

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

In the Matter of )
Spectra Communications Group, LLC )
And ) CC Docket No. 96-45
GTE Midwest Incorporated )
Joint Petition for Waiver of )
Definition of "Study Area" Contained in the )
Part 36 Appendix-Glossary of the )
Commission's Rules and Section 69.3(e)(9) of the )
Commission's Rules )
Spectra Communications Group, LLC )
Petition for Waiver of Section 61.41(c) of the )
Commission's Rules )

ORDER

Adopted: July 26, 2000

Released: July 27, 2000

By the Deputy Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant requests from Spectra Communications Group, LLC (Spectra) and GTE Midwest Incorporated (GTE) for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. This waiver will permit GTE to remove 107 exchanges comprising 116,149 access lines from its GTE Systems of Missouri, Contel Missouri, and GTE Missouri study areas (collectively, Missouri study areas). This waiver also will permit Spectra to combine the 107 exchanges it is acquiring from GTE into a single new study area for Missouri.

2. We also grant Spectra's request for waiver of section 61.41(c)(2) of the Commission's rules to permit Spectra to operate under rate-of-return regulation after acquiring the 107 GTE exchanges that are currently under price cap regulation. Finally, we grant the request of Spectra and GTE for waiver of section 69.3(e)(9) of the Commission's rules to permit the acquired access lines to re-enter the National

1 Spectra Communications Group, LLC and GTE Midwest Incorporated, Joint Petition for Waiver of the Definition of "Study Area" in the Appendix to Part 36 of the Commission's Rules (Glossary) and Section 69.3(e)(9) of the Commission's Rules and Petition for Waiver of Section 61.41(c) of the Commission's Rules, CC Docket No. 96-45 (filed Mar. 17, 2000) (Petition).

Exchange Carrier Association, Inc. (NECA) common line pool.

## II. STUDY AREA WAIVER

### A. Background

3. *Study Area Boundaries.* A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. When a carrier acquires additional entire study areas in a given state, however, the carrier may operate more than one study area in that state. The Commission froze all study area boundaries effective November 15, 1984,<sup>2</sup> and an incumbent LEC must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.

4. *Transfer of Universal Service Support.* Section 54.305 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>3</sup> For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,<sup>4</sup> the loops of the acquired exchange shall receive the same per-line support as calculated under the new non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges.<sup>5</sup> Section 54.305 is meant to discourage carriers from transferring exchanges merely to

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<sup>2</sup> 47 C.F.R. § 36 app. (defining "study area"). 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, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

<sup>3</sup> 47 C.F.R. § 54.305.

<sup>4</sup> On November 2, 1999, the Commission released two orders finalizing implementation plans for high-cost reform for non-rural carriers. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (rel. Nov. 2, 1999); *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order (rel. Nov. 2, 1999). The new mechanism, which went into effect on January 1, 2000, does not apply to rural carriers. The new mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309. The Commission's forward-looking methodology for calculating high-cost support for non-rural carriers targets support to states where the statewide average forward-looking cost per line exceeds 135 percent of the national average forward-looking cost. See *id.* The total amount of support directed to non-rural carriers in a high-cost state equals 76 percent of the amount the statewide average forward-looking cost per line exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the state. Carriers serving wire centers with an average forward-looking cost per line above the national cost benchmark shall be eligible to receive support. The amount of support provided to a non-rural carrier serving a particular wire center depends on the extent to which per-line forward-looking economic costs in that wire center exceed the national cost benchmark.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*); as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC (continued....)

increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.<sup>6</sup> High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,<sup>7</sup> interim hold-harmless support for non-rural carriers,<sup>8</sup> rural carrier high-cost loop support,<sup>9</sup> local switching support,<sup>10</sup> and Long Term Support (LTS).<sup>11</sup> To the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

5. As described in the Commission's recent order adopting an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service (CALLS), beginning July 1, 2000, if a price cap LEC acquires exchanges from another price cap LEC the acquiring carrier will become eligible to receive interstate access universal service support for the acquired exchanges.<sup>12</sup> Because the interstate access universal service support mechanism is capped at \$650 million, transactions involving the transfer of support will not increase the mechanism's overall size.<sup>13</sup> If a non-price cap LEC acquires exchanges from a price-cap LEC, per-line interstate access universal service support will not transfer.<sup>14</sup>

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Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999).

