

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Qwest Corporation )
Compliance with the Commission's )
Rules and Regulations Governing )
Advertising the Availability of Lifeline and )
Link-Up )
File No. EB-03-TC-126
NAL/Acct. No. 200532170003
FRN: 0003605953

ORDER

Adopted: November 17, 2004

Released: November 22, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Qwest Corporation, Inc. ("Qwest"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether Qwest was in compliance with section 214(e)(1)(B) of the Communications Act of 1934, as amended (the "Act"), and sections 54.405(b) and 54.411(d) of the Commission's rules, as it relates to the duty to publicize Lifeline and Link-Up programs to low-income residents on tribal lands.

2. The Enforcement Bureau and Qwest have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. We also conclude that, in the absence of material new information not previously disclosed to the Bureau, the matters raised in the investigation do not raise any substantial and material questions of fact regarding Qwest's qualifications to be a Commission licensee.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, that the attached Consent Decree IS ADOPTED.

1 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b), 54.411(d).

2 47 U.S.C. § 154(i).

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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Qwest Corporation ) File No. EB-03-TC-126
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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Qwest Corporation ("Qwest"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation (the "Investigation") regarding whether Qwest was in compliance with section 214(e)(1)(B) of the Communications Act of 1934, as amended (the "Act"), and sections 54.405(b) and 54.411(d) of the Commission's rules,<sup>1</sup> as it relates to the duty to publicize Lifeline and Link-Up programs to low-income residents on tribal lands.

II. BACKGROUND

2. Qwest is an eligible telecommunications carrier ("ETC"), i.e., a telephone company eligible to receive universal service support under section 214 of the Act.<sup>2</sup> Qwest serves numerous tribal lands in the 14-state area in which it operates as an incumbent Local Exchange Carrier.

3. Based on concerns raised informally with the Bureau by tribal leaders, the Bureau sent a Letter of Inquiry ("LOI") to Qwest on October 7, 2003<sup>3</sup> stating that it was investigating whether Qwest was satisfying its obligations under sections 54.405(b) and 54.411(d) of the Commission's rules to publicize the availability of Lifeline and Link-Up services to low-income residents on tribal lands "in a manner reasonably designed to reach those likely to qualify" for those services. The Bureau sent a supplemental LOI on April 6, 2004.<sup>4</sup> The LOIs directed Qwest to describe any action it had taken over the previous year to satisfy sections 54.405(b) and 54.411(d) of the Commission's rules and to support its responses with pertinent documentation and affidavits.

<sup>1</sup>47 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>2</sup>47 U.S.C. § 214.

<sup>3</sup>See Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Commission Division, Enforcement Bureau, to Qwest Communications, Inc. (October 7, 2003) ("October 7, 2003 LOI").

<sup>4</sup>See Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunication Commission, Enforcement Bureau, to Qwest Communications, Inc. (April 6, 2004).

4. During the course of the Investigation, Qwest provided written responses to the LOIs on November 14, 2003, April 27, 2004, and August 20, 2004. Qwest stated that it provides Lifeline and Link-Up services to low-income residents on tribal lands in 12 states within its 14-state incumbent region. Qwest asserted that it conducted outreach to low-income residents on tribal lands within its region and provided some evidence to support its contention.

### III. DEFINITIONS

5. For purposes of this Consent Decree, the following definitions shall apply:
- a. "Act" means the Communications Act of 1934, as amended.
  - b. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - c. "Commission" means the Federal Communications Commission.
  - d. "Effective Date" means the date on which the Bureau releases the Adopting Order.
  - e. "Investigation" means the investigation commenced by the Bureau's Letter of Inquiry, dated October 7, 2003,<sup>5</sup> to Qwest regarding Qwest's possible noncompliance with the requirements contained in section 214 of the Act and sections 54.405(b) and 54.411(d) of the Commission's rules during the period from January 1, 2001 through April 6, 2004.
  - f. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
  - g. "Parties" means Qwest and the Bureau.
  - h. "Qwest" means Qwest Corporation and any telecommunications carrier subsidiary, successor, or telecommunications carrier controlled by Qwest Corporation.

### IV. AGREEMENT

6. Qwest agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Qwest and the Bureau. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, Qwest agrees to the terms, conditions, and procedures contained herein.

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<sup>5</sup> See October 7, 2003 LOI.

8. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Qwest with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Qwest does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

9. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, Qwest agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$250,000 within ten (10) business days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

10. Further, Qwest agrees to implement a Lifeline and Link-Up Outreach Program to low-income residents on tribal lands consisting of the components delineated below. Qwest agrees that it will spend a minimum of \$200,000 to develop and implement this Program during the term of this Consent Decree.

- a) Qwest will send a representative to at least four regional Native American gatherings, such as conferences, Pow Wows, and workshops, with tribal participants from its service area to discuss the Lifeline and Link-Up programs. Qwest will make reasonable efforts to advertise the availability of Lifeline and Link-Up in the workshop/conference's written materials and will establish a booth at each workshop/conference where interested persons can speak directly with a Qwest representative to ask questions about the Lifeline and Link-Up programs and obtain enrollment brochures written in plain English. Qwest will also provide the name and number of a Qwest representative who will be available to answer additional questions.
- b) Not later than 60 days after the Effective Date, members of the Core Project Team (*i.e.*, representatives from Qwest's Product, Compliance, Public Policy, Network, and Legal organizations working on tribal Lifeline and Link-Up outreach) will meet with members of Voice of Many Feathers, a Qwest-sponsored resource group comprised of Qwest employees, many of whom are Native Americans, to discuss ways to improve Qwest's tribal outreach. Where feasible, Qwest will endeavor to utilize members of Voice of Many Feathers to provide assistance to low-income residents on tribal lands in understanding the Lifeline and Link-Up programs where cultural and linguistic differences (*e.g.*, disability, language spoken other than English, unable to understand written English), require some form of translation in order to fully understand the discount programs.
- c) Not later than 90 days after the Effective Date, Qwest will make good faith efforts to identify and contact an appropriate tribal liaison for each tribe Qwest serves. Such good faith efforts will include, as necessary, contact with the tribe via letter, telephone, social service agencies, and regional Native American

gatherings. Tribal liaisons will assist Qwest in determining the best approach to publicizing the availability of Lifeline and Link-Up services. Where a Qwest employee of Voice of Many Feathers is a member of or affiliated with a specific tribe, Qwest may designate the Voice of Many Feathers member as a tribal liaison if he/she is deemed an appropriate liaison by the specific tribe.

- d) Not later than five months after the Effective Date, Qwest will have developed and submitted to the Bureau a Lifeline and Link-Up Outreach Plan for each tribe Qwest serves. Each Outreach Plan shall be designed to reach the greatest number of low-income residents of that specific tribe. Qwest will make a good faith effort to work in conjunction with each tribal liaison to develop the Outreach Plan. Such good faith efforts will include, as necessary, contact with the tribe via letter, telephone, social service agencies, and regional Native American gatherings. To the extent these efforts do not result in the participation of the tribe in the creation of an Outreach Plan for that tribe, Qwest will develop a plan for that tribe that does not depend on Tribal involvement.

Where Qwest serves a “limited portion” of a tribal land, as defined below, Qwest will attempt to establish contact with a representative from that tribe but Qwest’s Outreach Plan for such tribal lands may be limited to distribution of tribal Lifeline and Link-Up brochures to a representative of the tribe. For purposes of this paragraph, Qwest will be considered to serve a “limited portion” of a tribe if: (1) Qwest serves less than 10% of the geographic area of the tribal land on which the tribe resides; and (2) the area Qwest serves is predominately uninhabited, rather than inhabited, the area does not contain clusters of living units, and the area does not contain a concentration of governmental or business enterprises. Currently, Qwest serves a limited portion of approximately 14 tribal lands out of the more than 70 tribal lands that Qwest serves in total.

Not later than six months after the Effective Date, Qwest will begin implementing each Outreach Plan. Qwest will work closely with each tribal liaison that it has identified to develop and implement the Outreach Plans, which shall include at least some of the following measures: use of enrollment brochures in plain English; language interpreters to speak directly with tribal residents of tribal lands with sizable non-English speaking populations; door-to-door contact with tribal residents to orally explain the Lifeline and Link-Up programs; distribution of information through schools and social service organizations; use of trained technicians to distribute brochures where the tribal liaison deems it appropriate; public service announcements; written advertisements in local tribal publications; and other means of increasing participation in the Lifeline and Link-Up programs. Any written or oral information will be presented in either plain English or in the appropriate tribal language. When Qwest uses trained technicians, public service announcements or broadcast advertising, or written advertisements, it will follow the procedures below.

