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

In the Matter of	)	
	)	
Petition of Hawaiian Telcom, Inc. for Phase I Pricing Flexibility Pursuant to Section 69.709 of the Commission's Rules	))))	WCB/Pricing File No. 08-01

ORDER

Adopted: May 14, 2008 **Released: May 14, 2008**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On November 16, 2007, Hawaiian Telcom, Inc. (Hawaiian) filed a petition pursuant to sections 1.774 and 69.701 *et seq*. of the Commission's rules[1] for Phase I pricing flexibility[2] for dedicated transport and special access services, other than channel terminations between Hawaiian's end offices and end-user customer premises, provided within Hawaiian's state-wide study area but outside of the Honolulu Metropolitan Statistical Area (the Hawaii Non-MSA area).[3] On January 3, 2008, the Commission issued a public notice seeking comment on the Petition.[4] As detailed below, the Commission established the rules for granting pricing flexibility for special access and dedicated transport services in its *Pricing Flexibility Order*.[5] In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent local exchange carriers (LECs) as competition develops in the

[1] 47 C.F.R. §§ 1.774, 69.701 *et seq*.

[2] *See* Petition of Hawaiian Telcom, Inc. for Phase I Pricing Flexibility Pursuant to Section 69.709 of the Commission's Rules, WCB/Pricing File No. 08-01 (filed Nov. 16, 2007) (Petition). A list of the specific services for which Hawaiian seeks pricing flexibility can be found in the Appendix to this order.

[3] Hawaiian's study area consists of the Honolulu MSA which consists of the island of Oahu. This pricing flexibility petition is for what Hawaiian refers to as the Hawaii Non-MSA area and consists of five Hawaiian Islands: Hawaii, Kauai, Lanai, Maui, and Molokai.

[4] *Pleading Cycle Established for Hawaiian Telcom, Inc. Petition for Phase I Pricing Flexibility Pursuant to Section 69.709 of the Commission's Rules*, WCB/Pricing File No. 08-01, Public Notice, 23 FCC Rcd 41 (Wireline Comp. Bur. 2008).

[5] *See Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

market for interstate access services "to ensure that our own regulations do not unduly interfere with the operation of these markets."[6] For the reasons that follow, we grant Hawaiian'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.[7] 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.[8] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[9] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[10]

3. The 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 price cap LECs: (1) do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) do not increase rates to unreasonable levels for customers that lack competitive alternatives.[11] 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.[12]

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 certain "triggers," to demonstrate that market conditions in a particular area warrant

[6] *Pricing Flexibility Order*, 14 FCC Rcd at 14224, para. 1.

[7] 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 point where an IXC connects its network with the LEC network. Charges for special access services generally are divided into channel termination charges and interoffice facility charges. Channel termination charges (which can include a flat-rated charge and a mileage component) 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. *See* 47 C.F.R. § 69.703(a). Interoffice facility charges recover the costs of facilities between the LEC serving wire center and the LEC end office serving the end user. *See Pricing Flexibility Order*, 14 FCC Rcd at 14226-27, paras. 8-10. For the interoffice facility, carriers often have separate termination and mileage charges.

[8] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*), *aff'd, Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998).

[9] *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, para. 14.

[10] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 4.

[11] *Id*. at 14225, para. 3. 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. *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20, paras. 262-79 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation. *Pricing Flexibility Order,* 14 FCC Rcd at 14224, para. 1 n.1.

[12] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 3.

the relief they seek. Pricing flexibility for special access and dedicated transport services[13] is available in two phases, Phase I and Phase II, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the study area.[14] Pricing flexibility for channel termination services[15] is also available in two phases, based on an analysis of competitive conditions in individual MSAs or non-MSA parts of the study area.[16]

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[17] and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.[18] 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.[19] 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.[20] 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.[21] In both cases, the price cap LEC also must show, with respect to each wire center used to satisfy the trigger, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[22]

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[13] For purposes of pricing flexibility proceedings, "dedicated transport services" refer to services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Id*. at 14234, para. 24 n.54. These services are defined in 47 C.F.R. § 69.2(oo) (direct-trunked transport), § 69.2(qq) (entrance facilities), and § 69.2(ss) (tandem-switched transport).

[14] *See* 47 C.F.R. § 22.909(a) (definition of MSA). *See also Pricing Flexibility Order,* 14 FCC Rcd at 14261, para. 76 (pricing flexibility will be granted to price cap LECs within the non-MSA parts of a study area if they satisfy the applicable triggers throughout that area). In its petition, Hawaiian requests Phase I pricing flexibility relief but not Phase II, thus we do not describe Phase II pricing flexibility here. Phase II pricing flexibility is described in paragraphs 141-57 of the *Pricing Flexibility Order*. *See Pricing Flexibility Order,* 14 FCC Rcd at 14296-302, paras. 141-57.

[15] For purposes of pricing flexibility proceedings, a channel termination between a LEC end office and a customer premises is defined as a "dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic." 47 C.F.R. § 69.703(a)(2).

[16] *See supra* note 14.

[17] 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, para. 91 (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).

[18] *Pricing Flexibility Order,* 14 FCC Rcd at 14287-88, para. 122.

[19] *Id.* at 14234-35, para. 24.

[20] *Id.* at 14234-35, 14274, paras. 24, 94.

[21] *Id.* at 14274-77, paras. 95-98; 47 C.F.R. § 69.709(b).

[22] 47 C.F.R. § 69.709(b).

6. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC's 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.[23] 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.[24] Again, the LEC also must demonstrate, with respect to each wire center used to satisfy the trigger, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[25]

7. Competitive Showing. 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.[26] For special access and dedicated transport services and channel termination services the incumbent must identify: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; and (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 a provider other than the incumbent to transport traffic from that wire center.[27] In addition to these three requirements, the petitioner must show either: (A) 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] or (B) that the percentage of total base period[29] revenues that are attributable to the wire centers upon which the petitioner relies satisfies the applicable pricing flexibility triggers.[30]

III. DISCUSSION

8. Hawaiian seeks Phase I pricing flexibility for the Hawaii Non-MSA area for dedicated transport and special access, other than channel terminations between Hawaiian's end offices and end-user customer premises.[31] 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.[32]

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[23] *Pricing Flexibility Order*, 14 FCC Rcd at 14278-79, paras. 102-103.

[24] *Id*. at 14280-81, paras. 105-06; 47 C.F.R. §§ 69.711(a), (b).

[25] 47 C.F.R. §§ 69.711(a), (b).

[26] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

[27] 47 C.F.R. § 1.774(a)(3)(i)-(iii).

[28] 47 C.F.R. § 1.774(a)(3)(iv)(A).

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

[30] The revenues applicable to this requirement are those generated by the services for which the incumbent seeks relief. 47 C.F.R. § 1.774(a)(3)(iv)(B).

[31] *See* Petition at 1.

[32] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

9. Hawaiian has demonstrated compliance with the requirements for Phase I pricing flexibility. Hawaiian has provided sufficient information to demonstrate that it meets the applicable pricing flexibility triggers for the relief it has requested. As explained in greater detail below, to make this showing, Hawaiian assigned wire centers to the Hawaii Non-MSA area and identified wire centers within that area where service providers have obtained collocation with alternative facilities other than Hawaiian-provided transport.[33] Hawaiian also gathered revenue data and assigned it either to dedicated transport or special access services other than channel terminations between Hawaiian's end offices and end user's customer premises.[34]

10. Hawaiian identified the Hawaii Non-MSA area that qualifies for pricing flexibility by: (1) assigning wire centers to the non-MSA area and identifying wire centers within the non-MSA area; (2) identifying wire centers in the non-MSA area where service providers have obtained collocation with alternative facilities other than Hawaiian-provided transport; (3) identifying revenue from dedicated transport and special access services, other than channel terminations between Hawaiian's end offices and end-user customer premises; and (4) calculating the percentage of such revenue earned in the collocated wire centers in the Hawaii Non-MSA area.[35]

