



Idaho Public Utilities Commission
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OCT 25 2004

Boise, Idaho

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October 25, 2004

VIA HAND DELIVERY

Jean D. Jewell
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074

**Re: Docket #GNR-T-04-2
Citizens of Soldiers Meadow Area v. Qwest Corporation**

Dear Ms. Jewell:

Enclosed for filing with this Commission is an original and seven (7) copies of **QWEST CORPORATION'S ANSWER TO PETITION FOR RECONSIDERATION**.

If you have any questions, please contact me. Thank you for your cooperation in this matter.

Very truly yours,


Mary S. Hobson

:blg
Enclosures
cc: Service List

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**CITIZENS OF SOLDIERS MEADOW
AREA,**

Complainants,

vs.

QWEST CORPORATION,

Respondent.

Case No. GNR-T-04-2

**QWEST CORPORATION'S ANSWER TO
PETITION FOR RECONSIDERATION**

Qwest Corporation ("Qwest"), by and through its undersigned counsel, and pursuant to Idaho Code § 61-626 and IPUC Rule of Procedure 331.05 hereby answers the petition for reconsideration dated October 12, 2004, by Vlado and Vivian Maras ("Complainants"). Qwest requests that the petition be denied.

I. THE ISSUES

Complainants' petition takes the form of a one-page letter setting out three issues upon which reconsideration is requested. Complainants' first claim that the Commission's decision was "unreasonable, unlawful and erroneous" because the Commission failed to take into consideration Idaho Code §§ 62-610A-F. Complainants contend they are "legally entitled to receive" benefits under those statutes.

Second, the Complainants contend that the Commission should consider whether it can "assist Idaho citizens who request telephones" by using the "FCC Universal Service Fund." Complainants state that they seek the Commission's support to work with Qwest to extend service using this program.

Finally, Complainants ask that the Commission consider including Complainants "in a geographic support area or service area."

This response addresses each of these issues and demonstrates that Complainants' petition for reconsideration of Order No. 29597 should be denied.

II. DISCUSSION

A. Expansion of Qwest's Service Territory.

In their petition Complainants state, "we request consideration to be included in a geographic support area or service area." This request, like the remainder of Complainants' petition, is directed primarily at the Commission and does not mention Qwest. While it is theoretically possible that the Commission could grant reconsideration to decide whether these Complainants could be placed in the "geographic support area or service area" of another telephone corporation, the record does not contain evidence that any other wireline telephone

corporation¹ is willing or able to serve the Soldiers Meadow area. Nor have Complainants offered to produce additional evidence on this point if reconsideration is granted. Accordingly, for purposes of this response, Qwest assumes that the Complainants wish the Commission to reconsider its decisions that Soldiers Meadow is outside Qwest's service territory and that "it would be unreasonable to require Qwest to change its service boundaries and install landline service facilities to the Soldiers Meadow area." Order No. 29597 at 3.

IPUC Rule 331.01 provides that "petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." Complainants' petition does not meet these regulatory requirements. Complainants do not point to any evidence that the Commission's decision concerning the limits of Qwest's current boundaries is erroneous or unlawful; nor do they offer new evidence to suggest that the Commission should reconsider its conclusion that it would be unreasonable to require Qwest to expand its exchange boundaries.

The Commission's decision is supported by the record, which demonstrates that even if Qwest were to annex Soldiers Meadow, Qwest's line extension policy would require payment by the affected customers in amounts that they have admitted they are unwilling to pay. In fact, the evidence shows only nine of the 19 potential customers indicated a willingness to pay anything to receive service. The decision is also supported by the fact that only seven potential customers were full-time residents of the area. Under these circumstances the Commission correctly

¹ There is evidence, however, that most of the residents of the Soldiers Meadow area have wireless service.

concluded that it would not be in the general interest of the public to compel Qwest to extend service to Soldiers Meadow.

The only new support for Complainants' position offered in the petition is the suggestion that some form of state or federal universal service funding may be available to extend facilities to Soldiers Meadow. However, as the discussion below demonstrates, the determination whether an area is included within a telephone corporations' service area must be made before a company can turn to the question whether universal service fund ("USF") funding may be used to offset some the expenses incurred in serving a particular area or group of customers. Because the Commission has correctly decided that Soldiers Meadow is not presently within Qwest's service territory and that it is not reasonable to require Qwest to change those boundaries, the notion that USF funding may change the result for these Complainants is misguided.

B. Federal Universal Service Funding.

The petition suggests that the "FCC Universal Service Fund" could provide some relief for their situation. Complainants ask that the Commission lend its "support under this program to work with Qwest to extend service." Attached to the petition is a two-page document taken from the FCC's website providing "Consumer Facts" relating to the Federal Universal Service Fund ("FUSF"). This document points out that there are four components to the FUSF. The Complainants specifically ask that the Commission consider the second of these:

High-Cost. This program provides financial support to companies that provide telecommunications services in areas of America where the cost of providing service is high.

In citing this FCC information the Complainants apparently do not understand that the FUSF only provides funding based on a rural company's embedded costs.² There is no

² Rate-of-return carriers may receive federal high-cost support for intrastate services through the high-cost loop support mechanism and Local Switching Support ("LSS"). Presently Qwest does receive LSS to

mechanism under the FUSF to apply for or obtain advance funding to construct facilities. Nor do federal regulations permit potential customers to obtain funds for use in securing services for their area. Thus, the costs for serving Soldiers Meadow could be considered for FUSF funding only if they were included in a qualifying company's request for FUSF.³ Moreover, the Soldiers Meadow costs could be presented only if (i) Soldiers Meadow were included in the company's service area, and (ii) the company had already used other funds to build the facilities. Unless these requirements are met, the company cannot submit the financial data associated with the Soldiers Meadow facilities to the National Exchange Carrier Association ("NECA") for inclusion in its cost models. Furthermore, even if Qwest were to annex the Soldiers Meadow area and build the facilities (without collecting the increased costs through its line-extension policy), the portion of the costs recovered from the FUSF cannot be predicted. Any remaining costs of construction would have to be recovered from the general body of northern Idaho ratepayers.

Because the Commission has correctly determined that it would not be reasonable to require Qwest to annex this area, and because it would not be in the public interest to require the costs of serving the area be spread to existing customers, the FUSF is not a solution for these Complainants.

offset some of the intrastate costs of its northern Idaho operations. Qwest receives no high-cost loop support in northern Idaho or anywhere else in its service territory.

³ In a July 16, 1996 order the FCC clarified that its "frozen study area boundary rule" by identifying circumstances under which rule waivers would not be necessary. *Concerning the Definition of "Study Area" Contained in Part 36*, Memorandum Opinion and Order, 11FCC 8156 (1995). Such circumstances include, "if a separately incorporated company is establishing a study area for previously unserved territory.

C. State Universal Service Fund.

Complainants also suggest that the Commission was remiss in not mentioning Idaho Code §§ 62-610A-F, which they apparently believe would assist them in securing service for Soldiers Meadow. Once again Complainants labor under a misunderstanding.

As the Commission is well aware, in 1998 the Idaho Legislature enacted Idaho Code §§ 62-610 A-F, authorizing the Commission to establish a neutral funding mechanism which would operate in coordination with federal universal support as a new intrastate USF. However, due in part to an industry-wide debate over the efficacy and application of competing models for determining costs and pinpointing high cost areas, in 2000 the legislature amended the statutes and eliminated any deadline for the Commission to establish the new Idaho USF. Since that time, although the Commission has conducted proceedings to determine the how cost models will be used to identify and rank high cost areas using a forward-looking cost methodology,⁴ the new Idaho USF has not been established.

What this means for Complainants is that the new Idaho USF has not been established, although progress has been made in drawing the rough outlines as to how the fund might operate. To date no surcharges have been imposed under Idaho Code § 63-610F(2), nor has the Commission determined the procedures for applying for funds, or the criteria under which funds would be awarded. The Idaho USF contemplated in Idaho Code §§ 62-610A-F does not offer any relief to the Complainants.

⁴ See In the Matter of the Investigation to Determine an Appropriate Cost Model Using Forward-Looking Economic Costs for Calculating the Costs of Basic Telecommunications Services in Idaho, Case Nos. GNR-T-97-22; GNR-T-00-2.

III. CONCLUSION

Based on the foregoing, Complainants' petition for reconsideration does not comply with IPUC Rule 331.01 in that it does not identify grounds for conclusion that the Commission's Order No. 29597 is unreasonable, unlawful, erroneous or not in conformity with the law. The Commission has correctly concluded, based on the record evidence, that the general interest of the public does not require Qwest to extend landline facilities to Soldiers Meadow.

Submitted this 25th day of October, 2004.

Qwest Corporation



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Adam L. Sherr
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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2004, I served the foregoing **QWEST CORPORATION'S ANSWER TO PETITION FOR RECONSIDERATION** upon all parties of record in this matter as follows:

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