<sup>6</sup> *Id.*

<sup>7</sup> See 47 C.F.R. § 54.309.

<sup>8</sup> In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. See 47 C.F.R. § 54.311

<sup>9</sup> Rural carriers receive high-cost loop support when their average cost per loop exceeds the nationwide average loop cost. See 47 C.F.R. §§ 36.601-36.622.

<sup>10</sup> Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

<sup>11</sup> Carriers that participate in the NECA common line pool are eligible to receive LTS. See 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. See *First Report and Order*, 12 FCC Rcd at 9163-9165.

<sup>12</sup> See *Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-103, at para. 225 (rel. May 31, 2000) (*Interstate Access Universal Service Order*).

<sup>13</sup> See 47 C.F.R. § 54.801(a); see also *Interstate Access Universal Service Order* at para. 201.

<sup>14</sup> Section 54.801 of the Commission's rules states that, if "all or a portion of a study area served by a price cap LEC is sold to an entity other than a price cap LEC, . . . then the support that would otherwise be provided under (continued....)

6. *The Petition for Waiver.* GTE Midwest, an incumbent LEC that currently serves approximately 435,384 access lines in Missouri, proposes to sell 107 telephone exchanges that serve approximately 116,149 access lines in Missouri.<sup>15</sup> GTE seeks a waiver of the rule freezing study area boundaries to allow it to remove these exchanges from three of GTE's Missouri study areas. Spectra is a new company formed to purchase and operate the exchanges it is purchasing from GTE.<sup>16</sup> Spectra seeks a waiver of the rule freezing study area boundaries to allow it to form a new single study area in Missouri.<sup>17</sup>

7. On April 3, 2000, the Common Carrier Bureau (Bureau) released a public notice soliciting comments on the petition.<sup>18</sup> No comments were filed.

## B. Discussion

8. We find that good cause exists to waive the definition of study area contained in the Part 36 Appendix-Glossary of the Commission's rules to permit GTE to remove 107 exchanges from its Missouri study areas and to permit Spectra to combine the 107 exchanges into a single new study area for Missouri.

9. Generally, the Commission's rules may be waived for good cause shown.<sup>19</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>20</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>21</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>22</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: first, the change in study area boundaries must not adversely affect the universal service funds;

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this subpart, had such study area or portion thereof not been sold, will not be distributed or collected." 47 C.F.R. § 54.801(b).

<sup>15</sup> Petition at 2-4. *See also* NECA Universal Service Fund 1999 Submission of 1998 Study Results filed October 1, 1999.

<sup>16</sup> Petition at 1. Spectra is a newly formed venture of Spectronics Corporation, CenturyTel, Inc., and Local Exchange Carrier, LLC. *See id.* at 3.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *GTE Midwest Incorporated and Spectra Communications Group, LLC Filed Petition for Waiver of Sections 61.41(c) and 69.3(e)(9) and the Definition of "Study Area" in Part 36 of the Commission's Rules*, Public Notice, DA 00-404 (rel. Apr. 3, 2000).

<sup>19</sup> 47 C.F.R. § 1.3.

<sup>20</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>22</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

second, no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and third, the transfer must be in the public interest.<sup>23</sup> For the reasons discussed below, we conclude that Spectra and GTE have satisfied these criteria and demonstrated that good cause exists for a waiver of the Commission's study area freeze rule.

10. First, we find that Spectra and GTE have demonstrated that the proposed changes in the study area boundaries will not adversely affect any of the universal service mechanisms. Because, under the Commission's rules, carriers purchasing high-cost exchanges can only receive the same level of per-line support as the selling company was receiving for those exchanges prior to the sale, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction.<sup>24</sup> As such, Spectra will receive the same per-line levels of interim hold-harmless support for which the 107 GTE exchanges were eligible prior to their transfer.<sup>25</sup> Because GTE does not currently receive LTS for the acquired exchanges, we note that Spectra will be ineligible to receive LTS for those exchanges. We also note that because Spectra will not be a price cap LEC,<sup>26</sup> it will not be eligible to receive interstate access universal service support for the acquired exchanges.<sup>27</sup>

11. Second, no state commission having regulatory authority over the transferred exchanges opposes the transfer. In a letter to the Common Carrier Bureau, the Missouri Public Service Commission has indicated that it does not oppose grant of the requested study area waiver for GTE and Spectra.<sup>28</sup>

12. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit GTE to remove the 107 exchanges from its Missouri study areas and to permit Spectra to combine the 107 exchanges into a single new study area. In addition to the services that GTE currently provides to customers in Missouri, Spectra intends to offer customers services such as Internet access, voice mail, and broader caller ID availability.<sup>29</sup> Spectra also states that, by being headquartered in Missouri, it will be able to provide improved customer services.<sup>30</sup> Spectra also notes that CenturyTel, Inc.

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<sup>23</sup> See, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995).

<sup>24</sup> See 47 C.F.R. § 54.305.

<sup>25</sup> We note that the Federal-State Joint Board on Universal Service (Joint Board) recently recommended that interim hold-harmless support for exchanges transferred to non-rural carriers be phased down over the same time period as the seller's support would have been phased down. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-1, at paras. 19-22 (rel. Jun. 30, 2000). The Joint Board also recommended that interim hold-harmless support for exchanges transferred to rural carriers should not be phased down following the transfer until the Commission reexamines the operation of section 54.305 of the Commission's rules and/or reforms the high-cost mechanism for rural carriers. *Id.* at para. 21.

<sup>26</sup> See *infra* discussion at paras. 17-20.

<sup>27</sup> See 47 C.F.R. § 54.801(b).

<sup>28</sup> Petition at 10, Exhibit C.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 9-10.

will provide operational and marketing support to Spectra, to the extent required to serve the rural and low-density exchanges Spectra intends to acquire.<sup>31</sup> Based on these facts and the findings of the Missouri Public Service Commission, we conclude that petitioners have demonstrated that grant of this waiver serves the public interest.

### III. WAIVER OF THE COMMISSION'S PRICE CAP RULES

#### A. Background

13. Section 61.41(c) of the Commission's rules provides that any price cap telephone company subject to a merger, acquisition, or similar transaction shall continue to be subject to price cap regulation notwithstanding such transaction.<sup>32</sup> In addition, when a non-price cap company acquires, merges with, or otherwise becomes affiliated with a price cap company or any part thereof, the acquiring company becomes subject to price cap regulation and must file price cap tariffs within a year.<sup>33</sup> Moreover, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation.<sup>34</sup> Under these rules, Spectra's acquisition of GTE's 107 Missouri exchanges would subject Spectra to price cap regulation for the acquired exchanges.

14. In the *LEC Price Cap Reconsideration Order*, the Commission explained that section 61.41(c) is intended to address two concerns regarding mergers and acquisitions involving price cap companies.<sup>35</sup> The first concern was that, in the absence of the rule, a LEC might attempt to shift costs from its price cap affiliate to its non-price cap affiliate, allowing the non-price cap affiliate to charge higher rates to recover its increased revenue requirement, while increasing the earnings of the price cap affiliate. The second concern was that, absent the rule, a LEC might attempt to game the system by switching back and forth between rate-of-return regulation and price cap regulation. For example, without such a rule, a price cap company may attempt to "game" the system by opting out of price cap regulation, building a large rate base under rate-of-return regulation so as to raise rates and then, after returning to price caps, cutting costs back to an efficient level, thereby enabling it to realize greater profits. It would not serve the public interest, the Commission stated, to allow a carrier alternately to "fatten up" under rate-of-return regulation and "slim down" under price cap regulation, because the rates

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<sup>31</sup> *Id.* at 10. According to Spectra, CenturyTel, Inc. will make a preferred equity investment in the company and will have minority board representation. *Id.* at 3.

<sup>32</sup> 47 C.F.R. § 61.41(c)(1).

<sup>33</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, 6821 (1990), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990) (*LEC Price Cap Order*), modified on recon., Order on Reconsideration, 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*), *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 Subelements 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 on Second Further Reconsideration, 7 FCC Rcd 5235 (1992).

<sup>34</sup> 47 C.F.R. § 61.41(d).

<sup>35</sup> See *LEC Price Cap Reconsideration Order* at 2706.

would not decrease in the manner intended under price cap regulation.<sup>36</sup>

15. The Commission nonetheless recognized that narrow waivers of the price cap “all-or-nothing” rule might be justified if efficiencies created by the purchase and sale of exchanges outweigh the threat that the system might be subject to gaming.<sup>37</sup> Such waivers will not be granted unconditionally, however. Waivers of the all-or-nothing rule will be granted conditioned on the selling price cap company’s downward adjustment to its price cap indices to reflect the sale of exchanges.<sup>38</sup> That adjustment is needed to remove the effects of transferred exchanges from rates that have been based, in whole or in part, upon the inclusion of those exchanges in a carrier’s price cap indices.<sup>39</sup> In addition, waiver of the all-or-nothing rule has been granted subject to the condition that the acquiring carrier obtain prior Commission approval of any attempt to return to price cap regulation.<sup>40</sup>

16. Spectra intends to operate under rate-of-return regulation, while GTE is subject to price cap regulation. Spectra seeks a waiver of section 61.41(c)(2) of the Commission’s rules to permit it to be regulated under rate-of-return regulation after acquiring from GTE the 107 Missouri exchanges that are currently under price cap regulation. Absent a waiver of the all-or-nothing price cap rules, all of Spectra’s operations would become subject to price cap regulation no later than one year after acquiring the price cap exchanges from GTE.

## B. Discussion

17. For the reasons discussed below, we find that good cause exists for us to waive section 61.41(c)(2) of the Commission’s rules, and that it would be in the public interest to grant Spectra’s waiver request. As discussed previously, the courts have interpreted section 1.3 of the Commission’s rules to require a petitioner seeking a waiver of a Commission rule to demonstrate that special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>41</sup>

18. Because Spectra is significantly smaller than any of the carriers subject to mandatory price caps, we find that special circumstances support a waiver of section 61.41(c)(2) of the Commission’s rules. In evaluating requests for waiver of section 61.41(c)(2), the Bureau has taken into

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2706 n. 207.

<sup>38</sup> See *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9104-06 (1995) (*LEC Price Cap Review Order*). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission’s rules for price cap carriers. See 47 C.F.R. § 61.45.

<sup>39</sup> See *LEC Price Cap Review Order* at 9105-9106.

<sup>40</sup> See, e.g., *Rye Telephone Company, Inc. and U S WEST Communications, Inc., Joint Petition for Waiver of Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules and Petition for Waiver of Section 61.41(c)(2) of the Commission’s Rules*, CC Docket No. 96-45, Order, DA 00-1585, at para. 17 (Acc. Pol. Div. rel. Jul. 18, 2000); *ALLTEL Corp. Petition for Waiver of Section 61.41 of the Commission’s Rules and Application for Transfer of Control*, CCB/CPD No. 99-1, Memorandum Opinion and Order, 14 FCC Rcd. 14191, 14202 (1999) (*ALLTEL/Aliant Merger Order*).

<sup>41</sup> See *supra* discussion at para. 9.

account the company's preferences and, in particular, the preferences of small carriers.<sup>42</sup> Spectra has expressed a preference for operating under rate-of-return regulation.<sup>43</sup> After the proposed transaction, Spectra will still be far smaller than any of the LECs subject to mandatory price caps,<sup>44</sup> and also will be significantly smaller than many other carriers that have been granted waivers of section 61.41(c)(2) of the Commission's rules.<sup>45</sup> Therefore, we believe that Spectra presents special circumstances to support its waiver request.

19. We conclude that, in this case, waiver of section 61.41(c)(2) of the Commission's rules will serve the public interest. We agree with Spectra that the circumstances surrounding Spectra's acquisition of GTE's exchanges fail to give rise to the dangers of cost-shifting and gaming of the system.<sup>46</sup> Spectra is not seeking to maintain separate affiliates under different systems of regulation, and, therefore, Spectra will have no opportunity to shift costs between price cap and rate-of-return affiliates.<sup>47</sup> Moreover, to safeguard against possible gaming resulting from attempts to elect price cap regulation, we will require Spectra to seek prior Commission approval if it seeks to elect price cap regulation. At that time, the Commission can make a determination if the transaction raises concerns that the Commission sought to address in section 61.41 of its rules. We believe that requiring Spectra to seek Commission approval before electing price cap regulation is sufficient to deter gaming in the future.

