

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

In the Matter of)
Direct Communications Cedar Valley, LLC)
and)
Qwest Corporation) 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)
Petition for Waiver of Sections 69.2(hh) and)
69.605(c) of the Commission's Rules)

ORDER

Adopted: November 29, 2005

Released: November 29, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a joint request from Direct Communications Cedar Valley, LLC (Direct Communications) and Qwest Corporation (Qwest) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission rules. This waiver will allow the territory served by Eagle Mountain City's municipal telephone system (EMC) to be removed from Qwest's study area and will allow Direct Communications to establish a new study area in the state of Utah. We also grant a request from Direct Communications for waivers of sections 69.2(hh) and 69.605(c) of the Commission's rules in order that Direct Communications may become a member of the National Exchange Carrier Association (NECA) and receive interstate access settlements and universal

1 See 47 C.F.R. Part 36, App. (defining study area); Direct Communications Cedar Valley, LLC and Qwest Corporation, Joint Petition for Waiver of the definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed November 2, 2004) (Waiver Petition).

2 Direct Communications is a newly-formed Utah company whose corporate parent, Direct Communications Rockland, Inc. is an incumbent local exchange carrier (LEC) in the state of Idaho. Direct Communications was formed solely to purchase the municipal telephone system owned by Eagle Mountain City, which serves approximately 2,223 subscribers. Id. at 3. EMC is not an incumbent LEC pursuant to section 251(h), nor has it ever received universal service support payments. Qwest is the largest incumbent LEC in the state of Utah. Qwest is a price cap carrier that operates approximately one million access lines throughout Utah. Qwest has never had telephone facilities in the area served by EMC although the area is geographically within Qwest's Utah study area. Id. at 2.

service support pursuant to NECA's average schedule formulas.³ In addition, on our own motion, we grant Direct Communications a waiver of the definition of incumbent LEC in Part 36 and section 54.5 of the Commission's rules to the limited extent necessary to permit Direct Communications to be treated as an incumbent LEC for purposes of calculating universal service support. We also waive the October 1, 2005 data filing deadline set forth in section 54.301(b) of the Commission's rules for local switching support (LSS); the October 1, 2005 filing deadline set forth in section 54.314(d) of the Commission's rules for state certification of support for rural carriers; and the March 31, 2005, and July 31, 2005 data filing deadlines set forth in section 54.903(a) of the Commission's rules for interstate common line support (ICLS).⁴ We grant these waivers on our own motion to permit Direct Communications to receive, to the extent it is eligible, federal universal service support on the date that it would otherwise be entitled to receive such support.

II. STUDY AREA WAIVER

A. Background

2. *Study Area.* A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. The Commission froze all study area boundaries effective November 15, 1984.⁵ The Commission took this action to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.⁶

3. *The Petition for Waiver.* Direct Communications and Qwest (collectively, the Petitioners) filed a joint petition for a waiver of the study area boundary freeze and other related waivers on November 2, 2004. On November 24, 2004, the Bureau released a public notice seeking comment on the petition for waivers.⁷ A study area waiver would permit Qwest to alter the boundaries of its Utah study area by removing the territory where EMC currently operates and would permit Direct Communications to create a new study area in the state of Utah.

4. The municipal telephone system, EMC, was created by Eagle Mountain City in 1997 to serve an area in which no other carrier had facilities and has been problematic for EMC, its subscribers, and

³See Direct Communications Rockland, Inc., and Direct Communications Cedar Valley, LLC, Petition for Waiver of Sections 69.2(hh) and 69.605(c) of the Commission's Rules, Approval of Related Actions, and an Expedited Decision, CC Docket No. 96-45 (filed November 2, 2004) (Part 69 Petition). On February 7, 2005, Direct Communications filed a supplement to its Part 69 Petition clarifying that it seeks average schedule status for purposes of receiving both universal service support and access pool settlements. See Direct Communications Rockland, Inc., and Direct Communications Cedar Valley, LLC, Petition for Waiver of Sections 69.2(hh) and 69.605(c) of the Commission's Rules, Approval of Related Actions, and an Expedited Decision, Supplemental Filing, CC Docket No. 96-45 (filed February 7, 2005) (Supplemental Part 69 Petition).

⁴ See 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a).

⁵See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*) adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 C.F.R. Part 36, App.

⁶*Part 67 Order* at para. 1.

