

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**Qwest Corporation
Tariff FCC No. 1**

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Transmittal No. 206

MCI PETITION TO SUSPEND AND INVESTIGATE

MCI, Inc. (MCI), pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to suspend and investigate the above-captioned transmittal filed by Qwest Corporation (Qwest) on August 16, 2003.¹ In Transmittal No. 206, Qwest proposes to make a variety of changes to its special access rates in areas for which it has received Phase II pricing flexibility, i.e., where Qwest's special access rates are no longer subject to price caps.

As the Commission has made clear, the elimination of price cap regulation in Phase II areas in no way excuses Qwest from its obligation to comply with Section 201 of the Act and charge rates that are just and reasonable. The Commission explained to the D.C. Circuit that "even after obtaining Phase II relief, carriers remain subject to statutory

¹ Suspension and investigation of a proposed tariff or tariff modification is warranted when significant questions of lawfulness arise in connection with the tariff. See AT&T Transmittal No. 148, Memorandum Opinion and Order, FCC 84-421 (released Sept. 19, 1984); ITT, 73 FCC 2d 709, 719 (1979); AT&T, 46 FCC 2d 81, 86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

obligations to charge just, reasonable, and nondiscriminatory rates. 47 U.S.C. 201(b), 202(a).”²

The Commission has also made clear that the grant of Phase II pricing flexibility does not in any way limit the Commission’s ability to suspend and investigate ILEC tariffs under section 204. Indeed, the Commission has promised that it will continue to use its authority under section 204 – and not rely on the pricing flexibility triggers alone – in order to ensure just and reasonable rates in Phase II areas. In its brief to the D.C. Circuit, the Commission stated that, even after a carrier has obtained Phase II relief, “[p]arties may challenge an ILEC’s tariff filing [T]hese provisions constrain the ILEC’s incentive to charge unreasonable prices at the outset.”³

Suspension of tariffs proposing unjust and unreasonable rates is especially critical when, as Qwest has done here, the ILEC has filed its proposed tariff changes pursuant to section 204(a)(3) of the Act. In the Tariff Streamlining Order, the Commission emphasized that it would continue to exercise its pre-effective review powers.⁴

The Commission should suspend and investigate Qwest Transmittal No. 206 because the rates proposed in Transmittal No. 206 are not just and reasonable. Although Qwest is proposing rate decreases for a limited number of rate elements, the overall impact of the rate changes proposed in Transmittal No. 206 is a substantial rate increase for special access customers. The vast majority of the rate changes proposed by Qwest

² MCI WorldCom et al. v. FCC, FCC Brief at 28.

³ *Id.* (emphasis added)

⁴ Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd 2170, 2197 (1997) (Tariff Streamlining Order).

are rate increases, and in most instances those rate increases are substantial. The most astonishing rate increases proposed by Qwest are for DS3 rates, where Qwest is proposing increases of over *100 percent* in some rate elements, as is shown in the Attachment. Even for circuits purchased under a 60-month term commitment, the total cost of a 10-mile DS3 circuit will increase 46 percent (see Attachment).

A rate increase of the magnitude proposed by Qwest will plainly lift Qwest's rates to levels that are not just and reasonable. As the Commission has explained, the price caps that applied to Qwest's rates for many years, prior to the grant of pricing flexibility in 2002, were set at levels that limited Qwest's rates to a zone of reasonableness.⁵ Because the Phase II triggers were intended to identify those areas where competition was sufficiently-developed to take the place of price caps, and thus maintain rates at just and reasonable levels, the Commission made clear in the *Pricing Flexibility Order* that rates should not, as a general matter, rise following the grant of Phase II pricing flexibility. In particular, the Commission explained, any rate increases would likely be limited to "some" customers in "certain areas" where Commission rules may have required incumbent LECs to price access services below cost.⁶

Contrary to the Commission's expectation, the rate increases proposed by Qwest in Transmittal No. 206 are not limited in scope. They are not limited to particular pricing zones. Nor are they limited to particular services. Even though customers that make heavy use of DS3s will face the largest rate increases, virtually every special access

⁵ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6787 (1990) ("Price cap regulation of LECs, as we have designed it, is intended to produce rates within a zone of reasonableness.")

service and thus virtually every special access customer will face a rate increase. Overall, Qwest's special access revenues will increase substantially.

Because Qwest's proposed rates are so far above the rates that prevailed under price caps, it is clear that the proposed rates are well above the zone of reasonableness. That conclusion is confirmed by Qwest's 2003 rate of return on special access services, which – at 68 percent⁷ – was already excessive, demonstrating that there is absolutely no justification for any rate increase, much less for an across-the-board rate increase of the magnitude proposed in Transmittal No. 206. Qwest cannot credibly argue that price cap regulation was holding Qwest's special access rates below cost.

It is no answer to say that customers are “free” to negotiate contract tariffs with Qwest. If the proposed rates are allowed to go into effect, they will form the baseline for any contract tariff discussions conducted in the future. Even if Qwest offers a discount off those baseline rates as part of a contract tariff, the proposed baseline rates are so high that even contract tariff rates will likely be far above the rates that customers are paying today. Moreover, customers will likely be able to achieve discounted rates through a contract tariff only by agreeing to far more onerous terms and conditions than apply today. For example, other ILECs have generally offered their best rates only to customers that commit to maintaining 95 or 100 percent of their current circuits with the ILEC for several years. Consequently, Qwest Transmittal No. 206 presents customers with a “choice” between (1) continuing to purchase generally-available tariff services,

⁶ Access Charge Reform, Fifth Report and Order, CC Docket No. 96-262, released August 5, 1999, at ¶ 155 (Pricing Flexibility Order).

⁷ Qwest ARMIS 43-01, column s, rows 1910, 1915 (total net return of \$705 million; total average net investment of \$1.036 billion).

with rate increases as high as 100 percent; and (2) negotiating a contract tariff that will result in smaller – but still substantial – rate increases, while locking in the customer to Qwest services for years. The latter outcome makes it even less likely that competitors will deploy the facilities that are necessary to constrain Qwest's special access prices.

For the reasons stated herein, the Commission should suspend and investigate Qwest Transmittal No. 206.

Respectfully submitted
MCI, Inc.

/s/ Alan Buzacott

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August 23, 2004

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 23, 2004.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Suspend and Investigate were sent via first class mail, postage paid, and by facsimile*, to the following on this 23rd Day of August, 2004.

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