- i) Technician Training: Working with the Core Project Team, the Qwest manager responsible for Lifeline and Link-Up on tribal lands will conduct training sessions with Qwest Local Network Technicians whose work areas include a tribal land. Such training will include, but not be limited to, the benefits of and eligibility for Lifeline and Link-Up. The

technicians will be given Qwest enrollment brochures on Lifeline and Link-Up written in plain English for distribution to customers on all repair and installation calls. Where the technician does not speak to a customer, the technician will leave enrollment brochures on the customer's door. Newly assigned technicians will undergo the same Lifeline and Link-Up training from a Qwest manager knowledgeable regarding the Lifeline and Link-Up programs. In all instances, technicians will receive follow-up training every 12 months.

- ii) Public Service Announcements or Broadcast Advertising: Qwest will distribute public service announcements ("PSAs") or advertisements to radio stations specifically describing the availability of Lifeline and Link-Up discounts for low-income residents on tribal lands. Qwest will focus on distribution to radio stations in its region that serve residents on tribal lands. Where necessary, Qwest will provide funding to ensure that the PSAs and advertisements reach the broadest tribal audience that Qwest serves. The PSAs and advertisements shall include a Qwest customer service contact telephone number staffed by Qwest customer service representatives trained on Lifeline and Link-Up programs who will offer to send Lifeline and Link-Up brochures by mail.
  - iii) Written Advertising: Qwest will develop written advertisements that describe the potential benefits of and qualifications for the Lifeline and Link-Up programs to low-income residents on tribal lands. The advertisements shall include a Qwest customer service contact telephone number staffed with Qwest customer service representatives trained on Lifeline and Link-Up programs who will offer to send Lifeline and Link-Up brochures by mail. Qwest will focus on distribution to print media in its region that serve residents on tribal lands. Qwest will provide funding to ensure that the written advertisements reach the broadest audience in the majority of tribal lands that Qwest serves.
- (e) Qwest will submit a written report to the Bureau describing its compliance with this Consent Decree three, six, twelve, and eighteen months after the Effective Date. The reports shall address in detail Qwest's compliance with each separate term and provision of this Consent Decree, estimates of the total cost of developing and implementing the tribe-specific Outreach Plans required in Paragraph 10(d) above, and the amount spent to date. Qwest must mail its reports to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W. Room 4-C244, Washington, D.C. 20554, and must include the file number listed above. Qwest will also send an electronic copy of its reports to Mark Stone, Deputy Chief, Telecommunications Consumers Division, at [Mark.Stone@fcc.gov](mailto:Mark.Stone@fcc.gov) and Cynthia Bryant, Attorney, Telecommunications Consumers Division, at [Cynthia.Bryant@fcc.gov](mailto:Cynthia.Bryant@fcc.gov).
- (f) No later than 30 days after the expiration of this Consent Decree, Qwest will certify to the Bureau that it has spent a minimum of \$200,000 to develop and implement this Outreach Program. Nothing in this Consent Decree is intended or designed to limit or restrict the funds or resources Qwest uses to develop and implement this Outreach Program.

- (g) Qwest will maintain and make available to the Bureau, within 14 days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.

11. The Bureau agrees that, in the absence of new material evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Qwest, including any other enforcement action, nor will the Bureau seek on its own motion any administrative or other penalties from Qwest concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Qwest with respect to Qwest's basic qualifications to be a Commission licensee. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

12. Qwest's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

13. Provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification, Qwest waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree.

14. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. By this Consent Decree, Qwest neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

16. Qwest agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

17. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Qwest does not consent), that provision will be superceded by such Commission rule or order.

18. The Parties agree that the requirements of this Consent Decree shall expire eighteen (18) months from the Effective Date.



19. This Consent Decree may be signed in counterparts.

For: Qwest Corporation

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Qwest Signature)

For: Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau