

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

In the Matter of)
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Frontier Petition for Pricing Flexibility for) CCB/CPD No. 01-07
Special Access and Dedicated Transport)
Services)
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MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2001

Released: July 13, 2001

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant Frontier’s¹ petition for flexibility in the pricing of certain interstate special access and dedicated transport services.² As detailed below, the Commission established the parameters for granting such relief in the *Pricing Flexibility Order* released in August 1999.³ In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent local exchange carriers (“LECs”) as competition develops in order to “ensure that our own regulations do not unduly interfere with the operation of [interstate access] markets.”⁴ Frontier’s petition requests both Phase I and Phase II relief for various access services in the Rochester, New York Metropolitan Statistical Area (“MSA”). For the reasons that follow, we grant Frontier’s petition.

¹ “Frontier” refers to Frontier Telephone of Rochester, Inc., and Frontier Communications of Seneca-Gorham, Inc.

² See Pleading Cycle Established For Frontier Petition For Pricing Flexibility For Special Access And Dedicated Transport Services, CCB/CPD No. 01-07, Public Notice, DA 01-731 (Mar. 22, 2001) (“Public Notice”); see also Petition for Pricing Flexibility For Special Access And Dedicated Transport Services, CCB/CPD No. 01-07 (filed Mar. 20, 2001) (“Frontier Petition”). AT&T was the only party to file comments. See AT&T Opposition to Frontier Petition For Pricing Flexibility For Special Access And Dedicated Transport Services, CCB/CPD No. 01-07 (filed Apr. 4, 2001) (“AT&T Opposition”).

³ Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14,221 (1999) (“*Pricing Flexibility Order*”), aff’d, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁴ *Pricing Flexibility Order*, 14 FCC Rcd at 14,224 (citing Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15,982, 15,985, 16,094 (1997) (“*Access Charge Reform First Report and Order*”)).

II. BACKGROUND

2. To recover the costs of providing interstate access services, incumbent LECs charge interexchange carriers (“IXCs”) and end users for access services in accordance with the Commission’s Part 69 access charge rules.⁵ The Commission has long recognized that it should allow incumbent LECs progressively greater flexibility in the pricing of access services as they face increasing competition for the provision of these services.⁶ In the *Access Charge Reform First Report and Order*, the Commission adopted a market-based approach to access charge reform, pursuant to which it would relax restrictions on incumbent LEC pricing as competition emerges.⁷ At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.⁸ Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.⁹

3. In that order, the Commission established a framework for granting price cap LECs greater flexibility in the pricing of interstate access services once they make a competitive showing, or satisfy “triggers,” to demonstrate that market conditions in a particular area warrant the relief they seek.¹⁰ Pricing flexibility for special access and dedicated transport services¹¹ is available in two phases, based on an analysis of competitive conditions in individual MSAs.¹²

⁵ See 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. Special access services employ dedicated facilities that run directly between the end user and an IXC point of presence (POP) — the physical plant where an IXC connects its network with the LEC network. Charges for special access services generally are divided into channel termination charges and channel mileage charges. Channel termination charges recover the costs of facilities between the customer’s premises and the LEC end office and the costs of facilities between the IXC POP and the LEC serving wire center. Channel mileage charges recover the costs of facilities (also known as interoffice facilities) between the LEC serving wire center and the LEC end office serving the end user.

⁶ See Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858 (1995) (“*Price Cap Second FNPRM*”); see also Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21,354, 21,428-48 (1996) (“*Access Charge Reform NPRM*”) (seeking comments on the Commission’s pricing flexibility proposals).

⁷ See *Access Charge Reform First Report and Order*, 12 FCC Rcd 15,982 (1997).

⁸ See *id.* at 15,989.

⁹ See *Pricing Flexibility Order*, 14 FCC Rcd at 14,224-25 (citing *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15,989, 16,106).

¹⁰ The Commission instituted price cap regulation for the Regional Bell Operating Companies (BOCs) and GTE in 1991, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990) (“*LEC Price Cap Order*”). The *Pricing Flexibility Order* applies only to price cap LECs, that is, those LECs that are subject to price cap regulation.

