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Article by [Charles H. Kennedy](#)**

### **FCC Relaxes Regulation Of BOC Long Distance Services**

In an order released August 31, 2007, the FCC substantially liberalized its regulation of the in-region, long distance services of the Bell Operating Companies ("BOCs").

The BOCs, which now include Verizon, AT&T, and Qwest, are the successors to the 23 local exchange carriers that were divested from AT&T, parent company of the Bell system, under the terms of the antitrust consent decree entered in 1982. (The divestiture was not complete until 1984.) The decree prohibited the divested BOCs from providing certain products and services, including long distance services outside specified local access and transport areas ("LATAs").

The Telecommunications Act of 1996 gave the BOCs a pathway to the interLATA service market, but only after the BOCs had made state-by-state demonstrations that the local exchange markets in their home regions had been opened to competition. Where the required showing had been made, BOCs were permitted to provide in-region long distance service, but only through separate subsidiaries. **The separate subsidiary requirement was temporary, however, and when that requirement lapsed, the Commission offered BOCs a choice of regulatory regimes: they could continue to provide in-region long distance services through a separate affiliate, under conditions defined in section 272 of the 1996 Act, in which case the service would be regulated on a liberal, "nondominant" basis; or they could provide those services directly, not using a separate affiliate of the kind described in the 1996 Act, under a stricter scheme of "dominant" regulation.**

In February of this year, the Commission granted in part a Qwest petition seeking relief from dominant regulation. Under the terms of that order, Qwest was permitted to provide in-region, long distance service on a nondominant basis without using a section 272 subsidiary for that purpose.

In its new order, the FCC agrees with the BOCs that those companies no longer have market power in the provision of in-region long distance services. However, the Commission finds that the BOCs still have the ability to discriminate against their long distance competitors in the provision of access service. Accordingly, the Commission will continue to require the BOCs to observe certain safeguards in the provisioning of access service, but will not continue to apply dominant regulation to the BOCs' unseparated, in-region long distance service.

The new regulatory regime does not include tariffing of BOC long distance service, relieves the BOCs of certain discontinuance and transfer of control obligations, and includes forbearance from certain contract tariff filing requirements. The BOCs also are relieved of so-called "equal access scripting," under which BOCs are required to advise their subscribers of the availability of independent long distance service providers.

The FCC imposed additional conditions, including special access performance metric reporting by the BOCs, revised cost allocation manuals, and the imputation of the companies' tariffed access rates to their long distance services, thereby ensuring that the BOCs charge themselves the same access rates that they charge their long distance service rivals. The BOCs also agreed to offer, for three years, long distance rate plans tailored to the needs of low-volume residential consumers.

**February 20, 2007**

### **FCC Conditionally Grants Qwest Forbearance Relief from Dominant Carrier Regulation of Its In-Region, Unseparated Long Distance Services**

On February 20, 2007, the FCC adopted an order conditionally granting in part and denying in part a forbearance petition filed by Qwest Communications International, Inc. seeking relief from "dominant carrier"

regulation of any interstate, interLATA (i.e., long distance) service that Qwest provides through the same entities that provide its local services. In the absence of such relief, Qwest would have to continue providing interstate, interLATA service in its local service region ("in-region service") on a structurally separated basis (i.e., through affiliates that are separate from the affiliates that provide its local services) in order to avoid tariffing requirements and other strict regulation of its interLATA service. The relief granted permits Qwest to combine its long distance services with its local operations without triggering heightened regulation of the long distance services. In granting forbearance, the FCC imposed conditions on Qwest's provision of access services to ensure that Qwest does not raise its long distance competitors' costs by discriminating in its provision of access service to the competitors.

**The FCC has imposed tariffing and other requirements on Bell Operating Companies ("BOCs") and other dominant carriers – i.e., carriers with market power – for over 20 years. As part of the Telecommunications Act of 1996, Congress added Section 272 to the Communications Act, which requires that BOC in-region, interstate, interLATA service be provided through affiliates meeting stringent separation requirements. In applying its dominant carrier requirements to BOC long distance services, the FCC held that BOC long distance services provided through separate affiliates meeting the Section 272 criteria should be treated as non-dominant and thus not subject to tariffing and other dominant carrier rules, while BOC long distance services provided on an unseparated basis, either through the same affiliate that provides local service or through another affiliate not compliant with the Section 272 criteria, would be subject to dominant carrier regulation. As a result, even after Qwest's Section 272 requirements sunset by operation of the statute in 2006, its long distance services would continue to be subject to dominant carrier regulation unless they are provided through Section 272-compliant affiliates.**

Qwest argued that, in light of the vigorous competition in long distance services, the continued imposition of dominant carrier regulation on its unseparated long distance services serves no regulatory purpose, justifying forbearance. Qwest is in the anomalous position of having to maintain its Section 272 affiliates after the sunset of the Section 272 requirements simply to avoid dominant carrier regulation of its in-region long distance services.

In the public notice adopting its forbearance order, the FCC stated that it agreed that Qwest lacks market power in the provision of in-region long distance services but found that it is still able to exercise exclusionary market power in the provision of bottleneck access services to its long distance rivals. Accordingly, the FCC imposed conditions to prevent Qwest from exercising its bottleneck power and, based on those conditions, granted forbearance from the application of dominant carrier regulation to Qwest's unseparated in-region long distance services to the extent stated in the notice. Qwest thus is relieved of certain tariffing requirements, discontinuance and transfer of control requirements, and certain contract filing requirements. Qwest is not relieved of the non-discrimination requirements of Section 272(e) or the accounting requirements applied to its in-region long distance services. The FCC also imposed additional conditions, including the implementation of special access performance metrics for two and a half years to ensure that Qwest does not discriminate in its provision of special access service and the imputation of Qwest's tariffed access rates to its long distance services, thereby ensuring that it charges itself the same access rates that it charges its long distance service rivals.

The FCC vote was 4-0 for adoption of the forbearance order, with Commissioner McDowell not participating because CompTel had opposed the petition. Commissioners Copps and Adelstein expressed concern that the FCC has not completed its pending rulemaking addressing the regulatory treatment of post-Section 272 sunset BOC long distance services and that a comprehensive resolution would be preferable to deciding individual petitions. Nevertheless, because granting the petition with conditions is a "clearly superior" outcome to granting it "by Commission inaction," they concurred in the result. The order was adopted on the last day that the FCC could deny or place conditions on the petition. AT&T and Verizon have filed similar forbearance petitions, although Commissioners Copps and Adelstein cited Qwest's "unique competitive position" and commented that the conditions imposed by the FCC "may well be . . . insufficient as applied to the situation of industry participants not present here."

