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

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In the matter of	)	
	)	
Saddleback Communications	)	
	)	CC Docket No. 96-45
And	)	
	)	
Qwest Corporation	)	
	)	
	)	

ORDER

Adopted: November 29, 2001 **Released: November 30, 2001**

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Saddleback Communications (Saddleback) and Qwest Corporation (Qwest) for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.[1] This waiver will permit Qwest to remove from its Arizona study area part of the Phoenix exchange comprising approximately 2,700 access lines.[2] This waiver also will permit Saddleback to establish a new study area comprising the Salt River Pima-Maricopa Indian Community, which will include Saddleback's existing facilities and the approximately 2,700 access lines it intends to acquire from Qwest.[3]

2. We also grant Saddleback's request for waiver of sections 61.41(c)(2), and 69.3(e)(11) of the Commission's rules. Waiver of section 61.41(c)(2) will permit Saddleback to operate under rate-of-return regulation after acquiring from Qwest approximately 2,700 access lines that are currently under price-cap regulation. Waiver of section 69.3(e)(11) will permit Saddleback to participate in the National Exchange Carrier Association, Inc. (NECA), common line tariff effective upon closing of the transaction.

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[1] Saddleback Communications and Qwest Corporation, Joint Petition for Expedited Waivers (filed June 12, 2001) (Petition).

[2] On June 12, 2001, Qwest filed an 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 service to that portion of its Phoenix exchange serving the Salt River Pima-Maricopa Indian Community.

[3] Saddleback is a division of, and has been licensed by, the Salt River Pima-Maricopa Indian Community to provide local exchange service on the Saddleback Reservation. Petition at 1 n.1. The Salt River Pima-Maricopa Indian Community is a federally-recognized Indian Tribe located east of Scottsdale, Arizona. Petition at 1 n.2. Saddleback is currently a competitive eligible telecommunications carrier providing both residential and business service on the Salt River Pima-Maricopa Reservation. Saddleback was designated as an eligible telecommunications carrier pursuant to section 214(e)(6) of the Communications Act of 1934 by the Commission on November 4, 1998. *See Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, DA 98-2237 (Comm. Car. Bur. Nov. 4. 1998).

II. STUDY AREA WAIVER

A. Background

3. *Study Area Boundaries*. A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. The Commission froze all study area boundaries effective November 15, 1984,[4] and an incumbent LEC must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.

4. *Transfer of Universal Service Support*. Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.[5] For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's universal service support mechanism for non-rural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges. Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.[6] High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,[7] interim hold-harmless support for non-rural carriers,[8] rural carrier high-cost loop support,[9] local switching support,[10] and Long Term Support (LTS).[11] To the extent

[4] 47 C.F.R. § 36 app. (defining "study area"). *See 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, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); *see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

[5] 47 C.F.R. § 54.305.

[6] *Id.*

[7] *See* 47 C.F.R. § 54.309. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999), *rev'd and remanded for further consideration, Qwest Corporation v. FCC.*, 258 F.3d 1191 (10th Cir. 2001); *Federal-State Joint Board on Universal Service*; *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order (rel. Nov. 2, 1999), *affirmed, Qwest Corporation v. FCC et al.*, 258 F.3d 1191 (10th Cir. 2001).

[8] In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. *See* 47 C.F.R. § 54.311.

[9] *See* 47 C.F.R. §§ 36.601-36.631. On May 23, 2001, the Commission reformed the high-cost support mechanism for rural carriers. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001).

[10] Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer. Under the Commission's revised high-cost support mechanism for rural carriers, however, rural carriers may be eligible to receive additional support for new investments in acquired exchanges.[12]

5. *Saddleback's Petition*. On June 12, 2001, Saddleback and Qwest filed a joint petition for waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.[13] The requested waiver would permit Qwest to delete the Salt River Pima-Maricopa Indian Community from its Arizona study area and transfer to Saddleback approximately 2,700 access lines on the Salt River Pima-Maricopa Indian Reservation. The waiver also would permit Saddleback to establish a new study area in Arizona comprising the Salt River Pima-Maricopa Indian Community, which would include Saddleback's existing facilities and the approximately 2,700 access lines it intends to acquire from Qwest. On July 10, 2001, the Common Carrier Bureau released a public notice seeking comment on the petition.[14] The National Telephone Cooperative Association submitted comments in support of the petition.[15]

B. Discussion

6. We find that good cause exists to waive the definition of study area contained in Part 36 Appendix-Glossary of the Commission's rules to permit Qwest to remove the 2,700 access lines from its Arizona study area, and to permit Saddleback to establish a new study area in Arizona comprising the Salt River Pima-Maricopa Indian Community for the acquired access lines.

