Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Qwest Wireless's Petition for Waiver of the Telecommunications Relay Services Fund Contribution Rules, 47 C.F.R. § 64.604(c)(5)(iii)	))))	CG Docket No. 03-123

QWEST WIRELESS'S PETITION FOR WAIVER OF THE TRS FUND CONTRIBUTION RULES, 47 C.F.R. § 64.604(c)(5)(iii)

Pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules,[1] Qwest Wireless ("QW") respectfully seeks a waiver of the Telecommunications Relay Services ("TRS") Fund contribution requirements, 47 C.F.R. § 64.604(c)(5)(iii).[2] QW seeks this waiver so that its contributions to the TRS Fund may be better aligned with the recovery of those costs from QW's remaining customers as it winds down its business.

I. BACKGROUND

Section 225(d)(3)(B) of the Communications Act requires that the Commission establish regulations to recover the costs of the provision of TRS such that the regulations

> generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.[3]

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[1] *See* 47 C.F.R. § 1.3.

[2] To the extent the Commission views that waiver of additional Commission regulations is necessary to effect the relief Qwest seeks, Qwest also requests waiver of those additional provisions.

[3] 47 U.S.C. § 225(d)(3)(B).

In response to this statutory obligation the Commission created the TRS Fund to recover the costs caused by interstate TRS.[4] The Commission's rules require that "[e]very carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues."[5] Further, 47 C.F.R. § 64.604(c)(5)(iii)(B) states in relevant part that "Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission."

QW is an affiliate of Qwest Communications International Inc. ("QCII") that resells wireless service. As such, QW is a provider of interstate telecommunications and is a contributor to the TRS Fund as required by the Commission. But, unlike most telecommunications providers who are contributing into the TRS Fund, QW is exiting the telecommunications business.[6] Due to QW exiting the business, it has significantly fewer customers from whom to recover the costs of the TRS Fund contribution obligations, relative to the number of customers that it had in prior years.[7] In August 2008 QW ceased selling its services to new customers and began its exit of that business. From January to June 2009, in accord with the Commission's TRS Fund contribution rules, QW has been contributing into the TRS Fund based on its calendar-year 2007 interstate and international end-user revenues. But, in the first six months of 2009 QW had less than half of the customer base it had in 2007. And, that customer base continues to decline. QW originally intended to cease providing wireless service

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[4] *See* 47 C.F.R. § 64.604(c)(5).

[5] 47 C.F.R. § 64.604(c)(5)(iii)(A).

[6] Qwest Corporation, another QCII affiliate, now markets Verizon Wireless service, but no Qwest entity other than QW is currently a provider of wireless services.

[7] For purposes of this petition "customer" refers to an active customer account, which may include one or more wireless handsets.

to customers in February 2009. But, because QW customers were not migrating to other providers as quickly as QW had anticipated, and in order to minimize any sudden loss of service to those remaining customers who have not yet migrated, QW has continued to provide service to those customers. QW has begun providing notice to its remaining customers that it will discontinue their QW service on October 31, 2009.

II. REQUEST FOR WAIVER

QW seeks a waiver of the TRS Fund contribution requirements so that its contributions to the TRS Fund in calendar year 2009 are better aligned with the recovery of TRS costs from its current customers. To accomplish this QW proposes that for the new TRS funding year starting in July 2009 that QW would not contribute to the TRS Fund.

In accord with Commission Rule 1.3 the Commission may waive any of its regulations when good cause is demonstrated. To show good cause a carrier must demonstrate that (1) there are special circumstances warranting deviation from the general rule and (2) waiver will serve the public interest.[8] For the reasons that follow, QW believes that there is good cause for the Commission to grant the requested relief.

As described in the preceding section, QW is exiting the telecommunications business. But, until QW ceases providing service to its remaining customers, QW is in the unusual and difficult position of being required to contribute into the TRS Fund amounts that it would be unfair to recover from those customers. For instance, for QW to recover its monthly contribution to the TRS Fund for April 2009 which it has already paid, it would have had to charge each of its customers an approximate TRS Fund recovery rate of 4.01%. And, for QW to recover the amount it would be expected to contribute in July 2009 from its anticipated customer base at that

[8] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

time, it would need to charge each customer a TRS Fund recovery rate of approximately 5.88%. These percentages are mis-aligned with the current TRS Fund contribution factor of 1.01% and the National Exchange Carrier Association ("NECA")-proposed 1.14% TRS contribution factor for the upcoming funding year.[9] Such high surcharges would not be appropriate. Instead, QW continues to charge its few remaining customers TRS Fund charges based on the contribution factor as applied to their interstate telecommunications charges. In turn, QW is losing, and will continue to lose, significant amounts of money if it continues to contribute to the TRS Fund based on historical revenues that grossly over-estimate its revenues from current subscribers. Thus, in April 2009 QW contributed $162,260 to the TRS Fund, recovered $48,988 from customers in TRS Fund charges, leaving $113,272 of QW's TRS Fund contribution not recovered from subscribers. Similarly, in July 2009, if QW must continue to contribute based on annual historical revenues, QW projects that it will contribute approximately $160,000 to the TRS Fund, recover approximately $30,000 from customers in TRS Fund charges, leaving approximately $130,000 of QW's TRS Fund contribution not recovered from subscribers. In fact, for the first six months of 2009 QW will have contributed approximately $635,000 into the TRS Fund that it has not been able to recover from its customers. Further, if QW is required to contribute into the TRS Fund for the 2009-10 funding year, but has no customers at all after October 31, 2009, it will be contributing into the TRS Fund without any prospect of recovering those contributions for the majority of the funding year. QW projects that for the 2009-10 funding year QW would contribute over $1.8 million that it would not be able to recover from

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[9] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 23 FCC Rcd 9976-77 ¶ 1 (2008) (adopting proposed TRS Fund carrier contribution factor of 0.01012) and NECA's Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CC Docket No. 03-123, filed May 1, 2009 at 19 (estimating that the TRS Fund contribution factor will need to be 0.01137) ("NECA Fund Estimate").

customers. This situation is not only financially harmful, but also seems to be in conflict with the statutory requirement that the costs be recovered "from all subscribers for every interstate service" because in this case the costs are primarily or exclusively being recovered from the interstate service provider, and not the subscribers.

In addition to these special circumstances, granting the relief requested would be in the public interest as it would (1) comply with the statutory language, (2) resolve the inequitable contribution burden placed on QW because it is winding down its business, and (3) not harm the TRS Fund or the provision of services supported by the Fund.

First, the statutory language which the Commission is implementing in its TRS Fund recovery rules is that "costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service."[10] This language does not require that these costs be recovered from telecommunications providers, be based on their contributions to a shared funding mechanism, or have the contributions based on a factor applied to their interstate telecommunications end-user revenues. These are all requirements the Commission has put in place in implementing its statutory obligation. To the extent that telecommunications providers' contributions to the TRS Fund are a legitimate surrogate for recovery of the TRS costs from all interstate service customers -- as the Commission has viewed them to be[11] -- QW's proposed relief is wholly consistent with the statutory language the Commission is implementing. If anything, QW has in fact over-contributed to the TRS Fund on behalf of its customers for the

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[10] 47 U.S.C. § 225(d)(3)(B).

[11] *In the Matter of 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, 14 FCC Rcd 16602, 16630 ¶ 60 (1999).

entirety of calendar year 2009.[12] The Commission's action in granting this waiver would be in accord with its statutory obligations.

Second, granting the requested relief would remove the inequitable burden that the current contribution computation imposes on QW as it winds down its business. The current contribution computation is a reasonable approach for recovering TRS costs where a telecommunications provider is an ongoing venture. It is not, however, a reasonable approach where a telecommunications provider is winding down its business, and cannot adequately recover its contribution from its remaining customers. Permitting a different contribution computation in these circumstances can ameliorate this inequity.

Third, allowing the requested relief will not harm the TRS Fund. In its recent filing of TRS Payment and Revenue Requirements for July 2009-June 2010, NECA has anticipated a surplus of approximately $90 million for the current fund year (July 2008-June 2009) after June 2009 minutes are paid.[13] And, for the upcoming funding year, NECA is recommending maintaining a one-month surplus which it estimates to be $75 million.[14] NECA has projected an overall TRS Fund requirement of $891.2 million for 2009-10.[15] Permitting QW to be relieved of the obligation to contribute to the TRS Fund for the 2009-10 funding year would result it approximately $1.9 million less in contributions to the Fund. While this is a significant amount of money for QW, it is not significant for the Fund or its surplus.

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[12] As such, QW expects to continue to recover those amounts through TRS Fund charges on its customers until it stops providing service to those customers in October.

[13] NECA Fund Estimate at 19.

[14] *Id.* at n.40.

[15] *Id.* at 4.

For these reasons, QW requests that this Commission grant it a waiver of its TRS Fund contribution rules and permit QW to be excused from contributing to the TRS Fund starting with the upcoming 2009-10 funding year.

Respectfully submitted,

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June 26, 2009

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST WIRELESS'S PETITION FOR WAIVER OF THE TRS FUND CONTRIBUTION RULES, 47 C.F.R. § 64.604(c)(5)(iii)** to be: 1) filed via ECFS with the Office of the Secretary of the FCC in CG Docket No. 03-123; 2) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com; and 3) served via electronic mail and First Class United States mail, postage prepaid, on the party listed below.

/s/ Richard Grozier

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