

Before the
Federal Communications Commission
Washington, D.C. 20544

In the Matter of)
)
Qwest Services Corporation) WCB/Pricing File No. 02-32
)
Petition for Waiver of Section 32.27(c))
of the Commission's Rules)

ORDER

Adopted: January 22, 2003

Released: January 23, 2003

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. On November 8, 2002, Qwest Services Corporation (Qwest Services), an administrative service affiliate of Qwest Communications, Inc. (Qwest), filed a petition for waiver of the affiliate transaction rules¹ as codified in section 32.27 of the Commission's rules.² Specifically, Qwest Services seeks permission to use fully distributed cost to value services that it provides to its affiliates while it provides services to a former affiliate for a limited period of time. No comments were filed. In this order, we grant the requested waiver.

II. BACKGROUND

2. The affiliate transaction rules set forth the procedures that all incumbent local exchange carriers (ILECs), other than average schedule companies, must use in recording transactions between regulated and nonregulated affiliates.³ Section 32.27 of the Commission's rules requires an ILEC to record services provided by its affiliated entities at the lower of **fully** distributed cost (FDC) or fair market value when there is no tariff rate, prevailing price, or publicly filed agreement for the transaction. Section 32.27 further allows the ILEC to use fully distributed cost without making fair market value studies to record services provided by affiliates that exist solely to provide services to members of the ILEC's corporate family.

3. In its petition, Qwest Services states that it exists solely to provide services to members of Qwest's corporate family, and thus it provides these services at fully distributed cost,

¹ Qwest Services Corporation Petition for Waiver, filed November 8, 2002 (Qwest Services Waiver Petition). See *Qwest Services Corporation Files A Petition for Waiver of 47 C.F.R. §32.27(c)*, WCB/Pricing No. 02-32, Public Notice, 17 FCC Rcd 23988 (2002).

² 47 C.F.R. § 32.27

³ See 47 C.F.R. § 32.27

rather than the lower of fair market value and fully distributed cost.' It states that on November 8 2002, part of Qwest Dex, Inc. (Qwest Dex), a former Qwest affiliate, was sold to an outside interest, and the remaining part would be sold to the same outside interest by the second quarter 2003.' Qwest Services seeks approval to provide certain services to Qwest Dex for a transitional period following the sale, for a term not to exceed 18 months. The services Qwest Services provides to the purchaser are accounting services and general corporate services. Qwest Services estimates the cost of these services initially to be approximately \$375,000 per month, which is less than 0.5% of its monthly billing. Qwest Services states that the cost of services would increase when the second part of the transaction is completed, but it is not expected to exceed 1% of its total monthly billing.'

III. DISCUSSION

4. The Commission may grant a waiver of its rules for good cause shown.' Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." Finally, a waiver request must be consistent with the principles underlying the rule for which a waiver is requested.

5. Due to the limited duration and scope of these services, we conclude that the burden of requiring Qwest Services to perform a good faith determination of fair market value for services it provides its affiliates under these circumstances would outweigh any benefits derived from strict adherence to the rules in this specific situation. This request arises from a specific situation involving the sale of one corporate affiliate to an outside third party. We agree with Qwest Services that the public interest will be served by avoiding the cost for Qwest to conduct fair market value studies for this relatively minimal service agreement. Accordingly, we grant the petition for waiver of section 32.27(c) filed by Qwest Services. This waiver is limited to services provided by Qwest Services to its affiliated entities and the purchaser listed in this waiver request.'

⁴ Qwest Services Waiver Petition at 2

⁵ *Id.* at 1-2

⁶ *Id.* at 1-2

⁷ 47 C.F.R. § 1.3.

⁸ See United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules, Order, 13 FCC Rcd 214 (Conn. Car. Bur. 1997) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*)).

⁹ This waiver applies to services that Qwest Services provides to Qwest Dex, Inc. and members of Qwest's corporate family.

IV. ORDERING CLAUSE

6. Accordingly, **IT IS ORDERED**, pursuant to sections 1, 4(i), 4(j), 201-205, and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218-220, and sections 0.91, 0.291, 1.3, 1.106, 32.18, and 32.27 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, 32.18, and 32.27, that the Petition for Waiver filed by Qwest Services **IS GRANTED** to the extent described above in paragraph 5.

FEDERAL COMMUNICATIONS COMMISSION



Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau