

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) WC Docket No. 05-337
High Cost Universal Service Support)
and)
Federal-State Joint Board on) CC Docket No. 96-
45
Universal Service)

Comments of Sacred Wind Communications, Inc.
re: Identical Support

Introduction and Summary

Sacred Wind Communications, Inc. (“SWC”) congratulates the FCC and the Joint Board for its attention to possible solutions to what SWC and the FCC have recognized as a universal service support system that, as it relates to supporting competitive or wireless eligible telecommunications carriers (“ETCs”), has gone astray. SWC intends to address the several subjects and tentative conclusions for which the FCC seeks comment. SWC believes that its particular operating circumstances and its particular customer base are comparatively unique among other rural incumbent local exchange carriers (“incumbent LEC” or “ILEC”), and further believes that its comments may contribute something of value to this discussion.

SWC is an incumbent LEC operating in northwestern New Mexico, whose customer base is nearly 96 percent Navajo Indian. Having purchased in December 2006 all of Qwest Corporation’s copper wire network on Navajo lands in New Mexico, SWC began its operations with approximately 2,000 wireline residential customers and another 6,500-7,000 households in its territory with no home-based telecommunications service whatsoever – that is, a telephone

penetration rate of around 22 percent. Due to the difficulties in acquiring land use permits and other rights of way authorizations across tribal and other federally managed lands, and due to the considerable costs of constructing wireline systems across the 3,200 square miles of such territory, the wireline telephone formula applied to the Navajo Nation failed, and continues to fail, its population miserably. This is why SWC has developed plans, and has begun, to build a fixed wireless network to carry basic and advanced telecommunications and information services to its unserved customers.

Additionally, the customers SWC serves are generally lower income and extremely rural. For the Navajo Nation at large, the median family income is \$11,885. Over 56 percent of Navajos live under the national poverty level, the highest poverty rate in the country even among American Indians.¹ SWC calculates that, among the unserved households, far higher poverty levels will be found, since the currently served Navajo customers, living proximate to rural towns and along state and interstate highways, tend to secure employment in nearby towns and represent for SWC the “lower hanging fruit” that it acquired.

There exist no wireline competitive local exchange carriers (“competitive LECs” or “CLECS”) in this area; only mobile wireless carriers operate within or within sight of SWC’s service territory and only one mobile wireless carrier – Smith Bagley, operating as CellularOne – possesses ETC designation. Upon information and belief, the preponderance of CellularOne’s wireless facilities that may serve Navajo people in New Mexico serve the transient traffic along Interstate 40 between Albuquerque and Gallup, then continuing to the Arizona border; and along NM State Road 550, originating outside of Albuquerque and then reaching Bloomfield, NM through 80 miles of Navajo lands.

¹ <http://www.indiancountryextension.org/extension.php?=6>

Two-thirds of SWC's customers live within a 1,000 square mile area north and south of Interstate 40, stretching 85 miles along Interstate 40 from the southeastern most end of SWC's territory to the Arizona border; and another third of its customers live within a 2,200 square mile area south and east of NM State Road 550, stretching 90 miles from its boundary at the Counselor Chapter, up to Bloomfield, NM, and then across the Bloomfield Highway west of Farmington, NM.

With SWC's extensive travel throughout Navajo lands in new Mexico and northern Arizona, SWC can vouch that very little mobile wireless facilities are found away from those highways and away from the rural towns, solely dedicated to serving the Navajo populace. In comparison to the approximate 6,000 Navajo households in SWC's 1,000 square mile territory between To'hajiilee, NM and the Arizona border along Interstate 40, there were recorded an average of 269,414 vehicles per week travelling that route along Interstate 40 in 1996.² Among the rural towns along that same route, only within Gallup, NM and Grants, NM are mobile wireless services found to be adequate. Gallup's population is 20,209 and Grants population is 8,806.³

It is SWC's contention that wireless carriers in this general area, including the one wireless CETC, have built wireless facilities to serve the tens of thousands of customers travelling daily over Interstate 40 and State Road 550, as well as the thousands of customers who live in Gallup, Grants, Bloomfield and Farmington, NM – but not specifically to serve the more remote Navajo households.

In SWC's experience, many Navajo households subscribe to a mobile wireless telephone service that is egregiously inadequate in their locale. Countless customers have reported to SWC that they must walk, drive or ride on horseback

² Division of Government Research, UNM, 2/13/1998:
www.unm.edu/~dgrint/studies/speedlim.pdf

³ NM Dept. of Transportation, Statewide Multimodal Transportation Plan, 2003.

a considerable distance from their home to pick up a signal in order to call out or to receive a pre-appointed call.

