

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

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Reform of Access Charges Imposed)	
By Competitive Local Exchange Carriers)	

COMMENTS OF MCI, INC.

MCI, Inc. (“MCI”) hereby submits its comments in response to the petition for waiver filed by PrairieWave Telecommunications, Inc. (“PrairieWave”).¹ MCI opposes PrairieWave’s request for a waiver of sections 61.26(b) and (c) of the Commission’s Rules,² which govern the maximum rate that a competitive local exchange carrier (“LEC”) can charge for interstate switched access services. If the Commission is nevertheless inclined to grant PrairieWave’s request for some of relief, MCI believes that such relief should be limited to a waiver of section 61.26(a)(6)’s eligibility requirements for the rural exemption.

In its request for a waiver of sections 61.26(b) and (c), PrairieWave submitted a cost study for Commission approval of access rates that are above the benchmark set by PrairieWave’s incumbent LEC competitor Qwest in Sioux Falls, South Dakota. By compiling a cost study, PrairieWave is asking the Commission to depart from its current market-based approach for setting interstate switched access charges and to instead revert

¹ Petition for Waiver, Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, (filed Nov. 12, 2004) (“Petition”).

² 47 C.F.R. §§ 61.26(b) and (c).

to a cost-based approach. The Commission has expressly declined to adopt a cost-based approach for setting competitive LEC access charges. The Commission could not have been more clear -- it will not permit competitive LECs to set rates above the incumbent LEC's benchmark if the rates proposed are based on cost studies instead of market data.³ The Commission views such an approach as "contrary to [its] market-based approach to competitive LEC access charges..."⁴ PrairieWave has not demonstrated that special circumstances warrant such a departure from the Commission's market-based policies.

The Commission has long declared that it would determine the reasonableness of competitive LEC access rates by evaluating the market factors rather a particular carrier's costs.⁵ The rationale behind this approach is that the Commission interprets the policies and purposes of the Communications Act of 1934, as amended, to demand a market-based approach to access charges. As a result, the FCC has ceased applying historical, cost-based incumbent LEC policies and rules to competitive LECs.⁶ In addition, the FCC determined that, absent accounting and separations rules applicable to incumbent LECs, there would be substantial difficulties involved with comparing competitive LEC rates to any objective standard of reasonableness.⁷ It is therefore irrelevant that PrairieWave would not object to the application of legacy regulatory rules applicable to

³ *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order, 16 FCC Rcd, 9923, ¶ 45 (2001) ("Access Charge Order I"); *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order, 19 FCC Rcd 9108 (2004) ("Access Charge Order II"); see also, *AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 12312 (2001) ("BTI Order").

⁴ *Access Charge Order II*, ¶ 57, citing *Access Charge Order I*, ¶ 45.

⁵ *Access Charge Order II*, ¶ 57, citing *BTI Order*, ¶ 17-21.

⁶ *BTI Order*, ¶ 18.

⁷ *Id.*, ¶ 19.

incumbent LECs.⁸ The Commission has soundly rejected this approach.⁹ PrairieWave’s submission of a cost study containing “real-world evidence” of its unique situation represents a step backwards. Absent compelling data, PrairieWave has not presented any justification for a waiver of sections 61.26(b) and (c).

If the Commission believes that some form of relief is necessary, a more appropriate avenue for relief for PrairieWave would be a waiver of section 61.26(a)(6). Unlike the rest of PrairieWave’s territory, in Sioux Falls, PrairieWave competes with a price cap LEC, Qwest. MCI believes that it is safe to conclude that PrairieWave is a rural competitive LEC. PrairieWave otherwise qualifies for the rural exemption because it serves several rural communities within Iowa, Minnesota and South Dakota. It is only by virtue of its merger with McLeodUSA, Inc. (“McLeod”), that PrairieWave came to be providing service to some residences and businesses in Sioux Falls, South Dakota, a non-rural community with more than 50,000 inhabitants. MCI agrees with PrairieWave that it is in the unique situation of providing service to a limited number of customers in Sioux Falls and that to apply the rural exemption limit of 50,000 inhabitants to this particular situation would be unjust.

Understandably, as a rural competitive LEC, PrairieWave does not want to be limited to Qwest’s per minute rates in Sioux Falls. As the Commission recognized, “limiting CLECs to the higher of the benchmark rate or the access rate of its ILEC competitor could prove rather harsh for some of the small number of CLECs that operate

⁸ Petition at 8.

⁹ For competitive LECs in a higher cost market, they have the option of charging the benchmark rate and recovery any additional costs from their end users. Like TDS before it, PrairieWave has failed to demonstrate why the Commission’s approach is insufficient to cover its costs. *Access Charge Order II*, ¶ 58.

in rural areas.”¹⁰ It is true that the Commission anticipated that the rural exemption would apply to a limited number of lines or carriers, but this is presumably the type of situation that the rural exemption was designed to cover. Indeed, the Commission stated that “the rural exemption to the benchmark scheme is available for a competitive LEC competing with a non-rural incumbent LEC.”¹¹ MCI recognizes that a small portion of PrairieWave’s service area does fall within a non-rural area. However, if any waiver is deemed necessary, a waiver of the rural exemption requirements would be a better course of action than reversing course on the Commission’s approach to setting access rates. MCI would not oppose grant of such a waiver in order to avoid an unintended consequence of the Commission’s rules forcing a rural carrier to sustain the high costs of providing service in an urban area.

In sum, PrairieWave’s Petition does not present circumstances that would justify a substantial departure from the Commission’s market-based approach for setting access charges, including competitive LEC access charges. Any relief deemed necessary by the Commission should be limited to a waiver of the rural exemption requirements.

Respectfully submitted,

MCI, Inc.

_____/s/_____
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¹⁰ *Access Charge Order I*, ¶ 64.

¹¹ *Access Charge Order II*, ¶ 33.