20. In accordance with section 61.45 of the Commission's rules, we also require GTE to adjust its price cap indices to reflect the removal of the transferred access lines from its Missouri study

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<sup>42</sup> See, e.g., *ALLTEL/Aliant Merger Order* at 14204-05. In fact, the Commission traditionally has been sensitive to the unique administrative burdens imposed on small telephone companies by the application of its rules. See, e.g., *id.* at 14204; *In the Matter of Minburn Telecommunications, Inc., Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, CCB/CPD No. 99-16, Memorandum Opinion and Order, 14 FCC Rcd 14184, 14187 (Com. Car. Bur. 1999). For example, in the *LEC Price Cap Order*, the Commission decided that small telephone companies would not be required to operate under a regulatory regime that was designed largely on the basis of the historical performance of the largest LECs. The Commission, therefore, limited the mandatory application of price cap regulation to the eight largest LECs -- the seven Regional Bell Operating Companies (RBOCs) and GTE. See *Price Cap Order* at 6818-19.

<sup>43</sup> Petition at 13.

<sup>44</sup> According to Spectra, after the proposed transaction, it will serve 116,149 access lines, representing approximately 3.5 percent of the access lines in Missouri. See *id.* at 5.

<sup>45</sup> See, e.g., *CenturyTel of Northwest Arkansas, LLC et al., 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 69.3(g)(2) of the Commission's Rules*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1434 (Acc. Pol. Div. rel. June 27, 2000) (approving the conversion of 214,270 access lines from price cap to rate-of-return regulation); *ALLTEL/Aliant Merger Order* (approving the conversion of approximately 300,000 access lines from price cap to rate-of-return regulation); *In the Matter of ALLTEL Service Corporation, Petition for Waiver of Section 61.41 of the Commission's Rules*, Order, 8 FCC Rcd 7054 (Com. Car. Bur. 1993) (approving the conversion of approximately 285,000 access lines from price cap to rate-of-return regulation).

<sup>46</sup> See Petition at 11-12.

<sup>47</sup> *Id.*



areas.<sup>48</sup> Section 61.45 of the Commission's rules grants the Commission discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.<sup>49</sup> We require GTE to make such an adjustment.<sup>50</sup>

#### IV. WAIVER OF SECTION 69.3(e)(9)

##### A. Background

21. Under section 69.3(g)(3) of the Commission's rules, telephone companies involved in mergers or acquisitions that wish to have more than 50,000 common lines re-enter the NECA common line pool must request a waiver of section 69.3(e)(9).<sup>51</sup> In adopting the 50,000 line threshold for waiver requests, the Commission recognized that this requirement should not deter local exchange carriers from executing a transaction that otherwise would be desirable.<sup>52</sup> Therefore, if the telephone company has met all other legal obligations, a request for waiver of section 69.3(e)(9) will be deemed granted sixty-one (61) days from the date of the public notice inviting comment on the waiver request unless, *inter alia*, the merger or acquisition involves one or more partial study areas.<sup>53</sup> In mergers or acquisitions involving one or more partial study areas, petitioners seeking waiver of section 69.3(e)(9) must demonstrate that the re-entry of non-pooling access lines into the common line pool would not have a substantial adverse effect

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<sup>48</sup> See 47 C.F.R. § 61.45(d)(1)(iv). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. See also *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961 (1995).

<sup>49</sup> See 47 C.F.R. § 61.45(d)(1)(iv).

<sup>50</sup> The Bureau has required carriers to make adjustments to their price cap indices in past study area waivers involving the sale of exchanges operated by carriers subject to price cap regulation. See, e.g., *Northland Telephone Company d/b/a PTI Communications, Inc. and US West Communications, Inc., Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(6) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13329, 13336 (Acc. Aud. Div. 1997); *GTE North, Inc., and PTI Communications of Michigan, Inc., Petition for Waiver of Sections 61.41(c) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13882, 13888 (Acc. Aud. Div. 1997); *Golden Belt Telephone Association, Inc., and United Telephone Company of Kansas, Petition for Waiver of Sections 61.41(c)(2) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 16335, 16341 (Acc. Aud. Div. 1997); *Rural Telephone Service Company, Inc., and United Telephone Company of Kansas, Petition for Waiver of Sections 61.41(c)(2) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 16343, 16350 (Acc. Aud. Div. 1997).

