

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition by the Iowa Utilities Board	)	
for Temporary Waiver	)	CCB/CPD No. 00-15
of the Section 51.507(f)	)	
UNE Deaveraging Requirement	)	

**Order**

Adopted: July 12, 2000

Released: July 13, 2000

By the Chief, Common Carrier Bureau:

**I. Summary**

1. In this order, we grant the Iowa Utilities Board a temporary waiver of section 51.507(f) of the Commission's rules until December 31, 2000. Section 51.507(f) requires state commissions to establish at least three deaveraged rate zones for the pricing of unbundled network elements (UNEs).<sup>1</sup>

**II. Background**

2. The Commission promulgated certain rules in the August 1996 *Local Competition Order* to implement section 251 of the Communications Act of 1934, as amended.<sup>2</sup> One such rule, section 51.507(f), requires each state commission to "establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences."<sup>3</sup> Section 51.501(b) states that "the term 'element' includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements."<sup>4</sup>

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<sup>1</sup> See 47 U.S.C. § 51.507(f).

<sup>2</sup> See *In re* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Report and Order*, 11 FCC Rcd. 15,499 (1996) (Local Competition Order).

<sup>3</sup> 47 C.F.R. § 51.507(f).

<sup>4</sup> 47 C.F.R. § 51.501(b).

3. A number of parties appealed the *Local Competition Order*, and the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's section 251 pricing rules in September 1996 pending its consideration of the appeal.<sup>5</sup> In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the Commission lacked jurisdiction.<sup>6</sup> On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion.<sup>7</sup>

4. Because the section 251 pricing rules had not been in force for more than two years, and because not all states had established at least three deaveraged rate zones, the Commission stayed the effectiveness of section 51.507(f) on May 7, 1999, to allow the states to bring their rules into compliance.<sup>8</sup> The Commission stated that the stay would remain in effect until six months after the Commission released its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural local exchange carriers.<sup>9</sup> The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in the Universal Service proceeding.<sup>10</sup> The Commission said it would entertain on a case-by-case basis waiver petitions filed by state commissions that sought relief from the general rule in light of their particular facts and circumstances.<sup>11</sup>

5. On November 2, 1999, the Commission adopted its order in CC Docket No. 96-45.<sup>12</sup> In that order, the Commission announced that section 51.507(f) would become effective six months later, on May 1, 2000, consistent with its earlier decision in CC

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<sup>5</sup> Iowa Utilities Board v. FCC, 96 F. 3d 1116 (8th Cir. 1996) (per curiam) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). See also Iowa Utilities Board v. FCC, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

<sup>6</sup> Iowa Utilities Board v. FCC, 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997).

<sup>7</sup> AT&T v. Iowa Utilities Board, 119 S. Ct. 721, 733, 738 (1999).

<sup>8</sup> See *In re Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, *Stay Order*, 14 FCC Rcd. 8300, 8300-01 (1999).

<sup>9</sup> *Id.*, 14 FCC Rcd. at 8301.

<sup>10</sup> *Id.*, 14 FCC Rcd. at 8302.

<sup>11</sup> *Id.*, 14 FCC Rcd. at 8303.

<sup>12</sup> *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20,432 (1999).

Docket No. 96-98.<sup>13</sup> On April 6, 2000, the Commission denied a reconsideration petition by GTE Florida that sought continuation of the stay until May 1, 2001.<sup>14</sup> The Commission reasoned that further nationwide delay of the deaveraging rule “would impede the ability of competitive local exchange carriers to obtain interconnection and UNEs at cost-based rates, and to compete in the local market.”<sup>15</sup>

6. The Common Carrier Bureau released an order April 28, 2000, granting limited waivers from the deaveraging requirement to seven state commissions.<sup>16</sup> The longest of the waivers extend until October 31, 2000.<sup>17</sup> The Bureau granted the waivers because the state commissions had demonstrated through their considerable efforts that they were committed to implementing the deaveraging requirement and merely had been delayed by procedural difficulties.<sup>18</sup> The Bureau recognized the difficult nature of deaveraging, acknowledged the unique and drawn out history of the Commission’s deaveraging rule, and observed that circumstances in particular states will not always allow as expedient an implementation of the Commission’s rules as it might wish.<sup>19</sup> The Bureau concluded that a short delay would assist the states in establishing more precise rate zones, thereby aiding rather than impeding the ability of competitive LECs to obtain cost-based UNEs.<sup>20</sup> Two days before the Bureau released the waiver order on the first set of petitions, the Iowa Utilities Board filed this petition seeking a limited waiver of section 51.507(f) until December 31, 2000, so that it could complete a deaveraging proceeding involving U S WEST.<sup>21</sup>

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<sup>13</sup> *Id.*, 14 FCC Rcd. at 20,492-93. See *In re Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, *Stay Order*, 14 FCC Rcd. 8300, 8301 (1999).

<sup>14</sup> *In re Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, *Order on Reconsideration*, FCC 00-121 (rel. April 6, 2000).

<sup>15</sup> *Id.* at para. 4.

<sup>16</sup> *In re Petitions for Waiver of the Section 51.507(f) UNE Deaveraging Requirement*, CCB/CPD Nos. 00-07 to 00-14, *Order*, DA 00-956 (Common Car. Bur. rel. April 28, 2000) (Waiver Order). The seven commissions are: the Public Utility Commission of Oregon, the Nebraska Public Service Commission, the Wisconsin Public Service Commission, the Public Utilities Commission of Ohio, the Arizona Corporation Commission, the North Carolina Utilities Commission, and the Idaho Public Utilities Commission. *Id.* at ¶ 1. The Bureau also granted the Public Service Commission of the District of Columbia a permanent waiver in that order. *Id.* at ¶¶ 1, 19.

<sup>17</sup> *Id.* at ¶ 7.

<sup>18</sup> *Id.* at ¶¶ 7, 17-18.

<sup>19</sup> *Id.* at ¶ 18.

<sup>20</sup> *Id.*

<sup>21</sup> *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Petition by the Iowa Utilities Board for Temporary Waiver*, CCB/CPD No. 00-15, at 1-2

### III. Discussion

7. We grant the Iowa Board a limited waiver of section 51.507(f) until December 31, 2000. Generally, the Commission's rules may be waived for good cause shown.<sup>22</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>23</sup> In addition, the Commission may take into account on an individual basis considerations of hardship, equity, or more effective implementation of overall policy.<sup>24</sup> Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>25</sup> We conclude that such circumstances are present here.

8. The petition explains that U S WEST had filed a tariff on March 15, 2000, to deaverage its wholesale and UNE prices into three zones based on exchange size, and to begin deaveraging its retail rates.<sup>26</sup> Three parties, including AT&T, filed objections, raising what the Iowa Board describes as complex issues on matters such as U S WEST's proposed zones, the scope of the required deaveraging, and the pricing methodology.<sup>27</sup> Thus, the Iowa Board docketed the matter as a contested case, with opportunity for discovery, several rounds of pre-filed testimony, a formal hearing scheduled to begin September 26, 2000, and initial and reply briefs.<sup>28</sup> The Iowa Board's May 19 supplement to its petition further explains that some of the issues center around U S WEST's refusal to remove from its calculations data related to thirty-two rural exchanges that the Iowa Board has already authorized U S WEST to sell.<sup>29</sup> The Iowa Board has since ordered U S WEST to file exhibits indicating the effect of the sale on U S WEST's proposed UNE prices.<sup>30</sup> For all these reasons, the Iowa Board states that it will not be possible to resolve

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(filed April 26, 2000) (Iowa Pet.).

<sup>22</sup> 47 C.F.R. § 1.3.

<sup>23</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>24</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>25</sup> *Id.*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>26</sup> *Iowa Pet.* at 3.

<sup>27</sup> *Iowa Pet.* at 3 & attach. A at 1-2.

<sup>28</sup> *Iowa Pet.* at 3.

<sup>29</sup> *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplement to Petition by the Iowa Utilities Board for Temporary Waiver*, CCB/CPD No. 00-15, at 2-3 (filed May 19, 2000) (Iowa Supp. Pet.).

<sup>30</sup> *Id.* at 3.

the matter by May 1, 2000.<sup>31</sup> The Iowa Board says it anticipates a written decision by December 31, 2000.<sup>32</sup>

9. In light of these facts, we find good cause to grant the Iowa Board its limited waiver request. As was the case in the petitions that were the subject of our prior waiver order, the Iowa Board has demonstrated through considerable efforts its commitment to our deaveraging policy in the face of special procedural circumstances, including the resistance of U S WEST to provide data necessary for the Iowa Board to evaluate the deaveraged rates. Granting the waiver will allow the Iowa Board needed additional time to procure and review information necessary for it to determine the appropriateness of the proposed prices. This will serve the public interest by helping to produce rates that are closer to cost than might result were we to insist upon strict compliance with the rule deadline in this instance. Thus, we disagree with AT&T's contention that the Iowa Board has failed to demonstrate the requisite special circumstances necessary for a waiver.<sup>33</sup> We remain committed to the notion that deaveraging plays a crucial role in affording competitive local exchange carriers an opportunity to compete in the local market. Mispriced deaveraged rates, however, defeat the purpose of deaveraging in the first place.

10. AT&T argues that U S WEST's refusal to remove the thirty-two exchanges from its calculations, or to provide the underlying data, is grounds for sanctions against U S WEST, and should not be the basis for a waiver from which U S WEST will benefit.<sup>34</sup> We find this argument misplaced. Whether U S WEST should exclude the thirty-two exchanges, as well as whether U S WEST should be sanctioned, are matters for the Iowa Board in the first instance, and not for the Commission. Moreover, it is questionable that delays in deaveraging are to U S WEST's ultimate benefit. Until U S WEST offers deaveraged UNE rates, it arguably is not eligible under section 271 of the Communications Act for entry into the long-distance market in Iowa.<sup>35</sup> Under the Commission's recently adopted order implementing the proposal of the Coalition for Affordable Local and Long-Distance Service, U S West will also be allowed to deaverage

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<sup>31</sup> *Iowa Pet.* at 3; *Iowa Supp. Pet.* at 3.

<sup>32</sup> *Iowa Pet.* at 3.

<sup>33</sup> *See In re Iowa Utilities Board's Petition for Limited Waiver of 47 C.F.R. Section 51.507(f)*, CCB/CPD No. 00-15, Comments of AT&T, at 4 (filed June 5) (AT&T Opposition).

<sup>34</sup> AT&T Opposition at 4.

<sup>35</sup> *See* 47 U.S.C. §§ 271(c)(2)(B)(i) (conditioning Bell operating company entry into in-region long-distance market on compliance with sections 251(c)(2) and 252(d)(1)); 251(c)(2) (requiring incumbent local exchange carriers to provide interconnection at just, reasonable, and nondiscriminatory rates); 252(d)(1) (requiring determinations by state commissions of just and reasonable rates for interconnection and UNEs to be based on costs); *Local Competition Order*, 11 FCC Rcd. at 15,882 (basing UNE deaveraging requirement on conclusion that deaveraged rates more closely reflect costs).

its subscriber line charges in Iowa and may receive increased universal service support once its rates are deaveraged.<sup>36</sup>

11. In the previous waiver order, the Bureau granted some of the state commissions extensions until October 31, 2000, which was less time than those commissions requested.<sup>37</sup> The Bureau did so because the availability of cost-based UNEs plays a critical role in the development of local competition, and the Bureau hopes to spur that competition as quickly as possible.<sup>38</sup> AT&T argues that the issues the Iowa Board faces are no more complex than those these prior petitioners faced, and thus that any waiver we grant the Iowa Board should be similarly limited to October 31, 2000.<sup>39</sup> Unlike those previous petitions, however, the Iowa Board has provided us with a more definite picture of its docket status and projected completion date, and has requested a specific, relatively short extension from the May 1, 2000, deadline.<sup>40</sup> Thus, we grant the Iowa Board a limited waiver of section 51.507(f) until December 31, 2000.

#### IV. Ordering Clauses

12. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201, 251, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 251, 303(r), and 405, and Sections 0.91, 0.201-03, and 0.291 of the Commission's

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<sup>36</sup> See *In re Access Charge Reform*, CC Docket No. 96-262, *Sixth Report and Order in CC Docket No. 96-262 and 96-1*, FCC 00-193, at ¶¶ 73, 113, 127, 206-210 (rel. May 31, 2000).

<sup>37</sup> See *Waiver Order*, at ¶¶ 7, 17. See, e.g., Public Utilities Commission of Ohio's Petition for Waiver, CCB/CPD No. 00-10, at 4 (filed April 7, 2000) (Ohio Pet.) (requesting an extension until "no earlier than May 2001"); North Carolina Utilities Commission's Petition for Waiver, CCB/CPD No. 00-13, at 5 (filed April 19, 2000) (N.C. Pet.) (requesting an extension until "no earlier than May 1, 2001"); Idaho Public Utilities Commission's Petition for Limited Waiver of FCC Rule 47 CFR § 51.507(f), CCB/CPD No. 00-14, at 1 (filed April 13, 2000) (Idaho Petition) (requesting an extension until December 31, 2001).

<sup>38</sup> *Waiver Order* at ¶ 17.

<sup>39</sup> AT&T Opposition at 3-4, 6.

<sup>40</sup> Compare Iowa Pet. at 3 (stating that the Iowa Board has scheduled a formal hearing for September 26, 2000, and anticipates issuing a written decision by December 31, 2000) with Neb. Pet. at 1, 3 (requesting a waiver "until such time that [the Nebraska Public Service] Commission concludes its cost model investigation"), Wis. Pet. at 2 (estimating a decision "by sometime around the end of the year" but not making a specific extension request), Ohio Pet. at 4 (requesting an extension until "no earlier than May 2001," and providing no estimated completion date), N.C. Pet. at 5 (stating that hearings have been scheduled for July 31, 2000, and August 28, 2000, but that motions to modify the schedule have been filed, and requesting an extension until "no earlier than May 1, 2001," but providing no estimated completion date), and Idaho Pet. at 1 (explaining that a March 28, 2000, public workshop set a schedule for the state's non-rural universal service fund, stating that once the universal service is finalized the Idaho commission will be ready to implement deaveraging, and requesting an extension until December 31, 2001).

rules, 47 C.F.R. §§ 0.91, 0.201-03, and 0.291, that the waiver petition is GRANTED to the extent described above.

Federal Communications Commission

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