¹¹ For purposes of pricing flexibility proceedings, “dedicated transport services” refer to entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. See *Pricing Flexibility Order*, 14 FCC Rcd at 14,234 n.54. These services are defined in 47 C.F.R. § 69.2(qq) (entrance facilities), § 69.2(oo) (direct-trunked transport), and § 69.2(ss) (tandem-switched transport).

¹² See 47 C.F.R. § 22.909(a) of the Commission’s rules for a definition of an MSA.

4. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day's notice, contract tariffs¹³ and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.¹⁴ To protect those customers that may lack competitive alternatives, a price cap LEC receiving Phase I flexibility must maintain its generally available price cap constrained tariffed rates for these services.¹⁵ To obtain Phase I relief, a price cap LEC must meet triggers designed to demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue.¹⁶ In particular, to receive pricing flexibility for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.¹⁷ In both cases, the price cap LEC also must show, with respect to each wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.¹⁸

5. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC end office and an end user customer. A competitor collocating in a LEC end office continues to rely on the LEC's facilities for the channel termination between the end office and the customer premises, at least initially, and thus is more susceptible to exclusionary pricing behavior by the LEC.¹⁹ As a result, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.²⁰ Again, the LEC must demonstrate, with respect to each wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.²¹

6. Phase II Pricing Flexibility. A price cap LEC that receives Phase II relief is allowed to offer dedicated transport and special access services free from the Commission's Part 69 rate structure and Part 61 price cap rules. The LEC, however, is required to file, on one day's notice, generally available tariffs for those services for which it receives Phase II relief.²² To obtain

¹³ A contract tariff is a tariff based on an individually negotiated service contract. *See* 47 C.F.R. § 61.3(o); *see also* 47 C.F.R. § 61.55 (describing the required composition of the contract-based tariffs).

¹⁴ *See Pricing Flexibility Order*, 14 FCC Rcd at 14,287.

¹⁵ *See id.* at 14,235.

¹⁶ *See id.* at 14,234.

¹⁷ *See id.* at 14,23; 47 C.F.R. § 69.709(b).

¹⁸ *See Pricing Flexibility Order*, 14 FCC Rcd at 14,234 n.55; 47 C.F.R. § 69.709(b).

¹⁹ *See Pricing Flexibility Order*, 14 FCC Rcd at 14,279.

²⁰ *See id.* at 14,234; 47 C.F.R. § 69.711.

²¹ *See Pricing Flexibility Order*, 14 FCC Rcd at 14,234 n.55; 47 C.F.R. § 69.711(b).

²² *See Pricing Flexibility Order*, 14 FCC Rcd at 14,301.

Phase II relief, a price cap LEC must meet triggers designed to demonstrate that competition for the services at issue within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period.²³ To obtain Phase II relief for dedicated transport and special access services (other than channel terminations to end users), a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.²⁴ Higher thresholds apply for obtaining Phase II pricing flexibility relief for channel terminations between a LEC end office and an end user customer.²⁵ To obtain such relief, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 65 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.²⁶ Once again, the LEC also must demonstrate, with respect to each wire center, that at least one collocator is relying on transport facilities provided an entity other than the incumbent LEC.²⁷

III. DISCUSSION

7. Frontier seeks both Phase I and Phase II relief in the Rochester, New York MSA for special access and dedicated transport services (other than channel terminations to end users). Frontier seeks only Phase I relief for end user channel terminations. The particular services for which it seeks relief are set forth in its petition and listed in Appendix A of this Order.²⁸

8. As noted above, pricing flexibility will be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.²⁹ For special access and dedicated transport services, the Commission established two means of satisfying this requirement. The incumbent may show: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by an entity other than the incumbent to transport traffic from that wire center; and (4) that the percentage of wire centers in which competitors have collocated and use competitive transport satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.³⁰ Alternatively, the incumbent may show: (1) in each

²³ See *id.*

²⁴ See *Pricing Flexibility Order*, 14 FCC Rcd at 14,299; 47 C.F.R. § 69.709(c).

²⁵ See *Pricing Flexibility Order*, 14 FCC Rcd at 14,235, 14,299.

²⁶ See *id.* at 14,235; 47 C.F.R. § 69.711(c).

