

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

In the Matter of
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

Adopted: March 10, 2006

Released: March 15, 2006

By the Commission:

I. INTRODUCTION

1. In this Order, we conditionally grant a joint request from Heart of Iowa Communications Cooperative (Heart of Iowa) 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 three exchanges comprising approximately 815 lines from its Iowa Telecom-North study area. This waiver also will permit Heart of Iowa to add those lines to its existing Iowa study area.

1 See 47 C.F.R. Part 36 App. See also 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 (filed November 26, 2003) (Petition).

2 See Letter from Gregory J. Vogt, Counsel for Iowa Telecommunications Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed January 27, 2004) (clarifying that the Iowa Telecom study area at issue in this proceeding is Iowa Telecom-North).

3 Heart of Iowa is acquiring the Conrad, Eldora, and Steamboat Rock exchanges from Iowa Telecom. See Petition at 3.

2. Heart of Iowa owns and operates, as an interstate access average schedule incumbent local exchange carrier (LEC), approximately 2,487 access lines in seven exchanges in the state of Iowa. Heart of Iowa also operates 2,744 access lines, as a competitive LEC, in the same territory of the three exchanges it is acquiring from Iowa Telecom. Iowa Telecom is an interstate access price cap incumbent LEC that owns and operates approximately 257,000 access lines in three study areas that include nearly 300 exchanges in the state of Iowa.<sup>4</sup> Heart of Iowa intends to transfer its competitive LEC lines within Iowa's Telecom's service area to Heart of Iowa's incumbent LEC operations following the completion of the transaction. Because Heart of Iowa operates a competitive LEC within the boundaries of the exchanges it intends to acquire, and because it wants to transfer its competitive LEC access lines to its incumbent LEC operations, this petition presents a new issue that the Commission has not addressed in prior study area waiver orders.<sup>5</sup>

3. In analyzing the study area waiver request, we have considered the universal service fund impact of both the transfer of Iowa Telecom's 815 lines and Heart of Iowa's intended conversion of the competitive LEC lines. We grant the request on the condition that Heart of Iowa's competitive LEC lines will be treated as acquired incumbent LEC lines for the purpose of calculating universal service support. We also grant Heart of Iowa's request for waiver of section 69.3(e)(11) of the Commission's rules so that Heart of Iowa may include the acquired exchanges in the National Exchange Carrier Association (NECA) common line tariff upon acquisition.<sup>6</sup> The waivers granted herein are not effective until Heart of Iowa merges its competitive LEC operations with its incumbent LEC operations. We take this action to prevent differing regulatory treatment of Heart of Iowa's incumbent and competitive LEC operations at any time prior to the merger of incumbent and competitive LEC operations.

4. We find that the public interest would not be served by allowing Heart of Iowa to continue operating as an average schedule company after the acquisition from Iowa Telecom and after adding Heart of Iowa's competitive LEC lines to its incumbent LEC operations. Therefore, we deny Heart of Iowa's request for a waiver of section 69.605(c) of the Commission's rules.<sup>7</sup> Moreover, we dismiss as moot Heart of Iowa'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.<sup>8</sup>

## II. STUDY AREA WAIVER

### A. Background

5. *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.<sup>9</sup> 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

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<sup>4</sup> See Petition at 3.

<sup>5</sup> For several years, routine study area waivers and related waivers have been delegated to the Wireline Competition Bureau (Bureau) for resolution. We find, however, that the instant proceeding raises a new and novel issue that warrants examination and resolution at the Commission level.

<sup>6</sup> 47 C.F.R. § 69.3(e)(11).

<sup>7</sup> 47 C.F.R. § 69.605(c).

<sup>8</sup> 47 C.F.R. § 61.41(c).

<sup>9</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*) adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 C.F.R. Part 36 App.

Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.<sup>10</sup>

6. 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 high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.<sup>11</sup> Section 54.305(b) applies to high-cost loop support and local switching support.<sup>12</sup> Section 54.305(b) is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.<sup>13</sup> 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.<sup>14</sup> Iowa Telecom currently does not receive high-cost loop support or local switching support.

7. The Petition for Waiver. Heart of Iowa and Iowa Telecom filed a joint petition for a waiver of the study area boundary freeze and other related waivers on November 26, 2003. On December 19, 2003, the Bureau released a public notice seeking comment on the petition for waivers.<sup>15</sup> A study area waiver would permit Iowa Telecom to alter the boundaries of its Iowa Telecom-North study area by removing the three exchanges that it is transferring to Heart of Iowa. The waiver would also permit the exchanges to be added to Heart of Iowa's Iowa study area. As noted earlier, Heart of Iowa operates 2,744 competitive LEC access lines in the three exchanges it is acquiring from Iowa Telecom. Heart of Iowa, upon completion of the acquisition, intends to discontinue competitive LEC operations and transfer the

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<sup>10</sup> *Part 67 Order* at para. 1.

<sup>11</sup> 47 C.F.R. § 54.305(b). Carriers' acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism. *See* 47 C.F.R. § 54.305(d)-(f). Carriers acquiring exchanges also may be eligible to receive interstate common line support (ICLS) not subject the limitations set forth in section 54.305(b). *See* 47 C.F.R. § 54.902.

<sup>12</sup> Prior to July 1, 2004, section 54.305(b) also applied to long term support (LTS), which is described in section 54.303 of the Commission's rules. Since July 1, 2004, LTS has been discontinued for all carriers and, instead, has been merged into ICLS. *See* 47 C.F.R. §§ 54.303, 54.901. By operation of section 54.901, the elimination of LTS is offset by an increase in ICLS.

<sup>13</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>14</sup> 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 term "rural carrier" refers to an incumbent LEC that meets the definition of "rural telephone company" in section 3(37) of the Communications Act of 1934, as amended (Act). *See* 47 U.S.C. § 153(37). Both carriers in this proceeding are classified as rural telephone companies within the definition of "rural telephone company" in the Act. 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.

<sup>15</sup> *See Domestic Section 214 Application Filed for Transfer of Control of the Conrad, Eldora, and Steamboat Rock (Iowa) Exchanges*, WC Docket No. 03-249, *Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom Seek a 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, 18 FCC Rcd 26330 (2003). 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 Heart of Iowa*, WC Docket No. 03-249, Public Notice, 19 FCC Rcd 9064 (2004).

competitive LEC subscribers to its incumbent LEC operations.<sup>16</sup>

8. *Standards for Waiver.* Generally, the Commission may waive its rules for good cause shown.<sup>17</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> 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 applies 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.<sup>20</sup>

9. 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.<sup>21</sup> 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.<sup>22</sup> After the Commission adopted section 54.305(b) it continued to apply the one-percent guideline to determine the impact on the universal service fund in light of the adoption of safety valve support, which allows an acquiring carrier to receive support for new investments in acquired lines, and interstate common line support (ICLS), which does not limit the amount of such support that a carrier can receive for acquired lines.

## B. Discussion

10. Subject to the condition set forth below,<sup>23</sup> 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 three exchanges that it is transferring to Heart of Iowa. We also find that, subject to the condition described below, good cause exists to permit Heart of Iowa to add these exchanges to its existing study area.<sup>24</sup> We conclude that petitioners have satisfied the three-prong standard that the Commission applies

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<sup>16</sup> See Petition at 4.

<sup>17</sup> 47 C.F.R. § 1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>19</sup> *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.

<sup>20</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>21</sup> See *id.* 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 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>22</sup> See *PTI/Eagle Order*, 10 FCC Rcd at 1773, para. 13.

<sup>23</sup> See *infra* para. 14.

<sup>24</sup> *Id.* Absent Heart of Iowa treating its competitive LEC lines as if they were acquired from an unaffiliated carrier, we would deny Heart of Iowa's request because we could not find that such a transfer is in the public interest.

to determine whether a waiver is warranted. In making this assessment, we have considered the effect of Heart of Iowa converting its competitive LEC lines to its incumbent LEC operations after the transfer of the 815 lines from Iowa Telecom is completed. In the future, we expect parties to identify, as Heart of Iowa and Iowa Telecom have done, such similar situations in their study area waiver requests and we will evaluate such acquisitions based on the entirety of the transaction and all relevant circumstances.

11. Although we conditionally grant the petitioners' study area waiver request, we are concerned that, as a result of this transaction, a competitor is being eliminated from the Iowa Telecom-North study area. As we do here, we will consider the effect of granting such transactions on competition in the acquired exchanges as part of our public interest analysis in any future request.<sup>25</sup> Specifically, we expect petitions filed after the effective date of this Order to include a strong public interest showing that the loss of competition in the acquired exchanges is outweighed by other public interest benefits.

