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

In the Matter of	)	
	)	
Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services	)	CCB/CPD File No. 02-01
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2002 **Released:** April 24, 2002

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On December 31, 2001, the Qwest Corporation (Qwest) filed a petition seeking pricing flexibility for special access and dedicated transport services in a number of Metropolitan Statistical Areas (MSAs) in its service territory.[1] As detailed below, the Commission established the parameters for granting pricing flexibility for special access and dedicated transport services in its *Pricing Flexibility Order*.[2] In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent local exchange carriers (LECs) as competition develops in the market for interstate access services "to ensure that our regulations do not unduly interfere with the operation of those markets."[3] For the reasons that follow, we grant Qwest's petition.

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.[4] In the *Access Charge Reform First Report and*

---

[1] *See Pleading Cycle Established for Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 02-01, Public Notice, DA 02-2 (Jan. 2, 2002).

[2] *See Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd, WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). The *Pricing Flexibility Order* also addressed flexibility for switched services, but those services are not at issue in the Qwest Petition.

[3] *Pricing Flexibility Order*, 14 FCC Rcd at 14224.

[4] 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. *Compare* 47 C.F.R. § 69.114 *with* 47 C.F.R. § 69.106. 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

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.[5] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[6] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[7]

3. The pricing flexibility framework the Commission adopted in the *Pricing Flexibility Order* grants progressively greater flexibility to LECs subject to price cap regulation as competition develops, while ensuring that: (1) price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.[8] In addition, the reforms are designed to facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.[9]

4. In keeping with these goals, 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. Pricing flexibility for special access and dedicated transport services[10] is available in two phases, based on an analysis of competitive conditions in individual MSAs.[11]

---

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. *See* 47 C.F.R. § 69.703(a). 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. *See* 47 C.F.R. § 69.709(a). *See also Pricing Flexibility Order*, 14 FCC Rcd at 14226-27.

[5] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*).

[6] *Id.* at 15989.

[7] *Pricing Flexibility Order*, 14 FCC Rcd at 14225 (citing *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, 16094-95).

[8] *Pricing Flexibility Order*, 14 FCC Rcd at 14225. The Commission instituted price cap regulation for the Regional Bell Operating Companies (RBOCs) and GTE in 1991, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation.

[9] *Pricing Flexibility Order*, 14 FCC Rcd at 14225.

[10] For purposes of pricing flexibility proceedings, the term "dedicated transport services" refers to services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Pricing Flexibility Order*, 14 FCC Rcd at 14234. 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).

[11] *See* 47 C.F.R. § 22.909(a) (definition of MSA).

5. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day's notice, contract tariffs,[12] and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.[13] 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.[14] 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. 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.[15] 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.[16]

6. 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.[17] 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.[18] Again, the LEC also 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.[19]

7. 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

---

[12] A contract tariff is a tariff based on an individually negotiated service contract. *See Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5897 (1991) (*Interexchange Competition Order*); 47 C.F.R. § 61.3(o). *See also* 47 C.F.R. § 61.55 (describing required composition of contract-based tariffs).

[13] *Pricing Flexibility Order,* 14 FCC Rcd at 14287.

[14] *Id.* at 14234-35.

[15] *Id.* at 14274, 14277-81; 47 C.F.R.§ 69.709(b).

[16] 47 C.F.R. § 69.709(b).

[17] *Pricing Flexibility Order*, 14 FCC Rcd at 14279.

[18] *Id.* at 14280-81; 47 C.F.R.§ 69.711(b).

[19] 47 C.F.R. § 69.711(b).

notice, generally available tariffs for those services for which it receives Phase II relief.[20] To obtain 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. 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.[21] Higher thresholds apply for obtaining Phase II pricing flexibility relief for channel terminations between a LEC end office and an end user customer. 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.[22] Once again, the LEC also 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.[23]

III. DISCUSSION

8. Qwest seeks Phase I and Phase II pricing flexibility for dedicated transport and special access services other than channel terminations to end users in 31 MSAs, and Phase I relief alone for two additional MSAs. These MSAs are listed in Qwest's Petition.[24] For channel terminations between Qwest's end office and end user customer premises, Qwest seeks Phase I and Phase II relief in 20 MSAs and Phase I relief alone in 11 additional MSAs. These MSAs also are listed Qwest's Petition.[25] The specific services for which Qwest seeks pricing flexibility

[20] *Pricing Flexibility Order*, 14 FCC Rcd at 14299-14301; 47 C.F.R. § 69.727(b)(3).

[21] *Pricing Flexibility Order*, 14 FCC Rcd at 14299; 47 C.F.R. § 69.709(c).

[22] *Pricing Flexibility Order*, 14 FCC Rcd at 14235; 47 C.F.R. § 69.711(c).

