

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Developing a Unified Intercarrier Compensation) CC Docket No. 01-92
Regime)
Telapex, Inc. Petition for Waiver of Sections) WC Docket No. 17-252
51.909(a), 51.917(b)(1) and 51.917(b)(7) of the)
Commission's Rules to modify access rate bands)
and charges, and 2011 Base Period Revenue in)
connection with merger of affiliated study areas in)
Mississippi)
Venture Communications Cooperative Petition for) WC Docket No. 17-323
Waiver of Sections 51.909(a), 51.917(b)(1) and)
51.917(b)(7) of the Commission's Rules to modify)
access rate bands and charges, and 2011 Base)
Period Revenue in connection with merger of)
affiliated study areas in South Dakota)

ORDER

Adopted: December 11, 2018

Released: December 11, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,¹ we grant to the extent provided for herein the Petitions for Waiver filed by Telapex, Inc. (Telapex) and Venture Communications Cooperative

1 See e.g., Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief; Consolidated Communications Companies Tariff F.C.C. No. 2; Frontier Telephone Companies Tariff F.C.C. No. 10; Windstream Telephone Systems Tariff F.C.C. No. 7, Order, 27 FCC Rcd 15753 (2012) (2012 Average Schedule Conversion Order) (order approving a methodology for establishing initial interstate switched and special access rates for the study areas in new tariff filings in order to allow the requesting carriers to operate more efficiently post waiver); CenturyLink Petition for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 14-23, Order, 29 FCC Rcd 5140 (2014) (order allowing CenturyLink to establish a single interstate access tariff with blended switched and special access rates for three study areas and simultaneously allowing the three affiliates requesting the waiver to withdraw from the NECA pool).

(Venture) (collectively Petitioners),² each of which is merging its wholly owned rate-of-return study areas.³ The merging subsidiaries of each company currently charge one or more different switched access rates. In order to facilitate the mergers, we waive our rules to the extent necessary to allow the merged entities to charge uniform adjusted switched access rates and to combine the Base Period Revenue amounts of the merging entities. Based on the record before us, we find that grant of the unopposed waivers will serve the public interest by promoting increased productivity and efficiencies that result in cost savings for the companies, which will in turn benefit consumers by encouraging the companies to invest in broadband deployment.⁴

II. BACKGROUND

A. Intercarrier Compensation Reform

2. In the *USF/ICC Transformation Order*,⁵ the Commission capped reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.⁶ For rate-of-return carriers, the Commission adopted a recovery mechanism that allows incumbent local exchange carriers (LECs) to recover intercarrier compensation revenues reduced due to the intercarrier compensation reforms, up to an amount defined for each year of the transition, which is referred to as “Eligible Recovery.”⁷ A rate-of-return carrier may recover its Eligible Recovery each year from its end users through the Access Recovery Charge, subject to an annual cap.⁸ If the projected Access Recovery Charge revenues do not recover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in Connect America Fund – Intercarrier Compensation support.⁹

3. The calculation of a rate-of-return LEC’s Eligible Recovery begins with its Base Period Revenue.¹⁰ A rate-of-return carrier’s Base Period Revenue is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided

² See Telapex, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission’s Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Mississippi, WC Docket No. 17-252 (filed Sept. 19, 2017) (Telapex Petition); Venture Communications Cooperative Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission’s Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota, WC Docket No. 17-323 (filed Nov. 21, 2017) (Venture Petition).

³ A study area is the geographic territory of an incumbent local exchange carrier’s telephone operation. See 47 CFR Part 36 App.

⁴ *Wireline Competition Bureau Seeks Comment on Telapex, Inc. Petition for Waiver of the Commission’s Rules for Modifying Access Rate Bands and Charges and 2011 Base Period Revenue*, WC Docket No. 17-252, Public Notice, 32 FCC Rcd 7368 (WCB 2017); *Wireline Competition Bureau Seeks Comment on Venture Petition for Waiver of the Commission’s Rules for Modifying Access Rate Bands and Charges and 2011 Base Period Revenue*, WC Docket No. 17-323, Public Notice, 32 FCC Rcd 10114 (WCB 2017). No comments were received on either petition.

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) *aff’d*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁶ See 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17956-57, paras. 847, 850.

⁸ *Id.* at 17958, para. 852; 47 CFR § 51.917(e); 47 CFR § 51.917(d).

⁹ *Id.* at 17994-95, para. 918; 47 CFR § 51.917(f).

¹⁰ See 47 CFR § 51.917(b)(7).

during Fiscal Year (FY) 2011,¹¹ and the projected revenue requirement for interstate switched access services that the LEC provided during the 2011-2012 tariff period.¹² The Base Period Revenue for rate-of-return carriers was reduced by five percent initially and is reduced by an additional five percent in each year of the transition.¹³ A rate-of-return LEC's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question less, for each relevant year of the transition, the sum of (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.¹⁴ A rate-of-return LEC's Base Period Revenue is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.¹⁵

B. Commission Precedent Related to Merging Study Area Waivers

4. The Commission's rules for calculating Eligible Recovery are based on study area specific data, but do not address what adjustments may be necessary when study areas are merged. Because the Base Period Revenue of one of the merging study areas and the interstate revenue requirement portion of the Base Period Revenue of that carrier are study area specific, neither alone will equate to the Base Period Revenue and interstate revenue requirement for a merged study area. The interstate switched access rates being assessed frequently will differ between merging entities, meaning that each study area has a different rate and rate cap for one or more switched access services. The merged entity must assess a single access charge, requiring one or both of the rates being charged for a specific switched access rate element to be adjusted.¹⁶ The Commission has addressed the necessary adjustments through individual waiver proceedings to ensure compliance with the intent of its rules.¹⁷

5. In order to facilitate such mergers, the Commission has allowed merging rate-of-return carriers to add together the Base Period Revenues of the study areas and the interstate revenue requirement portion of the Base Period Revenues to establish a single Base Period Revenue and interstate revenue requirement component for the merged entity.¹⁸ This adjusted Base Period Revenue establishes the baseline for calculating Eligible Recovery of the entity serving the combined study areas going

¹¹ For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. See 47 CFR § 51.903(e).

¹² See 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

¹³ See 47 CFR § 51.917(b)(3).

¹⁴ See 47 CFR § 51.917(d).

¹⁵ *Id.*

¹⁶ 47 CFR § 69.3(e)(7).

¹⁷ See *Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Petition of Butler-Bremer Mutual Telephone Company, Inc. for a Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue in Connection with Merger of Affiliated Study Areas in Iowa; Petition of Panora Communications Cooperative and Prairie Telephone Company, Inc. for Waiver of Sections 51.909(a), 51.917(b)(1), 51.917(b)(2), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue Requirement and 2011 Base Period Revenue in Connection with Study Area Waivers in Iowa*, WC Docket Nos. 10-90, 15-118, 15-166; CC Docket No. 01-92, Order, 33 FCC Rcd 1152, at 1157-58, para. 16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions).

¹⁸ See *Butler-Panora Order*. See also *Connect America Fund; Federal-State Joint Board on Universal Service; Joint Petition for Waiver of the Definition of "Study Area" or the Appendix-Glossary of Part 36 of the Commission's Rules filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications; Winnebago Cooperative Telecom Association*, WC Docket No. 10-90, CC Docket No. 96-45, Order, 31 FCC Rcd 10683 at 10691, para. 27 (WCB 2016) (approving allocating Base Period Revenue amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

forward.¹⁹

6. The Commission has also used the waiver process to adjust the interstate switched access rate that the merged entity may assess. The Commission has waived the rate cap requirement to allow the carriers to develop a weighted composite rate for merging entities that do not participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff.²⁰ This allows some rates to increase, while other rates must be reduced.²¹ The new rate becomes the rate cap for the rate element in question.²² For carriers that participate in the NECA traffic-sensitive tariff, the Commission has used a comparable, although not identical, approach taking into account the NECA tariff's rate bands. Under rate banding, carriers are placed in a rate band with other carriers that have similar cost characteristics.²³ The Commission has granted waivers to allow NECA to place the consolidated study area in the rate band that most closely approximates the merged entities' cost characteristics.²⁴ The rate for that rate band then becomes the rate cap for the merged study area.

C. Petitioners' Requests

7. Telapex seeks a waiver of the Commission's rules, as necessary, to allow it to merge Mississippi study areas of its wholly-owned subsidiaries Franklin Telephone Company, Inc. (Franklin) and Delta Telephone Company, Inc. (Delta), both of which are cost companies that receive Alternative Connect America Cost Model support.²⁵ Telapex seeks to tariff rates for the merged entity in Rate Band 3 for Local Switching Service, Rate Band 7 for Dedicated Transport Service, and Rate Band 1 for Tandem Switching Service.²⁶ Telapex also seeks a waiver to combine Delta's and Franklin's 2011 interstate access revenue requirements and to combine the Base Period Revenues for the two study areas into a single Base Period Revenue for the merged study area.²⁷

8. Venture seeks a waiver of the Commission's rules, as necessary,²⁸ in conjunction with a merger of two wholly-owned study areas—"Venture" and "Venture fka Western"—in South Dakota that are "administered as cost companies receiving legacy support."²⁹ Venture seeks a waiver to allow it to tariff rates in Rate Band 1 for Local Switching Service and Rate Band 8 for Dedicated Transport Service

¹⁹ See *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

²⁰ *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15759-60, para. 16.

²¹ See *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

²² *Id.*; 47 CFR § 51.909(a).

²³ See *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

²⁴ See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

²⁵ Telapex Petition at 1-2. The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

²⁶ Telapex Petition at Exh. A. The Franklin study area is in Rate Band 3 for Local Switching Service, Rate Band 8 for Dedicated Transport Service, and Rate Band 1 for Tandem Switching Service. The Delta study area is in Rate Band 1 for Local Switching Service, Rate Band 7 for Dedicated Transport Service, and Rate Band 2 for Tandem Switching Service. *Id.* at 3.

²⁷ *Id.* at 3-4.

²⁸ The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

²⁹ Venture Petition at 2. "Western was acquired by Venture as a wholly-owned subsidiary corporation in July 2008, was subsequently merged into the surviving Venture entity in January 2015, and has operated under a single corporate cooperative structure since that time. However, the Venture fka Western SAC 391688 and Venture SAC 391680 have remained as separate study areas." *Id.*

for the merged entity.³⁰ Tandem Switching Service will remain in Rate Band 2 for the merged study area.³¹ Venture also seeks to combine the 2011 interstate access revenue requirements of the merging study areas and to combine the Base Period Revenues for the two study areas into a single Base Period Revenue for the merged study area.³²

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.³³ The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.³⁴ 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.³⁵

10. Consistent with precedent, we find that the merging of these study areas and the operations of the merging entities constitutes special circumstances that warrant a deviation from the general rule, and good cause exists to grant the petitions for waiver filed by Telapex and Venture. First, in each case, combining the merging carriers' Base Period Revenues and interstate revenue requirements reflects the merging of the two carriers' operations into a single operation and therefore is the appropriate base from which to begin calculating Eligible Recovery for the newly merged entities. The combined Base Period Revenues of the merging study areas and the combined revenues of the two study areas that will be subtracted from the Base Period Revenue of the merged entity maintained the appropriate relationship between the components used in calculating the Eligible Recovery of the merged entity.

11. Second, as participants in the NECA traffic-sensitive tariff, the merged carriers' local switching, dedicated transport, and tandem switching rates of the merging study areas will be included in rate bands reflecting comparable cost groupings.³⁶ After they merge, the carriers must charge a single rate for each type of rate element, and the combined operation of the merged carriers produces a cost characteristic of the newly merged entities that warrants one or more rates being included in different rate bands after the mergers. This will result in some traffic being assessed at a higher rate, while other traffic is assessed at a lower rate than it was prior to the merger.³⁷ We find the carriers' proposed rate band assignments to be reasonable.³⁸ These new rates will become the rate caps for the affected rate elements. This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*.³⁹ We recognize that, depending on the traffic mix, this may alter slightly the relative recovery between access revenues and Connect America Fund – Intercarrier Compensation support for Telapex and Venture. We find these minimal differences to be more than

³⁰ *Id.* at Exh. A. The Venture study area is in Rate Band 1 for Local Switching Service and Rate Band 8 for Dedicated Transport Service, while the Venture fka Western study area is in Rate Band 8 for Local Switching Service and Rate Band 10 for Dedicated Transport Service. *Id.* at 3.

³¹ *Id.* at Exh. A.

³² *Id.* at 3.

³³ 47 CFR § 1.3.

³⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁵ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁶ *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15765, para. 33.

³⁷ The use of a composite rate also involves some traffic being assessed a higher rate, while some traffic has lower rates. *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

³⁸ *See supra* paras. 7-8.

³⁹ *See Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

offset by the public interest benefits resulting from efficiencies gained from implementation of the mergers. We agree with Petitioners that the mergers will serve the public interest⁴⁰ by producing significant administrative cost savings and facilitating the Commission's goal of encouraging carriers to become more efficient and to increase productivity,⁴¹ which in turn will encourage investment in broadband deployment.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver filed by Telapex, Inc. on September 17, 2017 IS GRANTED.

13. IT IS FURTHER ORDERED, pursuant to sections 4(i), 5, 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver filed by Venture Communications Cooperative on November 21, 2017 IS GRANTED.

14. IT IS FURTHER ORDERED that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

⁴⁰ Telapex Petition at 4-5; Venture Petition at 4.

⁴¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.