12. *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 815 lines that Iowa Telecom proposes to transfer to Heart of Iowa, 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.<sup>26</sup> Iowa Telecom-North has not been eligible for high-cost loop support or local switching support for the 815 access lines at issue. Therefore, Heart of Iowa will not receive such support for the 815 lines it acquires from Iowa Telecom. Although Heart of Iowa may be eligible for safety valve support for investments in the acquired lines, we have no reason to believe that this amount would significantly increase the high-cost fund, and certainly would fall well short of the one percent threshold.<sup>27</sup>

13. Heart of Iowa intends to transfer its competitive LEC operations within the acquired exchanges to its incumbent LEC operations after this transaction is completed. We allow Heart of Iowa to transfer its existing competitive lines to Heart of Iowa's newly configured incumbent LEC study area subject to the conditions set forth below.<sup>28</sup> 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, we find that these competitive LEC lines should be treated, for universal service purposes, in the same manner as the 815 lines acquired from Iowa Telecom-North.<sup>29</sup> Such treatment is consistent with the intent of section 54.305 to discourage carriers

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<sup>25</sup> See *infra* at paras. 18-19.

<sup>26</sup> See 47 C.F.R. § 54.305(b). Section 54.305(b) specifically refers to the sale or transfer of exchanges between unaffiliated carriers. The Petitioners in this proceeding have an indirect and limited corporate relationship. See Petition at 5. Because we find this is an arm's length transaction, we treat them as unaffiliated carriers for purposes of applying section 54.305.

<sup>27</sup> In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only 815 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).

<sup>28</sup> See *infra* para. 14.

<sup>29</sup> Failing to apply section 54.305 to the former competitive LEC lines would have the following consequences: 1) Heart of Iowa would have to maintain separate cost records for the 815 acquired lines and the former competitive LEC lines; 2) Heart of Iowa would have to allocate shared costs, and would have incentives to increase universal service payments to the former competitive LEC lines; 3) the 815 acquired lines and the former competitive LEC lines would be eligible for different amounts of universal service support; and 4) it would leave open the question of whether new customer lines in the three exchanges would be subject to section 54.305.

from acquiring exchanges merely to increase their share of high-cost universal service support.<sup>30</sup>

14. Approval of this study area waiver is, therefore, conditioned on Heart of Iowa 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, and our approval is effective only upon the merger of Heart of Iowa's incumbent and competitive LEC operations.<sup>31</sup> Any new subscribers or lines that Heart of Iowa 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 transaction will not have an adverse impact on universal service support.<sup>32</sup>

15. Heart of Iowa estimates that it will receive an additional \$47,335 in ICLS after the acquisition of the 815 lines from Iowa Telecom, assuming its per-line ICLS amount remains at its present level.<sup>33</sup> Based on the amount of ICLS that Heart of Iowa projects it will receive after acquiring Iowa Telecom's 815 lines, Heart of Iowa may be eligible to receive approximately \$159,370 in ICLS for its competitive LEC lines once Heart of Iowa transfers those customers to its incumbent LEC operations.<sup>34</sup> We find that providing ICLS to Heart of Iowa for the acquired lines and its former competitive LEC lines will not result in a significant increase in the total high-cost fund. We therefore conclude that the amount of \$47,335 that Heart of Iowa estimates it will receive in ICLS plus the estimated \$159,370 that Heart of Iowa may receive for its competitive LEC lines, 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.<sup>35</sup>

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<sup>30</sup> See, e.g., *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).

<sup>31</sup> We therefore direct Heart of Iowa to notify the Bureau when it has merged its competitive LEC operations with its incumbent LEC operations.

<sup>32</sup> Consistent with these findings, we also determine that these former competitive LEC lines and any newly added lines will be eligible for additional high-cost loop support pursuant to the safety valve rules. For purposes of calculating safety valve support, the eligible costs of the 815 acquired lines, the former competitive LEC lines and any newly added lines shall be combined.

<sup>33</sup> Heart of Iowa indicates that it currently receives an estimated \$58.08 in annual ICLS per line and, by adding Iowa Telecom's 815 lines to its study area at the same \$58.08 per-line support level, Heart of Iowa would receive an additional \$47,335 in annual ICLS. See Petition at 7.

<sup>34</sup> This estimate is based on Heart of Iowa's projection that it will receive \$47,335 for 815 lines, or \$58.08 per line. If we multiply this amount (\$58.08) by Heart of Iowa's competitive LEC lines (2,744 lines), we estimate that it may be eligible to receive approximately \$159,370 in ICLS. Heart of Iowa's ICLS support will be subject to true-up once Heart of Iowa files actual cost and revenue data.

