

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

In the Matter of
Federal-State Joint Board on Universal Service
Iowa Telecommunications Services, Inc.
and
Wellman Cooperative Telephone Association,
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 69.605(c) and 54.305 of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a joint request from Iowa Telecommunications Services, Inc. (Iowa Telecom) and Wellman Cooperative Telephone Association (Wellman) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. The study area waiver will permit Iowa Telecom to transfer a small area from Iowa Telecom's existing Williamsburg exchange, including one access line, to Wellman's existing Iowa study area. We also grant Wellman's request for a waiver of section 54.305 of the Commission's rules to allow Wellman to receive universal service high-cost support for the acquired line in the same manner as its existing lines. Lastly, we grant Wellman's request for a waiver of section 69.605(c) so that it may continue to operate as an average schedule company after the transfer.

1 47 C.F.R. Part 36 App.; Iowa Telecommunications Services, Inc. and Wellman Cooperative Telephone Association, 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 Section 69.605(c) of the Commission's Rules Regarding the Definition of "Average Schedule Company," and Section 54.305 of the Commission's Rules, CC Docket No. 96-45 (filed Oct. 16, 2009) (Petition).

2 Petitioners state that the subject area is one-quarter square mile and will result in the transfer of one access line from Iowa Telecom's Williamsburg exchange to Wellman's exchange. See Petition at 4.

3 47 C.F.R. § 54.305.

4 47 C.F.R. § 69.605(c).

## II. STUDY AREA WAIVER

### A. BACKGROUND

2. *Study Area.* A study area is a geographic segment of an incumbent local exchange carrier's (LEC) telephone operations. The Commission froze all study area boundaries effective November 15, 1984.<sup>5</sup> The Commission took this action to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of universal service high-cost support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer exchanges.<sup>6</sup>

3. *Universal Service Support.* 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 universal service high-cost support for which the acquired exchanges were eligible prior to their transfer.<sup>7</sup> This rule is meant to discourage a carrier from acquiring an exchange merely to increase its share of universal service high-cost support.<sup>8</sup>

4. *The Petition for Waiver.* Iowa Telecom and Wellman filed a joint petition for a waiver of the study area boundary freeze on October 16, 2009.<sup>9</sup> On December 22, 2009, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.<sup>10</sup> The petitioners state that the area to be transferred from Iowa Telecom's Williamsburg exchange to Wellman's only exchange is a small area, covering only one-quarter square mile.<sup>11</sup> The petitioners state that Iowa Telecom currently provides service to approximately 2,300 access lines in the Williamsburg exchange, of which only one access line serving one customer is involved in the proposed transfer.<sup>12</sup> Wellman has provided service to that customer located in Iowa Telecom's Williamsburg exchange on an adjacent exchange basis and that

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<sup>5</sup> 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*); 47 C.F.R. Part 36 App.

<sup>6</sup> *Part 67 Order*, 50 Fed. Reg. at 939, para. 1.

<sup>7</sup> 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support and local switching support. A carrier's acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism. See 47 C.F.R. § 54.305(d)-(f). A carrier acquiring exchanges also may be eligible to receive interstate common line support, which is not subject to the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

<sup>8</sup> 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).

<sup>9</sup> Iowa Telecom operates, as an incumbent LEC, approximately 203,000 access lines in three study areas in the state of Iowa. Wellman operates, as an incumbent LEC, approximately 1,300 access lines in one study area in Iowa. See Petition at 3-4.

<sup>10</sup> See *Comment Sought on the Joint Petition of Iowa Telecommunications Services, Inc. and Wellman Cooperative Telephone Association to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules and Sections 54.305 and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 14623 (Wireline Comp. Bur. 2009). The National Telecommunications Cooperative Association filed comments in support of the petition.

<sup>11</sup> See Petition at 4. The physical boundary of the area to be transferred is shown at Exhibit C of the Petition. *Id.* at Exhibit C.

<sup>12</sup> See *id.* at 3-4.

customer has requested an additional access line from Wellman.<sup>13</sup> The Iowa Utilities Board has issued an order approving the transfer of the subject area.<sup>14</sup>

5. *Standard for Waiver.* In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission applies a three-part standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfer must be in the public interest.<sup>15</sup> In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission analyzes 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.<sup>16</sup>

## B. Discussion

6. For the reasons discussed below, we conclude that the petitioners have satisfied the three-part standard that the Commission applies to determine whether a waiver is warranted. We therefore 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 the petitioners to exchange territories as described above.<sup>17</sup>

7. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected by granting this study area waiver. Section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support for acquired lines to the same per-line support levels for which they were eligible prior to transfer.<sup>18</sup> As discussed below, we grant Wellman a waiver of section 54.305 of the Commission's rules, but we find that Wellman will receive less high-cost loop support for that line as a result of the waiver.<sup>19</sup> Therefore, we find that granting the study area waiver and a waiver of section 54.305 will not adversely affect the universal service fund.<sup>20</sup>

<sup>13</sup> See *id.* at 4.

<sup>14</sup> See *id.* at Exhibit B (attaching *Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, and Wellman Cooperative Telephone Association, Order Approving Changes to Exchange Boundary Maps*, Docket No. SPU-2009-0004 (TF-2009-0056, TF-2009-0057) (Iowa Util. Bd., May 19, 2009) (Iowa Order)).

<sup>15</sup> 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*).

<sup>16</sup> 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).

<sup>17</sup> Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> 47 C.F.R. § 54.305(b).

<sup>19</sup> See *infra* para. 10 & note 29.

<sup>20</sup> See, e.g., *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2 (hh) of the Commission's Rules*, CC Docket No. 96-45, Order, 19 FCC Rcd 6761 (2004); *Qwest Corporation, Pine Telephone Systems, Inc., Oregon Telephone Corporation, Qwest Corporation, Pine Telephone,*

(continued....)

8. *Position of State Commission.* The Iowa Utilities Board has issued an order approving the transfer.<sup>21</sup> Thus, we find that the state commission with regulatory authority over the transferred area does not oppose the transfer.

9. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver of the study area freeze to permit Iowa Telecom to transfer the one-quarter square mile area to Wellman as described. Wellman represents that grant of the waiver will result in the provision of high-quality telecommunications service to a rural consumer by the consumer's carrier of choice.<sup>22</sup> Based on the totality of these circumstances, we conclude that the transfer of the one-quarter square mile area will serve the public interest.<sup>23</sup>

### III. SECTION 54.305 WAIVER

10. The Commission has issued only two waivers of section 54.305 of the Commission's rules. In both instances, the incumbent LECs were tribally-owned carriers operating in areas with high-costs, low telephone penetration levels, and large populations at or below the poverty line.<sup>24</sup> In all other instances, the Commission has denied requests for waivers of section 54.305 because the requesting parties did not show that special circumstances warranted the requested waivers.<sup>25</sup>

11. We find in this instance, however, that there is good cause to waive section 54.305 of the Commission's rules. We agree with Wellman that a waiver of section 54.305 of the Commission's rules is warranted because the proposed transaction involves the transfer of only one access line.<sup>26</sup> In addition,

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*Inc., Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 24 FCC Rcd 4986 (Wireline Comp. Bur. 2009).

<sup>21</sup> See *supra* note 14.

<sup>22</sup> Petition at 9.

<sup>23</sup> The Bureau has granted the acquisition of certain assets of Iowa Telecom by Wellman. See *Notice of Domestic Section 214 Authorized Granted*, WC Docket No. 09-195, Public Notice, 24 FCC Rcd 14475 (Wireline Comp. Bur. 2009).

<sup>24</sup> See *Mescalero Apache Telecom, Inc., Request for Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45, Order, 16 FCC Rcd 1312 (2001) (*Mescalero Order*); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9227 (Wireline Comp. Bur. 2006) (*Sacred Wind Order*). In the *Mescalero Order*, the Commission concluded that Mescalero, a newly-formed, tribally-owned carrier, demonstrated that a deviation from the general rule was warranted because, among other things, Mescalero intended to bring additional service to a reservation where 52 percent of the residents on the reservation lacked telephone service. *Mescalero Order*, 16 FCC Rcd at 1316-18, paras. 7-10. Similarly, in the *Sacred Wind Order*, the Bureau concluded that a waiver of section 54.305 was warranted because Sacred Wind intended to serve some areas that have no telephone service at all and that more than 50 percent of the population in the proposed service area have income levels at or below the poverty level. *Sacred Wind Order*, 21 FCC Rcd at 9236-37, paras. 22-23.

<sup>25</sup> The Commission has emphasized on several occasions that carriers seeking a waiver of section 54.305 must bear a heavy burden and that routine waivers of the rule will not be granted. See, e.g., *Federal-State Joint Board on Universal Service, Valor Telecommunications of Texas, L.P. Request for Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 782, 786 para. 12 (2005) (denying Valor's request for a waiver of section 54.305); *Mescalero*, 16 FCC Rcd at 1320, para. 13; *United Telephone Company of Kansas, United Telephone of Eastern Kansas, and Twin Valley Telephone, Inc., 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 Section 69.3(e)(11) of the Commission's Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10111, 10117, para. 15 (Wireline Comp. Bur. 2006) (denying Twin Valley's request for waiver of section 54.305).

