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Harisha J. Bastiampillai
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Qwest

June 29, 2010

re Docket No. 96-45

VIA UPS

Federal Communications Commission
% U.S. Bank
SL-MO-C2-GL
1005 Convention Plaza
St. Louis, MO 63101

Attn: FCC Government Lockbox
P.O. Box 979091

Re: Pine Drive Telephone Company and Qwest Corporation Joint Petition for Waiver

In connection with Lockbox number 979091, enclosed with this letter for filing with the Federal Communications Commission is Pine Drive Telephone Company's and Qwest Corporation's Joint Petition for Waiver. Also included is a completed Remittance Advice FCC Form 159; this form includes a check to cover the petition processing fee ($7,725.00) associated with this submission. *See*, 47 C.F.R. § 1.1105(3)(b)(ii). The Form 159 references the FRNs for both applicants: Qwest Corporation (0003746757) and Pine Drive Telephone Company (0003728284, the FRN for Pine Drive was registered in CORES by JED Enterprises, Inc., d/b/a Pine Drive Telephone Company). Finally, enclosed is an extra copy of the first page of the Petition, which has been marked "copy," which is expressly provided to be stamped as received and returned to the undersigned in the enclosed stamped, self-addressed envelope.

Thank you for your assistance with this matter, and please do not hesitate to call me at the above telephone number should there be any questions concerning this submission.

Sincerely,

/s/ Harisha J. Bastiampillai

Enclosures

No. of Copies rec'd 0+1
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Pine Drive Telephone Company	)	
	)	
and	)	
	)	
Qwest Corporation	)	~~WC~~ CC Docket No. 96-45
	)	
Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules	)	

JOINT PETITION FOR WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's (Commission) Rules, Pine Drive Telephone Company (Pine Drive) and Qwest Corporation (Qwest) (collectively, Petitioners), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules.

Petitioners request this waiver in order to extend Pine Drive's existing study area in Colorado to include an area referred to as the Red Creek Ranch territory[1] and additional service territory north of that territory and State Highway 96,[2] and to remove the same areas from Qwest's Colorado study area.

[1] The legal description of the area to be added to Pine Drive's study area is: Sections 31-35 in T20S, R67W, and Sections 2-11, 14-23, 26-35 in T21S, R67W from Qwest's Pueblo Exchange to Pine Drive; and Sections 12, 13, 23-26, SE ¼, and S/E ¼ of NE ¼ Section 34 and Sections 35 and 36 in T21S, R68W from Qwest's Florence exchange to Pine Drive.

[2] The additional service territory to be transferred from Qwest to Pine Drive is described as: Sections 31-35, T20S, R67W.

I. INTRODUCTION AND SUMMARY

Qwest is a price cap incumbent local exchange carrier (ILEC) that owns and operates approximately 1,737,456 access lines as of December 31, 2009 in Colorado. Pine Drive is an Average Schedule Settlement ILEC that owns and operates approximately 880 access lines. Qwest has no facilities or customers in the area to be transferred to Pine Drive. On July 29, 2009 the Colorado Public Utilities Commission (CO PUC) approved modifications to the service areas of Qwest and Pine Drive as described above, subject to the condition that each carrier submits an Advice Letter and accompanying tariff changes after the parties receive the Part 36 waiver from this Commission.[3] The CO PUC also removed Qwest's Provider of Last Resort obligations for the aforementioned service areas and designated Pine Drive as Provider of Last Resort for those areas.

Because Qwest has no customers in the area to be transferred to Pine Drive, Pine Drive will not provide the anti-slamming notice required by Section 64.1120 of the Commission's Rules.

II. WAIVER OF THE DEFINITION OF STUDY AREA IS WARRANTED

Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to

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[3] *Joint Application of Qwest Corporation and Pine Drive Telephone Company to Rearrange Their Exchange Area Boundaries and Qwest Corporation's Application to Relinquish Designation as Provider of Last Resort and to Designate Pine Drive Telephone Company as the Provider of Last Resort and Qwest's Petition for a Waiver from Compliance with the Commission's Requirement that Newspaper Notice be Published Concerning the Relinquishment of its Provider of Last Resort Obligations,* Decision Granting Application for Approval of Rearranged Exchange Area Boundaries and for Approval to Change Each Provider's Designation as Provider of Last Resort; Requiring the Filing of Advice Letters; and Granting Waiver of the Commission's Newspaper Notice Rule, Decision No. C09-0853, Jul. 29, 2009 (CO PUC Order). (A copy of the Order is attached to this Petition.)

prevent a carrier from segregating territories artificially to maximize high cost support,[4] the Commission has recognized "that changes that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns that prompted the freeze.[5] Although not a sale, the mutual transfers of territory are arms-length transactions.

The Commission has recognized that failure to waive the rule in the case of transfer of exchanges would produce an absurd result, forcing the transferor to continue to include exchanges in its study area for which it has no costs, and preventing the transferee from including in its study area exchanges it actually serves.[6] Such a result would not serve the Commission's policy objective of ensuring that a carrier's actual costs are reflected in their accounting so that they can accurately set just, reasonable and non-discriminatory rates. Logically, the same principles should apply to the changes hereby proposed to the Pine Drive and Qwest study areas.

Further, the proposed study area revisions meet the three criteria the Commission has established for approval of such waiver petitions: (1) the transfer of the areas between the two carriers will not adversely impact the Universal Service Fund (USF); (2) the relevant state

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[4] *See, In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board,* Recommended Decision & Order, 57 R.R. 2d 267, 290 ¶ 65 (1984).

[5] *See, In the Matter of Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2) and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules,* Memorandum Opinion and Order, 5 FCC Rcd 7505 ¶ 7 (Com. Carr. Bur. 1990).

[6] *In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 ¶ 17 (1990).

commission does not object to the changes in the study areas; and (3) the public interest will be served by granting the waiver.[7]

A. The Changes in Study Area Boundaries will not adversely affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year. Although Section 54.305 of the Commission's Rules is not applicable to this Petition because there is no transfer of customers or facilities,[8] the mutual transfers of partial study areas will produce no such adverse impact.

At the present time there are no customers or facilities in the area to be added to Pine Drive's study area. Most of the first area (Sections 31-35 in T20S, R67W), now referred to as Red Creek Ranch, was owned by a developer who requested that Pine Drive provide facilities to the development because Qwest, then U S WEST, did not have sufficient facilities to provide adequate service to the development, and because some of the sections of the development were already in Pine Drive's territory. As a result, in 1994, U S WEST agreed to transfer its service area in that development to Pine Drive. U S WEST did not have any customers in the affected service areas. Pine Drive subsequently extended its facilities to the development and is currently providing service to 125 customers in the development. While Joint Petitioners did not obtain the requisite study area waiver contemporaneous with the transfer of that service area, there has

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[7] *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, Appendix-Glossary of the Commission's Rules,* Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774 ¶ 14 (1995).

[8] *In the Matter of M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612 and 69.2(hh) of the Commission's Rules,* Order, 19 FCC Rcd 6761, 6767-68 ¶ 16 (2004) (*Skyline*).

been no impact on USF. Pine Drive has not sought USF for the service area in question to this date,[9] and U S WEST was not receiving USF for the service area at that time of the transfer or thereafter. There will, therefore, be no increase in USF to Pine Drive in the current year. Pine Drive notes that the average cost per loop of the Red Creek Ranch build did not raise the company's average cost per loop, nor should the acquisition of the other two areas impact the average cost per loop.

The other two Qwest areas that are the subject of this transfer (Sections 2-11, 14-23, and 26-35 in T21S, R67W and Sections 12, 13, 23-26, SE ¼ and SE ¼ of NE ¼ Section 34 and Sections 35 and 36 in T21S, R68W) are near Qwest facilities that require frequent maintenance. Joint Petitioners agree that Pine Drive is better able than Qwest to provide updated facilities and additional services to these areas.

B. The State Commission Does Not Object to Grant of the Petition.

The CO PUC Order granted the Joint Application of Qwest and Pine Drive, relieved Qwest of its Provider of Last Resort obligations for the service areas specified in the Joint Application, transferred said Provider of Last Resort obligations to Pine Drive, and directed Qwest and Pine Drive to file appropriate Advice Letters and accompanying tariff sheets after the applicants receive the appropriate Part 36 Waiver for the transaction from the Commission.[10]

C. The Public Interest Will Be Served By Grant of the Waiver

The CO PUC Order found the proposed revisions to be in the public interest.[11] This conclusion is based, *inter alia,* on its findings that the rearrangements were not adverse to any

[9] An Average Schedule ILEC's USF amounts are not tied to study-area specific data.

[10] CO PUC Order at 5-6.

[11] *Id.* at 4 ¶ 13.

In regard to the Red Creek Ranch development, Pine Drive has already demonstrated that it is capable of providing services to 125 customers in that area. Pine Drive has already invested in facilities to serve the area and is committed to further investments, as needed, in facilities to serve that area. In regard to the other two areas, Pine Drive is in a better position to update facilities in those areas and to deploy new facilities.

The combination of more efficient provision of high quality service, and more logical service areas supports the conclusion that grant of the Petition will serve the Public Interest.

III CONCLUSION

Good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis in order that the parties may rationally and timely continue their planning and be in position to providing efficient and effective high quality service to the area as it develops.