<sup>35</sup> The estimated additional ICLS (\$47,335+\$159,370=\$206,705) as a result of this transaction is approximately .005 percent of the total high-cost fund. We further estimate that, as a result of this transaction, interstate access support paid to Iowa Telecom-North's incumbent LEC operation and to Heart of Iowa's competitive LEC operation will be reduced by a total of approximately \$44,000 annually, which will counterbalance the increase in ICLS.

16. To further ensure that this transaction is in the public interest, we direct Heart of Iowa, 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 their pre-acquisition exchanges.<sup>36</sup>

17. *Position of State Commission.* The state commission with regulatory authority over the transferred exchanges does not oppose the transfer. On December 19, 2003, the Iowa Public Utilities Board issued an order indicating that it does not object to the Commission granting a study area waiver.<sup>37</sup>

18. *Public Interest Analysis.* We conclude that the public interest is served by a conditional waiver of the study area freeze rule to permit Iowa Telecom to remove from its Iowa Telecom-North study area the Conrad, Eldora, and Steamboat Rock exchanges and to permit Heart of Iowa to include the acquired exchanges in its Iowa study area. Heart of Iowa states that, once acquired, it will provide customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. Heart of Iowa intends to provide quality basic services to its acquired exchange areas, improve the existing network where necessary, and expand the availability of advanced services.<sup>38</sup> Heart of Iowa also states that the local rates for transferred customers will be reduced.<sup>39</sup> We conclude that Heart of Iowa's proposed improvements sufficiently demonstrate that the grant of this waiver request will serve the public interest.

19. Because Heart of Iowa is ceasing its competitive operations and eliminating a competitive alternative in portions of Iowa Telecom's service area, we are sensitive to the unique public interest concerns raised by this transaction in the form of a reduction in competitive alternatives.<sup>40</sup> In this particular case, we find that permitting Heart of Iowa to acquire Iowa Telecom's exchanges and transfer Heart of Iowa's competitive operations into its incumbent LEC operations serves the public interest because our action enables Heart of Iowa to operate more efficiently in these three exchanges. We expect consumers to benefit from these efficiencies. The increased economies of scale also will permit Heart of Iowa to roll out advanced services in the rural communities that it serves.<sup>41</sup>

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<sup>36</sup> See 47 C.F.R. §§ 36.611, 54.301. Following the transfer of the three exchanges from Iowa Telecom-North to Heart of Iowa, Heart of Iowa's pre-acquisition exchanges will be eligible for different amounts of high-cost loop support and local switching support than the exchanges being transferred from Iowa Telecom-North and the access lines that Heart of Iowa operated as a competitive LEC. As noted above, Heart of Iowa's competitive LEC lines do not receive high-cost loop support or local switching support.

<sup>37</sup> See Letter from David Cosson, Counsel for Heart of Iowa, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed December 22, 2003) (attaching Order from State of Iowa, Department of Commerce Utilities Board (December 19, 2003) (*Iowa Order*)).

<sup>38</sup> See Petition at 8-9.

<sup>39</sup> See *Iowa Order* (attaching Affidavit of David L. Schmidt).

<sup>40</sup> We note that the pending *Mid-Rivers* proceeding, in which a carrier seeks to be designated as an incumbent LEC under section 251(h)(2), raises issues concerning competitive rights and obligations under section 251(c), universal service support, and appropriate access rate levels. *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, Notice of Proposed Rulemaking, 19 FCC Rcd 23070, 23074-76, paras. 10-12 (2004). The circumstances in the *Mid-Rivers* proceeding are different from those before the Commission in the instant proceeding. For example, *Mid-Rivers* is seeking designation as an incumbent LEC pursuant to section 251(h)(2) on the grounds that it has, among other things, "substantially replaced" the existing incumbent LEC, while in this proceeding, Heart of Iowa is purchasing all of the incumbent access lines in three exchanges in which it has competitive LEC operations and then transferring the competitive LEC lines to its existing incumbent LEC operations.

<sup>41</sup> See Petition at 8-9.

