

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

In the Matter of)
)
ALLTEL Corporation)
) CCB/CPD No. 99-01
Petition for Waiver of)
Section 61.41 of the Commission’s Rules)

ORDER

Adopted: June 11, 2001

Released: June 12, 2001

By the Chief, Common Carrier Bureau:

1. In this Order, we grant the petition for waiver filed by ALLTEL/Aliant¹ and extend to July 1, 2002, the deadline by which exchanges acquired from Aliant are required to convert to rate-of-return regulation, thus allowing the Aliant exchanges to remain under price cap regulation for an additional twelve months.

2. ALLTEL merged with Aliant in 1999. ALLTEL/Aliant, headquartered in Little Rock, Arkansas, provides a range of telecommunications services to mostly small to mid-sized communities. It provides telephone service to about 2.6 million access lines in 15 states and wireless communications to 6.3 million customers. Before the merger, ALLTEL was subject to rate-of-return regulation in the interstate jurisdiction, and Aliant was subject to price cap regulation, which it elected in 1993. As part of the merger’s approval, the Commission waived sections 61.41(c)(1), (2) and (d) of the Commission’s rules,² and any other necessary provisions of its rules, to allow the ALLTEL exchanges to remain subject to rate-of-return regulation and to permit the Aliant exchanges to convert from price cap to rate-of-return regulation after the merger.³

¹ For purposes of this order, when discussing the company formed by the merger of ALLTEL and Aliant, we use the term “ALLTEL/Aliant” or the “merged company.” When discussing only the ALLTEL exchanges, we use the term “ALLTEL.” Similarly, when discussing only the Aliant exchanges, we use the term “Aliant.”

² See 47 C.F.R. §§ 61.41(c)(1), (2) and (d); see also *ALLTEL Corporation, Petition for Waiver of Section 61.41 of the Commission’s Rules and Applications for Transfer of Control, Memorandum Opinion and Order*, 14 FCC Rcd 14191, 14198-14199 (1999) (*ALLTEL/Aliant Merger Order*) (“Under these rules [without a waiver], ALLTEL’s merger with Aliant obligates ALLTEL to become subject to price cap regulation and Aliant to remain subject to price cap regulation after the merger.”)

³ See *id.* at 14201 (“ALLTEL believes that this [price cap regulation] would not be suitable for its entire operation. We [the Commission] agree. As ALLTEL points out, it serves dispersed geographic areas in 22 states and consequently, faces varied market conditions.”) and 14202-14206.

In order to prevent ALLTEL/Aliant from circumventing the purpose of the Commission's rules in sections 61.41(c) and (d), the Commission also required the merged company to seek prior Commission approval if it ever decided to elect price cap regulation.⁴

3. On May 17, 2000, ALLTEL/Aliant filed a petition⁵ requesting that the Commission grant it permission to convert 13 of its study areas to price cap regulation under section 61.41(a)(3) of the Commission's rules,⁶ and waive, on a temporary basis, section 61.41(b) of the Commission's rules,⁷ to permit the continued regulation of its remaining study areas as rate-of-return companies. In addition, ALLTEL/Aliant requested permission to continue to operate the Aliant exchanges under price cap regulation pending the Commission's decision on ALLTEL/Aliant's request to elect price cap regulation on a permanent basis for 13 of its study areas.

4. On June 16, 2000, the Commission granted ALLTEL/Aliant's petition for a waiver to the extent necessary to permit its former Aliant exchanges to file a price cap annual access tariff effective July 1, 2000.⁸ As a result, the Aliant exchanges have not been converted to rate-of-return regulation and have remained under price cap regulation. On June 21, 2000, ALLTEL/Aliant withdrew its request to convert 13 of its study areas to price cap regulation⁹ after concluding it was not feasible in light of the *CALLS Order*.¹⁰ In addition, ALLTEL/Aliant filed a separate petition for waiver of section 61.41(b) to allow it to continue operating the Aliant exchanges under price cap regulation for one year.¹¹

5. On April 18, 2001, ALLTEL/Aliant filed the instant petition to extend the waiver of section 61.41(b) of the Commission's rules so the company can file a price cap annual access tariff that would become effective July 1, 2001, for the Aliant exchanges, enabling them to operate under price cap regulation for another year.¹² Without an extension of this waiver,

⁴ See *id.* at 14202 (The Commission's rules are designed to prevent "gaming" the system whereby, for example, a rate-of-return carrier could build a large rate base in order to raise rates, and then return to price cap regulation and cut costs back to an efficient level, thus maximizing its profits at the expense of ratepayers.)

⁵ Request for Approval to Elect Price Cap Regulation, Petition for Waiver of Section 61.41 of the Commission's Rules and Petition for Interim Waiver Pending Decision (filed May 17, 2000).

⁶ See 47 C.F.R. § 61.41(a)(3).

⁷ See 47 C.F.R. § 61.41(b).

⁸ See *ALLTEL Corporation Petition for Waiver of Section 61.41 of the Commission's Rules*, CCB/CPD No. 99-01, *Order*, 15 FCC Rcd 23227 (2000) (*Aliant Waiver Order*).

⁹ Motion for Leave to Withdraw Request for Approval to Elect Price Cap Regulation and Petition for Waiver (filed June 21, 2000).

¹⁰ See *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order*, 15 FCC Rcd 12962 (2000), *pets. for review pending, sub.nom.* Texas Office of Public Util. Counsel et al. v. FCC, Nos. 00-060434 (and consolidated cases) (5th Cir. 2000)(*CALLS Order*).

¹¹ Petition for Temporary Waiver of Section 61.41 of the Commission's Rules (filed June 30, 2000). (We note that the Commission did not act on this petition because the desired relief had already been granted in the *Aliant Waiver Order* on June 16, 2000.)

¹² Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules (filed April 18, 2001) (*ALLTEL/Aliant Petition*); see also ALLTEL Files Petition to Extend Current Interim Waiver of Section 61.41 to Allow Aliant to Continue Under Price Cap Regulation, Public Notice (seeking comment), CCB-CPD No. 99-1, DA 01-1067 (April 24, 2001).

ALLTEL/Aliant would be required to include the Aliant exchanges in its annual access filing on June 18, 2001, under rate-of-return regulation. ALLTEL/Aliant asserts that a waiver is appropriate because special circumstances in this case serve the public interest, efficiencies resulting from the waiver of section 61.41 outweigh the threat of thwarting the Commission's rules, and approval will not result in any potential harms that the rule is designed to guard against.¹³ ALLTEL/Aliant states that competition, particularly from larger price cap local exchange companies, has developed in the access service market, and that improper cost-shifting, which section 61.41 is intended to prevent, would be unrealistic here.¹⁴ In addition, ALLTEL/Aliant argues that price cap regulation has benefited Aliant's customers and will enable them to continue participating in access reductions under the *CALLS Order*.¹⁵ Furthermore, ALLTEL/Aliant states that maintaining the status quo for the Aliant exchanges is beneficial because it "will eliminate the potential for customer confusion and rate churn that could result from changing the Aliant exchanges at this point in time to rate-of-return regulation."¹⁶

6. Although the *ALLTEL/Aliant Merger Order* contemplated that ALLTEL would convert the Aliant exchanges to rate-of-return regulation, these exchanges are still operating under price cap regulation pursuant to the *Aliant Waiver Order*. In evaluating ALLTEL/Aliant's request to maintain the status quo, we note that the company has raised several grounds for why this action would be beneficial to customers, and that no parties objected to ALLTEL/Aliant's petition or otherwise commented.

7. We find good cause to grant ALLTEL/Aliant's petition. Under price cap regulation, the Aliant exchanges have reformed their access charges and, therefore, have a more cost causative interstate rate structure. Returning the Aliant exchanges to rate-of-return regulation at this time would undo the benefits of those reforms. Similar reforms for companies under rate-of-return regulation are under consideration in the MAG proceeding,¹⁷ which also includes a proposal that would generally allow a holding company to maintain both rate-of-return and price cap study areas. Under these special circumstances, the public interest will be served by allowing Aliant exchanges to continue under price caps for another year. We, therefore, extend the waiver of the Commission's rules to allow ALLTEL/Aliant to file a price cap annual access tariff for the Aliant exchanges to become effective July 3, 2001, so these exchanges can remain under price cap regulation for one additional year.¹⁸ In so doing, we

¹³ See *id.* at 4-5.

¹⁴ See *id.* at 5-6.

¹⁵ See *id.* at 4-5.

¹⁶ See *id.* at 4.

¹⁷ The Multi-Association Group submitted a comprehensive proposal for interstate access charge and universal service reform for rate-of-return carriers. See *Petition for Rulemaking of the LEC Multi-Association Group*, RM 10011, at 16 (filed Oct. 20, 2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *Notice of Proposed Rulemaking*, FCC 00-448, at para. 11 (rel. Jan. 5, 2001)(*MAG proceeding*).

¹⁸ See *July 3, 2001 Annual Access Charge Tariff Filings*, CCB/CPD 01-08, *Order*, DA 01-838 (Comp. Pric. Div. rel. April 6, 2001)(stating that because annual access tariff filing dates for incumbent local exchange carriers fall on Saturday and Sunday, the July 2001 effective date for annual access tariffs is modified to be July 3, 2001).

extend the deadline to July 1, 2002, by which ALLTEL/Aliant is required to convert the exchanges it acquired from Aliant to rate-of-return regulation.¹⁹

8. Accordingly, IT IS ORDERED, pursuant to sections 4(i)-(j), and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), and 201, and sections 0.291, 0.91 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.291, 0.91 and 1.3, that section 61.41 of the Commission's rules, 47 C.F.R. §§ 61.41, SHALL BE WAIVED to the extent necessary to permit ALLTEL/Aliant to file a price cap annual access tariff that will be effective July 3, 2001.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

¹⁹ ALLTEL/Aliant has not sought a permanent waiver of section 61.41(b).