

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

In the Matter of)
Partner Communications Cooperative)
and)
Iowa Telecommunications Services, Inc., d/b/a) CC Docket No. 96-45
Iowa Telecom)
Joint Petition for Waiver of the Definition of)
"Study Area" Contained in Part 36, Appendix-)
Glossary of the Commission's Rules)
Petition for Waiver of Sections 69.3(e)(11) and)
69.605(c) of the Commission's Rules)

ORDER

Adopted: April 27, 2006

Released: April 27, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we conditionally grant a joint request from Partner Communications Cooperative (Partner) and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. This waiver will permit Iowa Telecom to remove four exchanges comprising approximately 2,030 lines from its Iowa Telecom-North study area. This waiver also will permit Partner to add those lines to its existing Iowa study area.

1 See 47 C.F.R. Part 36 App. See also Partner Communications Cooperative and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, 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 69.3(e)(11) and 69.605(c) of the Commission's Rules, CC Docket No. 96-45 (filed June 14, 2004) (Petition). On June 28, 2004, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition for waivers. See Domestic Section 214 Application Filed for Transfer of Control of the Baxter, Melbourne, Rhodes, and State Center (Iowa) Exchanges, WC Docket No. 04-231, Partner Communications Cooperative and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom Seek Waiver of the Study Area Boundary Freeze as Codified in Part 36 and Waivers of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 11512 (rel. June 28, 2004). No comments were filed in this proceeding. We note that the Bureau has granted transfer of control of the exchanges. See Wireline Competition Bureau Grants Consent for Acquisition of Local Exchange Assets of Iowa Telecom by Partner, WC Docket No. 04-231, Public Notice, 19 FCC Rcd 19515 (2004).

2 Partner is acquiring the Baxter, Melbourne, Rhodes, and State Center exchanges from Iowa Telecom. See Petition at 2.

2. Partner owns and operates, as an interstate access average schedule incumbent local exchange carrier (LEC), approximately 1,488 access lines in two exchanges in the state of Iowa. Partner also operates 314 access lines, as a competitive LEC, in the same territory of two of the four exchanges it is acquiring from Iowa Telecom. Iowa Telecom is an interstate access price cap incumbent LEC that owns and operates approximately 260,000 access lines in three study areas that include 294 exchanges in the state of Iowa.³ The Iowa Telecom study area at issue in this proceeding is Iowa Telecom-North.⁴ Partner intends to transfer its competitive LEC lines within Iowa Telecom's service area to Partner's incumbent LEC operations following the completion of the transaction.⁵

3. We also grant Partner's request for waiver of section 69.3(e)(11) of the Commission's rules so that Partner can include the acquired exchanges in the National Exchange Carrier Association (NECA) common line tariff upon acquisition.⁶ Moreover, we find that the public interest would not be served by allowing Partner to continue operating as an average schedule company after the acquisition from Iowa Telecom and after adding Partner's competitive LEC lines to its incumbent LEC operations. Therefore, we deny Partner's request for a waiver of section 69.605(c) of the Commission's rules.⁷ Finally, we dismiss as moot Partner's request for waiver of section 61.41(c) of the Commission's rules to continue operating under rate-of-return regulation after it acquires the exchanges from Iowa Telecom.⁸

4. Generally, the Commission's rules may be waived for good cause shown.⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ 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.

II. STUDY AREA WAIVER

A. Background

5. A study area is a geographic segment of an incumbent LEC's telephone operations. The Commission froze all study area boundaries effective November 15, 1984, to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support.¹² A carrier must therefore apply to the Commission for a waiver of the study area boundary

³ See Petition at 3.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ 47 C.F.R. § 69.3(e)(11).

⁷ 47 C.F.R. § 69.605(c).

⁸ See 47 C.F.R. § 61.41(c).

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹¹ *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.

¹² See *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.

freeze if it wishes to sell or purchase additional exchanges.¹³

6. Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost loop support and local switching support for which the acquired exchanges were eligible prior to their transfer.¹⁴ Section 54.305(b) is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.¹⁵ Iowa Telecom currently does not receive high-cost loop support or local switching support.

7. 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.¹⁶ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, we analyze whether a study area waiver will result in an annual aggregate shift in an amount equal to or greater than one percent of high-cost support in the most recent calendar year.¹⁷ The Commission began applying the one-percent guideline in 1995 to limit the potential adverse impact of exchange sales on the overall fund, also recognizing that, because high-cost loop support is capped, an increase in the draw of any fund recipient necessarily reduces the amounts that other LECs receive from the fund.¹⁸ After the Commission adopted section 54.305, it continued to apply the one-percent guideline to determine the

¹³ *Part 67 Order* at para. 1.

¹⁴ 47 C.F.R. § 54.305(b). Carriers' acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism, which allows an acquiring carrier to receive support for new investments in acquired lines. 47 C.F.R. § 54.305(d). Moreover, carriers acquiring exchanges may be eligible to receive Interstate Common Line Support (ICLS), which is not subject the limitations set forth in section 54.305(b). See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166*, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, Report and Order, and Report and Order, 16 FCC Rcd 19613, 19667-69, paras. 155-57 (2001), *recon. pending*.

¹⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43, para. 308 (1997) (subsequent history omitted). For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's high-cost support mechanism for non-rural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any of its other exchanges. Rural carriers receive high-cost loop support based on the extent to which their reported average cost per loop exceeds 115 percent of the nationwide average cost per loop. See 47 C.F.R. §§ 36.601-.631. The mechanism for non-rural carriers calculates support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309.

¹⁶ 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, para. 5 (1995) (*PTI/Eagle Order*).

¹⁷ See *id.* at 1774, paras. 14-17. See also *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the 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).

¹⁸ See *PTI/Eagle Order* at 1773, para. 13.

impact on the universal service fund in light of the adoption of safety valve support and ICLS.¹⁹

B. Discussion

8. We find that the pertinent facts in the instant proceeding are identical to those contained in the Commission's recently released order conditionally granting a joint study area waiver request of Heart of Iowa and Iowa Telecom.²⁰ For the same reasons set forth in the *Heart of Iowa Order* and subject to the condition mentioned below,²¹ 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 to permit Iowa Telecom to alter the boundaries of its existing Iowa Telecom-North study area by removing the four exchanges that it is transferring to Partner. We also find that, subject to the condition described below, good cause exists to permit Partner to add these exchanges to its existing study area. We conclude that the petitioners have satisfied the three-prong standard that the Commission applies to determine whether a waiver is warranted. In making this assessment, we have considered the effect of Partner converting its competitive LEC lines to its incumbent LEC operations after the transfer of the 2,030 lines from Iowa Telecom is completed.

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. With regard to the 2,030 lines that Iowa Telecom proposes to transfer to Partner, section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support to the same per-line levels of support that Iowa Telecom-North received prior to the transfer.²² Iowa Telecom-North has not been eligible for high-cost loop support or local switching support for the 2,030 access lines at issue. Therefore, Partner will not receive such support for the 2,030 lines it acquires from Iowa Telecom. Pursuant to Commission rules, Partner may be eligible for safety valve support for investments in the acquired lines. We have no reason, however, to believe that this amount would significantly increase the high-cost fund, and certainly would fall well short of the one percent threshold.²³

10. Partner intends to transfer its competitive LEC operations within the acquired exchanges to its incumbent LEC operations after this transaction is completed.²⁴ Consistent with the precedent established by the Commission in the *Heart of Iowa Order*, we allow Partner to transfer its existing competitive lines to Partner's newly configured incumbent LEC study area subject to the conditions set forth below. These competitive LEC lines currently do not receive high-cost loop support or local switching support because Iowa Telecom-North is not eligible for such support in the exchanges at issue. To prevent regulatory distortions and consistent with the intent of section 54.305, we find that these competitive LEC lines should be treated, for universal service purposes, in the same manner as the 2,030 lines acquired from Iowa

¹⁹ See *supra* n.14.

²⁰ See *Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, 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 69.3(e)(11) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Order, FCC 06-29 (rel. March 15, 2006) (*Heart of Iowa Order*).