Respectfully submitted

Pine Drive Telephone Company

By: _____

Barry L. Hjort
Its Attorney
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(~~308~~ 605) 550-4772

June 29, 2010

Qwest Corporation

By: _____

Harisha Bastiampillai
Its Attorney
1801 California Street, 10th FL
Denver, CO 80202
(303) 383-6671

Decision No. C09-0853

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-458T

IN THE MATTER OF THE JOINT APPLICATION OF QWEST CORPORATION AND PINE DRIVE TELEPHONE COMPANY TO REARRANGE THEIR EXCHANGE AREA BOUNDARIES AND QWEST CORPORATION'S APPLICATION TO RELINQUISH DESIGNATION AS PROVIDER OF LAST RESORT AND TO DESIGNATE PINE DRIVE AS THE PROVIDER OF LAST RESORT AND QWEST'S PETITION FOR A WAIVER FROM COMPLIANCE WITH THE COMMISSION'S REQUIREMENT THAT NEWSPAPER NOTICE BE PUBLISHED CONCERNING THE RELINQUISHMENT OF ITS PROVIDER OF LAST RESORT OBLIGATIONS.

DECISION GRANTING APPLICATION FOR APPROVAL OF REARRANGED EXCHANGE AREA BOUNDARIES AND FOR APPROVAL TO CHANGE EACH PROVIDER'S DESIGNATION AS PROVIDER OF LAST RESORT; REQUIRING THE FILING OF ADVICE LETTERS; AND GRANTING WAIVER OF THE COMMISSION'S NEWSPAPER NOTICE RULE

Mailed Date: August 4, 2009
Adopted Date: July 29, 2009

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the Joint Application (Application) filed by Qwest Corporation (Qwest) and Pine Drive Telephone Company (Pine Drive) (together, Joint Applicants) to revise portions of each companies' operating area, to review the associated proposed advice letter filings concurrently with the review of this Application, to obtain on behalf of Qwest a waiver of the Commission rule regarding newspaper notice and to change each provider's designation as provider of last resort.

2. Joint Applicants propose to transfer three portions of the Qwest territory located in the Pueblo and Florence Exchanges to Pine Drive. There are three distinctly identified portions of Qwest's territory that are included in the proposed transfer to Pine Drive: Sections 31-35 in T20S, R67W currently served by Pine Drive in the Southwestern portion of Pueblo County; Sections 2-11, 14-23 and 26-35 in T21S, R67W from Qwest's Pueblo exchange to Pine Drive; and Sections 12, 13, 23-26, SE ¼ and SE ¼ of NE ¼ Section 34 and Sections 35 and 36 in T21S, R68W from Qwest's Florence exchange to Pine Drive. The Application states that no assets will transfer and no customers will be affected by the proposed transfer of territory to Pine Drive.

3. On July 16, 2009, a supplement to the Application was filed which provided an Affidavit of Customer Notice that was provided to all interconnecting telecommunications providers and to the Board of County Commissioners of Pueblo County. The affidavit states that no current end users are affected by the proposed relinquishment of Qwest's provider of last resort designation.

4. Joint Applicants indicate that the requested changes are being requested in order to better serve existing and future customers in the existing Qwest and Pine Drive service territories.

5. One of the proposed Qwest service territory areas (Sections 31-35 in T20S, R67W) does currently contain 125 customers that are being served by Pine Drive with facilities placed and owned by Pine Drive. Applicants acknowledge that these customers are being served under an agreement entered into by Qwest's predecessor, U S WEST Communications, Inc. (U S WEST) and Pine Drive in 1994. In 1994, a developer approached Pine Drive requesting service in the then unserved U S WEST area. U S WEST did not have adequate facilities in the

area and agreed to transfer the territory to Pine Drive. The development came to be known as Red Creek Ranch. Pine Drive subsequently extended its facilities to Red Creek Ranch and has been serving customers to the present. Applicants concede that they failed to obtain Commission authority to rearrange their exchange area boundaries in this area contemporaneous with the rearrangement.

6. Both of the other proposed Qwest service areas that are the subject of this transfer (Sections 2-11, 14-23 and 26-35 in T21S, R67W and Sections 12, 13, 23-26, SE ¼ and SE ¼ of NE ¼ Section 34 and Sections 35 and 36 in T21S, R68W) are near Qwest facilities that require frequent maintenance. Joint Applicants agree that Pine Drive is better able than Qwest to provide updated facilities and additional services to these areas. No customers, it is represented, would be affected by the transfer of these areas to Pine Drive.

7. Within the application to rearrange service territories, Joint Applicants also seek a waiver of Rule 4 *Code of Colorado Regulations* (CCR) 723-2-2002(b)(IX)(B) with respect to the 125 customers in the Red Creek development to whom Pine Drive is already providing service. Good cause for this request exists and it will be granted.

8. Second, Joint Applicants request that the Commission release each provider of its respective obligations as providers of last resort for the service territories that are transferred. Pine Drive agrees to become the provider of last resort in the newly acquired service territories and Qwest agrees that it will not be permitted to offer service in the transferred territory if the transfer is approved by the Commission.

9. Third, the Application contains two proposed advice letters and associated tariff sheets that Joint Applicants intend to file, if the Commission approves the request for territory exchange. The filing requests that the Commission approve the contents of the advice letters and

tariff sheets and that Joint Applicants be able to file these in compliance with the Commission's order to become effective on not less than two business days' notice, in combination with the Application.

10. There is an acknowledgement made in the Application that if the Commission approves the requested territory exchange, a joint Part 36 Waiver and a Section 214 Application are required to be filed with the Federal Communications Commission (FCC) for its approval prior to closing the transaction.

11. Fourth, Joint Applicants request a waiver of the requirement that Qwest publish a newspaper notice of its relinquishment of its provider of last resort obligations in the areas that it transfers to Pine Drive (Rule 4 CCR 723-2-2186(e)).

12. Notice was posted on the Commission's web site on June 24, 2009. Interventions were due on or before July 24, 2009. None were filed.

B. Findings

13. We have reviewed the proposed revisions of the Pueblo and Florence exchanges and find the rearrangements are not adverse to any customer interests. We further find the implementation of those revisions will not adversely affect the public switched network. Finally, we find the revisions of the exchanges will not compromise the financial integrity of the providers. Therefore, we find the proposed revisions to the two exchanges to be in the public interest.

14. We are concerned that the transfer request related to the portion of the Pueblo exchange that has been served by Pine Drive since 1994 has taken so long to be filed with the Commission. This is contrary to the requirements of § 40-15-111(1), C.R.S., and Commission Rule 4 CCR 723-2-2105 that require a decision prior to implementation of any change in

exchange area boundaries. While we will not sanction Qwest or Pine Drive for this delay, we would like to make it clear that any exchange boundary modifications or transfers must be approved by this Commission prior to moving forward with actions that appear to demonstrate that approval was granted.

15. We will grant the request for waiver of our Rule 4 CCR 723-2-2186(e) as it relates to the requirement of a newspaper notice for the relinquishment of provider of last resort obligations by Qwest. Adequate notice was provided to affected entities and is found to be in the public interest.

16. Consistent with § 40-15-111(2), C.R.S., we find the Joint Application for the boundary changes of the Qwest Pueblo Exchange, the Qwest Florence Exchange and the Pine Drive Exchanges should be granted.

II. ORDER

A. The Commission Orders That:

1. The Joint Application filed by Qwest Corporation and Pine Drive Telephone Company is deemed complete.

2. The Joint Application filed by Qwest Corporation and Pine Drive Telephone Company is granted.

3. Joint Applicants' request for a waiver of Rule 4 *Code of Colorado Regulations* 723-2-2002(b)(IX)(B) with respect to the 125 customers in the Red Creek development to whom Pine Drive is already providing service is granted.

4. Qwest Corporation is granted a waiver, for this transaction only, of the newspaper notice requirement contained in Commission Rule 4 *Code of Colorado Regulations* 723-2-2186(e).

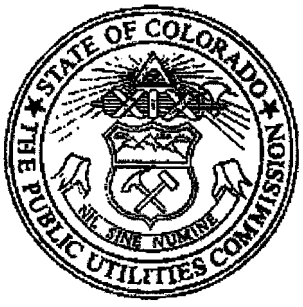
5. Qwest Corporation is relieved of its obligations as provider of last resort in the territory that is transferred to Pine Drive Telephone Company with Pine Drive Telephone Company to become the provider of last resort in the territory that is received as a part of the transaction.

6. Citing this Order as authority, Qwest Corporation and Pine Drive Telephone Company shall each make an Advice Letter and accompanying tariff sheet filing implementing the tariff changes on not less than two business days' notice. The Advice Letter and accompanying tariff sheets shall not be filed until the applicants receive the appropriate Part 36 Waiver for the transaction from the FCC.

7. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING July 29, 2009.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
ABSENT.

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused a copy of the foregoing **JOINT PETITION FOR WAIVER** to be transmitted via courier on June 30, 2010 to the parties listed below.*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW A-325
445 12th Street, N.W.
Washington, DC 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, N.W.
Washington, DC 20554

Richard Grozier

June 29, 2010

* The original Joint Petition for Waiver, and the associated filing fee and Form 159, were transmitted on June 29, 2010 via overnight delivery to the U.S. Bank in St. Louis for filing with the FCC on June 30, 2010.

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