- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of William W. Low vs. Qwest Corporation	DOCKET NO. 05-049-69 REPORT AND ORDER DENYING PETITION FOR UNIVERSAL PUBLIC TELECOMMUNICATIONS SERVICE SUPPORT FUNDING, REQUEST FOR WAIVER, AND RENEWAL OF MOTION TO DISMISS

ISSUED: June 30, 2008

SYNOPSIS

The Public Service Commission of Utah denies Qwest Corporation's request for waiver from various Commission rules governing one-time distributions from the State Universal Public Telecommunications Service Support Fund and thereby denies the requested one-time distribution to support the proposed upgrade of the Qwest Corporation telecommunications facilities serving Logan Canyon, Utah.

By The Commission:

PROCEDURAL HISTORY

On April 8, 2008, Qwest Corporation ("Qwest") filed a Petition for Universal Public Telecommunications Service Support Funding, Request for Waiver, and Renewal of Motion to Dismiss ("Petition") seeking a one-time distribution from the State Universal Public Telecommunications Service Support Fund ("USF" or "Fund") to Qwest in order to construct buried cable facilities to serve customers in Logan Canyon, Utah. The Petition noted in approving the one-time distribution the Commission must waive several provisions of Utah

Administrative Code R746-360. Finally, Qwest requested that, if the Commission grants the Petition and request for waiver, the Commission should then dismiss the formal complaint of Complainant William W. Low which gave rise to this docket.

The Division of Public Utilities ("Division") investigated this request. On June 19, 2008, the Division filed its analysis detailing the circumstances leading to the request, discussing the Commission Rules requiring waiver, analyzing the effect approval of the request would have on the USF, and recommending several conditions the Commission should impose if it approves the request.

BACKGROUND AND DISCUSSION

As outlined by Qwest and the Division in their filings, Qwest provides 8-party service in Logan Canyon, Utah, by means of twelve open copper wires that run approximately 6.5 miles into the canyon along a pole line consisting of 268 poles. Qwest estimates that there are 80 potential customers who own property in this segment of Logan Canyon. The existing facilities currently provide service to 20 residences and 3 businesses–a Forest Service station, a Forest Service campground, and the Girl Scout's Camp Lomia. Complainant's service is at a home that is considered a full-time residence. All of the other residences in the segment of the canyon served by Qwest are vacation homes. According to Qwest, the service has deteriorated and become unreliable due to heavy winters and steep canyon wall slides. The pole line has become dangerous to work on and pole change-outs expensive, if not impossible, to perform safely. There is no cell phone service in the canyon and emergency communications are unreliable or non-existent. Qwest estimates maintenance costs for the last three years have been about $25,000 per year.

This situation came to the Commission's attention in 2005 when William W. Low filed a formal complaint about his unreliable telephone service in the canyon. Since then, and while Mr. Low has been out of the country for the past two years, the Commission has sponsored a number of technical conferences to discuss this situation and Qwest has undertaken studies to determine the best course of action to address service quality and maintenance issues.

Qwest considered four alternatives to address Complainant's service quality issues: repair of existing open wire facility, deployment of a radio facility, placement of new aerial cable, and placement of a buried cable. For various reasons outlined in the Petition, Qwest determined the buried cable option is the best and most survivable solution. Qwest estimates this solution will cost a total of $800,000. Qwest proposes to contribute $200,000 if at least 20 customers agree to participate. Qwest plans to survey potential customers in Logan Canyon and wants to use a $1,875 customer contribution as a base to determine customer interest. Both the customer contribution of $1,875 per customer and the $200,000 Qwest will contribute will be "fixed" for the number of customers between 20 and 80 if the project cost remains at $800,000. Therefore, if only 20 customers participate, the Fund contribution would be $562,500, or $28,125 per customer. If 80 customers participate, the Fund contribution would be $450,000, or $5,625 per customer. If 21 to 79 customers sign up, the Fund contribution would be somewhere between $562,500 and $450,000, respectively.

Commission Rule 746-360-9(A) states USF one-time distributions can be used for amelioration of inadequate service, but only in “extraordinary circumstances, when traditional methods of funding and service provision are infeasible.”[1] Rule 746-360-9(2)(c) states “one-time distributions will not be made for seasonal developments that are exclusively vacation homes” while R746-360-9(2)(c)(i) defines a vacation home as a “secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.” For projects that combine one-time USF funding with customer funding, R746-360-9(C)(1) requires “[a]t least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for.” Rule 746-360-9(B) requires that, unless waived by the Commission, “the maximum one-time distribution will be no more than $10,000 per customer…” Finally, R746-360-9(B)(3) specifies required cost-shares from customers for projects that exceed $2,500 per account. The Division’s analysis indicates that Qwest’s proposal will require waiver of the cost-share requirement if fewer than 80 customers agree to connect to the service and provide $1,875 each for the project, as proposed. If the actual project costs exceed Qwest’s cost projection of $800,000, a cost-share waiver may be required even if all 80 customers participate.

The Division is concerned with several aspects of this project. First, the overall cost as proposed by Qwest is, on a per customer basis, very high and would require at least $450,000 in USF funding. Second, Qwest has not surveyed existing or potential customers in Logan Canyon to determine how much they are willing to pay for the project. However, Qwest

[1]R746-360-9(A)(1).

believes few would be willing to pay more than the proposed $1,875, let alone the much larger amounts that would be required if cost-sharing rules are waived and few people desire to participate. It is on this basis that Qwest seeks to freeze individual cost-shares at $1,875. However, if a small number of people participate at $1,875, the required departure from Commission-required matching would be substantial–customer cost-sharing could be as little as 6.8 percent of the amount required by rule. Finally, the Division is also concerned that this project would effectively require the waiver of several different provisions of the Commissions rules on USF funds. However, according to the Division, the above concerns need to be considered alongside the interest of existing customers for just, reasonable, and adequate service. As described in Mr. Low's original complaint, existing service is poor and is likely to continue to deteriorate.

Having reviewed the Petition and the Division's analysis thereof, we determine not to grant the requested waivers from Commission rules and therefore do not approve the requested one-time USF distribution. While we understand Complainant's concerns about inadequate service, as well as Qwest's concerns about the ongoing maintenance of its existing facilities, we are mindful that our rules have been adopted to protect not just the interests of Qwest's customers in Logan Canyon but of all telecommunications ratepayers throughout the state. Approval of Qwest's proposed one-time distribution would require the Commission to waive its long-standing rules prohibiting distributions to seasonal developments and developments comprised by a majority of part-time residents. In addition, it would likely require waiver of the Commission's $10,000 per customer limit and of the required cost-share contribution per customer. We have not previously waived so many requirements in order to approve a requested one-time USF distribution, and we are not prepared to do so on the facts presented here.

Finally, we decline to rule on Qwest's continuing motion to dismiss Mr. Low's complaint. While we appreciate Qwest's time and effort spent in developing options to enhance its service quality in Logan Canyon, Mr. Low's complaint giving rise to this docket concerned a specific service outage for which the Commission has not yet obtained adequate evidence on the record to determine whether Qwest, in that instance, violated any applicable statute, tariff provision or Commission rule. Further proceedings specifically addressing said complaint will be scheduled as necessary.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

Qwest Corporation's request for a one-time distribution from the State Universal Public Telecommunications Service Support Fund as referenced herein is denied.

Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah

Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 30th day of June, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#57930