

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

In the matter of
Petition of Citizens Communications Company
and Qwest Corporation For Waiver of
Section 61.48(o)(2) of the Commission's Rules
Petition of Verizon Telephone Companies and
Citizens Communications Company For Waiver of
Section 61.48(o)(2) of the Commission's Rules
CCB/CPD 01-09
CCB/CPD 01-11

Order

Adopted: June 8, 2001

Released: June 11, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. On March 23, 2001, petitioners Citizens Communications Company (Citizens) and Qwest Corporation (Qwest) filed a petition ("Citizens/Qwest Petition") requesting a waiver to extend the provision of section 61.48(o)(2) of the Commission's rules, so that Qwest can continue using an Average Traffic Sensitive (ATS) target rate of \$0.0095 for the properties that were subject to a contract of sale between Qwest and Citizens prior to April 1, 2000. On April 30, 2001, petitioners Verizon Telephone Companies (Verizon) and Citizens also filed a petition ("Verizon/Citizens Petition") requesting a waiver to extend the provision of section 61.48(o)(2), so that Verizon can use an ATS target rate of \$0.0095 for the properties that were subject to a contract of sale between Verizon and Citizens prior to April 1, 2000, in its 2001 annual tariff filing, and so Citizens can set its ATS rate for these properties under section 61.48(o)(2) once the sale is completed. We grant petitioners' request for relief.

II. BACKGROUND

2. The CALLS Order established target rates for price cap carriers with respect to certain traffic sensitive charges. These target rates, known as ATS target rates, vary depending on the size of the local exchange carrier. Bell Operating Companies (BOCs), including Qwest and Verizon, have an ATS target rate of \$0.0055 per minute; certain carriers whose service areas have low teledensity, such as

1 47 C.F.R. § 61.48(o)(2). Section 61.48(o)(2) states that "[f]or sale of properties for which a holding company was, as of April 1, 2000, under a binding and executed contract to purchase but which close after June 30, 2000, but during tariff year 2000, and that are subject to the \$0.0095 Target Rate as set forth in § 61.3(qq), the Average Traffic Sensitive Rate charged by the purchaser for that property will be the greater of \$0.0095 or the Average Traffic Sensitive Rate of that property."

2 Access Charge Reform, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, 15 FCC Rcd 12962 (2000), pets. for rev. pending sub nom. Texas Office of Public Util. Counsel et al. v. FCC, No. 00-60434 (and consolidated cases) (5th Cir. filed June 26, 2000) (CALLS Order).

Citizens, have an ATS target rate of \$0.0095 per minute of use.³ A carrier's ATS rate is subject to annual rate reductions until it has reached its ATS target rate.⁴ The *CALLS Order* recognized that some carriers with ATS target rates of \$0.0095 were in the process of purchasing exchanges from BOCs when the order was adopted. The Commission's rules state that, for the buyer, the property at issue in such a pending transaction would have a \$0.0095 ATS target rate.⁵ The *CALLS Order* endorsed the approach proposed by letter that would permit the seller, while the transaction is pending, to have a blended ATS target rate, *i.e.*, one that would be a weighted average of the combined target rates.⁶ The letter proposed no deadline, other than the completion of the sale, as to how long the seller could use the blended rate. The rules also state that once the transaction is completed, the buyer is permitted to charge the greater of \$0.0095 and the ATS rate for that property.⁷ This provision requires that the transaction be completed during tariff year 2000, *i.e.*, by June 30, 2001.⁸

III. PLEADINGS

A. Petition of Citizens and Qwest

3. In their petition, Citizens and Qwest state that they entered into binding and executed contracts for the sale by Qwest to Citizens of certain properties in ten states.⁹ They further state that they are unable to complete the transaction by June 30, 2001.¹⁰ Petitioners do, however, indicate that they expect the sales to be completed by June 30, 2002.¹¹

4. On April 18, 2001, AT&T filed its opposition to the waiver petition. AT&T alleges that petitioners do not meet the threshold standard for granting a waiver.¹² AT&T asserts that Qwest and Citizens have neither substantiated the assertion that they have a pre-April 1, 2000 contract, nor have they presented facts amounting to "special circumstances," why the property transfers could not be completed in the 15 months from April 1, 2000 to July 2, 2001, the end point of the 2000 tariff year.¹³

5. AT&T contends that section 61.48(o)(2) created a narrow time-bound exception. AT&T claims that the general rule was designed to guard against transfers of exchanges from large price cap LECs to smaller rural price cap LECs in a manner that would allow the ATS target rate for the properties to rise contrary to consumer interests. AT&T argues that the time limitation prevents parties from extending *ad infinitum* the close of a transaction and still claim a right to the narrow exemption.¹⁴

³ 47 C.F.R. § 61.3(qq). Some local exchange carriers are subject to a target rate of \$0.0065, *id.*, but these carriers are not parties in these petitions.

⁴ 47 C.F.R. § 61.45(b)(1)(ii).

⁵ 47 C.F.R. § 61.3(qq)(2).

⁶ 12 FCC Rcd at 13037, *citing* Letter from John T. Nakahata, Counsel to CALLS, to Magalie Roman Salas, Secretary, FCC, May 25, 2000.

⁷ 47 C.F.R. § 61.48(o)(2).

⁸ *Id.*

⁹ Citizens/Qwest Petition at 2. The sale properties are located in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Washington and Wyoming.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² AT&T Comments at 2.

¹³ *Id.* at 4.

¹⁴ *Id.* at 3-4.

6. AT&T also asserts that no public interest benefit would be achieved by granting a waiver that would allow petitioners to utilize a higher ATS target rate than otherwise permitted under the rules. Likewise, AT&T argues that there is no validity to petitioners' contention that a waiver is needed to avoid customer confusion or rate churn, because application of the rules as written would only serve to reduce ATS rates, *not* to reduce and subsequently increase them.¹⁵

7. In their reply, petitioners assert that section 61.48(o)(2), when read in conjunction with 61.3(qq)(2),¹⁶ only precludes Citizens from charging the higher of \$0.0095 and the ATS rate, but would nevertheless permit Citizens to charge \$0.0095 for the sale property.¹⁷ Petitioners also claim that section 61.48(o)(2) applies only to buyers, and not to sellers, so that there is no basis to conclude that Qwest must obtain a waiver to continue charging a blended rate in the exchanges subject to sale.¹⁸

8. Petitioners also argue that their interpretation of the rules does not require them to get a waiver, but that they elected to file "to ensure that the Commission was fully aware of Qwest's continuing use of the blended rate methodology after July 1, 2001."¹⁹ Nevertheless, they state that they have provided good cause for waiver, should one be necessary, in that grant of the waiver would avoid rate churn and customer confusion, the rationale the Commission used in adopting section 61.48(o)(2). Refusal to permit Qwest to continue charging a blended rate would result in rates going from the blended rate that Qwest presently charges, to Qwest's rate on July 1, 2001, and then to Citizens' rate upon the closing of the sale.²⁰

9. In a subsequent letter and affidavit,²¹ petitioners state that while the sale transactions were entered into on June 16, 1999,²² only the North Dakota transaction has closed. Petitioners provide two reasons for the delays for the other exchanges. First, they state that Citizens is purchasing from Qwest only select exchanges within each state, rather than an entire operating entity or operation within a state. They state that this type of purchase gives rise to a wide variety of systems and transition issues that are not present in other transactions, including interconnection, billing, host/remote switching, and joint provisioning of services. Petitioners contend that they must fully identify and resolve these issues, and exchange all necessary records, prior to closing, to make the transition as seamless as possible and to eliminate the potential for any service disruptions to customers.²³ Second, petitioners state that they have not received all necessary state regulatory approvals. They state that once all regulatory approvals have been received and all outstanding issues have been resolved, approximately three months are required to close.²⁴

B. Petition of Verizon and Citizens

10. In their petition, Verizon and Citizens state that on May 27, 1999, they entered into

¹⁵ *Id.* at 4.

¹⁶ 47 C.F.R. § 61.3(qq)(2).

¹⁷ Citizens/Qwest Reply at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 5.

²¹ See Letter from John B. Adams, Counsel for Citizens, and Philip J. Roselli, Counsel for Qwest, to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB/CPD 01-09 (filed May 3, 2001).

²² See *id.* at Attach.

²³ *Id.* at 1.

