

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 DENYING APPLICATIONS FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: August 4, 2006

Adopted Date: July 12, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (RRR) filed by Qwest Corporation (Qwest), the Colorado Office of Consumer Counsel (OCC), the Colorado Telecommunications Association (CTA), and Alltel Communications Inc. (Alltel) to Commission Decision No. C06-0600. In Decision No. C06-0808, we agreed to reconsider Decision No. C06-0600, which adopted rules regarding annual reporting requirements for carriers to be certified to receive federal universal service support funds (USFs). We now deny the applications for RRR and clarify some of the rules.

2. Many of the arguments made in the applications for RRR repeat comments made during the rulemaking proceeding (which was initiated by Decision No. C05-1490 issued on December 21, 2005), and some are new. We address the arguments in the order in which the rules are sequenced.

B. Discussion

3. The OCC submitted several general arguments on proposed Rule 2187(e)(I). The OCC states that the Notice of Proposed Rulemaking (NOPR) had alphabetized subsections A through O under 2187(e)(I) and 2187(e)(II) was its own stand alone subsection. The Commission's order citations are to 2187(e)(II), including subsections A through P. These rules were noticed before the recodified rules went into affect. The NOPR'd rules were renumbered for formatting reasons with no other changes but to re-align them with the new recodified rules.

4. The OCC generally argues that the Commission should open another rulemaking to address the initial ETC/EP designation, as opposed to reporting requirements which are the subject of this docket. It is awkward for the OCC to combine its comments in this docket with a request for rulemaking on a topic that, though related to the topic in this docket, is not a subject of this rulemaking. If the OCC believes that another rulemaking is appropriate, it can file a petition for rulemaking. We thus decline to open a new rulemaking docket.

5. The OCC also argues generally that the Federal Communications Commission (FCC) stated that its reporting requirements are the minimum requirements for an eligible telecommunications carrier (ETC) and could be supplemented by additional rules adopted by state commissions. The OCC points out that adopted Rule 2187 did not adopt the FCC's minimum requirements in their entirety. The OCC gave an example of the FCC's five-year build out plan submission whereas the adopted rule has a two-year requirement. The OCC states that in the Commission Order, paragraphs 1 and 3, the goal is to bring accountability into the ETC certification process, as well as the use of federal USF dollars, and the adopted rules fall short of the FCC's minimal requirements. The OCC requests that the Commission reconsider full adoption of the FCC's minimum requirements. The OCC cites no FCC language stating that its

requirements are the minimum standards that must be adopted. Instead, it cites our language in which we recognize that we may adopt different standards. This does not mean that the FCC's standards are the minimum standards. We believe that we have met the goal of bringing accountability into the ETC certification process by requiring a two-year build-out plan that is more reliable and allows more flexibility for ETCs to respond to market forces instead of being constrained by a five-year plan. We decline to adopt OCC's recommendation.

6. The OCC states that the Commission's Decision, in paragraph 20, recognizes that ETC certification rules create burdens upon ETC providers but that benefits accrue and outweigh the burden. More broadly, as the Commission recognized, by voluntarily applying for and receiving ETC status, a provider submits to certain and specific regulatory burdens. If a provider weighs the pros and cons and decides that the benefit of the federal USF subsidy outweighs the regulatory burden, it will make the decision to apply for ETC status. The OCC states it is this voluntary nature of ETC certification and weighing of the benefits and obligations that accompany the public subsidy and designation that is the proper context of these rules. The OCC submits its rejected recommendation for regulatory oversight were also rationally based burdens (for example, imposition of objective quality of service rules) that would further universal service. According to the OCC, the Commission's decision would allow ETCs, especially wireless ETCs, to opt out, or be excepted from the new rules, which would allow them to gain the benefits of certification without undertaking any of the burdens. The OCC requests that the Commission reconsider its presently adopted Rule 2187(e), and that the final rule states and evenly apply the burden/benefit context that the Commission espoused in Decision No. C06-0600. We acknowledge that service quality is a condition of the receipt and use of USFs,

however, we decline to adopt the OCC's suggestions at this time due to questions of the Commission's legal authority over wireless carriers.

7. The OCC states that the idea that certain ETC reporting requirement rules do not apply to certain carriers is troubling in that the Commission has presupposed that there will be one set of rules for one type of ETC provider and another set for other ETC providers. The effect of this and the open invitation to file waivers means that the Commission is establishing a "*de facto*" ETC reporting requirement that will not be competitively neutral, and thus, will be in contravention of federal law. Further, such a regulatory regime flouts the FCC's guidance in the ETC Report and Order that state commissions should apply its certification and reporting requirements uniformly to all ETCs. The OCC requests that the Commission reconsider its order in its entirety to correct the "*de facto*" disparate regulatory approach for wireless ETCs as opposed to wireline ETCs. The intent of these rules is to apply them uniformly to all ETCs. We believe that, although the rules do not consist of identical standards for wireline and wireless ETCs, the standards are appropriate given the different technologies in use, and our authority over wireless carriers. The OCC consistently fails to recognize that the Colorado General Assembly has deregulated wireless carriers. While seeking designation as an ETC naturally places these carriers under Commission jurisdiction for limited purposes, we must endeavor to follow the direction of the General Assembly. An ETC that requests a waiver of specific rules must show good cause before the waiver is granted, therefore, waivers will not be granted casually.

8. The OCC and other parties also filed RRR to the Commission's decision on specific rules. Regarding Rule 2187(e)(II), the OCC seeks clarification from the Commission of its interpretation that the Commission will not impose the rule's requirement upon wireless

ETCs. Rule 2187(e) mandates that all ETCs submit the information required in order to be certified to the FCC and to Universal Service Administrative Center to continue to receive federal support for the following calendar year. Qwest argues that the rule should clearly state that the requirements of the rule only apply to ETCs that actually receive support from the federal USF. If a carrier does not receive federal USF support, it follows that the carrier should not have to make the showings the rule requires. Qwest states that it receives Interstate Access Support (IAS) and Interstate Common Line Support (ICLS), but that this support is separate and apart from the federal USF support. IAS/ICLS are in fact high cost support. The Act mandated the separation of access charges that used to be implicit universal subsidies making these subsidies explicit. We will impose this rule in a competitive manner and it will apply to all ETCs accordingly.

9. The OCC, CTA, and Qwest submitted comments on proposed Rule 2187(e)(II)(A). This rule 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 not met. CTA states that wireline carriers already submit this information, so the rule is repetitive, the information is not relevant to the ETC certification process, and it is difficult to produce this report. Qwest states that rules (A) through (C) do not ensure that federal USF funds are spent as intended. Qwest also suggests that this rule requires submission of information already submitted to the Commission. The OCC states that we should apply this rule in a competitively neutral manner, and seeks clarification on whether we intend to grant exemptions from this rule. We believe that unfulfilled requests for service are relevant because the basic purpose of federal USF support is to ensure that customers have access to the network. Carriers already report to the Commission the number of held orders as of December

31 of the previous year, so this requirement will not create a significant burden to report. Also, our determination on whether to grant a waiver to this rule depends upon the facts presented in the application. As mentioned above, good cause will have to be demonstrated.

10. Rules 2187(e)(II)(B) and (C) require carriers to report “the number of complaints per 1,000 access lines or handsets and information regarding outages lasting 30 minutes or longer.” CTA and Qwest state that carriers already report this information, and the Commission should not require it a second time. CTA also argues that the rule should only relate to formal complaints, not informal ones. To the extent that a carrier already reports formal complaints or outages to the Commission, the carrier should not be required to file that report again. However, this information is relevant to the ETC certification process because any degradation in service, as evidenced by outages, could suggest that the ETC is not maintaining its network adequately. We believe that the ETC should be allowed to indicate in response to this or any rule that it has already filed the information with the Commission. This is discussed in greater detail below. If an ETC has filed any outage reports with the FCC, then they are required to provide a copy. As to informal customer complaints, we think that many customer complaints never reach the Commission because they are resolved by the company. However, the Commission rules do require carriers to maintain trouble reports (Rule 2005), and it should not be a significant burden on the carrier to provide the Commission with a copy of those trouble reports as part of the annual certification process.

11. The OCC argues in RRR to Rule 2187(e)(I)(D) that it should be made clear that the Commission’s service quality and consumer protection rules apply to all ETCs, even though they do not apply to wireless carriers. This is not really an argument about this rule, which

requires ETCs to certify that they are complying with the *applicable* Commission service quality standards, and we decline to adopt the OCC's suggestion to change the nature of this rule.

12. The OCC asks the Commission to reconsider its requirement that the ETC acknowledge the Commission may require it to provide customers with equal access to long distance carriers. We decline the OCC's recommendation. The FCC has not made a determination whether to include equal access in the definition of universal service, nor has it clarified its *Western Wireless Kansas CMRS order* as requested by the Universal Service Joint Board in regards to preemption of states from requiring equal access on CMRS providers.

13. Qwest states that Rule 2187(e)(I)(G), which requests the total amount of all federal USF support received in the previous year, is unnecessary and duplicative. Qwest states that once a carrier files its first report, the Commission will have the carrier's data for the current year. Upon the second annual report filing, the Commission will have the current year and prior year's information. We disagree with Qwest's analysis that the Commission will have the previous year's federal USF information. Because the carrier will only report the first six months of federal USF received in the current year, the Commission will not have the entire current year's worth until the next reporting period.

14. CTA and Qwest argue that they (and perhaps other carriers) cannot comply with Rules 2187(e)(II)(H) and (L) because they do not maintain their accounting records at the wire center level. CTA points out that Part 32 accounting rules require rural carriers to record investment and expense amounts at the total company level. Qwest states it does not have the technical ability to track maintenance expense below the total state level of detail. Initially, we note that the majority of rural carriers do not have multiple wire centers. However, for those that do, we believe that the carrier should know if a specific construction project is occurring in wire

center A or wire center B. In other words, the work orders for a construction or maintenance project will provide the wire center in which the money was spent. If the project involves central office plant, such as switching equipment or general purpose computers that serve more than one wire center, the cost of that plant can be allocated to each wire center that it serves. Further, Commission rules require rural carriers to maintain continuing property records. Those records are derived from work orders. Those work orders can be traced back to specific projects that serve a certain wire center. For these reasons, we deny RRR on this matter.

15. With respect to Rule 2187(e)(II)(I), the OCC requests that the Commission reconsider the OCC's recommendation to specifically define a Basic Universal Service (BUS) offering in the context of its previously filed comments, and to accept OCC's recommendation. In order for an applicant to be designated as an ETC, it must offer services supported by federal universal service support and it must advertise those services. This definition would be better handled the same time ETC/EP designation rulemaking is investigated. Moreover, the OCC recommends that a BUS offering definition provide that it is a stand-alone offering with unlimited local calling minutes. For a wireline ETC, a BUS offering would be a stand-alone basic local exchange service offering that implicitly has unlimited local calling. The wireless equivalent would be a "BUS" plan that is also stand-alone and has unlimited local calling. The OCC attempts to obtain here what it did not in the Commission's rulemaking proceeding that repealed and reenacted the Commission's telecommunications rules in their entirety.¹ We decline to adopt this definition for the reasons set forth in that docket.

¹ In Docket No. 03R-524T, the OCC vigorously advocated that carriers be required to offer stand-alone basic local exchanges service. The Commission declined to do so, instead allowing carriers to bundle stand-alone service with other products.

16. Regarding Rule 2187(e) (II) (J) that a competitive ETC offer a local usage plan comparable to that offered by an incumbent local exchange carrier (ILEC), the OCC would urge the Commission to add “at rates” to the language. We deny OCC’s recommendation because the wording of the rule recognizes that there is more to a local usage plan than rates. However, we do adopt OCC’s recommendation to insert an ‘a’ before the word competitive. We decline to adopt the OCC’s comments to add the requirement that the ETC is advertising a local usage plan. Adding this requirement would be duplicative of Rule 2187(e)(II)(I) that requires an ETC to offer and advertise BUS offerings.

17. Rule 2187(e)(I)(K) requires the carrier to file a map of the service area where the carrier has ETC designation showing location of facilities. Qwest stated that maps contain sensitive competitive information and are voluminous. CTA argues that the proposed rules will place an undue burden on small rural carriers. CTA goes on to state that the Commission has an obligation under Colorado law to consider the costs and economic impact of rules and regulations on rural carriers and their subscribers. The rule does not specify the level of detail required. The intent of this requirement is to require ETCs to provide high-level maps associated with specific construction projects, such as maintenance or upgrades on central office equipment, installation of feeder cable, or placement of fiber routes and does not require detailed maps showing specific customer locations. Current Commission Rule 2005(c)(IX) requires each provider to keep complete maps and records showing location and description of its plant facilities. Therefore, we deny the arguments against this rule.

18. Qwest and the OCC filed RRR to Rule 2187(e)(II)(L). As noted above, we believe that the language in Rule 2187(e)(II)(L) is appropriate. Two-year build out plans are more reliable, and five-year plans are much more speculative, especially given the rapid changes

in the industry. Also, the goal of the reporting requirements is to ensure that the funds are being used appropriately. This requires as much of a retrospective look at company expenditures as a prospective look forward. We thus deny the parties' RRR to this rule.

19. CTA states that proposed Rule 2187(e)(II)(M), which requires the ETC to provide a copy of the filing made with NECA, does not define the specific NECA filing that the ETC must produce, the rule goes beyond the FCC's requirements, and would only apply to rural ILECs, and is therefore discriminatory. First, we clarify that the requirement is for a copy of the July 31 cost study used to calculate the amount of USF support that will be received by the ETC in the coming year. Second, ETCs that are not members of NECA must file line count information pursuant to FCC Rule 54.307. Therefore, we will correct the rule to reflect this. Because of this alternative filing requirement by those carriers who are not NECA members, this rule is not discriminatory. The FCC's order specifically indicates that state Commissions are able to impose additional requirements beyond those in the FCC order.

20. Rule 2187(e)(I)(N) requires a copy of the company trial balance for the previous year. Qwest, CTA, and Alltel filed RRR to this rule. Qwest states that the trial balance is provided at the company level and does not contain state-specific information. CTA argues that the trial balance is duplicative for wireline carriers who already file an annual report with the Commission. Alltel argues that this is not an FCC requirement and that it is not necessary or relevant with respect to the purpose of these rules which is to determine whether to recertify. Alltel further states that it is a multi-state carrier and does maintain its accounts on a state-specific basis and would therefore have to create this document. As CTA observes in its comments, the trial balance is used for auditing purposes. The PUC annual report does not contain all of the information necessary to determine whether ETCs are spending USF support

for the intended purpose. Specifically, the annual report does not separate out money spent on network maintenance. The trial balance is useful because it provides more detailed sub-accounting that assists the Commission in verifying the money spent for network upgrades, plant additions, and especially maintenance and repairs. The Commission recognizes that a total company trial balance would not provide the information we are seeking, and therefore, will insert “Colorado-specific” to the rule for specificity. Also, the annual report is not sufficient for ETC certification because the reports are often filed before the certified public accountant audit is completed. Since wireless providers are not required to submit an annual report to the Commission and are not required to submit a cost study to NECA, the trial balance is the only information that this Commission can rely upon to verify that a wireless carrier is upgrading and maintaining its network in support of basic local service. The purpose of the annual certification is to determine whether the carrier has spent USF support in an appropriate manner. Even though a wireless carrier’s support is not based on its own cost, the Commission still has the obligation to ensure that the ETC is spending USF support for the intended purposes. We believe that the Colorado-specific trial balance would aid the Commission in that determination. For these reasons, we deny the parties’ applications for RRR to this rule. Several parties have commented that provisions of the trial balance will be a significant regulatory burden. To the extent that this is the case, we encourage carriers to seek a waiver of this rule and suggest an alternative manner in which they can provide the information Commission Staff needs.

21. With regard to certain rules, carriers argue that they already provide the information in other filings with the Commission. Carriers seeking ETC certification are free to point to the location of that information by indicating the docket number, the document filed, and the place in the document, in lieu of re-filing the information.

C. Conclusion

22. We deny the applications for RRR, and clarify the rules as discussed above. We adopt the rules set forth in Appendix A. As noted in Decision No. C06-0600, we adopt these reporting requirements because we believe they bring accountability into the ETC certification process, as well as the use of federal USF dollars. In adopting these rules, we have tried to enact rules that are competitively neutral but also recognize the Colorado Legislature's deregulation of wireless carriers in Colorado.

II. ORDER**A. The Commission Orders That:**

1. The applications for rehearing, reargument, or reconsideration filed by the Colorado Office of Consumer Counsel; the Colorado Telecommunications Association; Alltel Communications, Inc.; and Qwest Corporation are denied consistent with the discussion above.
2. We adopt the rules attached in Appendix A.
3. This Order is effective upon its Mailed Date

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 12, 2006.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

Rule 2187. Eligible Telecommunications Carrier Designation.

* * *

[signifies omission of unaffected rule sections]

- (f) 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 a 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 year-to-date 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 are not needed, an explanation of why improvement is not needed 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 a 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 cost study filing made on July 31st to NECA for current year. If an ETC is not required to file cost study to NECA, then a copy of the line count filing made to the FCC and USAC Administrator shall be submitted.
- (N) A copy of the company's Colorado-specific 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 is 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.