<sup>26</sup> See Petition at 8.

a waiver would permit Wellman to treat the acquired line in the same manner as the rest of its lines.<sup>27</sup> As discussed below, Wellman will continue to operate as an interstate average schedule company and will receive high-cost loop support and local switching support pursuant to statistical formulas developed by NECA and approved by the Commission.<sup>28</sup> As a result, Wellman cannot manipulate its costs to maximize universal service support for the acquired line, i.e., support will be based on the results of the Commission approved average schedule formulas.<sup>29</sup> We conclude it would serve the public interest to grant Wellman a waiver of section 54.305 in this special circumstance where only one line is being transferred and support for that line will be based on the average schedule formulas.

#### IV. AVERAGE SCHEDULE WAIVER

##### A. Background

12. Incumbent LECs that participate in NECA pools collect access charges from interexchange carriers at the rates contained in tariffs filed by NECA.<sup>30</sup> 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.<sup>31</sup> 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 common carrier 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.<sup>32</sup> Average schedule companies thus are able to avoid the administrative and financial burdens of performing interstate cost studies.

13. 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."<sup>33</sup> 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 to average schedule status without a waiver of the Commission's rules.<sup>34</sup> 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

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<sup>27</sup> See *id.*

<sup>28</sup> See *infra* para. 15.

<sup>29</sup> Bureau analysis of the effect of waiving section 54.305 with respect to the additional line indicates that Wellman will receive less high-cost loop support. Without a waiver of section 54.305, Wellman would receive \$27,833 annually in high-cost loop support. With the waiver of section 54.305, Wellman will receive \$27,668, which is \$165 less. See NECA 2010 Modification of the Average Schedule Universal Service High Cost Loop Support Formula, WC Docket No. 05-337, page 4 (filed Aug. 27, 2009); *National Exchange Carrier Association, Inc. and Universal Administrative Company 2010 Modification of Average Schedule Universal Service Formulas*, CC Docket No. 05-337, Order, 24 FCC Rcd 14748 (Wireline Comp. Bur. 2009) (approving the average schedule high-cost loop formula for 2010).

<sup>30</sup> See 47 C.F.R. § 69.601.

<sup>31</sup> See 47 C.F.R. §§ 69.601-.612.

<sup>32</sup> See 47 C.F.R. § 69.606(a).

<sup>33</sup> 47 C.F.R. § 69.605(c).

<sup>34</sup> An 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).

compelling circumstances sufficient to warrant a special exception.<sup>35</sup> Accordingly, absent a waiver of section 69.605(c), an average schedule company acquiring lines from a cost-based company would be required to convert to operating as a cost-based company.<sup>36</sup> Our actions on requests for waiver of the definition of “average schedule company,” therefore, are guided by the principle that incumbent LECs should settle on a cost basis whenever possible without undue hardship.

14. Wellman seeks a waiver of the definition of “average schedule company” in section 69.605(c) of the Commission’s rules so that it may continue to operate as an interstate average schedule company after acquiring the access line from Iowa Telecom, which is an interstate cost-based company, and adding that line to its existing average schedule study area in Iowa.<sup>37</sup> Wellman states that a waiver is warranted because it currently operates as an average schedule company with only 1,286 lines, and after the transaction, its line count will increase by one to only 1,287 lines.<sup>38</sup>

#### **B. Discussion**

15. We find that good cause exists to grant Wellman’s request for waiver of section 69.605(c) of the Commission’s rules. The Commission has explained that the definition of “average schedule company” in section 69.605(c) was premised upon a policy determination that carriers with 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.<sup>39</sup> Based on the facts presented, we believe that Wellman would experience undue hardship if it were required to conduct cost studies solely because of the addition of one access line. We, therefore, grant Wellman’s request for waiver of section 69.605(c) of the Commission’s rules.

#### **V. ORDERING CLAUSES**

16. 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 joint petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Iowa Telecommunications Services, Inc. and Wellman Cooperative Telephone Association, Incorporated on October 16, 2009, IS GRANTED.

17. IT IS FURTHER 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 section 54.305 of the Commission's rules, 47 C.F.R. § 54.305, filed by Iowa Telecommunications Services, Inc. and Wellman Cooperative Telephone Association, Incorporated on October 16, 2009, IS GRANTED.

18. IT IS FURTHER 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 section 69.605(c) of the Commission's rules, 47 C.F.R. § 69.605(c), filed by Iowa

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<sup>35</sup> 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, 13662, para. 3 (1999) (*Heartland Order*).

<sup>36</sup> *Id.* at 13664-65, para. 7.

<sup>37</sup> See *Petition* at 11.

<sup>38</sup> *Id.* at 12.

<sup>39</sup> See *MTS and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, Memorandum Opinion and Order, 3 FCC 6642 (1986).

Telecommunications Services, Inc. and Wellman Cooperative Telephone Association, Incorporated on October 16, 2009, IS GRANTED.

19. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau