conducted discovery, and cross-examined witnesses at the hearing. Based on its review, Staff makes the following recommendations to the Commission:

#### **1. Motion for Letter of No Opposition**

Staff supports Sacred Wind's Motion for a Letter of No Opposition.

#### **2. Petition for Waiver of Portions of 17.11.10.24 NMAC**

Staff supports Sacred Wind's Petition for Waiver.

#### **3. Amendment**

Staff supports Sacred Wind's amendment to its Applications withdrawing Sacred Wind's request to be designated as an incumbent rural telecommunications carrier under NMSA 1978, Section 63-9H-5 and requesting the Commission find that Sacred Wind is a rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Act.

#### **4. Application for a CFTC**

Staff recommends that the Commission issue Sacred Wind a CFTC. Staff states that Sacred Wind's management has sufficient qualifications and

experience to successfully and continuously provide quality local exchange services, and that Sacred Wind has addressed technical issues related to its wireline and fixed wireless facilities to Staff's satisfaction.

**5. Application for COA**

Staff states that Sacred Wind has demonstrated in its testimony that it is prepared to provide quality service to its customers once it commences operations.

**6. Application for CCN**

Staff recommends that the Commission find that the services proposed by Sacred Wind are in the public convenience and necessity, and that the Commission should issue Sacred Wind a CCN.

**7. Petition for Designation as an ETC Pursuant to State and Federal Law.**

Staff states that the designation of Sacred Wind as an ETC under state and federal law is in the public interest. Specifically, Staff recommends that the Commission find that it is in the public interest for Sacred Wind to be designated an ETC for purposes of receiving support from the federal USF. Staff finds that Sacred Wind meets the common carrier definition of 47 U.S.C. Section 214(e)(1) and that Sacred Wind will provide service in a manner consistent with that section. Staff agrees that Sacred Wind will offer services supported by federal universal service support mechanisms under 47 U.S.C. Section 254(c) either using its own facilities or a combination of its own facilities and resale of Qwest's services. Staff is satisfied that Sacred Wind has submitted an advertising plan adequate to meet the advertising requirement of 47 U.S.C. Section 214(e)(1)(B).

Sacred Wind is negotiating an interconnection agreement with Qwest and Staff agrees that the filing of such an interconnection agreement with the Commission by closing of the Agreement is sufficient to meet the Commission's requirements and would demonstrate that Sacred Wind will be able to provide service using owned or leased elements.

Staff concurs that Sacred Wind has filed exchange boundary maps sufficient to meet the requirements of 47 U.S.C. Section 214(e)(2) and (e)(5) and 17.11.6.13(C).<sup>10</sup> NMAC for the establishment of a service territory by the Commission. Sacred Wind has filed tariffs related to basic rates as part of Mr. Badal's Rebuttal Testimony and intends to file interim rates prior to closing of the sale transaction. Staff is satisfied that this filing will address its concerns about proposed rates. Staff is satisfied that Sacred Wind's plan to advertise federal Lifeline and Link Up programs are reasonably calculated to reach low-income individuals most likely to qualify for such programs. Staff is satisfied that Sacred Wind had agreed to comply with future state or federal regulatory requirements.

While Staff believes that the Commission's newly adopted rule, 17.11.10.24 NMAC, should not apply to Sacred Wind's application for ETC designation, Staff believes that Sacred Wind has demonstrated that its designation is consistent with the public interest.

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<sup>10</sup> Staff Exhibit 4, Oberlander Testimony, at 18, refers to "17.11.6.13.C NMAC," but the Hearing Examiner believes the cite should be to "17.11.10.24.A NMAC."

Staff recommends that Sacred Wind be required to file an annual report with the Commission containing information set forth in Ms. Oberlander's Direct testimony at 14 to 16.<sup>11</sup>

**8. Application for Designation as a Rural Telecommunications Carrier Pursuant to NMSA 1978, 63-9H-1 through 63-9H-14**

Staff supports the designation of Sacred Wind as a rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Act.

**9. Support for Sacred Wind's Federal Waiver Requests**

Staff recommends that the Commission issue a statement of support, encouragement and endorsement related to Sacred Wind's proposed requests for waivers to be filed with the FCC. Staff recommends that the Commission certify to the FCC and the Universal Service Administrative Company ("USAC") that Sacred Wind has represented that all universal service high-cost support received by SWC will be used for the provision, maintenance and upgrading of the facilities and services for which the support is intended.

**10. Additional Reporting Requirements.**

Staff recommends that Sacred Wind be required to file a status report within thirty (30) days of the closing of the Agreement with Qwest containing the following information:

- a. A copy of the RUS loan agreement and related approval documents.
- b. An update on the requests for approvals and waivers Sacred Wind has requested from the FCC. If Sacred

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<sup>11</sup> Staff Exhibit 4.

Wind has not received any of these waivers, Sacred Wind should show whether and how it has exercised its other funding options described on page 24 of the Phase B Direct Testimony of John Badal.<sup>12</sup>

c. An update of progress Sacred Wind has made in moving forth with its plans to take over Qwest's operations and progress SWC has made in preparing to commence operations in the territory under consideration in this case.

d. Sacred Wind's proposed tariffs for the initial period of operations.

e. A copy of the Joint Section 214 Application filed with the FCC.

f. A copy of the Operating Agreement between Sacred Wind and Qwest and the status of any interconnection between Sacred Wind and any other carrier.

g. A copy of the Infrastructure Sharing Agreement between Qwest and Sacred Wind.

h. The updated financials to include but not be limited to the following: (i) updated income statement, balance sheet, statement of cash flows and ratio analysis and response to Staff Discovery Exhibit 1 in electronic format; and (ii) verifiable, auditable and traceable workpapers in electronic format showing the underlying calculations and how the numbers on the financial statements were derived. Staff has also recommended that Sacred Wind file, with the Commission, any approvals or disapprovals within a reasonable time after they are received by Sacred Wind as well as by the deadline stated above to follow closing of the sale agreement.

## **11. Proposed Rates**

Staff is satisfied that the Commission will have sufficient oversight in determining whether Sacred Wind's proposed interim and permanent rates are in the public interest when Sacred Wind files initial rates prior to closing on the Agreement and permanent rates in 2007.

## **12. Right of Way Issues**

Staff is satisfied that Sacred Wind has made adequate plans to address potential right of way issues on the Navajo Reservation, including the Addendum

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<sup>12</sup> SWC Exhibit 5.

to the Memorandum of Agreement between Qwest and the Navajo Nation and the Master Service Line Agreement being negotiated by Sacred Wind with the Navajo Nation at this time. Sacred Wind has also addressed satisfactorily right of way liabilities, including payments due to BIA allotment holders, in its Agreement with Qwest.

### **13. Qwest's Proposed Discontinuance of Service**

Staff believes that Qwest has complied with some of the requirements of 17.11.5.17.A NMAC related to discontinuance of service. Staff recommends that the Commission not grant discontinuance of service until Qwest has complied with the notice requirements of 17.11.5.17.B, and that Qwest work with Staff to develop the form of notice and timing of notice to customers. Staff recommends that the Commission treat Qwest's notice in this case as complying with 17.11.5.17.C NMAC, and require that discontinuance be conditioned upon the grant of Sacred Wind's Applications. Staff recommends the further conditions of the filing of rates by Sacred Wind and a showing that Sacred Wind is ready and capable of serving customers. Staff believes Qwest should submit revised boundary maps reflecting the revised service areas after sale of its asset to Sacred Wind but no later than thirty (30) days prior to discontinuance of service.

### **14. Rural Extension Fund Issues**

Staff agrees with SWC that the Commission need not address issues related to the possible transfer of rural extension fund monies from Qwest to SWC in this proceeding.

#### **B. Qwest's Position**

Qwest has acknowledged and accepted its responsibilities to the Commission and its current customers in its pending sale of telephone assets to Sacred Wind pursuant to 17.11.5 NMAC. As discussed above, Qwest has notified the Commission of steps it has taken to comply with applicable portions of 17.11.5 NMAC, including notification to the Commission of discontinuance of service under 17.11.5.16 and 17.11.5.17 NMAC. 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. Qwest reserves the right to challenge any requirement imposed on discontinuance of service that is not found in the Commission's rules.

Qwest witness Ms. Taylor testified that it will serve the public interest for the Commission to grant the transfer of service territory to Sacred Wind, in part, because the transfer is likely to increase penetration rates, address the medical and educational needs of the Navajo people and increase business development on the reservation. Increased penetration serves the "principal goal of universal service . . . ." Qwest confirms that Sacred Wind has met the requirements to be certified by the Commission.

### **C. Attorney General**

The Attorney General monitored the proceedings but did not submit testimony or examine witnesses at hearing in this matter. The Attorney General takes the following position in this case: the Attorney General supports the relief sought in the Applications, with the understanding that the Commission need not

address issues related to the possible transfer of Rural Exchange Fund monies from Qwest to SWC.

**D. NMECG**

NMECG monitored the proceedings but did not submit testimony or evidence or examine witnesses at hearing in this matter. NMECG takes the following position related to the case: The NMECG does not object to the relief sought by Sacred Wind in this case as described in the proposed joint recommended decision.

The Hearing Examiner recommends the Commission **FIND** and **CONCLUDE** as follows:

1. All findings of fact and conclusions of law contained in the Statement of the Case and Discussion, above, are adopted as Findings of Fact and Conclusions of Law of the Commission.
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. Due and proper notice of this matter has been provided.
4. Sacred Wind's Petition for Variance or Waiver of Provisions of 17.11.10.24 NMAC should be granted, and the requirements of 17.11.10.24.A(4) and 17.11.10.24.A(11) NMAC should be waived.
5. Sacred Wind's Motion for Letter of No Opposition to Federal Communications Commission's ("FCC") Consideration of Waiver Request should be granted, and the proposed form of letter to the FCC should be executed.

6. Upon the issuance of notice to its subscribers at least 60 days prior to discontinuance of service, Qwest should be deemed to have met the requirements of the 17.11.5.17 NMAC and the New Mexico Telecommunications Act, NMSA 1978, Section 63-9A-1, *et seq.*, to ensure continued quality of service and to protect consumer interests upon discontinuance by Qwest of service to customers in the Sale Territory. The discontinuance of service should be simultaneous with the assumption of service by Sacred Wind. Qwest should file revised boundary maps with the Commission.

7. Sacred Wind has demonstrated that its financial resources should support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interest, and that it possesses the technical competence to provide local exchange services.

8. Sacred Wind has demonstrated that its proposed services should accomplish the following objectives: ensure continued quality of service; preserve and advance universal service; safeguard the rights of consumers; protect the public health, safety and welfare; and protect the public interest.

9. Sacred Wind should file interim rates based on Qwest's rates now in effect for the Commission's approval prior to closing on the sale of Qwest's assets under the Asset Purchase Agreement between Qwest and Sacred Wind.

10. Granting to Sacred Wind a Certificate of Financial and Technical Competency, Certificate of Operating Authority and Certificate of Public Convenience and Necessity is in the public interest.

11. *Sacred Wind should be designated as an eligible telecommunications carrier ("ETC") under state and federal law for the territory described in the territory boundary map submitted into evidence, as further described in the testimony, and it 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.*

12. It is in the public interest of the State of New Mexico for Sacred Wind to be granted the waivers it seeks from the federal regulations as described more fully herein insofar as Sacred Wind's Petition for Waiver to the FCC, and the Commission should encourage the FCC to approve Sacred Wind's Petition for Waiver and requests that the FCC grant such waivers on an expedited basis, including a waiver of the FCC's study area freeze.

13. It is in the public interest for Sacred Wind to be designated as a rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Telecommunications Act of New Mexico, NMSA 1978, Section 63-9H-1 to 14 (1999).

14. Sacred Wind meets the common carrier definition of 47 U.S.C. Section 214(e)(1) and will provide service in a manner consistent with that section.

15. Sacred Wind will offer services supported by federal universal service support mechanisms under 47 U.S.C. Section 254(c) either using its own facilities or a combination of its own facilities and resale of Qwest's services.

16. Sacred Wind has submitted an advertising plan adequate to meet the advertising requirement of 47 U.S.C. Section 214(e)(1)(B).

17. Sacred Wind's plan for advertising federal Lifeline and Link Up programs are reasonable calculated to reach low-income individuals most likely to qualify for such programs. Sacred Wind agrees to comply with future state and federal regulatory requirements.

The Hearing Examiner recommends that the Commission **ORDER** as follows:

A. The Applications of Sacred Wind, as filed and supported by testimony and exhibits, subject to the conditions imposed herein, and are hereby granted.

B. The Notice of Discontinuance of Service of Qwest filed in this case, and subject to the conditions imposed herein, is hereby approved, and following consultation with Staff in regard to the timing and form of notice, Qwest shall send notice to customers of its discontinuance of service.

C. Thirty days prior to closing of the Asset Purchase Agreement with Sacred Wind, Qwest shall file revised exchange boundary maps excluding the Sale Territory.

D. As of the date of the closing of the Asset Purchase Agreement and the assumption by Sacred Wind of the obligation to provide public telecommunications services, Qwest shall be and hereby is authorized to discontinue providing public telecommunications services in the Sale Territory

exchanges and is thereupon relieved of all obligations as a certificated provider of public telecommunications in the Sale Territory.

E. Sacred Wind is hereby issued a Certificate of Financial and Technical Competency, Certificate of Operating Authority and Certificate of Public Convenience and Necessity to provide basis local exchange and exchange access services as a rural telecommunications carrier with its approved service territory upon the closing of the Asset Purchase Agreement described herein. This order shall constitute those certificates.

F. Within 30 days of the closing of the Asset Purchase Agreement, Sacred Wind shall file a status report detailing the information requested by Staff as set forth herein.

G. Sacred Wind is hereby designated as an eligible telecommunications carrier ("ETC") pursuant to the Telecommunications Act of 1996, and federal regulation and state law, for its entire service territory depicted by its exchange boundary maps on file with this Commission, for purposes of receiving support from the federal Universal Service Fund.

H. Sacred Wind shall file annual reports with the Commission on April 1 of each year, beginning with the first April after the first full year of operation, which report shall contain the following information:

1. A statement by an officer of the company that Sacred Wind will use federal high-cost support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended.

2. A copy of the data supplied to NECA to obtain the federal support received for the previous year

3. A report on failure to provide service that includes detailed information on the number of requests for service from potential customers within the Sacred Wind service area that were unfulfilled for the past year and describing how it attempted to provide service to those potential customers.

4. A report on the number of complaints per 1,000 lines that Sacred Wind received according to the following categories: (i) no dial tone and other connection problems; (ii) billing for services not ordered; (iii) inaccurate amounts on bill; and (iv) failure to provide service in a timely fashion. The report must also describe the carrier's efforts to resolve the complaints.

5. A certification of compliance with applicable consumer protection and service quality standards.

6. A certification of ability to function in emergency situations with a description of Sacred Wind's emergency procedures, reserve power requirements, maintenance scheduling and loss of switch plan.

7. A certification of where Sacred Wind placed advertisements for Lifeline/Link Up programs during the past year and the number of advertisements. Sacred Wind should also describe how these advertisements were reasonably calculated to reach low-income individuals not already receiving discounted services.