²⁷ See 47 C.F.R. § 69.711(c).

²⁸ See Frontier Petition, Attachment 1.

²⁹ See *Pricing Flexibility Order*, 14 FCC Rcd at 14,309.

³⁰ See *id.*; 47 C.F.R. §§ 1.774(a)(3)(i)-(iii), (iv)(A).

wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by an entity other than the incumbent to transport traffic from that wire center; (2) the total base period³¹ revenues in the MSA generated by the services for which the incumbent seeks relief; and (3) that the wire centers in which competitors have collocated and use competitive transport account for a sufficient percentage of the incumbent's base period revenues generated by the services at issue within the relevant MSA to satisfy the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.³²

9. To demonstrate that it qualifies for pricing flexibility in the Rochester, New York MSA, Frontier chose, and has met, the requirements of the latter alternative. First, Frontier identified collocators using competitive transport facilities from applications for collocation service and collocation agreements associated with Frontier's collocation arrangements.³³ Using these records, Frontier was able to: (1) identify those competitive local exchange carriers ("CLECs") collocating in its wire centers; and (2) identify those CLECs paying Frontier for cable space, which is needed only when the CLEC is using non-Frontier cable transport facilities.³⁴ Second, Frontier provides aggregate 1999 base period billing revenues generated by the services for which it seeks relief in the Rochester, New York MSA. Frontier tracks recurring demand for its Rochester study area by employing a historical database of interstate Uniform Service Order Codes ("USOCs") and the Carrier Access Billing System ("CABS"). Frontier used the USOC database, which contains bill number, circuit number, quantity billed, central office codes, and percentage of interstate use ("PIU") data, and CABS, which details rate elements by office, to allocate revenues to particular wire centers, in accordance with Commission rules.³⁵ Third, Frontier submits data to show that the wire centers in which competitors have collocated account for a sufficient percentage of its base period revenues generated by the services at issue within the Rochester, New York MSA to satisfy the trigger the Commission adopted with respect to the pricing flexibility that it sought.³⁶ Based upon a review of the information submitted, we conclude that Frontier has satisfied its *prima facie* burden of demonstrating that it has met the applicable triggers for the various services in the MSA for which it requests relief.

10. AT&T contends that Frontier has erroneously identified AT&T as a collocator using non-Frontier Entrance Facilities for two wire centers cited in Frontier's petition.³⁷ In response,

³¹ For price cap LECs, the "base period" is the 12-month period (*i.e.*, the calendar year) ending six months before the effective date of the LECs' annual access tariffs. *See* 47 C.F.R. § 61.3(g).

³² *See Pricing Flexibility Order*, 14 FCC Rcd at 14,309; 47 C.F.R. §§ 1.774(a)(3)(i)-(iii), (iv)(B).

³³ *See* Frontier Petition at 4.

³⁴ This information was provided by the CLEC at the time of or subsequent to its initial collocation application. *See id.*

³⁵ *See* 47 C.F.R. § 69.725. For a detailed description of Frontier's allocation methods, *see* Frontier Petition at 4-7.

³⁶ *See* Frontier Petition, Attachment 3.

³⁷ *See* AT&T Opposition at 2 (citing Carpiniello Declaration, ¶ 2) (these wire centers are identified in the confidential version of the Carpiniello Declaration).

Frontier asserts that it used information obtained from collocation applications and physical inspection of the wire centers to identify collocation arrangements.³⁸ Frontier states that in one wire center it has installed conduit for AT&T, which AT&T could use for non-Frontier transport cable, but AT&T has not done so, and, in the other wire center, at AT&T's request, Frontier has installed cable capable of being used by AT&T for competitive transport.³⁹ More important, however, Frontier identified in its initial filing collocators other than AT&T using competitive transport in each of the two wire centers at issue. Thus, even if AT&T were not collocating or using competitive transport in these wire centers, Frontier would still satisfy the applicable triggers. As it was required to do, Frontier provided to each CLEC upon which it relied a copy of its petition and an appendix indicating the wire centers in which Frontier contends the CLEC is collocated and using competitive transport.⁴⁰ No CLEC other than AT&T has come forward to contest Frontier's claim. Thus, we reject AT&T's argument that Frontier has failed to satisfy its burden in this regard.

11. AT&T also argues that Frontier has not met its burden of proof because Frontier aggregated revenue data at the MSA-level. According to AT&T, without revenue data by wire center, it is impossible to verify that the total revenue associated with wire centers in which competitors have collocated does in fact account for a sufficient percentage of base period revenues to meet the pricing flexibility triggers.⁴¹ The Common Carrier Bureau rejected this argument in the *BellSouth Order*, a fact acknowledged by AT&T in its instant opposition.⁴² In the *BellSouth Order*, the Common Carrier Bureau found that wire center-level data was not required for a LEC to make a *prima facie* showing that it has satisfied the revenue-based triggers.⁴³ Frontier responds that it has provided precisely the same level of detail as did BellSouth, and should be given the same relief.⁴⁴

12. We have reviewed Frontier's revenue allocation methodology, as described in its petition, and the data provided by Frontier in both the public and confidential versions of its petition and find that Frontier has met the requirements stated in Section 1.774 of the Commission's rules.⁴⁵ Furthermore, we note that the Commission's rules do not require that Frontier report revenue data at the wire center level. We again caution future filers of pricing

³⁸ See Reply Comments of Frontier Telephone of Rochester, Inc. and Frontier Communications of Seneca-Gorham, Inc., CCB/CPD No. 01-07 at 2 (filed Apr. 16, 2001) ("Frontier Reply Comments").

³⁹ See *id.*

⁴⁰ See Frontier Petition, Attachment 4.

⁴¹ See AT&T Opposition at 3-4.

⁴² BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC Rcd 24,588, 24,596-97 (2000) ("*BellSouth Order*"); AT&T Opposition at 3-4.

⁴³ See *BellSouth Order*, 15 FCC Rcd at 24,597.

⁴⁴ See Frontier Reply Comments at 3.

⁴⁵ See 47 C.F.R. § 1.774.

flexibility petitions, however, that lack of data disaggregated to the wire center level could pose a problem if the Commission were to determine that one of the wire centers does not meet the collocation requirements. If the data is aggregated above the wire center level, and the Commission rejects non-revenue evidence with respect to a particular wire center, the Commission would not have the data necessary to determine whether the remaining wire centers in the MSA account for revenue sufficient to meet the trigger.⁴⁶ By aggregating the data above the wire center level, therefore, the incumbent LEC runs the risk that its petition will be rejected upon a determination that it had relied on a wire center that does not qualify under the Commission's rules. Because we have not rejected any of Frontier's wire centers, however, the lack of revenue data at the wire center level is not a concern here. Apart from AT&T's generalized assertions, moreover, no party filed comments that call Frontier's data into question. Thus, we reject AT&T's argument.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 1.774 of the Commission's Rules, 47 C.F.R. § 1.774, and the authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, and the *Pricing Flexibility Order*, that the petition filed by Frontier IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

⁴⁶ For example, if a petition using data aggregated at the MSA level purported to show that competitors were collocated in ten wire centers providing 35 percent of the revenues for a particular service, but it included a wire center that it should not have, the Bureau would be unable to determine what percentage of the revenues was attributable to the remaining wire centers and would be forced to reject the petition for that MSA. If, on the other hand, that same petition provided data disaggregated to the wire center level, the Bureau would be able to review the revenue data for the remaining wire centers to determine whether the incumbent LEC had still satisfied the trigger for that particular MSA.

APPENDIX A**Services Qualifying for Pricing Flexibility****Special Access Services Basket***

Metallic Service
Telegraph Grade Service
Voice Grade Service (including WATS)
Program Audio Service
Digital Data Service
High Capacity Service – DS1
High Capacity Service – DS3
Fractional T1 Service
Digiline Interface Options
ADSL Service
SDSL Service

Trunking Services Basket*

Voice Grade Service
DS1 Service
Common Channel Signaling Network Connection
DS3 Service

*Includes dedicated transport services (entrance facilities, direct-trunked transport, flat-rated portion of tandem switched transport, flat-rated multiplexing), channel terminations between the serving wire center and end user's premises, flat-rated interoffice transport, and the optional features and functions associated with these services.