²¹ See *infra* para. 11.

²² See 47 C.F.R. § 54.305(b).

²³ In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only 2,030 access lines. Moreover, safety valve support is capped at 50 percent of any positive difference between a rural carrier's calculated high-cost loop support for the transferred exchanges and the index year amount. See 47 C.F.R. § 54.305(d). Also, the total amount of safety valve support available to rural carriers is capped at five percent of annual high-cost loop support available to rural carriers in any particular year, thereby providing an additional limitation on the amount of safety valve support available to carriers. See 47 C.F.R. § 54.305(e).

²⁴ Petition at 4.

Telecom-North.²⁵

11. Approval of this study area waiver is conditioned on Partner treating its former competitive LEC lines as if these lines were acquired from an unaffiliated carrier and subject to the provisions of section 54.305. Moreover, our approval is effective only upon the merger of Partner's incumbent and competitive LEC operations.²⁶ Any new subscribers or lines that Partner adds within the boundaries of the acquired exchanges shall also be subject to the provisions of section 54.305 for universal service support purposes. We find that the application of section 54.305 to the former competitive LEC lines and to newly added lines will ensure that the universal service effects of this entire transaction will not have an adverse impact on the universal service fund.

12. Partner estimates that it will receive an additional \$157,066 annually in ICLS support after the acquisition of the 2,030 lines from Iowa Telecom, assuming the ICLS amount remains at its present level.²⁷ Based on the amount of ICLS support that Partner projects it will receive after acquiring Iowa Telecom's 2,030 lines, Partner may be eligible to receive approximately \$23,886 annually in ICLS support for its competitive LEC lines once Partner transfers those customers to its incumbent LEC operations.²⁸ We conclude that the amount of additional ICLS as a result of this transaction, in addition to any amounts it may be eligible to receive in safety valve support, will not have an adverse impact on the universal service fund.

13. To further ensure that this transaction is in the public interest, we direct Partner as part of its annual universal service data submissions, to file a schedule showing its methodology for excluding the costs associated with the acquired access lines and the access lines previously operated as a competitive LEC from the costs associated with its pre-acquisition exchanges.²⁹

14. *State Commission Position.* The state commission with regulatory authority over the transferred exchanges does not oppose the transfer. On June 23, 2004, the Iowa Public Utilities Board issued an order indicating that it does not object to the Commission granting this study area waiver.³⁰

15. *Public Interest Analysis.* We conclude that the public interest is served by a conditional waiver of the study area freeze rule. Partner states that it will provide Iowa Telecom's former customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. Partner intends to provide quality basic services to its acquired exchange

²⁵ See *Heart of Iowa Order* at para. 13, n.29. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11284, para. 97 (2001).

²⁶ We therefore direct Partner to notify the Bureau when it has merged its competitive LEC operations with its incumbent LEC operations.

²⁷ See Petition at 7.

²⁸ This estimate is based on Partner's projection that it will receive \$157,066 for 2,030 lines, or \$76.07 per line. ICLS support for the competitive LEC lines is estimated by multiplying \$76.07 by the number of Partner's competitive LEC lines ($\$76.07 \times 314 = \$23,866$). Partner's ICLS support will be subject to true-up once Partner files actual cost and revenue data.

²⁹ See 47 C.F.R. §§ 36.611, 54.301. See also *Heart of Iowa Order* at n.36.

³⁰ See Letter from Bradley K. Gillen, Counsel for Iowa Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 96-45 (filed January 9, 2006) (attaching Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom and Partner Communications Cooperative, Order Approving Joint Application for Discontinuance of Service, Authorizing Transfer of Certificate, and Granting Waiver, Docket Nos. SPU-04-15, WRU-04-21-0263, State of Iowa, Department of Commerce, Utilities Board (June 23, 2004)).