SWC's submits that the wireless competitive LECs in SWC's territory do not provide their customers anything similar to identical services of the carrier grade services that SWC provides, nor can they demonstrate similar cost bases in serving this area of the state, nor have they the regulated service obligations of an incumbent LEC, and, therefore, should not receive "identical support" for so serving the area. In this filing, SWC intends to make the case that the competitive LECs, particularly the mobile wireless LECs, do not offer identical services, do not have the same capital or operating costs of an incumbent LEC, and do not share with the incumbent LEC its regulatory obligations to serve. These comments will additionally include proposed methods for more accurately accounting for a CETC's costs in such a high cost area as SWC's.

Are Wireless ETC services a Substitute for an Incumbent LEC's Services?

SWC purchased all of Qwest Corporation's "last mile" wireline assets on Navajo lands in New Mexico in December 2006, and is now upgrading and expanding that network simultaneously with construction of a fixed wireless local loop ("FWLL") network to reach 6,500-7,000 unserved Navajo households within its territory that are beyond the reach of a traditional wireline system. Meanwhile, wireless ETCs, including one wireless competitive ETC, provide mobile wireless service to many Navajo individuals living proximate to a rural community and those within cellular reach of portions of well trafficked highways. As noted above, the majority of Navajos living in SWC's study area are below the national poverty rate and do not have home-based telephone services, but not purely as a matter of affordability. Because of this exceedingly large population of low income and below-poverty individuals among the Navajo, most Navajos qualify for the federal Tribal Lifeline rate.

SWC, as part of its obligation to serve, owns, and is building, a network that must provide nearly everyone in its territory with unlimited local calling, touchtone, E-911, operator services, directory assistance, Internet and long distance. SWC charges a tariffed rate for its basic local service, which includes unlimited local calling, and offers discounts to Tribal Lifeline eligible customers affording such customers a monthly rate of \$1.00 for basic service. SWC increased its Tribal Lifeline subscriptions from 26, at the time of its purchase of Qwest's assets, to 916 as of January 31, 2008. The one wireless ETC operating in SWC territory, upon information and belief, offers mobile wireless services on the basis of several plans, including pre-paid and monthly or annual. According to the wireless ETC's advertisements, it offers its Tribal Lifeline customers limited "free" calling minutes per month, followed by a considerable per-minute rate after that. Similarly, upon information and belief, since many Navajo customers take advantage of pre-paid monthly mobile services, and since such services terminate and must be "replenished" when their pre-paid amount has been reached, their mobile telecommunications basic service cannot be considered identical to the incumbent LEC's which is not limited to a specific amount of local calling.

It is SWC's contention that many of the yet unserved Navajo households, many of which are some of the most remotely situated in this area, currently subscribe to an inadequate mobile wireless service solely because no other telecommunications service has been made available.

Are Wireless ETC Costs Identical to an Incumbent LEC's Costs?

Every component of SWC's network, and all of its operating costs, are dedicated to serving its customers within the boundaries of its 3,200 square mile service territory. SWC added almost 200 new customers in 2007 (an increase of eight (8) percent in its first year), and is building a second switch to be completed by mid-year, 2008, and is building a system of wireless towers with FWLL antennae to reach the remaining 6,000-6,500 unserved Navajo households. The operation

and full cost of our switches, towers, feeder, and “last mile” facilities are dedicated to our customers within our study area. Additionally, as we complete our switching and reconstruct 28 interconnection points with Qwest (where our customers are finally removed from Qwest’s trunking facilities), SWC is building three (3) geographically distributed outside plant garages and has hired outside plant technicians to provide home-based telecommunications services for our customers.

The several components of SWC’s FWLL network correspond easily to a wireline network’s components. Its backbone towers, licensed radio antennae, power supply and electronics correspond to a wireline LEC’s fiber transport, backhauling traffic to the switch. Its aggregation towers and poles, licensed and unlicensed aggregation radio antennae, power supply and electronics, relaying radio capacities from the backbone facilities to customer “neighborhoods”, correspond to a wireline LEC’s distribution or feeder network. SWC’s subscriber poles, subscriber FWLL radio antennae, delivering the FWLL signal directly into a customer’s home, and inside wire correspond to a wireline LEC’s “last mile” facilities.

Were a mobile wireless carrier to build its network solely within an incumbent LEC’s high cost local serving area, or at least its service territory, much the same comparison between wireline and mobile wireless networks can be made. (One exception to such a comparison would be the “last mile”, which, for a mobile wireless carrier is similar to its “distribution” – a radio signal footprint within a certain radius from its mobile communications tower). But, the mobile wireless ETCs offering services in SWC’s territory do not locate their switching in SWC’s territory and do not dedicate such switching to SWC’s customers; do not dedicate the majority of their “backbone” to SWC’s customers; do not invest in the number of smaller “aggregation” towers or poles to reach the more remote Navajo communities with a reliable signal, but instead rely on many Navajo customers to drive 20-50 miles into the nearest town to pre-pay their mobile service or to

“replenish” their pre-paid or Tribal Lifeline services by making a second cash payment. (The vast majority of Navajo households do not have checking accounts or credit cards that would allow them to make payments over the telephone or online.)

If we examine the population and traffic statistics reported above just for the Grants to Gallup area along Interstate 40, it could be said with some confidence that the mobile wireless ETCs operating in and near that portion of SWC’s territory target the much larger numbers of vehicular traffic and populations within those two cities, and pick up Navajo customers living on the Reservation as *incidental* to their larger non-Navajo business. Considering the 269,414 vehicles per week travelling that route and the total population of Grants and Gallup along Interstate 40, SWC can make the assumption that what appeals to a wireless ETC in this area, and what it designs to and invests in, is not the potential 12,600 Navajo customers in this portion of SWC’s territory⁴, but the 286,823 potential customers who live in town or travel that segment of Interstate 40 on a weekly basis.⁵ SWC suggests, therefore, that any network and operating costs that wireless CETCs claim for this area of New Mexico be readily identified as the incremental costs of serving the customers within SWC’s or another incumbent LEC’s study area, separating such costs from their costs of providing services to the area at large.

SWC recommends that the “identical support” rule for wireless CETCs today observed by the FCC should be terminated, for there exists nothing identical, or remotely identical, between the wireless CETCs’ costs and the incumbent LEC’s

⁴ SWC estimates 6,000 households in its southern exchange along the Grants to Gallup route, and multiples that number by the 3.5 persons per household as commonly reported by the U.S. Census for Navajo households, then subtracts 40% as a somewhat arbitrary, though Census-substantiated, percentage of household members under 12 years of age.

⁵ SWC subtracts 40% from the population figures given for Grants and Gallup, accounting for household members under 12 years of age, and adds the result to the number of vehicles recorded by the NM Dept. of Transportation. SWC does not include any estimate of multiple occupants of vehicles who may also consume mobile services.

costs of serving the customers within this high cost study area, as we intend to further substantiate below.

Methodologies for Determining CETC Relevant Costs for USF support

A majority of Navajo households in New Mexico are located in the interior of the Navajo lands and are not within townships or HUD developments. Most Navajos access their homes by dirt roads in areas absent of mobile wireless coverage. [The Navajo Nation observes that 4,811 miles of roadway on the reservation are unpaved (or 77% of all roads on the Reservation)]⁶. SWC submits that many Navajo who subscribe to mobile wireless services, cognizant of the dead air time along their daily routes, do so for two reasons: 1) to at least have cellphone coverage as they approach portions of Interstate 40 and the few state roads across the Reservation as they conduct their business, and 2) because heretofore there have been no other options.

SWC is currently expanding home-based communications services to its customers and is building its feeder and “last mile” infrastructure to reach its remotest Navajo homes. As an incumbent LEC, with provider of last resort obligations, SWC’s per-line costs of delivering reliable telecommunications services to its customers in its service territory are greater than any competitive ETC’s that professes to serve SWC’s study area, but in fact owns and operates a network that largely serves customers outside SWC’s study area. SWC will make three points in this regard:

- 1) a competitive ETC’s cost methodology needs to be different from an incumbent LEC’s;
- 2) unless all of its network is located within an incumbent LEC’s high cost area, only a portion of a competitive ETC’s costs should be considered for USF support;
- 3) only a portion of a competitive ETC’s service territory should be designated, or a disaggregation zone created, for USF support.