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

#### A. Background

20. 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.<sup>42</sup> 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.<sup>43</sup> Because the next annual access tariff filing effective date is July 1, 2006,<sup>44</sup> Heart of Iowa 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, Heart of Iowa has requested a waiver of section 69.3(e)(11) of the Commission's rules.<sup>45</sup> The waiver would enable Heart of Iowa to include the acquired access lines in the NECA carrier common line tariff upon the closing date of its acquisition transaction with Iowa Telecom. Heart of Iowa 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.<sup>46</sup> NECA has indicated that it has no objection to the inclusion of the acquired lines in the NECA common line tariff.<sup>47</sup> NECA has also indicated that it has no objection to including in such tariff the competitive LEC lines that Heart of Iowa intends to transfer to its incumbent LEC operations upon completion of the transaction between Iowa Telecom and Heart of Iowa.<sup>48</sup>

#### B. Discussion

21. We find that Heart of Iowa has demonstrated that special circumstances warrant a deviation from section 69.3(e)(11) of our rules and that it is in the public interest to grant Heart of Iowa's waiver request. According to NECA, the proposed addition of lines to the common line pool will not significantly impact common line pool revenue requirements and will not impose any undue administrative burdens on NECA.<sup>49</sup> Further, NECA does not object to the inclusion of expenses, assets and revenues associated with Heart of Iowa's former CLEC operations in the exchange areas acquired from Iowa Telecom pursuant to FCC study area waiver.<sup>50</sup> Based on NECA's representation in its letters,

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<sup>42</sup> See 47 C.F.R. § 69.3(a).

<sup>43</sup> 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).

<sup>44</sup> See 47 C.F.R. § 69.3(a).

<sup>45</sup> See Petition at 15.

<sup>46</sup> *Id.*

<sup>47</sup> See Letter from David Cosson, Counsel for Heart of Iowa, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed March 4, 2004) (attaching letter from Richard A. Askoff, Deputy General Counsel, NECA, to David Cosson, Kraskin, Lesse & Cosson, LLC (dated February 27, 2004) (NECA February Letter).

<sup>48</sup> See Letter from David Cosson, Counsel for Heart of Iowa, 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) (NECA July Letter).

<sup>49</sup> See NECA February Letter at 1.

<sup>50</sup> See NECA July Letter at 1.

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 Heart of Iowa to develop and file its own interstate tariff for the period prior to July 1, 2006 for a relatively small number of access lines. Consequently, we find that Heart of Iowa 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 Heart of Iowa will be able to devote 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 limited period of time until the next NECA access tariff period begins on July 1, 2006.<sup>51</sup> We therefore conclude that good cause exists to grant a waiver of section 69.3(e)(11) to Heart of Iowa.<sup>52</sup>

#### IV. AVERAGE SCHEDULE WAIVER

##### A. Background

22. Incumbent LECs that participate in NECA pools collect access charges from interexchange carriers at the rates contained in the tariffs filed by NECA.<sup>53</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>54</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>55</sup> Average schedule companies thus are able to avoid the administrative and financial burdens of performing interstate cost studies.

23. 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>56</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>57</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 compelling circumstances sufficient to warrant a special exception.<sup>58</sup> Accordingly, absent a waiver of

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<sup>51</sup> See Petition at 15.

<sup>52</sup> Our finding will not become effective until Heart of Iowa's competitive LEC lines become incumbent LEC lines.

<sup>53</sup> See 47 C.F.R. § 69.601.

<sup>54</sup> See 47 C.F.R. §§ 69.601-.612.

<sup>55</sup> See 47 C.F.R. § 69.606(a).

<sup>56</sup> 47 C.F.R. § 69.605(c).

<sup>57</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).

<sup>58</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*).

section 69.605(c), an average schedule company acquiring lines from a cost-based company would be required to convert to operations as a cost-based company.<sup>59</sup> Our actions on waivers 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.

24. In its Petition, Heart of Iowa seeks a waiver of the definition of “average schedule company” in section 69.605(c) so that it may continue to operate as an interstate average schedule company after acquiring the three exchanges from Iowa Telecom, which is an interstate cost-based company, and adding those exchanges to its existing average schedule study area in Iowa.<sup>60</sup> Heart of Iowa argues that several special circumstances justify this waiver. The petitioner notes 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 rate-of-return regulated exchange carriers. The Petition states that Heart of Iowa is seeking to acquire 815 access lines to join the existing Heart of Iowa average schedule study area in Iowa.<sup>61</sup> Heart of Iowa argues that, absent a waiver, it would have to convert its existing exchanges to cost-based settlements, at an unduly burdensome expense.<sup>62</sup> Heart of Iowa notes that the Commission has previously granted similar waivers to existing average schedule companies that wished to retain their average schedule status.<sup>63</sup>

25. Heart of Iowa also 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 Common Carrier Bureau found troubling in the *Nebcom Order*.<sup>64</sup> In the *NebCom Order*, the Bureau denied a waiver request for the conversion of approximately 3,000 access lines, or 40 percent of the resulting company’s lines, from cost-based to average schedule settlements.<sup>65</sup> Heart of Iowa argues that its situation can be distinguished from the facts in the *Nebcom Order* because Nebcom’s resulting study area was larger than 57 percent of all cost study areas. Heart of Iowa contends that, with the inclusion of the 815 lines, its newly configured study area would be larger than only 36 percent of all cost study areas and that if Heart of Iowa’s competitive LEC lines were considered, the resulting 6,046 line study area is larger than only 51 percent of cost study areas.<sup>66</sup>

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<sup>59</sup> *Id.* at 13664-65, para. 7.