<sup>51</sup> 47 C.F.R. § 69.3(g)(3). Under section 69.3(e)(9) of the Commission's rules, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff(s) must file Carrier Common Line tariff(s) for all its study areas. See 47 C.F.R. § 69.3(e)(9). In order to have more than 50,000 acquired common lines re-enter the common line pool, carriers must obtain a waiver of this requirement.

<sup>52</sup> 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, 235, 244 (1989) (*Common Line Pool Order*). We also note that the Commission specifically delegated to the Chief of the Common Carrier Bureau the authority to act on such waiver requests. See *id.* at 244.

<sup>53</sup> See 47 C.F.R. § 69.3(g)(3); see also *Common Line Pool Order* at 245.

on the pool's revenue requirement and would not significantly increase the LTS obligations of the remaining non-pooling LECs.<sup>54</sup> Such petitions must be filed as part of a Part 36 study area waiver request.<sup>55</sup> Spectra and GTE seek a waiver of section 69.3(e)(9) of the Commission's rules to permit Spectra to return the 116,149 access lines it is acquiring from GTE to the NECA common line pool.<sup>56</sup>

## B. Discussion

22. Because re-entry of Spectra's acquired 116,149 non-pooling access lines into the common line pool will not have a substantial adverse effect on the pool's revenue requirement and will not increase the LTS obligations of non-pooling LECs, we conclude that good cause exists for us to waive section 69.3(e)(9) of the Commission's rules. NECA has advised Spectra that including these access lines in the common line pool will cause a change of slightly more than one half of one percent (0.53%) in the overall common line pool revenue requirement.<sup>57</sup> We agree with NECA that such an increase in the common line pool's revenue requirement is not significant enough to justify a denial of Spectra's waiver request. We also conclude that including Spectra's acquired access lines in the common line pool will not increase the LTS obligations of contributing carriers. In accordance with section 54.305 of the Commission's rules, because GTE does not currently receive LTS for the acquired exchanges, Spectra will also be ineligible to receive LTS for those exchanges.<sup>58</sup> As such, the LTS obligations of contributing carriers will not be impacted. We, therefore, conclude that there is good cause to grant Spectra a waiver of section 69.3(e)(9) because NECA's common line pool will not be adversely affected, and there will be no significant increase in LTS obligations.

## V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of Part 36, Appendix-Glossary, of the Commission's rules, filed by Spectra Communications Group, LLC and GTE Midwest Incorporated, on March 17, 2000, IS GRANTED.

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<sup>54</sup> *Id.* In the *Common Line Pool Order*, the Commission also required that the re-entry of non-pooling access lines not significantly increase Transitional Support. We note that, in accordance with section 69.612 of the Commission's rules, Transitional Support expired on June 30, 1994. See 47 C.F.R. § 69.612(b). We also note that in the *First Report and Order* the Commission concluded that the burden of LTS for common line pool LECs should be shifted from the non-pooling LECs to all providers of interstate telecommunications services. See *First Report and Order* at 9164-9166.

<sup>55</sup> See *Common Line Pool Order* at 245.

<sup>56</sup> Petition at 14.

<sup>57</sup> See Petition at 17 (citing Exhibit D, Letter from Romita Biswas, Manager, Rate Development, National Exchange Carrier Association, Inc., to Kenneth Matzdorff, Spectra Communications Group, LLC, dated March 16, 2000).

<sup>58</sup> See 47 C.F.R. § 54.305. We note that, since adoption of section 69.3 of the Commission's rules, the burden of LTS for common line pool LECs has shifted from the non-pooling LECs to all providers of interstate telecommunications services. See *First Report and Order* at 9164-9166; Petition at 16. As such, even in the absence of section 54.305 of the Commission's rules, we do not believe that including Spectra's acquired access lines in the common line pool would significantly increase the LTS obligations of contributing carriers.

24. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of sections 61.41(c) and 69.3(e)(9) of the Commission's rules, filed by Spectra Communications Group, LLC and GTE Midwest Incorporated, IS GRANTED.

25. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, 1.3, and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 61.43, that GTE Midwest Incorporated SHALL ADJUST its price cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder  
Deputy Chief, Accounting Policy Division