

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

In the Matter of)
)
Joint Petition of Qwest, BellSouth, and SBC) WC Docket No. 03-189
for Expedited Forbearance From the)
Commission’s Current Pricing Rules for the)
Unbundled Network Element Platform)
)
Verizon Petition for Expedited Forbearance) WC Docket No. 03-157
From the Commission’s Current Pricing)
Rules for the Unbundled Network Element)
Platform)
)

COMMENTS OF ACS OF ANCHORAGE, INC.

ACS of Anchorage, Inc. (“ACS”) hereby submits these comments in support of the joint petition filed by Qwest Corporation, BellSouth Telecommunications, Inc., and SBC Communications Inc., (collectively “Joint Petitioners”), on July 31, 2003 requesting the Commission to forbear from applying its current Total Element Long Run Incremental Cost (“TELRIC”) pricing rules to the unbundled network element platform (“UNE-P”).¹

I. INTRODUCTION AND SUMMARY

In its Public Notice for this proceeding, the Commission asks whether the relief requested by the Joint Petitioners should apply to other local exchange carriers.² The Joint Petitioners seek the same relief requested by Verizon’s forbearance petition filed on July 1,

¹ *Joint Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, Joint Petition of Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications Inc. for Expedited Forbearance, WC Docket No. 03-189 at 1 (filed July 31, 2003) (“BOC UNE-P Petition”).

² Public Notice, *Pleading Cycle Established for Joint Petition of Qwest, BellSouth, and SBC for Expedited Forbearance From the Commission’s Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-189, DA 03-2679 (rel. Aug. 18, 2003).

2003.³ In its petition for forbearance, Verizon requested that the Commission forbear from the current pricing rules for UNE-P generally; the request was not limited to the petitioner in that proceeding. Neither the Communications Act of 1934, as amended (the “Act”), nor the Commission’s rules require that relief in a petition for forbearance be limited to the petitioners. As demonstrated by the comments to the Verizon Petition filed by ACS and USTA,⁴ the showing required by Section 10 of the Act has been met for UNE-P in all markets, not just Verizon’s territories. Therefore, the Commission should find that the relief requested in the BOC UNE-P Petition and the Verizon Petition is appropriate for all local exchange carriers.

II. THE VERIZON PETITION REQUESTS GENERAL RELIEF FROM UNE-P PRICING RULES

In its Petition, Verizon asks that the Commission forbear from applying its current TELRIC pricing rules to the UNE platform.⁵ Throughout the Petition, Verizon refers to the damage TELRIC pricing of UNE-P has on incumbent local exchange carriers (“ILECs”) in general, without reference to Verizon’s markets or any other particular market or carrier.⁶ Additionally, Verizon cites examples of harm that UNE-P pricing has caused to facilities-based CLECs.⁷ Verizon also describes the prevalence of arbitrage opportunities created by TELRIC pricing of UNE-P.⁸ Moreover, the Verizon Petition demonstrates that UNE-P pricing has contributed to the decline in the telecommunications industry. Thus, it is clear that Verizon’s

³ *Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform, Petition for Expedited Forbearance of the Verizon Telephone Companies*, WC Docket No. 03-157 (filed July 1, 2003) (“Verizon Petition”).

⁴ Comments of ACS of Anchorage, Inc. in WC Docket No. 03-157 (filed Aug. 18, 2003) (“ACS Comments”); Reply Comments of the United States Telecom Association in WC Docket No. 03-157 (filed Sept. 2, 2003) (“USTA Reply Comments”).

⁵ Verizon Petition at 1.

⁶ *See generally*, Verizon Petition.

⁷ Verizon Petition at 10.

⁸ *Id.* at 5-12.

request for forbearance from the current UNE-P pricing rules was meant as a general request for relief applicable to all facilities-based carriers required to offer UNE-P at prices that are regulated pursuant to Sections 251 and 252 of the Act.

The Joint Petitioners “seek exactly the same relief requested in the Verizon Petition” because the factual arguments in that petition apply equally to each Joint Petitioner.⁹ ACS agrees that the uneconomic nature of the UNE-P pricing rules has caused harm to all facilities-based carriers, as well as to the telecommunications industry and the economy as a whole.¹⁰ Thus, it is appropriate for the Commission to consider forbearing from applying the UNE-P pricing rules with respect to all facilities-based carriers, not just Verizon or the BOCs. Indeed, as explained in ACS’s comments in the Verizon petition, the Commission must forbear in markets where it finds the criteria of Section 10 to have been met.¹¹

III. NEITHER THE STATUTE NOR THE RULES REQUIRE THAT RELIEF BE LIMITED TO THE NAMED PETITIONERS

The language of the statute allows the Commission to forbear broadly from requirements of the Act. Specifically, Section 10(a) of the Act provides that “the Commission shall forbear from applying any regulation or any provision of this Act to *a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services*, in any or some of its or their geographic markets,” if the criteria for forbearance have been met.¹² The Commission’s ability, and its duty, to forbear is not limited to the petitioner or a particular carrier.

⁹ BOC UNE-P Petition at 2-3.

¹⁰ *Id.* at 3.

¹¹ ACS Comments at 8-9.

¹² 47 U.S.C. §160(a) (emphasis added).

Commission precedent supports the use of Section 10 authority to forbear from applying particular provisions of the Act across an entire class of carriers, regardless of whether any of the carriers filed a petition. In its Detariffing Order, for example, the Commission concluded, pursuant to the requirements of Section 10, that it must forbear from applying the Act's tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers.¹³ Although some interexchange carriers did not desire forbearance, the Commission determined that it had authority under Section 10 to refuse to permit any nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. Thus, the Commission ordered that all nondominant interexchange carriers cancel all such tariffs, and prohibited all such future filings.¹⁴

Finally, the Commission's requirements under Rule 1.53 do not foreclose general application of the relief Verizon has requested to all ILECs. Section 1.53 requires that any petition for forbearance under Section 10(c) of the Act be filed as a separate pleading and be captioned as a petition for forbearance.¹⁵ The Commission indicated when it adopted the rule that its purpose was to ensure adequate notice and opportunity to consider the record. The Commission stated that the purpose of this rule is to "help ensure that the Commission and all interested parties have the opportunity to consider fully the issues raised in petitions for forbearance within the statutory period for Commission consideration of such petitions."¹⁶ Thus, the rule is driven by the limited time allowed by the statute for consideration of forbearance

¹³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 ¶ 77 (1996) ("Detariffing Order").

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 1.53; *Adoption of Section 1.53 of the Commission's Rules, Memorandum Opinion and Order*, 15 FCC Rcd 1140 ¶ 1 (2000).

¹⁶ *Id.*

petitions. So long as the original petition is properly captioned, as it was in the case of both the Verizon and BOC Petitions, there can be no argument that the Commission was unable to identify the petitions or consider these requests within the statutory timeframe.¹⁷ However, the rule in no way limits the scope of the Commission's authority to forbear under Section 10 of the Act to petitioning parties.

IV. THE CONDITIONS FOR FORBEARANCE ARE SATISFIED

As demonstrated by the Verizon Petition and in the comments supporting that Petition,¹⁸ the conditions for forbearance under Section 10(a) have been satisfied. ACS hereby requests that the Commission incorporate into this docket the facts and arguments contained in its comments supporting the Verizon Petition.¹⁹ The ACS Comments illustrate that the conditions for forbearance from TELRIC pricing of UNE-P have been met in Anchorage. Below-cost UNE prices in Anchorage have given ACS's competitors a price advantage against which ACS cannot compete. Given the level of facilities-based competition in Anchorage, the current UNE-P pricing rules are unnecessary because market forces will ensure that ACS provides UNEs in a reasonable and non-discriminatory manner. As described in the ACS Comments, the unparalleled level of competition in Anchorage presents a particularly compelling case warranting a grant of forbearance. ACS's competitors are making similar market share gains in Fairbanks and Juneau as well. Thus, TELRIC-based UNE-P prices are unnecessary to protect consumers, given that ACS faces substantial facilities-based competition.

¹⁷ *See id.* ¶ 3.

¹⁸ *See, e.g.,* Verizon Petition; ACS Comments; USTA Reply Comments; *see also* BOC UNE-P Petition at 4-5.

¹⁹ *See* Comments of ACS of Anchorage, Inc. in WC Docket No. 03-157 (filed Aug. 18, 2003).

Moreover, forbearance from TELRIC pricing of UNE-P will benefit the public interest by promoting economic entry by competitors and by encouraging facilities-based competition.

V. CONCLUSION

For the reasons set forth above, ACS respectfully requests that the Commission has ample authority under Section 10 to forbear from applying its current TELRIC pricing rules to UNE-P as to ACS and all local exchange carriers.

Respectfully submitted,

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/s/ Karen Brinkmann

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September 22, 2003²⁰

²⁰ Due to federal government closures on September 18th and 19th, the original due date of September 18, 2003 was extended to September 22, 2003.

