

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

In the Matter of )  
 )  
Pioneer Telephone Cooperative, Inc. )  
Panhandle Telephone Cooperative, Inc. ) CC Docket No. 96-45  
EagleNet, Inc. )  
 )  
Joint Petition for Waiver of the )  
Definition of "Study Area" in )  
Appendix-Glossary of Part 36 )

**ORDER**

**Adopted:** March 16, 2001

**Released:** March 19, 2001

By the Chief, Accounting Policy Division:

**I. INTRODUCTION**

1. In this Order, we grant a request from Pioneer Telephone Cooperative, Inc. (Pioneer), Panhandle Telephone Cooperative, Inc. (PTCI), and EagleNet, Inc. (EagleNet) (collectively, petitioners), for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.<sup>1</sup> This waiver will permit Pioneer, PTCI, and EagleNet to alter the boundaries of their jointly operated Oklahoma study area by removing six exchanges that are currently owned by Pioneer. This waiver also will permit Pioneer to alter the boundaries of its existing Oklahoma study area to include the six exchanges it is removing from the petitioners' jointly operated study area.

**II. 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, an incumbent LEC operating in more than one state typically has one study area for each 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 and the transaction requires the alteration of a study area boundary. As a result of the study area freeze, an incumbent LEC may operate in more than one study area in a given state through the acquisition of partial or entire study areas from other

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<sup>1</sup> Pioneer Telephone Cooperative, Inc., Panhandle Telephone Cooperative, Inc., and EagleNet, Inc., Joint Petition for Waiver of the Definition of "Study Area" in the Appendix – Glossary of Part 36 (filed Jan. 24, 2000) (Petition). EagleNet is a wholly-owned subsidiary of PTCI. *See id.* at 1. No disaggregation of the EagleNet and PTCI exchanges is sought.

<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).

incumbent LECs. In transactions involving multiple acquiring carriers, exchanges in a single acquired study area may be operated by more than one incumbent LEC. Such is the case with the study area jointly operated by Pioneer, PTCI, and EagleNet.<sup>3</sup>

3. *The Petition for Waiver.* On February 18, 1994, the Common Carrier Bureau (Bureau) granted the petition of EagleNet for waiver of various of the Commission's rules to effectuate the purchase by EagleNet, PTCI, and Pioneer of 14 rural Oklahoma exchanges comprising 12,562 access lines from GTE Southwest Incorporated (GTE).<sup>4</sup> As a condition of approval of the study area waiver, the Bureau required EagleNet, PTCI, and Pioneer to create a new combined study area consisting of the 14 acquired exchanges.<sup>5</sup> The Bureau reasoned that permitting the carriers to create separate study areas for the acquired exchanges would have adverse jurisdictional separations implications and would increase the burden of administering the universal service programs.<sup>6</sup> The Bureau specifically expressed concern regarding PTCI's proposal to establish a second study area in Oklahoma for the exchanges operated by its wholly-owned subsidiary, EagleNet.<sup>7</sup> Of the 12,562 access lines which were acquired from GTE, EagleNet assumed operational responsibility for 4,727 access lines, Pioneer assumed operational responsibility for 3,452 access lines, and PTCI assumed operational responsibility for 4,383 access lines.

4. On January 24, 2000, Pioneer, PTCI, and EagleNet 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 Pioneer, PTCI, and EagleNet to remove the six exchanges operated by Pioneer from their combined Oklahoma study area, and permit Pioneer to incorporate the six exchanges into its existing Oklahoma study area. The six exchanges are contiguous with Pioneer's existing Oklahoma study area.<sup>8</sup> The petitioners state that the waiver is sought to regularize reporting and accounting practices, and to respond to a notification from the National Exchange Carrier Association, Inc. (NECA) that it will no longer accept the petitioners' prior practice of separately reporting their costs for consolidation at the Part 69 reporting level.<sup>9</sup> On February 29, 2000, the Bureau released a public notice seeking comment on the petition.<sup>10</sup> Comments in support of the petition were filed by NECA and the National Telephone Cooperative Association (NTCA).

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<sup>3</sup> See *infra* discussion at para. 3.

<sup>4</sup> *GTE Southwest Incorporated and EagleNet, Inc., Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix—Glossary of the Commission's Rules, EagleNet, Inc., Petition for Waiver of Section 61.41(c) and 69.3(e)(11) of the Commission's Rules, AAD 93-94, Memorandum Opinion and Order, DA 94-166, 9 FCC Rcd 1008 (1994) (EagleNet Study Area Waiver Order).*

<sup>5</sup> See *id.* at 1009. The Commission intended to prevent the carriers from gaining advantage under the universal service and jurisdictional separations rules. *Id.*

<sup>6</sup> See *id.*

<sup>7</sup> *Id.*

<sup>8</sup> Petition at 2-3.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *EagleNet, Inc., Panhandle Telephone Cooperative, Inc., and Pioneer Telephone Cooperative, Inc. Seek Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules, Public Notice, DA 00-417 (rel. Feb. 29, 2000).*

### III. DISCUSSION

5. 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 Pioneer, PTCI, and EagleNet to remove the six exchanges operated by Pioneer from their jointly operated Oklahoma study area, and permit Pioneer to incorporate the six exchanges into its existing Oklahoma study area.

6. Generally, the Commission's rules may be waived for good cause shown.<sup>11</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>12</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>13</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>14</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 fund; 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>15</sup> 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.

7. First, we conclude that Pioneer, PTCI, and EagleNet have demonstrated that the proposed change in study area boundaries will not adversely affect any of the universal service mechanisms. In accordance with past precedent, a study area waiver will not be granted if it results in an annual aggregate shift in high-cost loop support in an amount equal to or greater than one percent of the total high-cost loop support fund, unless the parties demonstrate an extraordinary public interest benefit.<sup>16</sup> We conclude that

<sup>11</sup> 47 C.F.R. § 1.3.

<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>15</sup> 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) (*Eagle Telecommunications 1995 Study Area Waiver*).

<sup>16</sup> Because of the operation of the indexed cap, any study area reconfiguration that increases the high-cost loop support of one recipient often reduces that of other recipients. In evaluating whether a study area change would have an adverse impact on the distribution or level of the high-cost loop support fund, the Commission determined that a "one-percent" guideline should be applied to study area waivers filed after January 5, 1995. See *Eagle Telecommunications 1995 Study Area Waiver*, 10 FCC Rcd at 1774. Section 54.305 of the Commission's rules, which was adopted on May 7, 1997, limits the amount of high-cost universal service support that a carrier acquiring exchanges from an unaffiliated carrier may receive to the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer. 47 C.F.R. § 54.305. The instant study area waiver request, however, does not involve a transfer, and therefore section 54.305 of the Commission's rules does not apply. It therefore is appropriate to apply the "one percent" guideline here.

the transfer of Pioneer's six exchanges from the combined study area to its existing Oklahoma study area will not result in such a shift. According to the petitioners, as a result of the proposed transfer of the six exchanges from the combined study area to Pioneer's Oklahoma study area, the net amount of annual high-cost loop support received by the petitioners' exchanges will increase \$47,514.<sup>17</sup> Because the total size of the high-cost loop support mechanism for calendar year 2001 is projected to be \$919.587 million, we conclude that an estimated increase of \$47,514 constitutes an insignificant aggregate shift in high-cost loop support.<sup>18</sup> Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms.

8. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Oklahoma Corporation Commission (Oklahoma Commission) has indicated that it does not object to the grant of the study area waiver.<sup>19</sup>

9. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit Pioneer, PTCI, and EagleNet to remove the six exchanges operated by Pioneer from their combined Oklahoma study area and permit Pioneer to incorporate the six exchanges into its existing Oklahoma study area. Specifically, the proposed study area waiver may result in greater operational efficiencies,<sup>20</sup> more accurate reporting of costs,<sup>21</sup> and reduced administrative burdens for the petitioners and

<sup>17</sup> See Letter from Sylvia Lesse, Counsel for EagleNet, Inc., Panhandle Telephone Cooperative, Inc., and Pioneer Telephone Cooperative, Inc., to Magalie Roman Salas, FCC, dated February 2, 2001. Annual high-cost loop support received by Pioneer would increase \$264,178 and high-cost loop support received by PTCI and EagleNet in the study area would decrease \$216,664.

<sup>18</sup> See Federal Universal Service Support Mechanisms Fund Size Projections & Contribution Base For the First Quarter 2001 (filed by USAC Nov. 2, 2000) (*USAC Filing for First Quarter 2001*). We also note that, even though per-line amounts of high-cost loop support, LTS, and local switching support directed to the six exchanges may increase as a result of the proposed transaction, the overall size of these support mechanisms are capped. The Joint Board recommended, and the Commission adopted, interim rules that limit the rate of growth of the high-cost loop support mechanism to the rate of growth in the total number of working loops nationwide. *See generally Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Recommended Decision, 9 FCC Rcd 334 (1993); *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993). The Commission extended these interim rules through July 1, 1996. *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 11 FCC Rcd 2538 (1995), summarized in 60 Fed. Reg. 65011 (1995). The Joint Board recommended, and the Commission adopted, an extension of the interim cap until final universal service rules become effective. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 11 FCC Rcd 7928 (1996); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 11 FCC Rcd 7920 (1996).

<sup>19</sup> See Petition at 4-5, Attachment 1.

<sup>20</sup> See *id.* at 5-6.

<sup>21</sup> See *id.* at 6. According to the petitioners, implementation of the NECA directive, which would require the petitioners to conduct a consolidated cost study for the jointly-held study area, may result in inaccurate and inconsistent reporting of the actual costs that each carrier in a jointly operated study area incurs in providing services to their respective customers. *Id.* Moreover, according to NECA, "consolidation of the Pioneer exchanges would enable discrete study area reporting to NECA for access charge settlements purposes for Pioneer and EagleNet." See NECA Comments at 3-4.

NECA.<sup>22</sup> As detailed above, we also believe that the instant waiver will not enable the petitioners to gain an undue advantage under universal service and jurisdictional separations rules, which was a concern raised in the Bureau's order requiring the petitioners to create a combined study area.<sup>23</sup> We also note that the Oklahoma Commission has concluded that approval of the petitioners' study area waiver request is in the public interest.<sup>24</sup> Based on these representations and the findings of the Oklahoma Commission, we conclude that the petitioners have demonstrated that grant of this waiver request will serve the public interest.

#### IV. ORDERING CLAUSE

10. 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 Pioneer Telephone Cooperative, Inc., Panhandle Telephone Cooperative, Inc., and EagleNet, Inc., on January 24, 2000, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder  
Chief, Accounting Policy Division

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<sup>22</sup> See Petition at 6-7. According to the petitioners, the aggregation of carrier costs in jointly operated study areas at the study area level for Part 69 purposes, and the disaggregation of such costs on a company-specific basis for operational purposes, may impose additional and unnecessary administrative and accounting burdens on the petitioners and NECA.

<sup>23</sup> See *EagleNet Study Area Waiver Order*, 9 FCC Rcd at 1009. For example, the jurisdictional separations rules permit carriers operating in smaller study areas to recover more of their loop costs from the interstate jurisdiction. See, e.g., 47 C.F.R. § 36.631.

<sup>24</sup> See Petition at 4-5, Attachment 1.