

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

In the Matter of )
Sacred Wind Communications, Inc. )
and )
Qwest Corporation )
Joint Petition for Waiver of the Definition of ) CC Docket No. 96-45
"Study Area" Contained in Part 36, Appendix- )
Glossary of the Commission's Rules )
Sacred Wind Communications, Inc. )
Related Waivers of Parts 36, 54, and 69 of the )
Communication's Rules )

ORDER

Adopted: August 27, 2008

Released: August 27, 2008

By the Chief, Wireline Competition Bureau:

1. In this order, we grant a request from Sacred Wind Communications, Inc. (Sacred Wind) to extend the timing of the waiver of sections 36.611 and 36.612 of the Commission's rules granted to Sacred Wind in the Sacred Wind Order.1 The extension of this waiver will permit Sacred Wind, a new local exchange carrier (LEC) in New Mexico, to receive high-cost loop support based on projected costs, subject to true-up, until December 31, 2008.

2. On August 15, 2006, the Wireline Competition Bureau (Bureau) released an order granting Sacred Wind waivers of sections 36.611 and 36.612 and related Commission rules, so that Sacred Wind would be eligible to receive immediate high-cost universal service support and participate in the National Exchange Carrier Association (NECA) pools and tariffs.2 The Bureau found that special circumstances warranted a deviation from sections 36.611 and 36.612 of the Commission's rules, and that

1 Sacred Wind Communications, Inc., Petition for Expedited Extension of Waiver of Sections 36.611 and 36.612 of the Commission's Rules, CC Docket No. 96-45 (filed Apr. 30, 2008) (Extension Petition); Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules Sacred Wind Communications, Inc. Related Waivers of Parts 36, 54, and 69 of the Communication's Rules, CC Docket No. 96-45, Order, 21 FCC Rcd 9227 (Wireline Comp. Bur. 2006) (Sacred Wind Order). The Wireline Competition Bureau (Bureau) released a public notice on May 16, 2008, seeking comment on Sacred Wind's Extension Petition. See Comment Sought on the Petition of Sacred Wind Communications, Inc. for the Extension of Waiver of Sections 36.611 and 36.612 of the Commission's Rules, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 7956 (Wireline Comp. Bur. 2008). The National Indian Telecommunications Institute filed comments in support of Sacred Wind's petition.

2 See Sacred Wind Order, 21 FCC Rcd 9227.

it was in the public interest to grant Sacred Wind's waiver request.<sup>3</sup> Commission rules generally result in carriers without historical data, such as newly-established carriers like Sacred Wind, having to wait up to two years before they are able to receive any high-cost loop support payments.<sup>4</sup> In the *Sacred Wind Order*, the Bureau found that delaying Sacred Wind's high-cost support would impair its ability to provide telecommunications services at affordable rates to unserved and underserved areas.<sup>5</sup> Consistent with the limited instances where requests for waiver of sections 36.611 and 36.612 of the Commission's rules have been granted, the Bureau also determined that delaying the timing of Sacred Wind's high-cost loop support could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.<sup>6</sup>

3. Sacred Wind initially requested waiver of sections 36.611 and 36.612 of the Commission's rules to enable it to receive high-cost loop support immediately upon commencement of operations in 2006.<sup>7</sup> Sacred Wind expected to begin operations shortly after the end of the first quarter of 2006 and projected that it would receive \$2.1 million in high-cost loop support for 2006, and that support would grow to approximately \$6.6 million in 2010.<sup>8</sup> The Bureau granted Sacred Wind waiver of sections 36.611 and 36.612 for the remainder of 2006 and all of 2007, with the expectation that, after 2007, when Sacred Wind's historical cost data would be available, Sacred Wind would begin to receive support pursuant to the Commission's rules.<sup>9</sup> Sacred Wind states that, because approval of the transaction by the New Mexico Public Regulatory Commission (New Mexico Commission) was delayed until December 15, 2006, only 15 days of network costs were incurred in calendar year 2006.<sup>10</sup> Sacred Wind therefore requests an extension of its waiver of sections 36.611 and 36.612 to the end of 2008.<sup>11</sup> Sacred Wind asserts that, because actual costs for 2006, which are the basis for 2008 high-cost support payments, were significantly less than anticipated, high-cost support for 2008 has been significantly diminished and, as a

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<sup>3</sup> See *id.* at 9233-34, paras. 14-16. Sacred Wind was established in 2004 to provide advanced and basic telecommunications services to the Navajo people on both reservation lands and nearby lands in the state of New Mexico. Sacred Wind acquired approximately 2,300 access lines from Qwest in 2006. See *id.* at 9227-28, para. 2.

<sup>4</sup> Carriers generally do not receive high-cost loop support based on historical cost data until the beginning of the second calendar year after the costs are incurred, because the data are not submitted by carriers until seven months after the end of a calendar year (i.e., July 31), and NECA requires time to analyze the data and make the necessary nationwide calculations. 47 C.F.R. § 36.611.

<sup>5</sup> See *Sacred Wind Order*, 21 FCC Rcd at 9234, paras. 15-16.

<sup>6</sup> See *id.* at 9233-34, para. 15.

<sup>7</sup> See Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Related Waivers of Parts 36, 54, and 69 of the Communication's Rules, CC Docket No. 96-45, at 20 (filed Mar. 30, 2006) (Study Area Waiver Petition).

<sup>8</sup> See Extension Petition at 4; Study Area Waiver Petition at 11.

<sup>9</sup> *Sacred Wind Order*, 21 FCC Rcd at 9234, para. 16; *supra* note 4.

<sup>10</sup> See Extension Petition at 4-6. The Extension Petition indicated that the New Mexico Commission approved Sacred Wind's certificate of convenience and necessity on December 15, 2006. See *id.* at 4. Sacred Wind subsequently clarified, however, that, on that date, the New Mexico Commission approved Sacred Wind's application for transfer of rural extension liability and approval of Sacred Wind's line extension tariff. Sacred Wind further clarified that the transfer of assets from Qwest to Sacred Wind could not occur until transfer of the rural extension liability was approved, and Sacred Wind could not commence service until the tariffs were approved. See Letter from Martin L. Stern, Attorney for Sacred Wind Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (dated Aug. 8, 2008).

<sup>11</sup> See Extension Petition at 5.

result, telecommunications services to underserved tribal and near-tribal areas will be delayed.<sup>12</sup>

4. Consistent with the Bureau's previous findings in the *Sacred Wind Order*, circumstances warrant grant of Sacred Wind's request to continue to waive sections 36.611 and 36.612 of the Commission's rules for an additional period.<sup>13</sup> We find that it is in the public interest to extend the timing of that waiver to permit Sacred Wind to receive high-cost loop support based on projected costs through the end of 2008. We further find that an interruption in Sacred Wind's high-cost loop support would impair its ability to provide telecommunications services at affordable rates, and that such interruption would not further the goals of section 254 of the Communications Act of 1934, as amended (the Act).<sup>14</sup> Pursuant to section 36.612 of the Commission's rules, we direct Sacred Wind to submit quarterly updates, so that NECA may determine whether adjustments for the 2006, 2007, and 2008 high-cost loop support amounts are necessary.<sup>15</sup> High-cost loop support payments to Sacred Wind for periods subsequent to December 2008 will be based on historic data in accordance with the Commission's rules.<sup>16</sup>

5. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that waiver of sections 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612, IS GRANTED, as described herein, to Sacred Wind Communications, Inc.

6. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that Sacred Wind Communication, Inc. is required to submit quarterly updates pursuant to section 36.612 of the Commission's rules, 47 C.F.R. § 36.612, for calendar years 2006, 2007, and 2008.

7. IT IS FURTHER ORDERED, pursuant to section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer  
Chief  
Wireline Competition Bureau

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<sup>12</sup> *Id.*

<sup>13</sup> *Sacred Wind Order*, 21 FCC Rcd at 9233-34, paras. 14-16.

<sup>14</sup> Section 254(b) of the Act provides, among other things, that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

<sup>15</sup> See 47 C.F.R. § 36.612.

<sup>16</sup> See 47 C.F.R. §§ 36.611, 36.612.