Decision No. C06-0600

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-537T

IN THE MATTER OF PROPOSED RULES REGARDING ANNUAL REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS TO BE CERTIFIED TO RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT.

ORDER ADOPTING RULES

Mailed Date: May 23, 2006
Adopted Date: May 9, 2006

I. BY THE COMMISSION

A. STATEMENT

1. This matter comes before the Commission for consideration of the adoption of permanent rules setting forth reporting requirements for eligible telecommunications carriers (ETCs). By Decision No. C05-1490 we issued a Notice of Proposed Rulemaking (NOPR) in this docket which contained the proposed rules. The rules we adopt here include annual reporting requirements for designated ETCs pursuant to the guidelines set forth in 47 Code of Federal Regulations §§ 54.313 and 54.314. Our rules are intended in part to adopt the modifications to reporting requirements set forth by Federal Communications Commission (FCC) Order 05-46 in FCC Docket 96-45 issued March 17, 2005 (ETC Report and Order). We adopt a few additional rules which are consistent with the Commission's previous ETC certification process.

2. In Decision C05-1490, the Commission allowed the parties until March 2, 2006, to file comments. Comments were filed on that date by: the Colorado Office of Consumer Counsel (OCC); Alltel Communication, Inc. (Alltel); N.E. Colorado Cellular, Inc., doing business as Viaero (Viaero); Qwest Corporation (Qwest); and the Colorado Telecommunications

Association (CTA). AT&T submitted its initial comments on March 15, 2006, and the OCC filed post-hearing comments on March 30, 2006. We also set the matter for hearing which was held as scheduled on March 16, 2006.

3. The purpose of the new rules is to bring more accountability to the use and receipt of Federal Universal Service Fund (FUSF) dollars. The Commission is charged with ensuring that federal support is spent for the intended purpose of provisioning, upgrading and maintaining basic local exchange service in Colorado. We emphasize that designated ETCs may request a waiver of specific rules, on a case-by-case basis, if particular rules do not apply to a carrier or are believed to be too burdensome. We also are cognizant that the FCC has recognized that state commissions are free to adopt rules different from those the FCC has adopted. However, the FCC in its Order encourages state commissions to require all ETC applicants and those already certified as ETCs to meet the same conditions as outlined in its order. While our proposed rules do not exactly match those adopted by the FCC, we have endeavored to not stray far from the FCC's rules, and believe the rules we adopt today nicely combine the FCC's rules with previously established guidelines.

B. Discussion

4. Several parties submitted comments on proposed Rule 2187(e)(I). This rule mandates that carriers submit the information required in subsequent rules to be certified by the Commission to receive federal support for the following calendar year, or to retain its ETC designation, and suggests that failure to submit the information may lead to not being certified by the Commission. The OCC suggests that the Commission change the deadline for submission of the required information from August 15 to June 1 so that parties could intervene prior to issuance of the certification letter. We decline to do so for two reasons. First, the certification

letter has never been sent in the context of a contested docket, and, second, some of the required information (e.g. NECA filings) are not available until July 31. The OCC also suggests that we insert the language from FCC rule, 47 *Code of Federal Regulations* (CFR) 54.209(d), which sets payment dates. This Commission does not make the actual payments. Instead, the USAC decides when payments are made, and we believe it more appropriate to exclude the suggested language. We also decline to delete the phrase "or previously designated by the Federal Communications Commission (FCC)." It is conceivable, although perhaps unlikely, that at some point this Commission could cede its responsibility to designate ETCs back to the FCC, at which point inclusion of this language could be helpful to the Commission. In any event, we do not believe there is any harm in keeping this language in the rule. The CTA believes that this rule leads to repetitive reporting requirements, and submits specific language that would allow a carrier to certify that it has already provided the requested information at another time. We decline to include the proffered language because it is relatively simple for a carrier to attach the required information to its submission if it is already available.

5. CTA and Qwest submitted comments on proposed Rule 2187(e)(II)(A). This requires submission of the number of requests from potential customers within the ETC's service area that were not fulfilled and an explanation of why the request for service was unmet. CTA states that wireline carriers already submit this information, so the rule is repetitive. Qwest states that rules (A) through (C) do not ensure that FUSF funds are spent as intended. Qwest also suggests that this rule requires submission of information already submitted to the Commission. Wireless carriers do not have to submit these reports currently. On deciding this issue, we note that it is a rare occurrence when a service request is unfulfilled, so the burden of

this rule is quite small. In the 2005 reports, not one ETC reported any unmet requests for service. We thus decline to adopt the parties' suggestions.

6. CTA and Qwest address proposed Rule 2187(e)(II)(B) which concerns the number of complaints per thousand access lines or handsets. CTA repeats its arguments with respect to repetitive reporting requirements, and Qwest echoes that comment. The Commission tracks complaint information when a customer calls the Commission. More often, a customer will call the company initially. If the situation is not resolved satisfactorily, then they will most likely call the Commission. We thus do not believe we receive all complaint information. Again, wireless providers do not have to provide this information, and we believe the additional burden to be minimal if the information is already available.

7. Proposed Rule 2187(e)(II)(C) concerns detailed information on outages lasting at least thirty minutes for ETC facilities. Again, CTA argues that the information is provided to the Commission elsewhere by wireline carriers, and they should be able to self-certify with respect to the rule. We decline CTA's argument. Currently, wireline carriers report 911 outages only, whereas this proposed rule requires ETCs to report any outage. The definition of an outage encompasses the ability of an end user to make and maintain a call. Viaero argues that the metric in the rule is different from Part 4 of the FCC's rules. Qwest argues that there is no correlation between outages and how the universal service fund is used. Qwest also argues that this reporting requirement is duplicative since the information is provided to the FCC. We believe that the security and stability of a carrier's network and critical infrastructure should be a major consideration in evaluating the public interest. The FCC does have a ten percent reporting metric.[1] We are not convinced by Qwest's argument that there is no correlation between outages

[1] ETC Report and Order at ¶ 69, footnote 194.

and how FUSF dollars are used; this depends on how the funds are used. We are similarly unconvinced by the parties' arguments on the burden of providing this information. Wireless carriers do not currently provide this information. We are asking for this information on an annual basis, not when the outages occur, and if the information is provided to the Commission in other reports by wireline carriers, it should be readily available.

8. The OCC suggests that in proposed Rule 2187(e)(II)(D) that we change "applicable" to "Commission's" and delete anything after "protection rules." We decline to make these changes. We want to make clear that carriers need to determine which rules are applicable to them, and certify to those rules. We don't believe that the Commission's service quality rules are applicable to all carriers, and want carriers to apply consumer protection rules if applicable.

9. Proposed Rule 2187(e)(II)(F) concerns certification that the ETC acknowledges the Commission may require it to provide customers with equal access to long distance carriers. Alltel and Viaero suggest that "Commission" be replaced by "FCC," and we agree. There is currently controversy at the FCC regarding this ruling, but we will adopt the suggested change until there is a definitive ruling that states may order equal access.

10. With respect to proposed Rule 2187(e)(II)(G) which requires carriers to report the total amount of all federal high cost support received in the previous calendar year and year-to-date for the current calendar year, Qwest suggests that the information is already provided in the annual report, and that "year-to-date" be defined. In our experience, not all carriers have reported all monies received from the FUSF in their annual reports, so we decline Qwest's suggestion on that point. We do, however, clarify that carriers are to report amounts through June 30 of the current calendar year.

11. Proposed Rule 2187(e)(II)(H) requires carriers to submit a detailed schedule showing the actual dollar amounts spent by the carrier on the provision of service, maintenance, upgrades, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC. Qwest argues that the rule is duplicative of (L), and carriers should be able to demonstrate compliance by referring to other filings. Qwest also argues that a comparison of actual and budgeted spending lower than the statewide level does not exist. Viaero suggests that we require a report on specific investments as opposed to by wire center. CTA argues that this requirement should not be applicable to carriers that submit annual reports because it is duplicative. CTA also states that the FCC does not require historical data, and that the requirement would be cost-prohibitive. The FCC's rules do require information at the wire center level. *See FCC Order* 05-46, ¶69 subsection (1) (March 17, 2005). Annual reports submitted to the Commission do not include the information required by this rule nor is the annual report information submitted at the wire center level. (We note that we require actual expenditures for two prior years while the FCC seeks information for five.) The rule is not duplicative of L because it pertains to the past two years while L applies to information for the current year. If the information has been filed in other reports such as the annual report, it is readily available, and the burden on carriers should not be great. We note that in other dockets before the Commission, Qwest has provided very specific information at a level much lower than the entire state, and Qwest has the technical ability to provide this information. We believe that adoption of this requirement will prevent carriers from seeking ETC status for purposes other than providing local exchange service to rural and high-cost consumers, and thus do not adopt any of the proposed changes.

12. For proposed Rule 2187(e)(II)(I), which concerns documentation of advertising and actual availability of basic service products, the OCC suggests that the rule read "Documentation that the carrier offers and advertises the rate and availability of Basic Universal Service offerings…." We adopt this language because it guarantees that carriers actually offer basic service, but leaves to each carrier what information it will submit.

13. Proposed Rule 2187(e)(II)(J) requires documentation that competitive ETCs offer a local usage plan at rates comparable to those offered by the incumbent LEC in the relevant service areas. No parties submitted comments to this rule, but we change the language to delete "at rates." We hesitate to require documentation that companies offer plans at rates comparable to the incumbent LEC because we do not know how comparability would be measured. We are more comfortable comparing actual service plans, and note that this language more closely mirrors that in the FCC's order.

14. Viaero, Qwest and CTA submitted comments on proposed Rule 2187(e)(II)(K). This rule requires carriers to submit maps of areas where it has received ETC status, including the location of provider facilities. Qwest and Viaero state that this information is highly confidential. Qwest suggests that this information be available for Commission inspection in order to limit access. Viaero suggests that the Commission adopt additional language to ensure that confidentiality is maintained. CTA states that the FCC does not require this information, that the information is not necessary, and that the maps would be too costly to produce. We disagree with CTA. The FCC's rules require that some maps detailing progress towards meeting each of ETC's goals be submitted. *See FCC Order* 05-46, ¶69 subsection (1). We require more complete cartography than the FCC because current maps in tariffs do not show facilities, and the more detailed maps will assist the Commission in assessing what areas carriers are able to

serve, and to track each carrier's progress in further developing its infrastructure with respect to FUSF dollars. Other states require maps, and we believe the benefits to the Commission are important. We do, however change the frequency of map submission to every three years. This will reduce the burden on carriers, and will allow enough time between new maps to capture a carrier's new infrastructure. The Commission is sensitive to the nature of the information it requests and realizes these maps will contain proprietary information. However, we believe the Commission rules on confidential information are adequate to protect against disclosure to third parties. *See* 4 CCR 723-1-1102.

15. Proposed Rule 2187(e)(II)(L) requires carriers to submit current year information (as opposed to (H), which requires information for the past two years) on dollars spent on infrastructure costs for any local exchange services within the areas where the carrier has received ETC designation. The OCC suggests that the Commission require plans for build-outs for the next five years. The CTA repeats its suggestion that this not be required of wireline carriers and others already required to submit annual reports. Viaero notes the proprietary nature of future plans, as does Qwest. Qwest also states that "current calendar year" should be defined and that it does not track construction or maintenance by product, and that investment plans are not at the wire center level. We decline to adopt the OCC's request for a five year requirement. Build-out plans are not reliable beyond two years. Also, annual reports do not capture build-out plans or maintenance or repair expenses so we won't exempt carriers who have already filed annual reports with the Commission. We do clarify that the current calendar year is through June 30, and substitute local exchange service for universal service products where it appears in the rule. Again, we recognize the sensitive nature of the information required by this proposed rule, but believe our rules on confidentiality will protect the secrecy of the information.

16. Proposed Rule 2187(e)(II)(M) requires carriers to submit cost study filings made on July 31 to NECA for the current year. CTA argues that the rule should be deleted because the FCC does not require it in their rules. Viaero states that it only submits line counts to NECA, not cost studies. Qwest seeks clarification in general as to the purpose of the rule. We agree with Viaero that the rule is not sufficient, and amend it. For those not required to file cost studies with NECA, we require that a copy of the line count filed with NECA be provided. The Commission views this rule as one that improves accountability because the information filed with NECA can be compared with that filed with the Commission, and thus makes only the change suggested by Viaero.

17. Qwest, Viaero, Alltel and CTA all filed comments with regard to proposed Rule 2187(e)(II)(N), which requires submission of a carrier's trial balance for the previous year. Here, too, CTA argues that this information is provided in the annual report by wireline carriers. Alltel suggests that we delete the rule because the FCC does not require it, and Qwest echoes Alltel's sentiments, and adds that general ledger information is represented in the trial balance and is summarized in the annual report filed on May 1. We believe that the annual report is not sufficiently detailed. As recognized by Qwest, it contains summarized information. In addition, companies that do not have audited financials completed when the annual reports are filed don't revise their annual reports to reflect any adjustments. We thus adopt the rule as proposed.

18. Proposed Rule 2187(e)(II)(O) requires that an officer, director, owner or partner of the company sign an affidavit attesting to the truth and correctness of the information submitted, and that the ETC is aware of the purpose of the support for the federal funds and is complying with the requirement in 47 U.S.C. § 254(e). Qwest suggests that the Commission allow an authorized employee to sign the affidavit. We will keep the rule in its current form

because we believe it appropriate to ensure that company officials are aware of the purpose behind FUSF dollars, and how they are being used by the carrier.

19. Proposed Rule 2187(e)(II)(P) states that, if a review of the data submitted by an ETC indicates that the carrier is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier, or revoke the carrier's designation as an ETC. We agree with the OCC and Alltel that we do not have authority to suspend support disbursements. We thus change the rule to indicate that we may refrain from certifying the carrier to the FCC, or revoke its designation as an ETC.

C. Conclusion

20. We adopt the rules set forth in Appendix A. We adopt these reporting requirements because, above all else, the goal of the FCC's rules is to bring accountability into the ETC certification process, as well as the use of federal universal support fund dollars. We believe that, if any new burdens are created by these rules, they are minimal in relation to the benefits that will accrue in terms of efficient and proper use of federal dollars, and the service improvements that will be realized by consumers.

II. ORDER

A. The Commission Orders That:

1. The Commission adopts the Proposed Rules Regarding Annual Reporting Requirements for Eligible Telecommunications Carriers to be Certified to Receive Federal Universal Service Support, 4 CCR 723-2-2187(e), attached to this Order as Attachment A.

2. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

3. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

4. The 20-day time-period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

5. This Order is effective upon its Mailed Date

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING May 9, 2006

(S E A L)

STATE OF COLORADO THE PUBLIC UTILITIES COMMISSION NIL SINE NUMINE

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

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Commissioners

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2187. Eligible Telecommunications Carrier Designation.

* * *
[signifies omission of unaffected rule sections]

(e) Annual Reporting Requirements for Eligible Telecommunication Carriers.

(I) In order for an Eligible Telecommunication Carrier (ETC) previously designated by the Commission, or previously designated by the Federal Communications Commission (FCC), to be certified to receive federal support for the following calendar year, or to retain its ETC designation, it shall submit the reporting information specified below no later than August 15th of each calendar year to the Commission. ETCs failing to meet these annual report filing requirements and deadlines may not be certified by the Commission to the FCC and the Universal Service Administrative Company (USAC) as eligible to receive federal support for the following calendar year.

(II) Every ETC shall submit the following information in its report:

(A) The number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and written explanation detailing how the ETC attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).

(B) The number of complaints per 1,000 access lines or handsets.

(C) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users in a service area, or that could affect access to 9-1-1. An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. The ETC must report the following information regarding each outage: date and time of outage; description of the outage and resolution; specific service(s) affected; specific geographic area(s) affected; steps taken to prevent it from happening again; and number of customers affected by the outage.

(D) Certification that the ETC is complying with the applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service.

(E) Certification that the ETC is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).

(F) Certification that the ETC acknowledges the FCC may require it to provide customers with equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

(G) The total amount of all federal high cost support received in the previous calendar year and through June 30 for the current calendar year.

(H) For the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC. An explanation regarding any network improvement targets that have not been fulfilled. This information shall be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center is not needed, an explanation of why improvement is not need and how funding will otherwise be used to further the provision of supported services in that area.

(I) Documentation the carrier offers and advertises the rate and availability of Basic Universal Service offerings, Lifeline, and Linkup programs throughout the service areas in Colorado where the carrier has been designated an ETC. Copies of written material used in newspaper advertisements, press releases, posters, flyers and outreach efforts and a log of when and where these materials were distributed. For newspaper advertisements, dated copies of the published newspaper advertisements may serve as copies of written material. For radio station advertising, a confirmation from broadcasters of when the public service announcement was aired.

(J) Documentation that competitive ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas.

(K) A map of the service areas where the carrier has ETC designation showing the locations of facilities or for wireless providers, maps showing the location of all cellular towers and the coverage area of these towers. Maps shall be submitted in 2007 and at least once every three years thereafter.

(L) Through June 30 of the current calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for any local exchange service within the service areas in Colorado where the carrier has been designated an ETC. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information shall be submitted at the wire center level or at the authorized service area.

(M) A copy of the cost study filing made on July 31st to NECA for current year. If an ETC is not required to file a cost study to NECA, then a copy of the line count filing made to NECA shall be submitted.

(N) A copy of company's trial balance for previous year.

(O) An affidavit attesting to the fact that the information reported on the annual report and information submitted under this rule are true and correct. The affidavit must also state that the ETC is aware of the purpose of the support for the federal high-cost support and it is complying with the requirement set forth by the FCC in 47 U.S.C. § 254(e). An officer, director, partner, or owner of the company must sign the affidavit.

(P) If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may refrain from certifying the carrier to the FCC or revoke the carrier's designation as an ETC. In addition, carriers must submit their reports on a timely basis.