⁷See *Wireline Competition Bureau Seeks Comment on the Petitions of Direct Communications Cedar Valley, LLC, Qwest Corporation, and Direct Communications Rockland, Inc., to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Sections 69.2(hh) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 04-3687 (rel. November 24, 2004). No comments were filed in this proceeding.

Utah regulators.⁸ Petitioners argue that Utah law barred EMC, as a municipal utility, from receiving state universal service support and, therefore, all of the expenses of constructing and operating the system have been borne by the subscribers. Further, Petitioners argue that EMC's subscribers pay the highest basic local rates in Utah, \$27.00 per month, and contend that the telephone system cannot economically be sustained, absent universal service support, without significantly raising rates on the subscribers.⁹

5. The Petitioners argue that the proposed transaction between EMC and Direct Communications will not have an adverse effect on universal service because section 54.305(b) limits an acquiring carrier to the same per-line high-cost support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹⁰ The Petitioners contend that, although EMC was eligible to receive federal universal service support, EMC never applied for NECA membership or for federal universal service support. The Petitioners further claim that Direct Communications is the successor to EMC rather than Qwest with respect to the application of federal universal service support.¹¹ The Petitioners also maintain that the transaction is in the public interest and the Public Service Commission of Utah (Utah Commission) does not object to this transaction.

6. *Standards for Waiver.* Generally, the Commission may waive its rules for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) no state commission having regulatory authority over the transferred exchanges opposes the transfer; and (3) the transfer must be in the public interest.¹⁵

7. In evaluating whether a study area boundary change will have an adverse effect on the universal service fund, the Commission has considered whether a study area waiver will result in an annual aggregate shift in an amount equal to or greater than one percent of the total high-cost loop support fund for the most recent calendar year.¹⁶ High-cost loop support is subject to an indexed cap, which

⁸ According to the Utah Public Service Commission, at the time of Eagle Mountain City's initial development, Qwest was willing to extend its service to the town, in accordance with the terms of its tariff, but the land developers did not choose that option. See Waiver Petition, Exhibit 2 (*Before the Public Service Commission of Utah, In the Matter of the Application of Direct Communications Rockland, Inc., and Direct Communications Cedar Valley, LLC, for a Certificate of Public Convenience and Necessity Allowing Operation as an Independent Local Exchange Carrier*, Docket No. 04-2419-01, Order at 4 (rel. August 9, 2004) (Utah Commission Order)).

⁹ See Waiver Petition at 5-6.

¹⁰ See *id.* at 8-9.

¹¹ *Id.* at 9.

¹² 47 C.F.R. § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ See, e.g., *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*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (*PTI/Eagle Order*).

¹⁶ See *PTI/Eagle Order*, 10 FCC Rcd at 1774, paras. 14-17; see *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the*

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limits total nationwide support to the previous year's total, increased by the sum of the annual loop growth for rural carriers and an inflation factor.¹⁷ The Commission recognized that, because of the indexed cap, an increase in the draw of any fund recipient necessarily reduces the amounts that other LECs receive from the fund.¹⁸ After adoption of section 54.305 of the Commission's rules, however, the one-percent guideline, was not, in practice, a necessary limitation because section 54.305(b) provides that a carrier purchasing exchanges from an unaffiliated carrier is permitted to receive only the same level of per-line high-cost support that the selling company was eligible for prior to the transfer.¹⁹

B. Discussion

8. We find that good cause exists to waive the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules as set forth herein. For the reasons discussed below, we conclude that the Petitioners have satisfied the three-prong standard that the Commission applies to determine whether a waiver is warranted.

9. *Impact on the Universal Service Fund.* Because the proposed study area waiver will not result in any significant increase in high-cost support, we conclude that the universal service fund will not be adversely affected by granting this study area waiver. We conclude that the limitation of section 54.305 of the Commission's rules does not apply to the unique facts of this acquisition because EMC, which owns the acquired lines, has been determined to be a non-carrier by the Utah Commission.²⁰ Section 54.305 limits the universal service support available to an acquiring carrier when such carrier is acquiring exchanges from another "carrier." Moreover, under section 54.201(a) of the Commission's rules, only "eligible telecommunications carriers" are allowed to receive universal service support.²¹ We conclude that the term "carrier" as used in section 54.305 refers to an "eligible telecommunications carrier." The Utah Commission determined that EMC is not an eligible telecommunications carrier (ETC) because it is a municipal utility.²² For this reason, we do not believe that Direct Communications is acquiring the exchanges of another "carrier," and therefore the limitation of section 54.305(b) does not apply.

10. We nevertheless evaluate the acquisition's impact on the fund under the Commission's previous one-percent guideline. Based on the small number of lines that are the subject of this transaction, we conclude that the amount of high-cost loop support and LSS that Direct Communications might receive for this exchange will fall well short of the one percent increase to the total high-cost loop support fund for 2004.²³ As noted above, Direct Communications is eligible to receive ICLS. Because its new study area is small, however, we also conclude that any ICLS received would not have an adverse

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Commission's Rules, and Petition for Waiver of Section 61.41(c) of the Commission's Rules, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

¹⁷ See 47 C.F.R. § 36.603.

¹⁸ See *PTI/Eagle Order*, 10 FCC Rcd at 1773-74, paras. 13-15.

¹⁹ See 47 C.F.R. § 54.305(b).

²⁰ 47 C.F.R. § 54.305(b) (providing that a "carrier that acquires telephone exchanges from an unaffiliated carrier shall receive . . . the same per-line levels for which those [acquired] exchanges were eligible prior to their transfer") (emphasis added).

²¹ 47 C.F.R. § 54.201(a) (stating that only eligible telecommunications carriers may receive universal service support distributed pursuant to Parts 36 and 69 of chapter 47, and subparts D and E of Part 54).

²² See Utah Commission Order at 6.

²³ The Waiver Petition states that there are approximately 2,223 subscribers in Eagle Mountain City. See Waiver Petition at 3.

effect on the universal service fund.

11. *Position of State Commission.* The Utah Commission has no objection and supports the modification of Qwest's study area to allow the transfer of the service area to Direct Communications.²⁴ The Utah Commission considers Direct Communications to be a "rural telephone company" as defined in the Act and has designated Direct Communications as an ETC for Eagle Mountain City pursuant to section 214(e)(2) of the Act.²⁵

12. *Public Interest Analysis.* We conclude that the public interest is served by a waiver of the study area freeze rule to permit Qwest to alter the boundaries of its existing Utah study area by removing the territory operated by EMC and to permit Direct Communications to create a new study area encompassing the territory operated by EMC. We are persuaded that the sale of the system to Direct Communications will make available state of the art services to subscribers and will put the system under the management and operation of an experienced and financially stable private carrier with access to capital financing on reasonable terms in order to finance growth and improvements.²⁶

III. WAIVER OF SECTION 69.2 (hh) AND RELATED WAIVERS

A. Background

13. The Commission's rules regarding participation in NECA tariffs and pools, and its rules regarding universal service support for incumbent LECs, do not specifically address companies, such as Direct Communications, that come into existence after the enactment of the Telecommunications Act of 1996.²⁷ In order to be a member of NECA and to participate in the NECA tariffs and pools, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.²⁸ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent LEC as defined in section 251(h)(1) of the Act.²⁹ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act, or a successor or assign of an incumbent LEC.³⁰ For purposes of calculating universal service support, Part 36 of the Commission's rules applies to incumbent LECs, and Part 54 of the Commission's rules distinguishes between incumbent LECs and competitive ETCs.³¹ Incumbent LEC for purposes of Part 54 of the Commission's rules has the same meaning as that term is defined in section 251(h)(1) of the Act.³²

²⁴See Utah Commission Order at 10.

²⁵See 47 U.S.C. §§ 153(47), 214(e)(2); Utah Commission Order at 13-14

²⁶See Waiver Petition at 6.

²⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act). 47 U.S.C. §§ 151 *et seq.*

²⁸See 47 C.F.R. § 69.601.

²⁹47 C.F.R. § 69.2(hh).

³⁰ See 47 U.S.C. § 251(h)(1).

³¹ For example, section 36.611 of the Commission's rules governs the submission of data to NECA for purposes of calculating high-cost support and only applies to incumbent LECs. Competitive ETCs file line count data and their support is calculated pursuant to section 54.307 of the Commission's rules. See 47 C.F.R. §§ 36.611, 54.307.

³² See 47 C.F.R. §§ 51.5, 54.5. Unlike Parts 54 and 69 of the Commission's rules, Part 36 does not include an explicit definition of incumbent LEC. The term "incumbent local exchange carrier" is used throughout Part 36, however, and in some cases references the Commission's definition of rural incumbent LEC in section 54.5 of the Commission's rules. See, e.g., 47 C.F.R. § 36.622(a).

14. Direct Communications is a newly-formed company, and is neither a successor nor assign of an incumbent LEC because EMC is not an incumbent LEC. Therefore, Direct Communications does not meet the definition of an incumbent LEC as defined in sections 54.5 and 69.2(hh) of the Commission's rules and section 251(h)(1) of the Act.³³ Direct Communications requests a waiver of section 69.2(hh) in order that it may become a member of NECA and receive federal universal service support.³⁴ Direct Communications argues that the operation of EMC's system is not economically feasible without both state and federal universal service support, and notes that both the purchase contract and Rural Utilities Service financing are contingent upon receiving the necessary waivers from the Commission.³⁵

15. Certain certification and data filing deadlines in the Commission's rules would prevent newly-formed companies like Direct Communications from beginning to receive federal universal service support on the date which it would otherwise be entitled to receive such support. Specifically, section 54.314 of the Commission's rules provides that states desiring rural carriers in their states to receive high-cost loop or local switching support must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all high-cost support received by such carriers will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."³⁶ In addition, section 54.301(b) of the Commission's rules provides that incumbent LECs must file certain data with USAC by October 1 of each year to receive LSS for the following calendar year;³⁷ section 54.903(a)(3) of the Commission's rules provides that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year;³⁸ and section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.³⁹

B. Discussion

16. We grant Direct Communications' request for waiver of section 69.2(hh) of the Commission's rules in order to allow the carrier to join NECA and to participate in NECA tariffs and pools. On our own motion, we also grant Direct Communications a waiver of the definition of incumbent LEC in Part 36 and section 54.5 of the Commission's rules to the limited extent necessary to permit Direct Communications to be treated as an incumbent LEC for purposes of calculating universal service support. We also grant Direct Communications waivers of: the October 1, 2005 filing deadline set forth in section 54.314(d) of the Commission's rules for state certification of support for rural carriers; the October 1, 2005 data filing deadline set forth in section 54.301(b) of the Commission's rules for LSS; and both the March 31, 2005 deadline for projected cost and revenue data and the July 31, 2005 deadline for line count data set forth in section 54.903(a) of the Commission's rules for ICLS.⁴⁰

³³See 47 U.S.C. § 251(h)(1); 47 C.F.R. §§ 51.5, 54.5, 69.2(hh).

³⁴See Part 69 Petition at 1.

³⁵See *id.* at 8.

³⁶47 C.F.R. § 54.314(a).

³⁷47 C.F.R. § 54.301(b). Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS. See 47 C.F.R. § 54.301.

³⁸47 C.F.R. § 54.903(a)(3).

³⁹47 C.F.R. § 54.903(a)(1). Section 54.903(a)(2) provides that rate-of-return LECs must file such line count data quarterly in areas where a competitive ETC has initiated service and reported line count data to USAC in order to receive support. 47 C.F.R. § 54.903(a)(2).

⁴⁰In order to receive ICLS, Direct Communications is required to file with the fund Administrator and the Commission, on the date it first files its line count information pursuant to section 54.903, a certification that all

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17. We conclude that Direct Communications has demonstrated that special circumstances warrant a waiver of section 69.2(hh). We also find that the public interest is served by waiver of the definition of incumbent LEC in Part 36 and section 54.5, and the state certification and data filing deadlines in sections 54.314(d), 54.301(b), and 54.903(a) of the Commission's rules. Participation in NECA will allow Direct Communications to avoid the costs of filing and maintaining its own company-specific interstate tariffs. Direct Communications estimates that it will have approximately 2,200 subscribers when it begins operation.⁴¹ Because Direct Communications will have relatively few customers, the costs of preparing company-specific tariffs could be disproportionately excessive. Therefore, it is in the public interest to permit Direct Communications and its customers to benefit from the cost savings and lower rates available through NECA participation. Without such participation in NECA's pools it is likely that Direct Communications' company-specific interstate access rates would be prohibitively high. Additionally, these waivers will allow Direct Communications to be eligible to receive high-cost universal service support. High-cost loop support and LSS will help Direct Communications to provide quality local service at affordable rates. ICLS funds will help ensure that Direct Communications will recover its interstate costs. Accordingly, we waive both the definition of incumbent LEC in Part 36 and sections 54.5 and 69.2(hh) of the Commission's rules and the filing deadlines noted above to permit Direct Communications to participate in NECA tariffs and pools and to receive any universal service support for which it may be eligible.

IV. AVERAGE SCHEDULE WAIVER

A. Background

18. Incumbent LECs that participate in NECA pools collect access charges from interexchange carriers at the rates contained in the tariffs filed by NECA.⁴² Each pool participant receives settlements from the pools to recover the cost of providing service plus a pro-rata share of the pool's earnings.⁴³ NECA pool participants' interstate access charge settlements are determined either on the basis of cost studies or average schedule formulas. Cost companies are incumbent LECs that receive compensation for interstate telecommunications services based on their actual interstate investment and expenses, calculated from detailed cost studies. Average schedule companies are those incumbent LECs that receive compensation for use of their interstate telecommunications services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies.⁴⁴ In electing average schedule status, companies are able to avoid the administrative and financial burdens of performing interstate cost studies.

19. Section 69.605(c) of the Commission's rules provides, in pertinent part, that "a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company."⁴⁵ The definition of "average schedule company" includes existing average schedule incumbent LECs, but does not allow the creation of new average schedule companies or the conversion of cost-based carriers or a portion of the lines of such a carrier to average schedule status

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ICLS support provided to Direct Communications will be used only for the provision and maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. § 54.904.

⁴¹See Part 69 Petition at 2.

⁴²See 47 C.F.R. § 69.601.

⁴³See 47 C.F.R. §§ 69.601-.610.

⁴⁴See 47 C.F.R. § 69.606(a).

⁴⁵47 C.F.R. § 69.605(c).

without a waiver of the Commission's rules.⁴⁶ The definition was designed to limit the use of average schedule formulas to companies that operated as average schedule companies prior to adoption of the rule or that are able to demonstrate compelling circumstances sufficient to warrant a special exception.⁴⁷ Accordingly, Direct Communications would be required to operate, absent a waiver, as a cost-based company. Our action on Direct Communications' request, therefore, is guided by the principle that incumbent LECs should settle on a cost basis whenever possible without undue hardship.⁴⁸

20. The Bureau, however, has granted waivers to certain small carriers that lacked the resources to operate on a cost-study basis.⁴⁹ Direct Communications seeks a waiver of the definition of "average schedule company" in section 69.605(c) so that it may operate as an average schedule company after acquiring EMC's assets.⁵⁰ Direct Communications argues that it does not have adequate historical data and the system of accounting followed by EMC has been structured to comport to municipal accounting policies and practices rather than anything similar to the Commission's Uniform System of Accounts.⁵¹

B. Discussion

21. We conclude that good cause exists for us to grant Direct Communications' request for a waiver of section 69.605(c). Direct Communications' predecessor, EMC, has not maintained its books and records in accordance with the Commission's various accounting rules.⁵² The number of lines affected by this waiver, approximately 2,200, is within the range of the number of lines that the Commission has previously permitted to be added to an existing average schedule company's operations. For example, in the *Dickey Rural Order*, the Commission approved continued average status when 635

⁴⁶An incumbent LEC may convert from an average schedule company to a cost company, but a carrier must obtain a waiver of the definition of "average schedule company" in section 69.605(c) to change from a cost company to an average schedule company. See 47 C.F.R. § 69.605(c).

⁴⁷See *Petition for Waiver Filed by Heartland Telecommunications Company of Iowa and Hickory Tech Corporation*, AAD File No. 96-94, Memorandum Opinion and Order, 14 FCC Rcd 13661, 13662, para. 3 (Comm. Car. Bur. 1999).

⁴⁸See *Nemont Telephone Cooperative, Inc., Missouri Valley Communications, Inc., Reservation Telephone Cooperative and Citizens Telecommunications Company of North Dakota*, Order, 18 FCC Rcd 838, 849, para. 28 (WCB 2003); *Dickey Rural Telephone Cooperative, Dickey Rural Access, Inc., Polar Telecommunications, Inc., Red River Rural Telephone Association, Red River Telecom, Inc. and Citizens Telecommunications Company of North Dakota*, Order, 17 FCC Rcd 16881, 16892, para. 29 (WCB 2002) (*Dickey Rural Order*).

⁴⁹See *BPS Telephone Co. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, AAD No. 95-67, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 13820, 13824 (Acc. Aud. Div. 1997). See also *Dumont Telephone Company, Inc. and Universal Communications, Inc., Request for Extraordinary Relief*, AAD 96-94, Memorandum Opinion and Order, 13 FCC Rcd 17821 (Acc. Saf. Div. 1998) (waiver granted to Dumont Telephone Company, Inc. and Universal Communications, Inc., which had approximately 1,544 access lines); *Petitions for Waiver Filed by Accent Communications, et al.*, AAD No. 95-124, Memorandum Opinion and Order, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996) (waiver granted to Mobridge Telecommunications Company, which had approximately 2,400 access lines); *National Utilities, Inc. and Bettles Telephone Co., Inc. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Report and Order, 8 FCC Rcd 8723 (Comm. Car. Bur. 1993) (waiver granted to National Utilities, which had 2,350 access lines, and Bettles, which had 50 access lines); *Newcastle Telephone Co. Petition for Waiver of Section 69.605(c)*, AAD No. 90-18, Memorandum Opinion and Order, 7 FCC Rcd 2081 (Comm. Car. Bur. 1992) (waiver granted to small company with 1,550 access lines, two exchanges).

⁵⁰See Part 69 Petition at 1. Direct Communications clarified in its supplemental filing that it is seeking average schedule status for both universal service support and interstate access settlements. See Supplemental Part 69 Petition.

⁵¹Part 69 Petition at 9.

⁵²See, e.g., 47 C.F.R. Parts 32, 36, 54, and 64.

lines were added to the Polar study area's existing 1,614 lines (2,249 lines total) and 1,028 lines were added to the Red River study area's existing 1,745 lines (2,773 lines total).⁵³ In the *Alpine Order*, the Commission allowed the Clarksville study area to remain in average schedule status after the acquisition of 931 lines to its existing 1,926 lines (2,857) lines total.⁵⁴ The resultant Polar, Red River, and Clarksville study areas are similar in size to Direct Communications' new study area. In these proceedings, we found that the high cost of completing cost studies relative to the carriers' small size establishes special circumstances that warrant granting their requests for a waiver of section 69.605(c).⁵⁵ We find similarly in this proceeding that the high cost of completing cost studies relative to Direct Communications' small size establishes a special circumstance for granting it average schedule status.

22. We find an additional special circumstance to grant average schedule status. Because Direct Communications is acquiring lines and facilities that were operated by a telephone company with accounting data that was not maintained in accordance with Commission rules, Direct Communications effectively must create a recordkeeping system that will be in accordance with Commission requirements. As an average schedule company, Direct Communications will not be required to keep the same level of detailed records as a cost-based regulated company. For the reasons provided above, we therefore find that Direct Communications' requested waiver of section 69.605(c) of the Commission rules is in the public interest and should be granted.

V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, .291, and 1.3, that the petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Direct Communications Cedar Valley, LLC and Qwest Corporation on November 2, 2004, IS GRANTED, as described herein.

24. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 69.2(hh) of the Commission's rules, 47 C.F.R. § 69.2(hh), filed by Direct Communications Rockland, Inc. and Direct Communications Cedar Valley, LLC on November 2, 2004, IS GRANTED, as described herein.

25. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that a waiver of the definition of incumbent LEC in Part 36 and section 54.5 of the Commission's rules, 47 C.F.R. Part 36 and § 54.5, IS GRANTED, to Direct Communications Rockland, Inc. and Direct Communications Cedar Valley, LLC, as described herein.

26. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that a waiver of the

⁵³See *Dickey Rural Order*, 17 FCC Rcd at 16893, para. 31.

⁵⁴See *Petitions for Waiver Filed by Alpine Communications et al. Concerning Sections 61.41(c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 12 FCC Rcd 2367, para. 15 (Acc. Aud. Div. 1997).

⁵⁵*Id.*

October 1, 2005 filing deadline in section 54.301(b) of the Commission's rules, the October 1, 2005 filing deadline in section 54.314(d) of the Commission's rules, and the March 31, 2005 and July 31, 2005 filing deadlines in section 54.903(a) of the Commission's rules, 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a), IS GRANTED, to Direct Communications Rockland, Inc. and Direct Communications Cedar Valley, LLC, as described herein.

27. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 69.605(c) of the Commission's rules, 47 C.F.R. § 69.605(c), filed by Direct Communications Rockland, Inc. and Direct Communications Cedar Valley, LLC on November 2, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau