

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
SADDLEBACK COMMUNICATIONS AND) CC Docket No. 96-45
QWEST CORPORATION) DA 01-1605
)
Joint Petition for Waiver of the)
Definition of "Study Area" in)
the Appendix-Glossary of Part 36)
)
Petition for Waiver of Section 61.41(c) and (d) and)
69.3(e)(11) of the Commission's Rules)

**COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) submits the following comments in response to the Commission's Public Notice released on July 10, 2001, inviting comments on the above-captioned joint petition for waiver. NTCA is a national association of more than 500 local exchange carriers including Saddleback Communications, a small, tribal local exchange carrier. NTCA's members provide telecommunications services to end users and interexchange carriers throughout rural America. They are also "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").¹

In accordance with Section 1.3 of the Commission's rules, Saddleback and Qwest have filed a joint petition seeking waivers to permit the deletion of 2,700 access lines located within the boundaries of the Salt-River Pima-Maricopa Indian Community from

¹ 47 U.S.C. §153(47).

Qwest's Phoenix exchange and Saddleback seeks a waiver to create a new study area for this territory. Saddleback also seeks a waiver of the Commission's Rule 61.41(c) so that it may continue to be regulated under rate of return once it acquires the 2,700 access lines from Qwest.

NTCA fully supports the petition of Saddleback and Qwest. The Commission's study area freeze should be waived. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries, which were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that LECs would set up high cost exchanges within their service territories as separate study areas to maximize high cost support.² Recognizing that a freeze may not be appropriate in all circumstances, the Commission established a three-prong test for deciding whether study area waivers should be granted. The Commission may approve waiver requests if it determines that: 1) the change will not affect adversely the USF support program; 2) that the state commission having regulatory authority does not object to the change; 3) and that the public interest supports grant of the waiver.³

As explained in the joint petition, the transaction will have no adverse impact on USF. Under Section 54.305 of the Commission's rules, a carrier purchasing a high cost exchange will receive the same level of support per line as the seller received prior to the sale.⁴ While the Arizona Corporation Commission (ACC) has not formally ruled on

² *In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 (Dec. 12 1984).

³ *In the Matter of US WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Memorandum Opinion and Order*, 10 FCC Rcd 1771, 1772 (1995).

⁴ 47 C.F.R. § 54.305.

transfer of the Salt River territory to Saddleback, on June 11, 2001 it issued a letter indicating that “it does not object to the requested study area waiver.”⁵ Small local telephone companies provide high quality service to their subscribers and since they have ties to the local communities, provide a higher level of customer service. The fact that Saddleback is a small, tribally owned carrier only reinforces its ability to better understand and meet the unique needs of tribal communities such as the Salt-River Pima-Maricopa Indian Community served by the 2,700 access lines Saddleback is acquiring from Qwest. Saddleback states that it intends to upgrade telecommunications services to the Salt River Community once the transition is complete. Clearly, the public interest would be served by granting the requested study area waivers allowing transfer of control of the 2,700 access lines in question from Qwest to Saddleback.

Saddleback and Qwest also request that the Commission waive its requirement that any non-average schedule company, when purchasing a price cap company or a portion of a price cap company, be subject to price caps.⁶ The Commission’s rules also require that a company that has elected price caps must continue under price caps.⁷ Saddleback requests waiver of this requirement so that it does not become subject to interstate price cap regulation.

The Commission declined to impose price cap regulation on all LECs acknowledging that it was not appropriate for smaller LECs.⁸ Saddleback is an NTCA member and a small, rural carrier. The Commission has previously determined that

⁵ See letter to Katherine Schroder, Chief, Accounting Policy Division of the Federal Communications Commission, June 11, 2001.

⁶ 47 C.F.R. § 61.41(c)(2) and (3).

⁷ 47 C.F.R. § 61.41 (d).

⁸ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5

companies such as Saddleback are not appropriately regulated under price cap regulation.

The Commission's primary concern with price cap waivers is "gaming the system" by LECs.⁹ Such a situation is not present here. As Petitioners explain, Saddleback intends to operate the access lines separate and apart from Qwest, once the transaction is complete. There will be no ownership or management affiliation between Saddleback and Qwest. Qwest will not gain any economic benefit from a grant of the waiver to Saddleback. A waiver makes sense in this instance.

Finally, Saddleback requests waiver of Section 69.3(e)(11) if necessary, to allow Saddleback to utilize the NECA as its tariff pool administrator. As pointed out in the petition, a literal reading of 69.3(e)(11) would require Saddleback to file interstate tariffs until July 1, 2001. Saddleback should be granted a waiver so that it may receive the economic and administrative benefit of participating in the NECA pool.

FCC Rcd 6786 (1990).

⁹ *Eagle Decision*, 10 FCC Rcd 1775.

For all of the above-mentioned reasons, NTCA supports the joint petition and respectfully submits that the public interest would be served best by the Commission's expeditious approval of the requested waivers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, DA 01-1605, was served on this 9th day of August 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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