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April 17, 2006

Ms. Frances. Nichols-Anglin
Administrative Hearings Division
Oregon Public Utility Commission
P. O. Box 2148
Salem, OR 97308-2148

Re: UM 1217

Dear Ms. Nichols-Anglin:

On behalf of Qwest Corporation and Malheur Home Telephone Co., enclosed please find an original and (5) copies of its Opening Post-Hearing brief, along with a certificate of service.

If you have any questions regarding this matter, please feel free to call me at your convenience. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler

CMB:cmb
Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1217

In the Matter of PUBLIC UTILITY
COMMISSION OF OREGON Staff
Investigation to Establish Requirements for
Initial Designation and Recertification of
Telecommunications Carriers Eligible to
Receive Federal Universal Service Support

QWEST CORPORATION'S AND
MALHEUR HOME TELEPHONE
COMPANY'S OPENING POST-
HEARING BRIEF

Pursuant to the schedule agreed upon by the parties at the March 9, 2006 evidentiary hearing, and as confirmed in Administrative Law Judge Christina Smith's March 15, 2006 Memorandum, and thereafter modified on April 14, 2006, Qwest Corporation ("Qwest") and Malheur Home Telephone Company ("Malheur") (collectively "Qwest") hereby submit their Opening Posthearing Brief.¹

INTRODUCTION AND SUMMARY

Qwest limited its testimony in this docket to certain Eligible Telecommunications Carrier ("ETC") reporting requirement issues (essentially four sub-issues) pertaining to the annual recertification of ETCs, which sub-issues comprised Issue III in this proceeding. Generally, Qwest believes that only those recertifying ETCs drawing traditional high-cost support from the Federal Universal Service Fund ("federal USF") should be required to file reports documenting or explaining the manner in which the USF funds they receive should be spent. In considering the adoption of these proposed rules, the Commission should evaluate the primary purpose for such rules, which is to ensure that federal USF support is used for intended purposes. Some of the FCC's rules in Order No. 05-46, however, do not effectively meet these purposes, or they unnecessarily duplicate other requirements already existing in state or federal law.

¹ Unless otherwise stated, Qwest and Malheur will be collectively referred to as Qwest.

Accordingly, Qwest largely agrees with Staff's general approach to these ETC issues, especially regarding the minimization of ETC reporting requirements. Indeed, Qwest agrees with Staff's position that if an ETC already meets a reporting requirement through reports that it currently submits to the Commission, the ETC should *not* be required to resubmit or rework such reports, but rather, the ETC should be able to simply refer to those reports that meet corresponding reporting requirements. There are a couple of matters, however, about which Qwest does not necessarily agree with Staff, and those are set forth in more detail below.

BRIEF PERTINENT PROCEDURAL HISTORY

At the Commission's August 16, 2005 public meeting, the Commission adopted Staff's August 9, 2005 report recommending it open an investigation to establish requirements for initial designation and recertification of telecommunications carriers eligible to receive federal USF. (See Staff Report, pp. 1, 9.) The Staff Report discussed the pertinent background, including the FCC's new proposed requirements for determining eligibility of carriers for support funding in FCC Order 05-46, as well as the role state commissions have for designation of such carriers. (Id., pp. 1-2.) The Staff report also noted that the FCC recommends but does not require that state commissions adopt its proposed requirements in their ETC designations. (Id., p. 2.) Staff also discussed the two different processes for initial designation (id., pp. 3-6) and recertification (id., pp. 6-9) of eligibility for USF funding. The Commission thereafter opened this docket. A number of parties, including Qwest and Malheur, then petitioned to intervene as parties.

On September 16, 2005, the parties attended a prehearing conference, and on September 19, 2005, Chief ALJ Michael Grant issued a Prehearing Conference Memorandum that granted numerous parties intervention and that established a procedural schedule, including dates for prefiled testimony and a hearing for March 9 and 10, 2006. Thereafter, on October 14, 2005, the parties jointly filed a Consolidated Issues List, which ALJ Grant adopted on October 28, 2005.

Thereafter, the parties filed direct testimony on December 13, 2005, and reply testimony on February 8, 2006.² The parties then appeared for an evidentiary hearing on December 9, 2006.³ At the conclusion of the December 9th hearing, the parties agreed to a post-hearing briefing schedule of opening briefs on April 14, 2006 and reply briefs on May 18, 2006, which briefing schedule ALJ Smith adopted in her March 15, 2006 Memorandum. On April 14, 2006, ALJ Smith granted a one-business day extension to April 17, 2006.

DISCUSSION

As mentioned, Qwest limited its testimony in this docket to certain CETC reporting requirement issues, and sub-issues, comprising Issue III in this proceeding. Specifically, Qwest provided testimony on the following sub-issues:

1. Should the Commission adopt any, or all, of the FCC reporting requirements proposed in FCC Order 05-46? (III.A.1.)
2. Should the Commission adopt other reporting requirements? (Issue III.A.2.)
3. Should the same reporting requirements apply to all types of ETCs – ILEC ETCs and competitive ETCs? (Issue III.A.3.)
4. Should the same reporting requirements apply regardless of the type of support (traditional high-cost, interstate access/common line, low-income) received by the ETC? (Issue III.A.4.)

Qwest generally believes that only those ETCs drawing traditional high-cost support from the federal USF should be required to file reports documenting or explaining the manner in

² Qwest and Malheur jointly filed direct testimony of Qwest employee Dennis Pappas (Exhibit Qwest/1) and reply testimony (which adopted Mr. Pappas' testimony) of Qwest employee Peter Copeland (Exhibit Qwest/2).

³ Qwest witness Peter Copeland, who had adopted Mr. Pappas' direct testimony, appeared for cross-examination via telephone pursuant to ALJ Smith's March 7, 2006 Memorandum. Both Exhibit Qwest/1 (the Direct Testimony of Dennis Pappas) and Exhibit Qwest/2 (the Reply Testimony of Peter Copeland) were admitted into the evidence and record without objection, and Mr. Copeland was briefly cross-examined via telephone.

which the USF funds they receive should be spent. The Commission should evaluate the primary purpose for such rules, which is to ensure that federal USF support is used for intended purposes, in considering the adoption of these proposed rules. Some of the FCC's rules, however, do not effectively meet these purposes. Others unnecessarily duplicate other requirements already existing in state or federal law. (Qwest/1, Pappas/3-4.)

In any event, Qwest largely agrees with Staff's general approach (Exhibit Staff/4 (Marinos)) to these issues, particularly regarding its agreement to "minimiz[e] [carriers'] reporting burdens to the extent possible." (Qwest/2, Copeland/3.) Further, regarding current ETCs such as Qwest and Malheur, Qwest wholeheartedly supports Staff's position (Staff/1, Marinos/74, lines 6-10) that "[i]f a requirement is *already being met* by some ETCs through reports currently submitted to the Commission, those ETCs should *not* have to resubmit or rework such reports. Instead, they should be able to reference the reports that meet the corresponding reporting requirements." (Id. (emphasis added).)

The following are Qwest's comments about the specific reporting sub-issues of Issue III:

I. The Commission should not adopt the requirements in FCC Order 05-46 (III.A.1.)

The first reporting sub-issue, III.A.1., asks: "Should the Commission adopt any, or all, of the FCC reporting requirements proposed in FCC Order 05-46?" Qwest generally agrees with the direction and approach that Staff is recommending consistent with its overall approach of minimizing the reporting burdens, as modified in Staff/4, Marinos/27-36.

II. The Commission should not adopt other reporting requirements (III.A.2.)

The second reporting sub-issue, III.A.2., asks: "Should the Commission adopt other reporting requirements?" Qwest generally supports Staff's recommendation regarding other reporting requirements. (Qwest/2, Copeland/4-5.) Further, Qwest believes that the Commission's Residential Service Protection Fund (RSPF) staff has already implemented the additional

proposed reporting requirement of reporting annual Lifeline and Linkup customers as part of that staff's procedures. Accordingly, Qwest does not believe the Commission should require any additional Lifeline and Linkup reporting requirements. (Qwest/2, Copeland/4-5.)

III. The same reporting requirements should apply to all types of ETCs (III.A.3.)

The third reporting sub-issue, III.A.3., asks: "Should the same reporting requirements apply to all types of ETCs – ILEC ETCs and competitive ETCs?" Qwest agrees with Staff that there is justification for some differences between ILEC ETCs and CETCs. (Staff/1,Marinos/88-89.) Specifically, Qwest supports Staff's position that ILEC ETCs should not be required to submit formal network improvement plans given the evolution and structure of the current system of support. (Qwest/2, Copeland/5.) Again, however, the Commission should carefully evaluate the rules in order to minimize unnecessary and duplicative reporting. (Qwest/1, Pappas/8.)

IV. The same requirements should not apply regardless of type of support (III.A.4.)

Finally, the fourth reporting sub-issue, III.A.4., asks: "Should the same reporting requirements apply regardless of the type of support (traditional high cost, interstate access/common line, low-income) received by the ETC?" Qwest does not believe that the same requirements should apply regardless of the type of support (traditional high cost USF, Interstate Access/Common Line, or low income) that the ETC receives.

If the Commission were to adopt additional ETC reporting requirements, however, the additional requirements should apply only to carriers receiving *traditional high-cost support*. This is especially so because Interstate Access Support and Lifeline Support are very different from the traditional high-cost support. Lifeline support is reimbursement for providing discounted basic service to qualifying customers, while Interstate Access Support (IAS) is interstate in nature and substitutes explicit support for recovering interstate loop costs. (Qwest/1, Pappas/8-9.) Staff agrees with this proposition. (Tr., pp. 174-176.) Further, IAS replaces the

implicit support formerly embedded within interstate access charges. (Qwest/1, Pappas/8-9.) Again, Staff agrees with this proposition. (Tr., pp. 176-177.) Accordingly, Qwest does not believe these two mechanisms are in any way tied to the upgrading or maintenance of the supported services, nor are the offsets for intrastate costs tied to such upgrading or maintenance. (Qwest/1, Pappas/8-9.)

As the FCC noted in its CALLS order⁴ for price cap carriers, the existing high-cost support mechanism for rural and non-rural carriers provides support which enables states to ensure reasonably affordable and comparable *intrastate* rates. The interstate access support (IAS) mechanism, however, provides explicit support to replace the implicit universal service support that existed in *interstate* access charges. (Qwest/2, Copeland/5-6.)

The creation of the explicit *interstate* support was accomplished through an *interstate* rate rebalancing. Essentially, the FCC ruled that it was not appropriate for LECs to recover the entire *interstate* portion of non-traffic sensitive cost of the local loop and switch port through *interstate* flat-rated charges (Subscriber Line Charges, or “SLCs”) to customers. Instead, the FCC capped the level of the customer charge because of its concerns that customers might disconnect their telephone service if the charge were too high. The IAS, therefore, was designed to provide recovery of the costs above the SLC caps (although the fund does not provide for the full recovery of those costs). (Qwest/2, Copeland/6.) In contrast, traditional high-cost support provides an expense offset for *intrastate* costs.⁵ This traditional support provides for affordable and comparable rates within state commission jurisdiction. (Id.)⁶

⁴ *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*; FCC 00-193, Sixth Report and Order in CC Docket Nos. 96-262, 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, released May 31, 2000, ¶ 185.

⁵ Qwest admits there are some similarities between traditional high-cost support and IAS. For example, as Staff noted (Staff/1, Marinos/90), traditional federal high cost support has been granted based on ILEC costs or cost

Staff, however, did express a special concern (Staff/1, Marinos/92) about “the need to monitor the performance of CETCs in non-rural ILEC service areas since they are subject to little ongoing regulatory oversight.” (Qwest/2, Copeland/8.) Thus, Staff proposes that ETCs which receive access-related universal service support be required to report to the Commission annually, even though the Commission is not involved with their recertification to the FCC. (Id.) Qwest would support an annual Commission recertification for IAS, so long as ILECs receiving IAS would be subject to the same reporting treatment as ILECs recertifying traditional high-cost support. This is consistent with Staff’s position (Staff/1 Marinos/90) because, unlike CETCs, ILECs are not building out their networks, but rather, are simply maintaining acceptable service, network quality and affordable rates in high-cost areas. (Id.)

Finally, the Commission already receives sufficiently-detailed reports from Qwest to inform itself regarding Qwest’s service quality, low-income programs, emergency capabilities, the comparability of urban and rural services, and the affordability of service. (Qwest/2, Copeland/8-9.) Staff agrees with this proposition. (Tr., pp. 177-178.) Specifically, Qwest and Malheur both currently provide Annual Reports of Operations (both provide Form O and Malheur Form 1), monthly service quality reports, and construction budget (Qwest only), among other reports. These reports cover all of the areas of interest to the Commission that have been

proxies relative to benchmarks the FCC has determined. IAS is similar in that it is a cost-based fund developed from capped SLC rates (which are equivalent to benchmarks) and distributed based on forward-looking cost-based UNE zone rates. ILECs are granted both traditional high cost and interstate access explicit support to meet the principle goal of universal service, which is to maintain quality services at affordable rates. The 1996 Telecommunications Act does not differentiate between affordable *interstate* and *intrastate* rates. (Qwest/2, Copeland/7.)

⁶ Qwest further agrees with Staff that “competitive neutrality” does not necessarily mean all ETCs must have the same annual reporting requirements. Staff correctly observes that ILEC ETCs are not expected to use USF funds to expand their networks, but rather, to *maintain* acceptable service, network quality, affordable rates, and to meet carrier of last resort obligations, given the evolution and structure of the current system of support. (Qwest/2, Copeland/7.) Further, as Staff notes (Staff/1, Marinos/74), “[r]eports should not be required from one set of ETCs merely because another set of ETCs are already required to submit them to the Commission. Rather, alternative

discussed in this proceeding, and thus, Qwest does not believe any further reporting from Qwest should be required. (Qwest/2, Copeland/9.)

CONCLUSION

For the reasons stated above, Qwest requests that the Commission consider Qwest's and Malheur's testimony regarding certain reporting requirements for CETCs, and that its final order be consistent with Qwest's and Malheur's recommendations on these reporting issues.

DATED: April 17, 2006.

Respectfully submitted,



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reports that are most suitable for meeting the same general requirement should be permitted if appropriate.” (Qwest/2, Copeland/7-8.) Staff agrees with this position. (See Staff/4, Marinos/40-41.)

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing QWEST CORPORATION and MALHEUR HOME TELEPHONE CO.'S OPENING POST-HEARING BRIEF was served on the 17th day of April, 2006 via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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Dated this 17th day of April, 2006.

Qwest Corporation
Malheur Home Telephone Co.



by: _____

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