⁶ www.navajonationcouncil.org/NNprofile.htm

Because competitive ETCs do not incur capital and operational costs involved in building a complete replacement network for the rural incumbent's network, and often build their networks to serve higher volume, low cost routes, the calculation of a competitive ETC's costs of incidentally serving high cost customers should be based on the incremental, actual costs of providing services to such high cost customers. Unless a competitive ETC can demonstrate that its switching and feeder (backhaul) systems are located within, and mainly serve, an incumbent LEC's study area, the competitive ETC should not receive Local Switching Support, Interstate Access Support, nor Interstate Common Line Support. SWC could support, as an alternative to an outright exclusion of such support, and the narrowest interpretation of what would constitute the "last mile's" high cost loop support, the Advocates for Regulatory Action's WiCAC proposal of using the 23 specific Part 32 accounts to calculate a wireless CETC's costs, as referenced in the FCC NPRM, paragraph 13 .

For wireless CETCs, most if not all incremental costs can be categorized purely as "last mile" costs and will be largely represented by 1) a small number of communications towers or monopoles, along with their radio equipment, that are placed within an incumbent LEC's high cost serving area and are used mainly to serve high cost customers, and 2) a portion of a wireless CETC's non-high cost specific facilities that contribute to, but are not dedicated to, providing services to an incumbent LEC's high cost customers. As a variation of the WiCAC proposal, and a reversal of the traditional cost allocations to interstate traffic, one other way to determine what constitutes a facility's or a network's "contributing to" providing services to high cost customers would be to establish a blanket percentage of such contribution. If such a blanket percentage of support for a wireless CETC's "last mile" costs would be considered, SWC recommends that any components of a wireless CETC's national or regional network (i.e., that are not wholly dedicated to serve high cost customers) that are used at least 30 percent to provide services to high cost customers in recognized study areas, have that

percentage of their costs eligible for per-line USF support. In other words, if 71 to 100 percent (71%-100%) of a wireless CETC's tower or radio equipment, or its spectrum, are used to provide services to non-high cost customers, then it should be ruled that service provided to its high cost customers be considered *incidental to* its greater mission and not receive USF support at all. But again, the WiCAC proposal may be a more practical way to identify high cost from non high cost and attempts to establish competitive neutrality by imposing the same USF support algorithm on wireless CETCs that the rural incumbent LECs subscribe to.

Commenting on the FCC's NPRM, paragraph 16, whether to disaggregate a competitive ETC's costs by relevant competitive ETC service area and by the relevant LEC study area, wire center or disaggregation zone, SWC recommends a calculation of a competitive ETC's costs as they are incurred only in providing services to the incumbent LEC's high cost customer base. In the spirit of achieving competitive and technological neutrality, a competitive ETC's study area should be exactly an incumbent LEC's study area. If a competitive ETC were to have a larger study area than an incumbent LEC, as in the case of the wireless ETC in northwestern New Mexico, there may be a risk that other, non-high cost-customer-specific costs are inadvertently added to the costs of serving the more high cost customers within a specific incumbent LEC's study area. Moreover, by limiting the calculation of high cost support for a competitive ETC to an incumbent LEC's study area, the FCC would be able to set a cap on such competitive ETC's per-line support at a specific incumbent LEC's level of support. Capping the competitive ETC's per-line support at the incumbent LEC's high cost loop support (HCSL) has another advantage - it would prevent the per-line USF support system from being "gamed" by a competitive ETC's strategically placing investment in a high cost area prior to its completion of its network in a heavily trafficked area, thereby causing the high cost fund to carry a greater support burden for facilities that ultimately were to benefit other than high cost customers. Sacred Wind supports setting the cap on competitive ETCs' USF support at the level of the incumbent LEC's high cost loop support, or the total of

the support calculated from its relevant Part 32 elements as proposed in the WiCAC proposal. Such support for competitive ETCs should be made for the actual number of customers served, not based on future projections as discussed in Section 20 of the FCC NPRM.

Reporting Requirements

Sacred Wind submits that a competitive ETC's reporting requirements be the same as those imposed on incumbent LECs in whose states the competitive ETCs operate, to be further consistent with the FCC's goals of competitive neutrality. Whether consumers hold the opinion that competitive ETCs' services are direct substitutes for an incumbent LEC's services or not, the fact that a competitive ETC would potentially receive the same per-line support from the USF fund for high cost loop support as would an incumbent LEC for the same customer, establishes direct competition between the incumbent LEC and the competitive ETC for USF support and for the customer's account. As discussed above, a competitive ETC's cost data should be provided to the state PUC on a disaggregated basis, demonstrating the ETC's actual costs of providing "last mile", or high cost loop services within study areas and identifying any other costs that contribute to such service.

Respectfully submitted,
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