

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Qwest Corporation and Sully Buttes)	
Telephone Cooperative, Inc.)	
Joint Petition for Waiver of the Subscriber)	
Carrier Selection Change Provisions)	
of the Telecommunications Act of 1996)	

**JOINT PETITION FOR WAIVER OF QWEST CORPORATION
AND SULLY BUTTES TELEPHONE COOPERATIVE, INC.**

I. **REQUEST FOR RELIEF**

Qwest Corporation (“Qwest”)¹ and Sully Buttes Telephone Cooperative, Inc. (“Sully Buttes”), pursuant to Section 1.3 of the Federal Communications Commission’s (“Commission”) rules,² respectfully request the Commission grant a limited waiver of the authorization and verification requirements of the Commission’s carrier-change rules, 47 C.F.R. Sections 64.1100 through 64.1190,³

¹ On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

² See 47 C.F.R. § 1.3.

³ The Commission’s verification rules prohibit a telecommunications carrier from submitting a preferred carrier-change order unless certain criteria have been met. See 47 C.F.R. § 64.1150.

and relevant Orders,⁴ to the extent necessary to permit Sully Buttes to be substituted as the local carrier for Qwest's current customers for the South Dakota exchange of Sisseton. Approval of the transfer of the Sisseton exchange to Sully Buttes, said approval having been requested of this Commission in June 2000,⁵ would entail changing the current carrier of approximately 2,400 access lines.

As demonstrated herein, the rural exchange sales being undertaken between Sully Buttes and Qwest fully satisfy the special circumstances required for a waiver of Commission rules, as stated in Wait Radio v. FCC.⁶ Moreover, grant of the instant Petition will further serve the public interest.⁷

II. BACKGROUND

In the Joint Petition for Waivers, Qwest sought to delete the South Dakota exchange of Sisseton containing approximately 2,400 access lines from its South Dakota study area.⁸ Sully Buttes sought a waiver to add those approximately 2,400

⁴ See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508 (1998), appeal in abeyance sub nom. MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir.).

⁵ See Joint Petition for Waivers of U S WEST Communications, Inc. and Sully Buttes, filed June 2, 2000 ("Joint Petition for Waivers").

⁶ WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁷ See Joint Petition for Expedited Waivers at 12, citing to the Public Utilities Commission of the State of South Dakota, Findings of Fact and Conclusions of Law, Notice of Entry of Order TC99-112, dated May 23, 2000.

⁸ The sale would entail the sale of customer accounts and accounts receivable.

access lines to its existing study area. On June 13, 2000, the Commission released a Public Notice seeking comments on the proposed study area waiver request.⁹

Importantly, affected customers have been fully informed of the carrier changes associated with the transfer of these access lines and accounts. On May 5, 2000, notifications were sent to all customers in the area to advise of the sale of the customer base and the transfer of the customers from Qwest to Sully Buttes.¹⁰ This notification advised customers of the impending service provider transfer and how that transfer would most likely affect their local, local long distance and interexchange carrier services after the transfer.

After the sale has been completed, Sully Buttes will contact these customers again with a “welcome” letter.¹¹ In that letter, much of the information that customers have already received will be repeated. In addition, customers will be advised that the transfer may affect their long distance carrier (both intrastate and interstate) and that should they currently use a carrier that is not present in Sully Buttes’ switch then a Sully Buttes representative will contact them to coordinate a carrier change at no charge. Customers will also be advised of the following:

⁹ Public Notice, Sully Buttes Telephone Cooperative, Inc. and U S WEST Communications, Inc. Seek a Waiver of the Definition of “Study Area” in Part 36 of the Commission’s Rules and Certain Sections of the Commission’s Price Cap Rules, CC Docket No. 96-45, DA 00-1310, rel. June 15, 2000.

¹⁰ The notification was done as part of Qwest’s application requesting authority under Section 214(a) of the Communications Act of 1934, 47 U.S.C. § 214(a), and Section 63.71 of the Commission’s rules, 47 C.F.R. § 63.71, to discontinue operations in these exchanges.

¹¹ See Attachment A.

The rates charged by Sully Buttes will be the same or lower than those charged by Qwest;

There will be no charge for the switch in service from Qwest to Sully Buttes;

As the new local service provider, Sully Buttes will now be responsible for all service issues; and

A customer contact number will be provided for questions.

III. SPECIAL CIRCUMSTANCES WARRANT A WAIVER

The Commission has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹² Such circumstances exist here. To the extent the basic sale between Qwest and Sully Buttes is ultimately approved as in the public interest, the concomitant action of moving the customers over to Sully Buttes is obviously a necessary aspect of realizing that public interest.¹³

In an increasing number of Orders, the Commission (or the Common Carrier Bureau through delegated authority) is finding that granting of similar waivers is in the public interest.¹⁴ As in the cases of these previously-granted waivers, prior

¹² See Wait Radio v. FCC, 418 F.2d at 1159; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ For this reason, Qwest agrees with Global Telecompetition Consultants, Inc. (“GTC”) that the Commission should take action regarding its existing carrier-change rules either to generally waive the requirements in those cases where a sale of some portion (or all) of the subscriber base is occurring or amend the rules to render them inapplicable to such sales. See Petition for Rulemaking submitted by GTC on Dec. 30, 1999.

¹⁴ See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Citizens Utilities Company [and] U S WEST Communications, Inc. Joint Petition for Waiver, CC Docket No. 94-129, Order, DA 00-1584 rel. July 14, 2000; In the Matter of Implementation of the

customer notification has already occurred. In addition, a follow-up “welcome” letter will be sent at approximately the same time as the occurrence of the actual transfer.

By granting this Petition, the Commission will ensure that the policy goals of the carrier-change rules are served without compromising the benefits associated with the commercially-reasonable alienation of property and the seamless transition of carriers serving end-user customers in the Sisseton exchange. Given that the above outlined circumstances are similar to those in which the Commission

Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc. Request for Waiver, Order, 14 FCC Rcd. 15268, 15269-70 ¶ 4 (1999) (waiver granted to allow transfer of customer base pursuant to asset purchase agreement with another carrier); and citing to WAIT Radio v. FCC, 418 F.2d at 1159; id. at 15270 ¶ 5 (granting International Exchange Communications, Inc. a waiver in conjunction with the purchase of International Telecommunications Corp.’s assets); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Iowa Telecommunications Services Petition for Waiver, CC Docket No. 94-129, Order, DA 99-2777, rel. Dec. 21, 1999 (waiver granted to allow Iowa Telecommunications Services (“ITS”) to change the preferred carrier of those consumers currently presubscribed to GTE of the Midwest to ITS); In the Matter of Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; MCI WorldCom, Inc. Request for Waiver, Order, 14 FCC Rcd. 12264 (1999) (waiver granted to allow transfer of customer accounts pursuant to purchase agreement with another carrier).

has previously granted waivers of its carrier-change rules, Qwest and Sully Buttes are confident that the Commission will find the granting of this Petition warranted and in the public interest.

Respectfully submitted,

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July 25, 2000

ATTACHMENT A

Dear Valued Customer:

Welcome! Sully Buttes Telephone Cooperative would like to welcome you as a new customer.

Qwest Corporation (formerly known as U S WEST Communications, Inc.), previously notified you that your local telephone service would be transferred to Sully Buttes Telephone Cooperative. All federal and state regulatory approvals have now been met, and we are starting the actual transfer process.

As a result of the transfer, all services, including local basic service and local long distance service, which were provided to you by Qwest will now be provided by Sully Buttes Telephone Cooperative. There is no charge to you for the switch in service from Qwest to Sully Buttes Telephone Cooperative.

Sully Buttes Telephone Cooperative is confident that you will be pleased with the change. We are committed to providing high quality, reliable service to you. And, we will charge the same or lower rates for local services than those charged by Qwest.

We would like to advise you that the transfer from Qwest to Sully Buttes Telephone Cooperative may affect your long distance carrier (both intrastate and interstate) if you currently use a carrier that is not present in our switch. If you are affected by this, you will be contacted by a Sully Buttes Telephone Cooperative representative to coordinate a carrier change to fit your needs at no charge.

As your new local service provider, Sully Buttes Telephone Cooperative will now be responsible for all service issues. If you have any questions about this notice or your service, please contact our Customer Service Representatives at our toll free numbers, (800) 824-7282 or (605) 852-2224.

Sincerely,

Randy W. Houdek
Manager

CERTIFICATE OF SERVICE

I, Kristi Jones, do hereby certify that I have caused 1) the foregoing **JOINT PETITION FOR WAIVER OF QWEST CORPORATION AND SULLY BUTTES TELEPHONE COOPERATIVE, INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a copy of the **JOINT PETITION** to be served, via hand delivery, upon the persons/entity (marked with an asterisk) listed on the attached service list and 3) a copy of the **JOINT PETITION** to be served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

Kristi Jones _____

Kristi Jones

July 25, 2000

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