

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

In the Matter of
ATEAC, Inc.,
Alaska Telephone Company,
Arctic Slope Telephone Association Cooperative,
Inc.,
Interior Telephone Company, Inc.,
Mukluk Telephone Company, Inc., and
United-KUC, Inc.
Petition for Waiver of the Definition of "Study
Area" Contained in the Part 36, Appendix-
Glossary of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: January 16, 2001

Released: January 17, 2001

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from ATEAC, Inc. (ATEAC), Alaska Telephone Company (ATC), Arctic Slope Telephone Association Cooperative, Inc. (ASTAC), Interior Telephone Company, Inc. (ITC), Mukluk Telephone Company, Inc. (MTC), and United-KUC, Inc. (United-KUC) (collectively, "Petitioners"), for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. The requested waiver will permit the Petitioners to divide their jointly operated ATEAC study area among ATC, ASTAC, ITC, MTC, and United-KUC. The requested waiver also will enable ATC, ASTAC, ITC, MTC, and United-KUC to alter the boundaries of their existing Alaska study areas to include the exchanges being transferred from the ATEAC study area.

1 ATEAC, Inc., Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Interior Telephone Company, Inc., Mukluk Telephone Company, Inc., and United-KUC, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules (filed Sep. 22, 2000) (Petition).

2 ATEAC is an Alaska corporation owned by four Alaska Corporations: (1) Alaska Power & Telephone Company ("AP&T"), the parent company of ATC which serves 14 Alaska exchanges (approximately 4,523 access lines); (2) ASTAC, a local exchange carrier which serves eight Alaska exchanges (approximately 2,367 access lines); (3) TelAlaska, Inc. ("TelAlaska"), the parent company of ITC, a local exchange company which serves nine Alaska exchanges (approximately 4,777 access lines) and of MTC, local exchange carriers which serves 12 Alaska exchanges (approximately 1,295 access lines) and (4) United Companies, Inc. ("United"), the parent company of United-KUC, a new Alaska local exchange carrier, and of United Utilities, Inc. ("UUI"), a local exchange carrier which serves 57 Alaska exchanges (approximately 5,911 access lines). AP&T, ASTAC, TelAlaska and United each own 25 percent of ATEAC's issued and outstanding stock.

3 We note that, in the original petition, United-KUC requested permission to create a new Alaska study area with its acquired exchanges. See Petition at 15-16. United-KUC subsequently amended this request and asked the (continued....)

In particular, the requested waiver will permit: (1) ATC to alter the boundaries of its existing Alaska study area to include six exchanges comprising approximately 7,593 access lines; (2) ASTAC to alter the boundaries of its existing Alaska study area to include a single exchange comprising approximately 3,693 access lines; (3) ITC to alter the boundaries of its existing Alaska study area to include two exchanges comprising approximately 4,096 access lines; (4) MTC to alter the boundaries of its existing Alaska study area to include a single exchange comprising approximately 3,398 access lines; and (5) United-KUC to alter the boundaries of the existing Alaska study area of United Utilities, Inc., its immediate parent company, to include three exchanges comprising approximately 5,016 access lines.

II. DISCUSSION

A. Background

2. 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. The Commission froze all study area boundaries effective November 15, 1984,⁴ 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.

3. 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.⁵ 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,⁶ the

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Commission to permit it to include the acquired exchanges in the existing Alaska study area of United Utilities, Inc. (UII), United-KUC's immediate parent company. See Letter from Gerard J. Duffy, Counsel for ATEAC, Inc. and United-KUC, Inc., to Magalie Roman Salas, FCC, dated December 22, 2000. United-KUC and UII would continue to operate as separate corporate entities, but United-KUC's three Alaska exchange and UII's 57 Alaska exchanges would be included in a single, consolidated Alaska study area.

⁴ 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).

⁵ 47 C.F.R. § 54.305.

⁶ 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 (continued....)

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.⁷ In adopting section 54.305, the Commission sought to ensure that a selling carrier does not artificially inflate the price of an exchange in anticipation of the buyer's receipt of increased universal service support as a result of the transfer.⁸ High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,⁹ interim hold-harmless support for non-rural carriers,¹⁰ rural carrier high-cost loop support,¹¹ local switching support,¹² and Long Term Support (LTS).¹³ To the extent

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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.

⁷ 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 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 (5th Cir. 1999).

⁸ See, e.g., *id.*

⁹ See 47 C.F.R. § 54.309.

¹⁰ 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. The Commission recently adopted the recommendations of the Federal-State Joint Board on Universal Service (Joint Board) for phasing down the interim hold-harmless support for non-rural carriers. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, FCC 00-428 (rel. Dec. 8, 2000). The Commission adopted measures to phase down interim hold-harmless support, excluding LTS, through \$1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. *Id.* at para. 1. The Commission also adopted the Joint Board's recommendation not to phase down interim hold-harmless support for eligible exchanges transferred to rural carriers until the Commission reexamines section 54.305 or until rural high-cost reform is complete. *Id.* at para. 21. Interim hold-harmless support for exchanges transferred to non-rural carrier will be phased down over the same time period as the seller's support would have been phased down. *Id.* at para. 22. The Commission also sought comment on whether to continue applying section 54.305 to transfers of telephone exchanges between non-rural carriers following phase-down. *Id.* at paras. 23-24.

¹¹ Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost. See 47 C.F.R. §§ 36.601-36.631.

¹² 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.

¹³ 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.

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.

4. *The Petition for Waiver.* On May 20, 1999, GTE Alaska Incorporated (GTEA), GTE Corporation (GTE), and ATEAC entered an asset purchase agreement for the sale of all 13 of GTEA's¹⁴ Alaska exchanges (approximately 23,796 access lines) to ATEAC.¹⁵ The asset purchase agreement required ATEAC to distribute the acquired Alaska exchanges among ATC, ASTAC, ITC, MTC, and United-KUC, its local exchange carrier owners or their subsidiaries.¹⁶ On October 20, 1999, the Petitioners filed applications with the Regulatory Commission of Alaska (Alaska Commission) for authorization to transfer operating assets and state certificates for the 13 exchanges from ATEAC to the other Petitioners. These applications were granted by the Alaska Commission on July 11, 2000. On February 8, 2000, the Petitioners filed a petition for waiver of sections 61.41(c) and (d) of the Commission's rules to enable them to operate the 13 Alaska exchanges as cost carriers under rate-of-return regulation following ATEAC's acquisition of these exchanges from GTEA, a price cap carrier. On August 18, 2000, the Common Carrier Bureau (Bureau) granted the requested waiver.¹⁷ On August 31, 2000, GTEA completed the sale of its 13 Alaska exchanges to ATEAC, and ATEAC completed its transfer of the 13 exchanges to ATC, ASTAC, ITC, MTC, and United-KUC.¹⁸

5. On September 22, 2000, ATEAC, ATC, ASTAC, ITC, MTC, and United-KUC filed a joint petition for waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. The requested waiver would permit the Petitioners to divide their jointly operated ATEAC study area among ATC, ASTAC, ITC, MTC, and United-KUC and would enable ATC, ASTAC, ITC, MTC, and United-KUC to alter the boundaries of their existing Alaska study areas to include exchanges being transferred from the ATEAC study area. On October 12, 2000, the Bureau released a public notice seeking comment on the petition.¹⁹ The National Telephone Cooperative Association and the United States Telecom Association filed comments in support of the petition.

¹⁴ GTEA, an Alaska corporation, is a wholly owned subsidiary of GTE, a New York corporation. *See* Petition at 2.

¹⁵ *See id.*

¹⁶ These transactions were structured as follows: (a) six of the exchanges, (Haines, Hyder, Klukwan, Metlakatla, Petersburg and Wrangell, comprising approximately 7,593 aggregate access lines) were transferred to ATC (Alaska Commission Docket No. U-99-119); (b) one of the exchanges (Barrow, comprising approximately 3,693 access lines) was transferred to ASTAC (Docket No. U-99-120); (c) two of the exchanges (Moose Pass and Seward, comprising approximately 4,096 aggregate access lines) were transferred to ITC (Docket No. U-99-121); (d) one of the exchanges (Nome, comprising approximately 3,398 access lines) was transferred to MTC (Docket No. U-99-122); and (e) three of the exchanges (Bethel, McGrath and Unalakleet, comprising approximately 5,016 aggregate access lines) were transferred to United-KUC (Docket No. U-99-123). *See* Petition at 5-7.

¹⁷ *See ATEAC, Inc. et al., Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, CCB/CPD No. 00-03, Memorandum Opinion and Order, DA 00-1883 (Com. Car. Bur. rel. Aug. 18, 2000).

¹⁸ *See* Petition at 8.

¹⁹ *ATEAC, Inc., Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Interior Telephone Company, Inc., Mukluk Telephone Company, Inc., and United-KUC, Inc. Seek a Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules*, Public Notice, DA 00-2306 (rel. Oct. 12, 2000).

B. Discussion

6. We find that good cause exists to waive the definition of study area contained in Part 36 Appendix-Glossary of the Commission's rules to permit the Petitioners to divide their jointly operated ATEAC study area among ATC, ASTAC, ITC, MTC, and United-KUC, and permit ATC, ASTAC, ITC, MTC, and United-KUC to alter the boundaries of their existing Alaska study areas to include exchanges being transferred from the ATEAC study area.

7. Generally, the Commission's rules may be waived for good cause shown.²⁰ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³ 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: (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 may oppose the transfer; and (3) the transfer must be in the public interest.²⁴ For the reasons discussed below, we conclude that Petitioners have satisfied these criteria and demonstrated that good cause exists for waiver of the Commission's study area freeze rule.

8. First, we conclude that the Petitioners 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 that 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.²⁵ As such, ATC, ASTAC, ITC, MTC, and United-KUC will receive the same per-line levels of support, including high-cost loop support, local switching support, and LTS, for which the exchanges were eligible prior to their transfer. Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms. We note that, as a result of this transaction, access lines in the Petitioners' pre-acquisition study area boundaries will be eligible for different amounts of high-cost support than the access lines being transferred from the ATEAC study area. We, therefore, direct ATC, ASTAC, ITC, MTC, and United-KUC to submit, as part of their annual universal service data submissions in accordance with the

²⁰ 47 C.F.R. § 1.3.

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *See, e.g., U S 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).

²⁵ *See* 47 C.F.R. § 54.305.

Commission's rules,²⁶ a schedule showing their methodology for excluding the costs associated with the acquired access lines from the costs associated with their pre-acquisition study areas.

9. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Alaska Commission has indicated that it does not oppose the grant of the study area waiver.²⁷

10. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit the ATEAC study area to be divided among ATC, ASTAC, ITC, MTC, and United-KUC and permit ATC, ASTAC, ITC, MTC, and United-KUC to alter the boundaries of their existing Alaska study areas to include exchanges being transferred from the ATEAC study area. Petitioners state that "ATC, ASTAC, ITC, MTC, and United-KUC's affiliates are established Alaska local exchange carriers, each of which has been in the state for at least 19 years."²⁸ According to the Petitioners, "this local ownership and control will result in greatly increased responsiveness to the telecommunications needs of residents of the thirteen communities."²⁹ We also note that the Alaska Commission has determined that the Petitioners are qualified to provide telecommunications services in the acquired exchanges.³⁰ Based on these representations, and the statements of the Alaska Commission, we conclude that the Petitioners have demonstrated that grant of this waiver request serves the public interest.

III. ORDERING CLAUSES

11. 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 ATEAC, Inc., Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Interior Telephone Company, Inc., Mukluk Telephone Company, Inc., and United-KUC, Inc., on September 22, 2000, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Chief, Accounting Policy Division

²⁶ See 47 C.F.R. § 36.611.

²⁷ See Petition at 5-7, Exhibits B-F.

²⁸ *Id.* at 14.

²⁹ *Id.*

³⁰ See, e.g., *id.* at Exhibit B-3, 5, 10.