<sup>60</sup> *See* Petition at 9.

<sup>61</sup> *See id.*

<sup>62</sup> *Id.* at 12. According to Heart of Iowa, it would spend approximately \$32,500 in annual recurring costs and \$37,500 in non-recurring costs to perform the cost studies. *Id.*

<sup>63</sup> *See id.* at 10 (citing *e.g.*, *Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of “Study Area” Contained in the 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)*, CC Docket No. 96-45, Order, 17 FCC Rcd 16881 (WCB 2002) (*Dickey Rural Order*); *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, AAD File No. 96-94, 12 FCC Rcd 2367, para. 15 (Acc. Aud. Div. 1997) (*Alpine Order*)).

<sup>64</sup> *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, paras. 13-14 (Acc. Aud. Div. 1998) (*NebCom Order*) (citing *MTS and WATS Market Structure: Average Schedule Companies*, Memorandum Opinion and Order, 2 FCC Rcd 6642 (1987)). The Common Carrier Bureau became the Wireline Competition Bureau in 2002.

<sup>65</sup> *Id.* at 4492, para. 14.

<sup>66</sup> *See* Petition at 13.

## B. Discussion

26. We deny the 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.”<sup>67</sup> The Commission has noted that section 69.605(c) serves to prevent an increase in the number of lines subject to average schedule treatment.<sup>68</sup> The Bureau has granted waivers to certain small exchange carriers that lacked the resources to operate on a cost-study basis.<sup>69</sup> 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.

27. As we noted above in our study area waiver discussion, it is appropriate to consider Heart of Iowa’s total operations (*i.e.*, competitive LEC and incumbent LEC operations) in the context of Heart of Iowa’s waiver requests, including its requested waiver of section 69.605(c). In doing so, we find that the impact of including Heart of Iowa’s competitive LEC lines weighs against the grant of a waiver. As explained below, Heart of Iowa’s total operations show that it has the financial resources and expertise to conduct cost studies without undue hardship.

28. We disagree with Heart of Iowa’s contention that the facts here are distinguishable from the facts in the *NebCom Order*. Like NebCom’s post-transaction study area, Heart of Iowa’s newly configured study area will be larger than most cost-based study areas.<sup>70</sup> Also, in the *NebCom Order*, the Bureau concluded that NebCom’s post-transaction study area (6,919 access lines) was not so small that it would, on the basis of its size alone, experience undue difficulty in preparing annual cost studies.<sup>71</sup> Heart of Iowa’s post-transaction study area, at 6,046 access lines, is not significantly smaller than NebCom’s study area. Although Heart of Iowa is purchasing only 815 access lines from Iowa Telecom, Heart of Iowa is adding to its existing study area the 2,744 lines it currently operates as a competitive LEC in the three acquired exchanges. Heart of Iowa is thus adding 3,559 access lines to its existing study area and desires average schedule status for these current non-average schedule status lines. Heart of Iowa is adding more lines (3,559) to its study area than NebCom (3,000) added to its study area. Furthermore, in the *NebCom Order* denial, 60 percent of the access lines subject to the transaction were average schedule access lines prior to the transaction, while in the instant proceeding only 41 percent of the access lines subject to this transaction are average schedule access lines.<sup>72</sup>

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<sup>67</sup> See *NebCom Order*, 13 FCC Rcd at 4492, para. 13.

<sup>68</sup> See *Heartland Order*, 13 FCC Rcd at 13664, para. 7; see also *NebCom Order*, 13 FCC Rcd at 4492, para. 13.

<sup>69</sup> See, e.g., *Newcastle Telephone Co. Petition for Waiver of Section 69.605(c)*, AAD File 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).

<sup>70</sup> See *supra* para. 25.

<sup>71</sup> See *Nebcom Order*, 13 FCC Rcd at 4492, para. 14.

<sup>72</sup> See also *Heartland Order*, 13 FCC Rcd at 13664-66, paras. 7-8. In the *Heartland Order*, the Commission affirmed the Bureau’s decision to deny a request for waiver of the “average schedule company” definition when only 9.6 percent of the total access lines of the merged company were operated on an average schedule basis before

(continued....)