areas, improve the existing network where necessary, and expand the availability of advanced services.³¹ Partner also states that the local rates for transferred customers will be reduced.³² As the Commission found in the *Heart of Iowa Order*, we also find that permitting Partner to acquire Iowa Telecom's exchanges and transfer Partner's competitive operations into its incumbent LEC operations serves the public interest because Partner will be able to operate more efficiently in these exchanges.³³ We expect consumers to benefit from these efficiencies. The increased economies of scale will also permit Partner to deploy advanced services in the rural communities that it serves.³⁴ We conclude that Partner has demonstrated that the grant of this waiver request will serve the public interest.³⁵

III. WAIVER OF SECTION 69.3(e)(11)

A. Background

16. Under section 69.3 of the Commission's rules, annual access tariffs, including the tariffs filed by NECA on behalf of companies that participate in NECA's access tariffs, go into effect on July 1 of each year.³⁶ To minimize the complexity of administering NECA's common line pool, any change in NECA common line tariff participation resulting from a merger or acquisition of telephone properties is effective on the next annual access tariff filing effective date following the merger or acquisition.³⁷ Because the next annual access tariff filing effective date is July 1, 2006,³⁸ Partner would have to wait until that date to participate in NECA's access tariffs and would be required to file its own interstate tariff for the interim period. To avoid the burdens associated with filing its own tariff during this interim period, Partner has requested a waiver of section 69.3(e)(11) of the Commission's rules.³⁹ The waiver would enable Partner to include the acquired access lines in the NECA carrier common line tariff upon the closing date of its acquisition transaction with Iowa Telecom. Partner indicates that the inclusion of the small number of access lines that it is acquiring from Iowa Telecom in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation.⁴⁰ NECA has indicated that it has no objection to the inclusion of the acquired lines in its common line tariff.⁴¹ NECA has also indicated that it has no objection to including in such tariff the competitive LEC lines Partner intends to transfer to

³¹ See Petition at 8-9.

³² *Id.* at 8.

³³ See *Heart of Iowa Order* at para. 19.

³⁴ See Petition at 8-9.

³⁵ In the *Heart of Iowa Order*, the Commission expressed its concern regarding the elimination of a competitor in the Iowa Telecom-North study area. The Commission also stated that it expects study area waiver petitions filed after the effective date of the *Heart of Iowa Order* to include a strong public interest showing that the loss of competition in the acquired exchanges is outweighed by other public interest benefits. See *Heart of Iowa Order* at para. 11. We note that the instant petition was filed prior to the effective date of the *Heart of Iowa Order*.

³⁶ See 47 C.F.R. § 69.3(a).

³⁷ 47 C.F.R. § 69.3(e)(11). See *Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions*, CC Docket No. 89-2, Report and Order, 5 FCC Rcd 231, 248 (1989).

³⁸ See 47 C.F.R. § 69.3(a).

³⁹ See Petition at 15.

⁴⁰ *Id.*

⁴¹ See Letter from David Cosson, Counsel for Partner, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed July 20, 2004) (attaching letter from Richard A. Askoff, Deputy General Counsel, NECA, to David Cosson, Kraskin, Moorman & Cosson, LLC (dated July 16, 2004)).

its incumbent LEC operations upon completion of the transaction between Iowa Telecom and Partner.⁴²

B. Discussion

17. We find that Partner has demonstrated that special circumstances warrant a deviation from section 69.3(e)(11) of the Commission's rules and that it is in the public interest to grant Partner's waiver request. NECA indicates that it has "no objection to inclusion of the exchanges acquired by Partner from Iowa Telecom, including expenses, assets and revenues associated with Partner's former [competitive] LEC operations in the acquired exchanges."⁴³ Based on NECA's representation in its letter, we conclude that the inclusion of the acquired access lines and the former competitive LEC lines in the NECA carrier common line tariff represent a minimal increase in NECA common line pool participation. Also, we believe that it would be administratively burdensome for Partner to develop and file its own interstate tariff until July 1, 2006 for a relatively small number of access lines. Consequently, we find that Partner presents special circumstances to justify a waiver of section 69.3(e)(11). Moreover, we believe that a waiver of section 69.3(e)(11) will be in the public interest because, according to Partner, it will be able to devote additional resources to providing improved telecommunications services to the affected rural areas that, absent the waiver, may otherwise be spent preparing a tariff filing that will be effective for only a brief period of time until the next NECA access tariff period begins on July 1, 2006.⁴⁴ We therefore conclude that good cause exists to grant a waiver of section 69.3(e)(11) to Partner.⁴⁵

IV. AVERAGE SCHEDULE WAIVER

A. Background

18. In its Petition, Partner seeks a waiver of the definition of "average schedule company" in section 69.605(c) so that it may continue to operate as an average schedule company after acquiring the four exchanges from Iowa Telecom, which is a cost-based company, and adding those exchanges to its existing average schedule study area in Iowa.⁴⁶ The petitioner states that the Commission has previously granted waivers when small average schedule companies that sought to retain their average schedule status acquired access lines from price cap or cost-based regulated exchange carriers. Partner is seeking to add Iowa Telecom's 2,030 access lines to its existing average schedule study area in Iowa.⁴⁷ Partner argues that, absent a waiver, it would have to convert its existing exchanges to cost-based settlements, at an unduly burdensome expense.⁴⁸ Partner states that the Commission has previously granted similar waivers to existing average schedule companies that wished to retain their average schedule status.

19. Partner argues that granting its request for a waiver of the definition of average company would not create an imbalance in average schedule company study area size such as the Bureau found troubling in previous orders.⁴⁹ Partner also argues that it falls within the range of other average schedule companies that the Bureau found did not have sufficient resources or expertise to justify conversion of

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *See* Petition at 15.

⁴⁵ Our finding will not become effective until Partner's competitive LEC lines become incumbent LEC lines.

⁴⁶ *See* Petition at 9. *See also Heart of Iowa Order* at paras. 22-23 (providing background on average schedule and cost companies).

⁴⁷ *See* Petition at 11.

⁴⁸ *Id.* According to Partner, it would spend approximately \$25,000 in annual recurring costs and \$20,000 in non-recurring costs to perform the cost studies. *Id.* at 12.

⁴⁹ *See* Petition at 13.

their average schedule status.⁵⁰ Partner contends that after the purchase it will remain one of the smaller average schedule carriers, stating that its newly configured study area of 3,832 lines would be smaller than 46 percent of all average schedule companies.⁵¹

B. Discussion

20. We deny Partner's petition for waiver of the definition of "average schedule company" in section 69.605(c). As the Bureau has previously stated, section 69.605(c) was premised on a policy determination "that exchange carriers which have the financial resources and expertise to conduct cost studies without undue hardship should be required to measure the actual costs they incur in providing interstate service."⁵² The Bureau has also noted that section 69.605(c) serves to prevent an increase in the number of lines subject to average schedule treatment.⁵³ The Bureau has granted waivers to certain small exchange carriers that lacked the resources to operate on a cost-study basis.⁵⁴ The Bureau has declined to permit a waiver on this ground, however, when a significant number of the requesting company's lines were previously operated on a cost basis or were subject to price caps, or when a waiver would add too greatly to the number of lines that settle on an average schedule basis.

21. As we noted above in our study area waiver discussion, it is appropriate to consider Partner's total operations (*i.e.*, competitive LEC and incumbent LEC operations) in the context of Partner's waiver requests, including its requested waiver of section 69.605(c).⁵⁵ In doing so, we find that the impact of Partner acquiring 2,030 lines that were subject to price caps and Partner converting its 314 competitive LEC lines to incumbent LEC status weighs against the grant of a waiver. The acquired lines plus Partner's competitive LEC lines more than doubles Partner's size. Based on the data included in the Petition, Partner's newly configured study area will consist of 3,832 lines. As explained below, Partner's total operations show that it has the financial resources and expertise to conduct cost studies without undue hardship.

22. Partner relies on the *Dickey Rural Order*, the *All West Order*, and the *Alpine Order* in support of its petition to retain average schedule status after acquiring Iowa Telecom's 2,030 lines.⁵⁶ We find that

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See *NebCom, Inc. Petition for Waiver of Sections 61.41(c)(2) and 69.605(c) of the Commission's Rules*, AAD File No. 97-50, Order, 13 FCC Rcd 4487, 4492, para. 13 (Acc. Aud. Div. 1998) (*NebCom Order*).

⁵³ *Id.*

⁵⁴ See, e.g., *Newcastle Telephone Co. Petition for Waiver of Section 69.605(c)*, AAD No. 90-18, Memorandum Opinion and Order, 7 FCC Rcd 2081 (1992) (waiver granted to small company with 1,550 access lines, two exchanges); *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 (1993) (waiver granted to National Utilities, which had 2,350 access lines, and Bettles, which had 50 access lines); *Papago Tribal Utility Authority Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order, 2 FCC Rcd 6631 (1987) (waiver granted to small company serving fewer than 400 lines in a 700 square mile area and lacking operational expertise).

⁵⁵ See also *Heart of Iowa Order* at para. 27.

⁵⁶ See Petition at 10 (citing *Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (2002) (*Dickey Rural Order*); *All West Communications, Inc., et al., Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c), 61.41(d) and 69.3(e)(11)*, Order, 16 FCC Rcd 4697 (2001) (*All West Order*); *Petitions for Waiver Filed by Alpine Communications et al., Concerning 61.41(c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and*

(continued....)

these decisions do not support granting Partner's request in light of Partner's size after the acquisition and its intent to transfer 314 lines competitive LEC lines to its incumbent LEC operations. In the *Dickey Rural Order*, the Bureau approved continued average schedule status when 635 lines were added to the Polar study area's existing 1,614 lines and 1,028 lines were added to the Red River study area's existing 1,745 lines.⁵⁷ In the *All West Order*, the Bureau approved continued average schedule status when Manti Telephone Company and Skyline Telecom acquired 1,887 lines and 1,407 lines, respectively.⁵⁸ In the *Alpine Order*, the Bureau allowed the Clarksville study area to remain in average schedule status after the acquisition of 931 lines which were added to its existing 1,926 lines.⁵⁹ In all of the proceedings cited by Partner, the resultant study areas were smaller than the resultant Partner study area after the transfer of the 2,030 lines and the inclusion of the 314 former competitive LEC lines.

23. Examination of the size of other cost-based study areas also weighs against the petitioner's claim that it is unduly burdensome for a study area with approximately 3,800 lines to settle on a cost basis. We found that 397 of the 977 existing cost-based study areas (40 percent) are smaller than Partner's post-transaction study area of 3,800 lines.⁶⁰ Because there are a large number of cost-based study areas that are smaller than Partner's post-transaction study area, Partner's size does not suggest that it would experience undue difficulty in preparing annual cost studies. Our action on Partner's request is guided by our policy preference that incumbent LECs settle on a cost basis whenever possible.⁶¹

24. We reject the petitioner's assertion that the burden of conducting the initial cost studies will negatively affect its subscribers.⁶² Partner tentatively estimates that it would incur approximately \$25,000 in annual recurring costs plus a one-time cost of \$20,000 to develop cost studies for Partner.⁶³ The Commission noted in the *Heartland Order* that carriers may assign the entire cost of their initial cost study to the interstate jurisdiction, with recovery from the NECA pooling process, which in turn recovers its costs through access charges paid by interexchange carriers nationwide.⁶⁴ Accordingly, there should be no discernible negative impact on the petitioner's subscribers from our denial of the requested waiver. We conclude that the requested waiver would convert an unacceptably large number of access lines to average schedule settlements and that Partner's study area after the conclusion of the transaction is large enough to conduct cost studies without undue administrative burden.

25. We will, however, grant a temporary waiver of section 69.605(c) in order to allow Partner time to transition to cost-based access settlements. We recognize that modifications to Partner's record-keeping systems will be necessary to facilitate cost-based settlements and we find that Partner should be permitted a reasonable amount of time to accomplish the transition to cost-based settlements. Accordingly, Partner shall not be required to calculate its interstate access settlements based on actual costs before January 1,

(...continued from previous page)

the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion & Order, 12 FCC Rcd 2367 (1997) (*Alpine Order*)).

⁵⁷ See *Dickey Rural Order*, 17 FCC Rcd at 16893, para. 31.

⁵⁸ See *All West Order*, 16 FCC Rcd at 4710, para. 27.

⁵⁹ See *Alpine Order*, 12 FCC Rcd at 2374, para. 15.

⁶⁰ See Universal Service Fund 2005 Submission of 2004 Study Results by the National Exchange Carrier Association, Inc. (filed Oct. 1, 2005).

⁶¹ See *NebCom Order*, 13 FCC Rcd at 4492, para. 13.

⁶² See Petition at 12.

⁶³ *Id.*

⁶⁴ See *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, 13667, para. 12 (1999).

2007. Beginning January 1, 2007, Partner must calculate its interstate access settlements on an actual cost basis.

V. REQUEST TO CONTINUE AS RATE-OF-RETURN COMPANY

26. Partner requested a waiver so that it could continue as a rate-of-return company after it acquired lines from Iowa Telecom.⁶⁵ The Commission's modification of section 61.41, and our decision in this Order to deny Partner's request to continue to operate as an average schedule company, renders moot the need for a waiver of section 61.41(c)(2).⁶⁶ Therefore, we dismiss without prejudice Partner's request for waiver of section 61.41(c)(2).

VI. OTHER MATTERS

27. Section 61.45(d) of the Commission's rules grants it discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.⁶⁷ Accordingly, we require Iowa Telecom to adjust its price cap indices to reflect the removal of the transferred access lines from its Iowa Telecom-North study area.

28. On May 11, 2001, the Commission adopted an order requiring incumbent LECs to freeze, on an interim basis, the Part 36 jurisdictional separations factors beginning July 1, 2001.⁶⁸ The Commission has addressed how an incumbent LEC converting from average schedule status to cost-based status shall calculate its frozen separations factors in its *Separations Freeze Order*.⁶⁹ Partner, upon conversion to cost-based status, is required to calculate its jurisdictional separations factors pursuant to the *Separations Freeze Order* and the Commission's rules.⁷⁰

VII. ORDERING CLAUSES

29. 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, 0.291, 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 Partner Communications Cooperative and Iowa Telecommunications Services, Inc. on June 14, 2004, IS CONDITIONALLY GRANTED, as described herein.

30. 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 69.3(e)(11) of the Commission's rules, 47 C.F.R. § 69.3(e)(11), filed by Partner Communications Cooperative on June 14, 2004, IS GRANTED, as described herein.

⁶⁵ See Petition at 2, n.2.

⁶⁶ See *Heart of Iowa Order* at paras. 35-36 (providing background on the rule change). Had we granted Partner's waiver request seeking average schedule status, Partner would have needed a waiver in order to remain a rate-of-return carrier because section 61.41(e) provides that the acquired lines may not be subject to average schedule settlements. 47 C.F.R. § 61.41(e).

⁶⁷ See 47 C.F.R. § 61.45(d).

⁶⁸ See generally *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*). See also 47 C.F.R. § 36.3(c) and (d).

⁶⁹ See *Separations Freeze Order*, 16 FCC Rcd 11382, 11407, para. 53.

⁷⁰ See 47 C.F.R. § 36.3(e).

31. 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 Partner Communications Cooperative on June 14, 2004, IS GRANTED until December 31, 2006, and is otherwise DENIED, as described herein.

32. 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, 1.3, 36.3(d) and 36.3(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, 36.3(d) and 36.3(e), that Partner Communications Cooperative SHALL ADJUST its jurisdictional separations factors to reflect this transaction, consistent with this Order.

33. 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, 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 61.41(c) of the Commission's rules, 47 C.F.R. § 61.41(c), filed by Partner Communications Cooperative on June 14, 2004, IS DISMISSED, without prejudice, as described herein.

34. 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, 1.3 and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 61.43, that Iowa Telecommunications Services, Inc. SHALL ADJUST its price cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

35. 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 Partner Communications Cooperative, SHALL SUBMIT, as part of its annual universal service data submissions to the fund administrator, a schedule showing the methodology for excluding costs associated with the acquired access lines and the lines previously operated as a competitive LEC, from costs associated with its pre-acquisition study area.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau