

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Universal Service - FCC
PSC Comments/Letters**

Case No. PU-439-96-149

ORDER AMENDING PRIOR ORDERS

June 8 2005

Appearances

Commissioners Tony Clark and Susan E. Wefald.

Don Negaard, Attorney, Pringle & Herigstad, P.C., PO Box 1000, Minot ND 58702, appearing for the Rural Telephone Company Group.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, 600 East Boulevard, Bismarck, ND 58505, appearing for the Public Service Commission.

Allen C. Hoberg, Director, Office of Administrative Hearings, 1707 North 9th Street - Lower Level, Bismarck, ND 58501-1882, appearing as procedural Hearing Officer.

Preliminary Statement

On February 22, 2005 the Commission issued a Notice of Intent to Amend a Prior Order and Opportunity to Be Heard. A public hearing was held on March 31, 2005.

The issues to be considered in this matter include:

1. Commission jurisdiction for a state Lifeline Plan and Link Up Plan.
2. The status of the plans based upon determination of Commission jurisdiction.

Background

In September 1989, Northwestern Bell Telephone Company (subsequently known as U S WEST Communications, Inc. and now known as Qwest Corporation) and the Commission developed a Lifeline Plan and Link Up Plan as part of a stipulation in Case No. PU-415-89-396. The plans were implemented and funded by Northwestern

Bell Telephone Company. Since 1989, U S WEST Communications, Inc. has sold several of its local telephone exchanges and some of those exchanges have been sold again. The current owners of the exchanges originally owned by Northwestern Bell Telephone Company in 1989 continue to provide and fund lifeline and link-up services as agreed to in the 1989 settlement.

In January 1991 Northern States Power Company sold the Minot local telephone exchange to Rochester Telephone Corporation. In its order concerning the buy/sell, Case Nos. PU-400-90-284 and PU-156-90-355, the Commission accepted a settlement offer under which Lifeline service would be funded. The Minot local telephone exchange has changed ownership several times, but lifeline service continues to be provided and funded as agreed to in the 1991 settlement.

By its November 5, 1997 order in Case No. PU-439-96-149, the Commission adopted a state Lifeline Plan and Link Up Plan to comply with the Federal Communications Commission (FCC) May 8, 1997 Universal Service Report and Order, CC Docket 96-45, FCC 97-157. FCC rules require that a telecommunications carrier offer Lifeline and Link Up services in order to be designated as an eligible telecommunications carrier for the purpose of receiving federal universal service funds. All North Dakota companies designated as an eligible telecommunications carrier followed the November 5, 1997 Lifeline Plan and Link Up Plan for North Dakota. On December 29, 2000, the Commission amended the Lifeline Plan and Link Up Plan for North Dakota to provide additional support for telephone service to low-income consumers in tribal areas.

Since December 2000 the FCC has adopted orders in Dockets FCC 03-115 and FCC 04-87 that could affect the plans. The FCC orders were the impetus for the current proceeding.

Jurisdiction

The Commission has long questioned whether it has had jurisdiction concerning lifeline and link-up services. At the March 31, 2005 hearing in this proceeding, William Binek referred to a July 9, 2001 memorandum in which he commented that the Legislature has been very specific in delegating jurisdiction to the Commission and nowhere in law does the Legislature grant the Commission authority to establish Lifeline and Link Up Plans. His opinion concludes that the Commission has no authority to adopt or implement lifeline and link-up plans.

We find that authority to create and implement lifeline and link-up plans for North Dakota has not been clearly delegated by the Legislature.

Status of the North Dakota Lifeline Plan and Link Up Plan

At the hearing, the RTCG expressed its preference for a single set of lifeline and link-up service rules. This would require that the North Dakota companies offering

lifeline and link-up services follow the federal rules for those programs rather than state-specific lifeline and link-up plans. North Dakota companies would be subject to the federal rules in the absence of state-specific lifeline and link-up plans or in the case of a state that adopts the federal default rules as their own.

Qwest Corporation comments do not indicate a preference for state-specific lifeline and link-up rules or the federal rules. Qwest Corporation's comments imply their ability to implement either the federal or state-specific lifeline or link-up rules.

Since the Commission has not been clearly delegated by the Legislature with authority to create and implement lifeline and link-up plans, and considering the RTCG preference to follow a single set of rules for those services, we believe the public interest would be served by amending previous Commission orders in this proceeding to eliminate the North Dakota Lifeline Plan and Link Up Plan. North Dakota telecommunications companies providing lifeline and link-up services would therefore provide lifeline and link-up services in compliance with FCC rules concerning those services. However, we do not propose to amend our previous orders which approved settlements or otherwise required certain companies to provide funding for lifeline services in North Dakota. The companies have continuing obligations to provide funding for lifeline as provided in those orders.

Other Issues

Parties were asked to respond to questions concerning procedures for certifying consumer eligibility for lifeline and link-up services, concerning procedures for verifying consumers continued eligibility, and concerning outreach programs to improve subscribership in Lifeline. We are encouraged by the eagerness of the RTCG and Qwest Corporation to work with the Commission and other governmental agencies/tribes to develop a cohesive plan for outreach efforts in North Dakota.

Order

The November 5, 1997 and December 29, 2000 orders in Case No. PU-439-96-149 adopting a North Dakota Lifeline Plan and Link Up Plan for North Dakota are rescinded.

PUBLIC SERVICE COMMISSION

**Susan E. Wefald
Commissioner**

**Tony Clark
President**

**Kevin Cramer
Commissioner**