11. To identify wire centers with collocation, Hawaiian examined its internal records to determine which wire centers located in the Hawaii Non-MSA area were wire centers with collocation.[36] Hawaiian then performed physical inventories to confirm the presence of a collocator.[37] In accordance with the Commission's rules, Hawaiian served a copy of its petition on each of the collocating carriers upon which it relied, including, for each collocator, the information about that party upon which Hawaiian relied in its petition.[38]

12. To ascertain revenue associated with dedicated transport and special access services, other than channel termination between Hawaiian's end offices and end-user customer premises, Hawaiian gathered data for the twelve-month period ending December 31, 2006, from two sources.[39] With respect to revenue data from January 1, 2006 through March 31, 2006, Hawaiian sourced the data from records previously obtained from Verizon, "which performed billing and collection services for [Hawaiian] during this period."[40] With respect to revenues billed from April 1, 2006 through December 31, 2006, Hawaiian obtained the data from a third-party vendor which manages Hawaiian's billing systems.[41] Hawaiian examined the Common Language Location Identifier (CLLI) code to associate

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[33] Petition, Attach. D.

[34] *Id.*, Attach. C, D.

[35] *Id.* at Attach. D.

[36] *Id*. at 1.

[37] *Id.*

[38] *Id*. at Attach. E; *see also* 47 C.F.R. § 1.774(e)(1)(ii).

[39] Petition, Attach. D at 1.

[40] *Id*.

[41] The third-party vendor is "Communications Data Group (CDG), which manages [Hawaiian's] billing systems using CDG's Carrier Access Billing System (CABS)." *Id*.

revenues with specific wire centers.[42] In particular, when a channel record identified a single serving wire center, 100 percent of associated revenue was assigned to that particular Hawaiian wire center.[43] When a channel record identified two wire centers, 50 percent of associated revenue was attributed to each of the wire centers.[44] Hawaiian then examined each record to determine the appropriate assignment of revenues from entrance facilities and channel terminations between any of its wire centers and an IXC POP to the serving wire center.[45] Hawaiian attributed "revenues from rate elements not directly mapped to a single wire center to the wire centers at each end of the circuit on a 50/50 basis."[46] Hawaiian then determined whether the percentage of revenue in each classification met the applicable trigger.[47] Pacific LightNet, Inc. was the only party that filed comments to Hawaiian's pricing flexibility petition, but has since withdrawn its comments and states that it believes Hawaiian has met the established triggers for Phase I pricing flexibility.[48]

13. After reviewing Hawaiian's verification method as described in the Petition and the data provided in the public and confidential versions of the Petition, we find that Hawaiian has met the applicable triggers in section 1.774 and Part 69, Subpart H of the Commission's rules.[49] Based upon a review of the information submitted we conclude that Hawaiian has satisfied its burden of demonstrating that it has met the applicable requirements for each of the various services in the Hawaii Non-MSA area for which it requests relief.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to section 1.774 of the Commission's rules, 47 C.F.R. § 1.774, the *Pricing Flexibility Order,* 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, the petition filed by Hawaiian Telcom, Inc. IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief, Wireline Competition Bureau

[42] Petition, Attach. D at 1.

[43] *See id*. at 2.

[44] *See id*.

[45] *See id*. Hawaiian excluded revenues attributable to channel terminations to end users. *See id*.

[46] *Id*.

[47] *See id*.

[48] *See* Comments of Pacific LightNet Inc., WCB/Pricing File No. 08-01 (filed Feb. 4, 2008) (Pacific LightNet Comments); letter from Laura Mayhook, Counsel, Pacific LightNet, Inc., to Marlene H. Dortch, Secretary, FCC, WCB/Pricing File No. 08-01 (Apr. 28, 2008).

[49] 47 C.F.R. §§ 1.774 and 69.701 *et seq*.

APPENDIX

Services Qualifying For Pricing Flexibility

Trunking Services Basket

Metallic
Voice Grade
Fractional T1 (FT1)
DS1
DS3
Optical Networking Service

Special Access Basket

Metallic
Telegraph
Voice Grade
Program Audio
Video Connect
Wideband Analog
Wideband Data
DDS
Fractional T1 (FT1)
European T1 (ET1)
Point to Point Fiber Optic Service
DS1
DS3
FiberConnect
Optical Networking Service