29. Heart of Iowa relies on the *Dickey Rural Order* and the *Alpine Order* in support of its petition to retain average schedule status after the acquisition of the 815 lines from Iowa Telecom. We find that neither of these decisions supports granting Heart of Iowa's petition in light of Heart of Iowa's intent to transfer 2,744 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.<sup>73</sup> 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.<sup>74</sup> In all of these proceedings, the resultant Polar, Red River, and Clarksville study areas are considerably smaller than the resultant Heart of Iowa study area (6,046 lines) after the transfer of the 815 lines and the inclusion of the 2,744 former competitive LEC lines.

30. Examination of the size of other cost-based and average schedule study areas weighs against the petitioner's claim that it is unduly burdensome for a study area with over 6,000 access lines to settle with NECA on a cost basis. We note that today the mean number of lines for an average schedule study area is 5,083, smaller than the petitioner's post-acquisition study area.<sup>75</sup> Furthermore, 496 of the 960 existing cost-based study areas (52 percent) have fewer than 6,000 lines.<sup>76</sup> Heart of Iowa's size does not suggest that it would experience undue difficulty in preparing annual cost studies. Almost 500 smaller study areas currently prepare annual cost studies. Therefore, we reject the petitioner's claim that Heart of Iowa's situation is different than the situation addressed in the *Nebcom Order*. Our action on Heart of Iowa's request is guided by our policy preference that incumbent LECs settle on a cost basis whenever possible.<sup>77</sup>

31. We reject the petitioner's assertion that the burden of conducting the initial cost studies will negatively affect its subscribers.<sup>78</sup> According to Heart of Iowa, its preliminary estimates show that it would incur approximately \$32,500 in annual recurring costs plus a one-time cost of \$37,500 to develop cost studies for Heart of Iowa.<sup>79</sup> 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.<sup>80</sup> 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 Heart of Iowa's study area after the conclusion of the transaction is large enough to conduct cost studies without undue administrative burden.

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the transfer. In that case, the average schedule company, which served 1,330 access lines, acquired an exchange serving 12,527 access lines subject to price cap regulation. *Id.* at 13664, para. 5.

<sup>73</sup> See *Dickey Rural Order*, 17 FCC Rcd at 16893, para. 31.

<sup>74</sup> See *Alpine Order*, 12 FCC Rcd at 2374, para. 15.

<sup>75</sup> See Universal Service Fund 2004 Submission of 2003 Study Results by the National Exchange Carrier Association, Inc. (filed Oct. 1, 2004). We also note that two average schedule study areas, Commonwealth Telephone (PA) and North State Communications (NC) have 338,666 and 127,044 access lines, respectively. Without these outliers, the mean number of lines in an average schedule study area is 4,149.

<sup>76</sup> *Id.*

<sup>77</sup> See *NebCom Order*, 13 FCC Rcd at 4492, para. 13; see also *Heartland Order*, 13 FCC Rcd at 13664, para. 7.

<sup>78</sup> See Petition at 12.

<sup>79</sup> *Id.*

<sup>80</sup> See *Heartland Order*, 13 FCC Rcd at 13667, para. 12.

32. We will, however, grant a temporary waiver of section 69.605(c) in order to allow Heart of Iowa a smooth transition to cost-based access settlements. We recognize that modifications to Heart of Iowa's record-keeping systems will be necessary to facilitate cost-based settlements. Heart of Iowa should be permitted a reasonable amount of time to accomplish the transition to cost-based settlements. Accordingly, Heart of Iowa shall not be required to settle interstate access settlements based on its actual costs before January 1, 2007. Beginning January 1, 2007, Heart of Iowa must settle interstate access on an actual cost basis.

33. 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.<sup>81</sup> 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*.<sup>82</sup> Heart of Iowa, 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.<sup>83</sup>

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

34. Heart of Iowa requested a waiver so that it could continue as a rate-of-return company after it acquires lines from Iowa Telecom.<sup>84</sup> Because of a change in Commission rules since Heart of Iowa filed its petition, we dismiss this waiver request as moot.

35. At the time that Heart of Iowa filed its request for a study area waiver, section 61.41(c)(2) provided that a non-price cap carrier, such as Heart of Iowa, that acquires access lines from a price cap carrier, such as Iowa Telecom, shall become subject to price cap regulation and must file price cap tariffs within a year.<sup>85</sup> In order to remain subject to rate-of-return regulation after acquiring Iowa Telecom's lines, Heart of Iowa would have needed a waiver of that rule.

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<sup>81</sup> See generally *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*). See also 47 C.F.R. § 36.3(c) and (d).

<sup>82</sup> See *Separations Freeze Order*, 16 FCC Rcd at 11407, para. 53.

<sup>83</sup> See 47 C.F.R. § 36.3(e).

<sup>84</sup> See Petition at 2, n.2.

<sup>85</sup> 47 C.F.R. § 61.41(c)(2). See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990), *modified on recon.*, Order on Reconsideration, 6 FCC Rcd 2637 (1991), *aff'd sub nom. National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *further modification on recon.*, *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Supplements for Open Network Architecture, Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991), *further recon.*, Memorandum Opinion and Order of Second Further Reconsideration, 7 FCC Rcd. 5235 (1992).

36. On February 12, 2004, the Commission modified its rules so that a rate-of-return carrier that acquires lines from a price cap carrier may subject those acquired lines to rate-of-return regulation.<sup>86</sup> Thus, under the modified rules, Heart of Iowa does not need a waiver to remain a rate-of-return carrier after it acquires lines from Iowa Telecom, provided that (1) the acquired lines will not be subject to average schedule settlements and, (2) Heart of Iowa does not, for five years, elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation.<sup>87</sup>

37. The Commission's modification of rule 61.41, and our decision in this Order to deny Heart of Iowa's request to continue to operate as an average schedule company, renders moot the need for a waiver of section 61.41(c)(2).<sup>88</sup> Therefore, we dismiss without prejudice Heart of Iowa's request for waiver of section 61.41(c)(2).

## VI. OTHER MATTERS

38. Section 61.45(d) of the Commission's rules grants us discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.<sup>89</sup> 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.

39. Finally, in the *Separations Freeze Order*, the Commission addressed how an incumbent LEC acquiring exchanges from another incumbent LEC shall recalculate its frozen separations factors.<sup>90</sup> Accordingly, Heart of Iowa is required to recalculate its jurisdictional separations factors pursuant to the *Separations Freeze Order* and the Commission's rules.<sup>91</sup>

## VI. ORDERING CLAUSES

40. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 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 Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc. on November 26, 2003, IS CONDITIONALLY GRANTED, as described herein.

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<sup>86</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4129-31, paras. 10-15 (*MAG Order/FNPRM*).

<sup>87</sup> 47 C.F.R. § 61.41(e). See *MAG Order/FNPRM*, 19 FCC Rcd at 4131, para 13.

<sup>88</sup> Had we granted Heart of Iowa's waiver request seeking average schedule status, Heart of Iowa would have needed a waiver in order to remain a rate-of-return carrier, because, as noted above, section 61.41(e) provides that the acquired lines may not be subject to average schedule settlements. 47 C.F.R. § 61.41(e).

<sup>89</sup> See 47 C.F.R. § 61.45(d).

<sup>90</sup> See *Separations Freeze Order*, 16 FCC Rcd at 11405-07, paras. 48-53.

<sup>91</sup> See 47 C.F.R. § 36.3(d). We note that in order for Heart of Iowa to calculate separations results for its entire newly configured study area, it will be required to establish frozen separations factors, pursuant to section 36.3(e), for its lines converted from average schedule settlements to cost-based settlements and then combine those results with the frozen separations factors for the lines acquired from Iowa Telecom. See *supra* para. 33. See also 47 C.F.R. § 36.3(e).

41. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 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 Heart of Iowa Communications Cooperative on November 26, 2003, IS GRANTED, as described herein.

42. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 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 Heart of Iowa Communications Cooperative on November 26, 2003, IS GRANTED until December 31, 2006, and is otherwise DENIED, as described herein.

43. 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 1.3, 36.3(d) and 36.3(e) of the Commission's rules, 47 C.F.R. §§ 1.3, 36.3(d) and 36.3(e) that Heart of Iowa Communications Cooperative SHALL ADJUST its jurisdictional separations factors to reflect this transaction, consistent with this Order.

44. 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, that the petition for waiver of section 61.41(c) of the Commission's rules, 47 C.F.R. § 61.41(c), filed by Heart of Iowa Communications Cooperative on November 26, 2003, IS DISMISSED, without prejudice, as described herein.

45. 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 1.3 and 61.43 of the Commission's rules, 47 C.F.R. §§ 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.

46. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that Heart of Iowa 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

Marlene H. Dortch  
Secretary