²⁴ *Id.* at 2.

binding and executed contracts for the sale by Verizon to Citizens of certain properties in California and Arizona.²⁵ They further state that while the Arizona commission has already approved the transaction, the California commission has not, even though the parties filed with the California commission on September 2, 1999. They state that while an administrative law judge in California approved the transaction on April 26, 2001, the current energy crisis in California may preclude the California commission from acting on the transaction by June 30, 2001.²⁶ Petitioners contend that these special circumstances warrant grant of a waiver, should one even be necessary.²⁷ Petitioners also contend that granting the petition will promote the Commission's goals in adopting section 61.48(o)(2) of avoiding unnecessary rate churn and confusion, and will give Citizens the benefit of the bargain it made when it agreed to purchase the Verizon exchanges.²⁸ Petitioners note that Citizens is making a significant investment in rural properties, and is committing to upgrade the network in many rural areas, including broadening the availability of advanced services. Petitioners suggest that the absence of this relief would make it less economic for Citizens to make the investments and upgrades to which it has committed.²⁹ Citizens subsequently filed a letter clarifying that once the transaction is completed, it seeks to charge a rate above \$0.0095 for the one Verizon property that has not reached the \$0.0095 ATS target rate.³⁰ No party filed an opposition to this petition.

IV. DISCUSSION

11. We grant petitioners' requests that Qwest and Verizon be able to continue using the ATS rate set forth in section 61.48(o)(2) of our rules, and that Citizens be able to use this rate after it acquires the relevant properties.³¹ We find that Qwest and Verizon do not need a waiver to continue utilizing a target rate of \$0.0095 for the properties at issue. Petitioners are correct in asserting that section 61.48(o)(2) only applies to "the purchaser of [the] property," and is silent with respect to the seller.³² Moreover, section 61.48(o), which sets forth how transfers of exchanges between price cap local exchange carriers with different ATS target rates should be treated, addresses two situations. Section 61.48(o)(1) applies to acquisitions "after July 1, 2000, . . . [where] the local exchange carrier did not have a binding and executed contract to purchase that filing entity or portion thereof as of April 1, 2000."³³ Section 61.48(o)(2) applies to sales of properties for which there was "as of April 1, 2000, . . . a binding and executed contract to purchase but which close after June 30, 2000, but during tariff year 2000."³⁴ The present situations are not covered by either provision, as they involve contracts to purchase that were in place as of April 1, 2000, but will not be completed during tariff year 2000, *i.e.*, by June 30, 2001. An extension of the time period contemplated by section 61.48(o)(2) for closing these transactions is appropriate to cover this unanticipated situation that is not covered by the Commission's rules. We also

²⁵ Verizon/Citizens Petition at 2.

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 1, 3.

²⁸ *Id.* at 3-4.

²⁹ *Id.* at 4.

³⁰ See Letter from John B. Adams, Counsel for Citizens, to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB/CPD 01-09 and CCB/CPD 01-11 (filed May 3, 2001).

³¹ Although the request for Citizens to use this rate was only made with respect to the Verizon properties, our rules explicitly permit Citizens to do so with respect to the Qwest properties as well. See 47 C.F.R. 61.3(qq)(2).

³² 47 C.F.R. § 61.48(o)(2).

³³ 47 C.F.R. § 61.48(o)(1).

³⁴ 47 C.F.R. § 61.48(o)(2).

grant petitioners' request that with respect to the Verizon properties, Citizens be able to charge the higher of the target rate and the ATS rate. Again, our rules are silent as to the situation here, where the contracts to purchase were in place as of April 1, 2000, but will not be completed by June 30, 2001.

12. Moreover, even if waivers are necessary, petitioners have demonstrated good cause as required under section 1.3 of the Commission's rules.³⁵ Petitioners have demonstrated that special circumstances exist as to why they have been unable to complete the sale of the exchanges. It would be inequitable to hold petitioners responsible for the completion of regulatory approvals, as these matters are not entirely within their control.

13. In addition, with respect to the Qwest properties, the fact that the transactions involve select exchanges, rather than complete operations within a state, may well have created transition issues that require additional time to complete. We find that it is in the public interest to resolve these issues completely rather than provide financial incentive for petitioners to expedite the completion of the sales at the risk of disrupting service to customers. With respect to the Verizon properties, denial of the relief sought would prevent Citizens from achieving the full benefit of the deal it struck to purchase these properties. We recognize that in acquiring the Verizon and Qwest properties, Citizens is making significant investment in rural areas. We find that it is in the public interest to encourage such actions. We also anticipate that further waivers will be unnecessary, as the parties are committed to completing the transactions by the next annual filing.

14. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 201, sections 1.3, 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91 and 0.291, that the relief requested by Citizens Communications Company, Qwest Corporation and Verizon Telephone Companies IS GRANTED to the extent set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Glenn T. Reynolds
Acting Deputy Chief, Common Carrier Bureau

³⁵ 47 C.F.R. § 1.3.