[23] 47 C.F.R. §69.711(c).

[24] *See* Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, Attach. A, CCB/CPD File No. 02-01 (filed Dec. 31, 2002) (Qwest Petition). *See also* Letter from Craig J. Brown, Senior Attorney, Qwest to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB/CPD File No. 02-1 (filed Jan. 4, 2002) (Qwest Jan. 4 e*x parte*). Qwest seeks Phase I and Phase II relief for dedicated transport and special access services other than channel terminations to end users for the following 31 MSAs: Albuquerque, NM; Bellingham, WA; Boise City, ID; Cedar Rapids, IA; Colorado Springs, CO; Davenport-Rock Island-Moline, IA-IL; Denver-Boulder, CO; Des Moines, IA; Dubuque, IA; Eugene-Springfield, OR; Fargo-Moorehead, ND-MN; Iowa City, IA; Medford, OR; Minneapolis-St. Paul, MN-WI; Olympia, WA; Omaha, NE; Phoenix, AZ; Portland, OR-WA; Provo-Orem, UT; Pueblo, CO; Rochester, MN; Salem, OR; Salt Lake City-Ogden, UT; Seattle-Everett, WA; Sioux City, IA-NE; Spokane, WA; St. Cloud, MN; Tacoma, WA; Tucson, AZ; Waterloo-Cedar Falls, IA; and Yakima, WA. Qwest seeks Phase I relief alone for dedicated transport and special access services other than channel terminations to end users for the following two MSAs: Fort Collins-Loveland, CO and Greeley, CO.

[25] *Id*. Qwest seeks Phase I and Phase II pricing flexibility for channel terminations to end users in the following 20 MSAs: Albuquerque, NM; Bellingham, WA; Boise City, ID; Colorado Springs, CO; Davenport-Rock Island-Moline, IA-IL; Des Moines, IA; Dubuque, IA; Eugene-Springfield, OR; Fargo-Moorehead, ND-MN; Iowa City, IA; Medford, OR; Olympia, WA; Omaha, NE; Phoenix, AZ; Portland, OR-WA; Rochester, MN; Salt Lake City-Ogden, UT; Spokane, WA; St. Cloud, MN; and Yakima, WA. Qwest seeks Phase I relief alone for channel terminations to

also are listed in its Petition.[26] No comments or oppositions were filed in response to Qwest's Petition.

9. As noted above, pricing flexibility may 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.[27] For special access and dedicated transport services, the Commission established two means of satisfying this requirement. In the first, the incumbent must 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) the name, in each wire center on which the incumbent bases its petition, 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.[28] Alternatively, the incumbent must show: (1) the total base period[29] revenues generated by the services for which the incumbent seeks relief in the MSA for which the incumbent seeks relief; (2) the name, in each wire center on which the incumbent bases its petition, 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 (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.[30]

10. With respect to each MSA, Qwest chose the latter, revenue-based alternative to demonstrate that it has met the applicable trigger(s).[31] Qwest first identified collocators by wire center using its Collocation Online Milestone and Event Tracking ("COMET") database. This database includes, for each collocation arrangement: (1) the name of the collocator, (2) the collocator's collocation applications, implementation dates, and whether the collocator is using an alternative transport provider, and (3) all activities occurring within the collocation account,

end users in the following 11 MSAs: Denver-Boulder, CO; Fort Collins-Loveland, CO; Minneapolis-St. Paul, MN-WI; Provo-Orem, UT; Pueblo, CO; Salem, OR; Seattle-Everett, WA; Sioux City, IA-NE; Tacoma, WA; Tucson, AZ; and Waterloo-Cedar Falls, IA.

[26] *Id.* at Attach. B. The specific services in the special access basket are: Metallic, Telegraph, Voice Grade, WATS, Audio and Video, DDS, SVDS, DS1, DS3, MBSS, SHNS, SRS, SST, and GEOMAX. The specific services in the trunking basket, which includes entrance facilities, fixed and variable mileage, multiplexers, and access tandem trunk ports, are: DSO, DS1, DS3, OC12, OC24, OC3, OC48, and OC196.

[27] *Pricing Flexibility Order*, 14 FCC Rcd at 14309.

[28] 47 C.F.R. §§ 1.774(a)(3)(i)-(iv)(A).

[29] For price cap LECs, the "base period" is the 12-month calendar year ending 6 months before the mid-year effective date of the LECs' annual access tariffs. 47 C.F.R. § 61.3(g).

[30] 47 C.F.R. §§ 1.774(a)(3)(i)-(iii), (iv)(B).

[31] Qwest Petition at 5-6; Attach. D at 1.

including changes, cancellations, and decommissions of collocation arrangements.[32] Qwest relies on records in this database for network planning and billing, and, therefore, considers them to "possess high indicia of reliability."[33]

11. When Qwest created its COMET database in 2000, it created records for all previously established collocation arrangements. For some older collocation arrangements, however, information was incomplete, and did not always indicate whether the collocator used an alternative transport provider.[34] For such older arrangements, Qwest State Interconnection Managers with first-hand knowledge of the nature of collocation arrangements in Qwest wire centers relied on their personal knowledge, examined records, or conducted physical inspections to ensure that these older collocation arrangements were operational and used non-Qwest transport facilities.[35] Qwest then compared this list of qualifying collocation arrangements to an internally-audited list of collocation arrangements that had been decommissioned or were in the process of being decommissioned.[36] Finally, Qwest verified that its list of qualifying collocation arrangements contained no abandoned collocation arrangements that might have failed to appear on the list of decommissioned arrangements.[37]

12. Qwest used the following methodology to determine the percentage of total base period (here, calendar year 2000) revenue generated by channel termination and channel mileage services in each MSA. To determine channel termination revenue by wire center, Qwest used an allocation factor because its Integrated Access Billing Services (IABS) and Customer Records Information System (CRIS) billing databases, from which it obtained revenue data, contained insufficient detail to determine whether channel termination revenue was associated with a channel termination between an end user customer and a Qwest end office, or a channel termination between an IXC POP and a Qwest wire center.[38] To determine the allocation factor, Qwest extracted from representative, June 2001 channel termination revenue, records for each circuit that enabled it to determine whether the channel termination revenue was associated with an end user or an IXC POP.[39] From this data, Qwest calculated a ratio of June 2001 end user channel termination revenue to total 2000 channel termination revenue for each wire center.[40]

---

[32] *Id.* at 4.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 5.

[36] *Id.*

[37] *Id*. *See also* Qwest Petition at Attach. F for a list of all wire centers with collocators using non-Qwest transport facilities.

[38] *Id.* at Attach. D, p. 4.

[39] Specifically, records identified the ends of a circuit between a Qwest serving wire center and an IXC POP with a "1", and the ends of a circuit between a Qwest end office and an end user premises with a number other than "1". *Id.* at Attach. D, n. 4.

[40] *Id.* at Attach. D, pp. 3-5. *See also* 47 C.F.R. § 69.725 (a) and (b).

Qwest identified the revenue remaining after application of the ratio to total 2000 channel termination revenue for each wire center as 2000 IXC POP channel termination revenue.[41] Qwest allocated any channel termination revenue not associated with a particular wire center proportionally to all wire centers in the MSA.[42] For channel mileage revenue, Qwest first determined total 2000 channel mileage revenue. Qwest then attributed fifty percent of total channel mileage revenue to the two wire centers at the end of each circuit to determine channel mileage revenue for each wire center, as required by the pricing flexibility rules.[43]

13. To determine the MSAs for which it met the revenue percentage triggers established in the pricing flexibility rules, Qwest assigned each wire center to an MSA by comparing a list of counties in which its wire centers were located to the Cellular MSA/RSA Markets and Counties Report.[44] Qwest then attributed each wire center's channel termination and channel mileage revenues to the appropriate MSA to determine the total channel termination and channel mileage revenue for the MSA. Qwest next calculated the total channel termination and channel mileage revenues attributable to wire centers with collocators using non-Qwest transport facilities within the MSA. Finally, Qwest calculated the percentage of channel termination and channel mileage revenue attributable to wire centers with collocators using non-Qwest transport facilities within the MSA to determine whether it met the revenue percentage triggers.[45]

14. Based upon a review of the information submitted, we conclude that Qwest has satisfied its burden of demonstrating that it has met the applicable triggers for each of the various services and MSAs for which it requests pricing flexibility relief. Each collocated competitor upon which Qwest relies in its petition was served with notice pursuant to the pricing flexibility rules.[46] We received no comments or oppositions in response to Qwest's petition. Based on our determination that Qwest's evidence is sufficient, we grant its petition.

IV. ORDERING CLAUSES

15. 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

---

[41] *Id*. at Attach. D, p. 5.

[42] *Id*.

[43] *Id.* at Attach. D, p. 3. *See also* 47 C.F.R. § 69.725(c).

[44] Qwest Petition at Attach. D, p. 2. The Cellular MSA/RSA Markets and Counties Report assigned individual counties to MSAs for purposes of establishing cellular markets. It relied on 1980 census data. *See Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties Report,* Public Notice, DA 92-109 (rel. Jan. 24, 1992). Qwest also compared these assignments to MSA records in its internal databases. *Id.*

[45] *Id. See also* Qwest Petition at Attach. E for a list of channel termination and channel mileage revenues by MSA.

[46] Qwest Petition at Attach. C.

Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, and the *Pricing Flexibility Order,* that the petition filed by Qwest IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Wireline Competition Bureau