7. Generally, Commission rules may be waived for good cause shown.[16] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[17] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[18] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[19] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, we traditionally have applied a three-prong test: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and (3) the transfer

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[11] Carriers that participate in the NECA common line pool are eligible to receive LTS. *See* 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. *See First Report and Order,* 12 FCC Rcd at 9163-9165.

[12] *RTF Order* at paras. 97-109. *See also* 47 C.F.R. 54.305(b)-(f).

[13] *See Petition* at 10.

[14] *Saddleback Communications and Qwest Corporation Seek Waiver of the Definition of "Study Area" in Part 36 and Sections 61.41(c) and 69.3(e)(11) of the Commission's Rules*, Public Notice, DA 01-1605 (rel. July 10, 2001).

[15] *See* Comments of the National Telephone Cooperative Association, CC Docket No. 96-45, DA 01-1605 (filed August 9, 2001).

[16] 47 C.F.R. § 1.3.

[17] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[18] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[19] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

must be in the public interest.[20] For the reasons discussed below, we find that good cause exists to waive the definition of study area contained in Part 36 Appendix-Glossary of the Commission's rules to permit Qwest to remove the approximately 2,700 access lines from its Arizona study area, and permit Saddleback to create a new study area comprising the Salt River Pima-Maricopa Indian Community, which will include Saddleback's existing facilities and the approximately 2,700 access lines it intends to acquire from Qwest.

8. First, we conclude that there will be no adverse impact on any of the universal service mechanisms if we permit Saddleback to create a new study area and Qwest to transfer a portion of the Phoenix exchange to the newly-created study area. Under section 54.305 of the Commission's rules, carriers purchasing high-cost exchanges receive the same level of per-line support that the selling company was receiving for those exchanges prior to the sale.[21] As a result, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction. Saddleback will receive the same per-line levels of support for which the access lines were eligible prior to the transfer. Because Qwest does not receive any high-cost support in Arizona, Saddleback will not receive any high-cost support for the access lines acquired from Qwest.[22] Therefore, we conclude that this transaction will not adversely affect any of the universal service mechanisms.[23] We note that, as a result of this transaction, Saddleback's existing facilities may be eligible for different amounts of high-cost support than the access lines being transferred from Qwest's study area. Accordingly, we direct Saddleback to submit, as part of its annual universal service data submissions, a schedule showing its methodology for excluding the costs associated with the acquired access lines from the costs associated with its existing facilities.

9. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Arizona Corporation Commission (Arizona Commission) has indicated that it does not object to the grant of the study area waiver.[24]

10. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule. In its petition, Saddleback states that grant of the requested waivers will enable the Salt River tribe to provide improved, state-of-the-art telecommunications services to its own people.[25] Saddleback adds

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[20] *See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (*PTI/Eagle Order*).

[21] *See* 47 C.F.R. § 54.305(a). We note, however, that under the Commission's revised high-cost support mechanism for rural carriers, Saddleback may be eligible to receive high-cost universal service support for new investments made in that portion of the Phoenix exchange acquired from Qwest. *See* 47 C.F.R. § 54.305(b)-(f).

[22] *See* 47 C.F.R. § 54.305.

[23] On November 8, 2001, the Commission modified its rules to reform the interstate access charge and universal service support systems for incumbent local exchange carriers subject to rate-of-return regulation. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Dockets Nos. 98-77 and 98-166 (rel. November 8, 2001). The universal service reforms will not take effect until July 1, 2002. While we recognize that section 54.305 of the Commission's rules will not apply to the transfer of interstate high-cost support for rate-of-return carriers, we have no reason at this time to believe that Saddleback's receipt of such support in the future will have an adverse impact on the universal service support mechanism.

[24] *See* Letter from Debra McGuire Mercer to Magalie Roman Salas,, dated August 24, 2001 at 1 (*August 24 Letter*).

[25] Petition at 13.

that the Salt River tribal government is "unique in its understanding and ability to serve the needs of the residents of the Salt River community."[26] The Arizona Commission found that Saddleback's acquisition of assets from Qwest will allow Saddleback to expand the availability of its services on the Reservation to households not currently being served by Qwest.[27] Based on Saddleback's representations and the findings of the Arizona Commission, we conclude that Saddleback has demonstrated that grant of this waiver request serves the public interest.

III. WAIVER OF THE COMMISSION'S PRICE CAP RULES

A. Background

11. Section 61.41(c)(2) of the Commission's rules provides that a non-price cap carrier that acquires access lines from a price cap carrier shall become subject to price cap regulation and must file price cap tariffs within a year.[28] Under this rule, Saddleback's acquisition of exchanges from Qwest would subject Saddleback to price cap regulation.

12. In the *LEC Price Cap Reconsideration Order*, the Commission explained that section 61.41(c), the "all-or-nothing" rule, is intended to address two concerns regarding mergers and acquisitions involving price cap companies.[29] The first concern was that, in the absence of the rule, a LEC might attempt to shift costs from its price cap affiliate to its non-price cap affiliate, allowing the non-price cap affiliate to charge higher rates to recover its increased revenue requirement, while increasing the earnings of the price cap affiliate. The second concern was that, absent the rule, a LEC might attempt to "game" the system by switching back and forth between rate-of-return regulation and price cap regulation. For example, a price cap company may attempt to game the system by opting out of price cap regulation, building a large rate base under rate-of-return regulation so as to raise rates and then, after returning to price caps, cutting costs back to an efficient level, thereby enabling it to realize greater profits. It would not serve the public interest, the Commission stated, to allow a carrier alternately to "fatten up" under rate-of-return regulation and "slim down" under price cap regulation, because the rates would not decrease in the manner intended under price cap regulation.[30]

13. The Commission nonetheless recognized in the *LEC Price Cap Reconsideration Order* that narrow waivers of the price cap "all-or-nothing" rule might be justified if efficiencies created by the purchase and sale of exchanges outweigh the threat that the system might be subject to gaming.[31] Waivers of section 61.41(c)(2) will be granted conditioned on the selling price cap company's downward

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[26] *Id.*

[27] *August 24 Letter*, Attachment at 2

[28] 47 C.F.R. § 61.41(c)(2). *See Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6821 (1990) (*Price Cap Order*), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990), *modified on recon.*, Order on Reconsideration, 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*), *aff'd sub nom. National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *further modification on recon.*, *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991), *further recon.*, Memorandum Opinion and Order on Second Further Reconsideration, 7 FCC Rcd 5235 (1992). Moreover, section 61.41(d) provides that a LEC that becomes subject to price cap regulation is not permitted to withdraw from such regulation. 47 C.F.R. § 61.41(d).

[29] *See LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2706.

[30] *Id.*

[31] *Id.* at 2706 n. 207.

adjustment to its price cap indices to reflect the sale of exchanges.[32] The Commission explained that such an adjustment is needed to remove the effects of transferred exchanges from rates that have been based, in whole or in part, upon the inclusion of those exchanges in a carrier's price cap indices.[33] In addition, waivers of the all-or-nothing rule have been granted subject to the condition that the acquiring carrier obtain prior Commission approval of any attempt to return to price cap regulation.[34]

14. Saddleback intends to operate under rate-of-return regulation, while Qwest is subject to price cap regulation. Saddleback seeks a waiver of section 61.41(c)(2) of the Commission's rules to permit it to operate under rate-of-return regulation after acquiring from Qwest 2,700 access lines that are currently operated under price cap regulation.[35] Absent a waiver of section 61.41(c)(2), all of Saddleback's operations would become subject to price cap regulation no later than one year after acquiring the price cap access lines from Qwest. Saddleback states that application of this rule will not serve the purpose of the rule, which is to prevent LECs from shifting costs between price cap and non-price cap affiliates and from increasing rates by switching back and forth between rate-of-return regulation and price cap regulation.[36]

B. Discussion

15. For the reasons discussed below, we find that good cause exists for us to waive section 61.41(c)(2) of the Commission's rules, and that it would be in the public interest to grant Saddleback's waiver request. As discussed previously, the courts have interpreted section 1.3 of the Commission's rules to require a petitioner seeking a waiver of a Commission rule to demonstrate that special circumstances warrant a deviation from the general rule, and that such a deviation will serve the public interest.[37]

16. Because Saddleback is significantly smaller than any of the carriers subject to mandatory price cap regulation, we find that special circumstances support a waiver of section 61.41(c)(2). In evaluating requests for waiver of section 61.41(c)(2), the Commission has taken into account the company's preferences and, in particular, the preferences of small carriers.[38] In fact, the Commission traditionally has been sensitive to the unique administrative burdens imposed on small telephone companies by the application of its rules.[39] In the *LEC Price Cap Order*, the Commission decided that

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[32] *See Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9104-06 (1995) (*LEC Price Cap Review Order*). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. *See* 47 C.F.R. § 61.45.

[33] *See LEC Price Cap Review Order*, 10 FCC Rcd at 9105-9106.

[34] *See, e.g., Rye Telephone Company, Inc. and U S WEST Communications, Inc., Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules and Petition for Waiver of Section 61.41(c)(2) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 00-1585, at para. 17 (Acc. Pol. Div. rel. Jul. 18, 2000); *ALLTEL Corp. Petition for Waiver of Section 61.41 of the Commission's Rules and Application for Transfer of Control*, CCB/CPD No. 99-1, Memorandum Opinion and Order, 14 FCC Rcd. 14191, 14202 (1999) (*ALLTEL/Aliant Merger Order*).

[35] Petition at 3-8.

[36] *See* Petition at 6-7.

[37] *See supra* discussion at para. 9.

[38] *See, e.g., ALLTEL/Aliant Merger Order*, 14 FCC Rcd at 14204-05.

[39] *See, e.g., id.* at 14204; *In the Matter of Minburn Telecommunications, Inc., Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, CCB/CPD No. 99-16, Memorandum Opinion and Order, 14 FCC Rcd 14184, 14187 (Com. Car. Bur. 1999).

small telephone companies would not be required to operate under a regulatory regime that was designed largely on the basis of the historical performance of the largest LECs.[40] The Commission explained that small and mid-size LECs may have fewer opportunities than large companies to achieve cost savings and efficiencies and may be less productive than the then-existing seven Regional Bell Operating Companies (RBOCs) and GTE.[41] The Commission, therefore, limited the mandatory application of price cap regulation to the eight largest LECs -- the seven RBOCs and GTE.

17. Saddleback seeks a waiver of section 61.41(c)(2) so that it may operate under rate-of-return regulation.[42] After the proposed transaction, Saddleback will be far smaller than any of the LECs subject to mandatory price caps, and also will be significantly smaller than many other carriers that have been granted waivers of section 61.41(c)(2) of the Commission's rules.[43] Further, Saddleback is the type of small carrier that the Commission previously has found to be an inappropriate candidate for price cap regulation.[44] Therefore, we find that Saddleback presents special circumstances to support its waiver request.

18. We also find that waiver of section 61.41(c)(2) of the Commission's rules will serve the public interest. We agree with Saddleback that the circumstances surrounding Saddleback's acquisition of Qwest's access lines fail to give rise to the dangers of cost-shifting identified by the Commission in adopting section 61.41(c)(2).[45] Saddleback is not seeking to maintain separate affiliates under different systems of regulation, and, therefore, Saddleback will have no opportunity to shift costs between price-cap and rate-of-return affiliates.[46] Moreover, to safeguard against possible gaming that could result from attempts to elect price-cap regulation at a later time, we will require Saddleback to seek prior Commission approval if it seeks to elect price-cap regulation. At that time, we can make a determination if the transaction raises concerns that the Commission sought to address in adopting section 61.41(c)(2). We believe that requiring Saddleback to seek Commission approval before electing price-cap regulation is sufficient to deter gaming in the future.

19. In accordance with section 61.45 of the Commission's rules, we also require Qwest to adjust its price cap indices to reflect the removal of the transferred access lines from its Arizona study area.[47] Under section 61.45, the Commission has discretion to require price cap carriers to make

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[40] *See Price Cap Order*, 5 FCC Rcd at 6799-6801, 6818-19.

[41] *Id.*

[42] Petition at 3-8.

[43] *See, e.g., CenturyTel of Northwest Arkansas, LLC et al., Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission's Rules*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1434 (Acc. Pol. Div. rel. June 27, 2000) (approving the conversion of 214,270 access lines from price cap to rate-of-return regulation); *ALLTEL/Aliant Merger Order* (approving the conversion of approximately 300,000 access lines from price cap to rate-of-return regulation); *In the Matter of ALLTEL Service Corporation, Petition for Waiver of Section 61.41 of the Commission's Rules*, Order, 8 FCC Rcd 7054 (Com. Car. Bur. 1993) (approving the conversion of approximately 285,000 access lines from price cap to rate-of-return regulation).

[44] *See Price Cap Order* at para. 6 (limiting mandatory price cap participation to the 8 largest LECs at that time – the seven Bell Operating Companies and GTE).

[45] *See* Petition at 6-8.

[46] *Id.*

[47] *See* 47 C.F.R. § 61.45(d). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. *See also Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961 (1995).

adjustments to their price cap indices to reflect cost changes resulting from rule waivers.[48] We require Qwest to make such an adjustment within thirty days of the closing of the transaction.[49]

IV. WAIVER OF SECTION 69.3(e)(11)

A. Background

20. Under section 69.3(e)(11) of the Commission's rules, any change in NECA carrier common line tariff participation and long term support (LTS) resulting from a merger or acquisition of telephone properties is effective on the next annual access tariff filing effective date following the merger or acquisition.[50] Section 69.3(e)(11) of the Commission's rules was implemented to minimize the complexity of administering the LTS program.[51] Because the next annual access tariff filing effective date is not until July 1, 2002,[52] Saddleback would be required to file its own interstate tariffs for the acquired access lines until July 1, 2002. In order to avoid the burdens associated with filing its own tariff, Saddleback has requested a waiver of section 69.3(e)(11) of the Commission's rules to enable the acquired access lines to participate in the NECA carrier common line tariff upon the date of the closing of the transaction.[53]

B. Discussion

21. We find that Saddleback has demonstrated that special circumstances warrant a deviation from section 69.3(e)(11) of the Commission's rules and that it would be in the public interest to grant Saddleback's waiver request. First, the inclusion of the acquired access lines in the NECA carrier common line tariff represents a minimal increase in NECA common line pool participation and will not unduly increase the complexity of administering the LTS program.[54] Second, we believe that it would be administratively burdensome for Saddleback to file interstate tariffs for only 2,700 access lines until July 1, 2002. We therefore believe that Saddleback presents special circumstances to justify waiver of section 69.3(e)(11) of the Commission's rules. We also believe that waiver of section 69.3(e)(11) will be in the public interest because inclusion of the acquired access lines in the carrier common line tariff prior to July 1, 2002 will enable Saddleback to concentrate its resources on providing high-quality telecommunications services to the affected rural areas on the Salt River Pima-Maricopa Indian Community.[55] We also note that, according to NECA, "inclusion of the acquired access lines in NECA's tariff, effective as of

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[48] *See* 47 C.F.R. § 61.45(d).

[49] The Bureau has required carriers to make adjustments to their price cap indices in past study area waivers involving the sale of exchanges operated by carriers subject to price cap regulation. *See, e.g., Sully Buttes Telephone Cooperative, Inc. and U S WEST Communications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix (Glossary) of the Commission's Rules and Petition for Waiver of Section 61.41(c) and (d) and 69.3(e)(11) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 00-1894 (Acc. Pol. Div. rel. Aug. 18, 2000).

[50] 47 C.F.R. § 69.3(e)(11).

[51] *See Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions*, CC Docket No. 89-2, Report and Order, 5 FCC Rcd 231, 248 (1989) (*Common Line Pool Order*).

[52] *See* 47 C.F.R. § 69.3(a).

[53] Petition at 8-9.

[54] According to Saddleback, the approximately 2,700 access lines that Saddleback intends to acquire from Qwest would represent an increase of only two tenths of one percent of the approximately 12.4 million access lines within the NECA common line pool. Petition at 9 n. 25.

[55] *See* Petition at 9.

September 1, 2001 or as soon as Saddleback begins offering service pursuant to the requested waivers, will create no undue administrative burden for NECA, nor will it result in any disadvantage to other tariff participants."[56] We therefore conclude that there is good cause to grant Saddleback a waiver of section 69.3(e)(11).

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of Part 36, Appendix-Glossary, of the Commission's rules, filed by Saddleback Communications and Qwest Corporation on June 12, 2001, IS GRANTED, as described herein.

23. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 61.41(c) of the Commission's rules, 47 C.F.R. 61.41(c) filed by Saddleback Communications IS GRANTED, as described herein.

24. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 69.3(e)(11) of the Commission's rules, 47 C.F.R. 69.3(e)(11) filed by Saddleback Communications IS GRANTED, as described herein.

25. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that Saddleback Communications SHALL SUBMIT, as part of its annual USF data submission to the fund administrator, a schedule showing the methodology for excluding costs associated with the acquired access lines from costs associated with its existing facilities.

26. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, 1.3, and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 61.43, that Qwest Corporation SHALL SUBMIT, consistent with this Order, revised price-cap indices within THIRTY (30) days of the closing of this transaction to reflect cost changes resulting from this transaction.

FEDERAL COMMUNICATIONS COMMISSION

Sharon L. Webber
Deputy Chief, Accounting Policy Division

[56] *See* Letter from Richard A. Askoff, Deputy General Counsel, National Exchange Carrier Association, to Mike Scully, Saddleback Communications (filed August 9, 2001).