

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

In the Matter of)	
)	
Adak Eagle Enterprises, LLC)	
d/b/a Adak Telephone Utility)	CC Docket No. 96-45
)	
Petition for Waiver of Sections 36.611, 36.612,)	
54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and)	
69.3(e)(6) of the Commission's Rules)	

ORDER

Adopted: December 29, 2005

Released: December 30, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (Adak Telephone), a new local exchange carrier (LEC) in Alaska, waivers of certain Commission rules so that it may receive high-cost loop support based on projected costs until historical costs become available.¹ Adak Telephone will be eligible to receive high-cost universal service support as of the date it was designated an eligible telecommunications carrier (ETC). Further, we grant Adak Telephone's request for waiver of the Commission's rules so that it may participate immediately in the National Exchange Carrier Association's (NECA) pools and tariffs.

II. BACKGROUND

2. *Petition.* On February 9, 2005, Adak Telephone filed a petition for waiver of certain Commission rules so that it may receive immediate federal high-cost universal service support. The Wireline Competition Bureau (Bureau) released a public notice on May 27, 2005, seeking comment on the petition for waivers.² Adak Telephone proposes to create a new study area in the state of Alaska in an area that has never been part of any study area or previously served by any designated ETC.³ This new

¹ See Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs, CC Docket No. 96-45 (filed February 9, 2005) (Petition). Adak Telephone also requests, if necessary, a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules. 47 C.F.R. Part 36 App. We conclude that such waiver is not needed. See *infra* para. 6.

² See Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Seeks Waiver of Sections 36.611, 36.612, 54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and 69.3(e)(6) of the Commission's Rules and, if necessary, a Waiver of the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 10432 (2005). The Regulatory Commission of Alaska (Alaska Commission) and the Alaska Telephone Association filed comments on June 10 and June 8, 2005, respectively, in support of Adak Telephone's petition.

³ See Petition at 5.

service area is on Adak Island, Alaska, a remote island that formerly housed a United States Navy (Navy) complex.⁴ The Navy installed and operated its own utility facilities, including a communications system, until the closure of the Adak Naval Complex in 2000.⁵ The record developed by the Alaska Commission shows that Adak Telephone was the only entity willing to undertake the provision of public telephone service on Adak Island.⁶ Adak Telephone argues that while it has been using the plant installed by the military (much of which is outdated) and a digital switch to provide service to the residents of Adak Island, it must replace virtually all of the existing plant and expand its operations in order to provide adequate and reliable service.⁷ Adak Telephone explains that these efforts will require substantial construction and installation projects and that Adak Telephone will incur significantly higher costs associated with obtaining a skilled workforce.⁸ Adak Telephone states that it has applied for a \$6.2 million loan from the Rural Utilities Service (RUS) to cover the necessary costs to upgrade the system.⁹

3. Adak Telephone also requests waivers of sections 36.611, 36.612, 69.2(hh), and 69.3(e)(6) of the Commission's rules.¹⁰ Waiver of sections 36.611 and 36.612 of the Commission's rules would enable Adak Telephone to receive accelerated high-cost loop support payments based on projected costs until historical costs become available.¹¹ Waiver of sections 69.2(hh) and 69.3(e)(6) would permit Adak Telephone to become a member of NECA and to participate in the NECA pools and tariffs.¹² In addition, Adak Telephone requests waivers of sections 54.301(b), 54.314(d), and 54.903(a)(3) to allow it

⁴ Adak Island is an island located in the Aleutian chain that was used by the United States military beginning in the 1940s. Adak Telephone's service area consists of that portion of Adak Island that was the former Adak Naval Complex. The remainder of Adak Island is part of the Alaska Maritime National Wildlife Refuge. *See id.* at 3. Currently, the number of working access lines on Adak Island varies from 75 for year-round residents to 160 during the summer months. *See id.*

⁵ Military operations ended on Adak Island on March 31, 1997, and the Navy completed its withdrawal effective September 30, 2000. *See id.*

⁶ *See* Alaska Commission Comments at 2. Upon withdrawal, the Navy transferred all utilities to the Adak Reuse Corporation (ARC), a public local redevelopment authority empowered to facilitate reuse and redevelopment of the Adak Naval Complex. Initially, Adak Telephone managed ARC's telephone utility services. ARC subsequently conveyed all utilities except communications to the City of Adak. The city declined to accept the communications system. On September 19, 2003, the Alaska Commission transferred ARC's temporary operating authority to Adak Telephone. Effective March 17, 2004, ownership of most of the land and improvements of the Adak Naval Complex were conveyed to the Aleut Corporation, a regional corporation established under the Alaska Native Claims Settlement Act. Adak Telephone has obtained a long-term lease of the existing communications facilities, but states that it will own all future additions and improvements constructed to provide local exchange service. *See* Petition at 3-6; Alaska Commission Comments, Appendix A at 4 & nn.8-9. On November 23, 2005, the Alaska Commission granted Adak Telephone a permanent certificate of public convenience and necessity to provide local exchange service in Adak, Alaska. *See* Second Supplement to Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs, CC Docket No. 96-45 (filed December 7, 2005) (attaching State of Alaska, Regulatory Commission of Alaska, Application by Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility for a Certificate of Public Convenience and Necessity to Provide Local Exchange Service in Alaska, Order Granting Permanent Certificate, Modifying Reporting Requirements, Requiring Filing, and Closing Docket, U-03-76, Order No. 4 (adopted Sept. 23, 2005)).

⁷ *See* Petition at 6. The military's communications system consisted of an analog private branch exchange switch, copper cable facilities, and limited amounts of fiber optic cable. *See id.* at 4.

⁸ *See id.*

⁹ *See id.*

¹⁰ 47 C.F.R. §§ 36.611, 36.612, 69.2(hh), 69.3(e)(6)

¹¹ *See* Petition at 9-12.

¹² *Id.* at 15-17.

to receive high-cost loop support, local switching support (LSS) and interstate common line support (ICLS) beginning January 1, 2005.¹³ Adak Telephone also asks that we grant on our own motion any other waivers needed to expedite receipt of universal service support and participation in NECA pools and tariffs.¹⁴ Adak Telephone maintains that granting these waivers is consistent with the Commission's goal of assisting carriers in serving high-cost rural areas and maintaining affordable local service rates, and will allow Adak Telephone and its customers the benefit of cost savings and lower rates available through participation in NECA pools and tariffs.¹⁵

4. *Standard for Waiver.* Generally, the Commission may waive its rules for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ 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.

III. DISCUSSION

A. Study Area Waiver

5. A study area is a geographic segment of an incumbent LEC's telephone operations. The Commission froze all study area boundaries effective November 15, 1984 to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support.¹⁹ A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.²⁰

6. We conclude that a study area waiver is not necessary under the circumstances of this petition and thus we decline to grant Adak Telephone such a waiver. In reaching our decision, we agree with the conclusions of the Alaska Commission that the area Adak Telephone proposes to serve is not within any existing study area, and thus a study area waiver is not needed.²¹ Specifically, the record shows that

¹³ *Id.* at 14-15. 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a)(3).

¹⁴ Petition at 18.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *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.

¹⁹ *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.

²⁰ *Part 67 Order* at para. 1.

²¹ *See* Alaska Commission Comments at 2. We note that our conclusion is consistent with the Commission's finding in the *Skyline Order* because Adak Telephone is not seeking to create a new study area from within one or more existing study areas. In the *Skyline Order*, the Commission clarified that a study area waiver request is necessary only when a company is seeking to create a new study area from within one or more existing study areas. *See M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, Order, 19 FCC Rcd 6761, 6766, para. 13 (2004) (*Skyline Order*).

because the previous provider was the Navy, the proposed service area has never been previously served by any certificated LEC or designated ETC.²²

B. Waiver of Sections 36.611 and 36.612

7. *Rules 36.611 and 36.612.* Adak Telephone requests a waiver of sections of 36.611 and 36.612 of the Commission's rules in order to receive immediate high-cost loop support payments based on its projected costs.²³ High-cost loop support is calculated using data provided by incumbent LECs pursuant to the Commission's cost accounting and data collection requirements.²⁴ In accordance with section 36.611 of the Commission's rules, on July 31 of each year, incumbent LECs file the preceding year's loop cost data with NECA.²⁵ Each rural carrier's high-cost loop support for the following year is based on the relationship between the carrier's study area average cost per loop and the nationwide average cost per loop, as limited by the indexed cap.²⁶ Because the cost data are not submitted by carriers until seven months after the end of a calendar year (*i.e.*, July 31), and NECA requires time to analyze the data and make the necessary nationwide calculations, carriers generally do not receive high-cost loop support based on these data until the beginning of the second calendar year after the costs are incurred.²⁷ As a result, carriers without historical data, such as newly established carriers, may wait up to two years before receiving any high-cost loop support payments. Under section 36.612 of the rules, however, carriers can update their data on a quarterly basis and receive support earlier than under section 36.611.²⁸

8. We find that special circumstances warrant a deviation from sections 36.611 and 36.612 of the Commission's rules, and that it is in the public interest to grant Adak Telephone's waiver request so that it may receive high-cost loop support prior to 2007. Absent universal service support, Adak Telephone would continue to have extremely high monthly basic local service rates of \$100 and \$130 for residential and business customers, respectively.²⁹ The Alaska Commission confirms that the network previously run by the Navy is outdated and, in certain instances, deteriorated, and that Adak Telephone must make system upgrades to provide modern, reliable telecommunications services in an area that is expensive to serve.³⁰ The Alaska Commission approved interim residential service rates that are more than four times the national average urban rate.³¹ Without immediate access to high-cost loop support,

²² See Petition at 8.

²³ See Petition at 9-12. To facilitate immediate high-cost loop support payments, Adak Telephone proposes to submit to NECA a rolling annualized average of current costs, subject to quarterly true-up adjustments based on actual costs. See *id.* at 13. Final high-cost loop support payments for the interim period would be based on actual costs for that period. Adak Telephone notes that the Bureau has previously approved this methodology. *Id.* (citing *Border to Border Communications, Inc., Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, AAD 94-61, 10 FCC Rcd 5055, 5057, paras. 5-14 (Com. Car. Bur. 1995)).

²⁴ See 47 C.F.R. Parts 36, 54, and 69.

²⁵ See 47 C.F.R. § 36.611.

²⁶ See 47 C.F.R. § 36.622.

²⁷ See 47 C.F.R. § 36.611.

²⁸ 47 C.F.R. § 36.612.

²⁹ Petition at 11.

³⁰ Alaska Commission Comments at 2.

³¹ *Id.* As of October 15, 2004, the average urban residential rate was \$24.31. See Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* at Table 1.1 (May 2005).

Adak Telephone's customers would have to wait at least two years for local service rate relief due to the customary lag in receiving such support.³²

9. We find that granting Adak Telephone's request is consistent with the Bureau's treatment of similar requests. Requests for waiver of sections 36.611 and 36.612 of the Commission's rules have only been granted in limited circumstances, primarily to accelerate the provision of support to cover costs incurred by new carriers initiating or extending service in predominantly unserved areas.³³ In these limited instances, newly established carriers lacking historical cost data have been allowed to receive support based on estimated costs that are subject to true-up.³⁴ Where requests for waiver of sections 36.611 and 36.612 have been granted, the Bureau determined that delaying the timing of high-cost loop support under the circumstances presented could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.³⁵ We agree with Adak Telephone that denial of immediate high-cost loop support could have a similar effect here.

10. We further find that delaying Adak Telephone's high-cost support would impair its ability to provide telecommunications services at affordable rates and, thus, in these unique circumstances, strict application of our rules may not further the goals of section 254 of the Communications Act of 1934, as amended (the Act).³⁶ Accordingly, we grant Adak Telephone a waiver of sections 36.611 and 36.612 of the Commission's rules to the extent necessary to permit it to receive high-cost loop support for the period beginning May 25, 2005, the date the Alaska Commission designated it an ETC.³⁷ Adak Telephone's support initially, for the period May 25, 2005 through December 2006, will be based on annualized current costs followed by true-ups using actual costs. This methodology is consistent with previous waivers of sections 36.611 and 36.612.³⁸ We direct Adak Telephone to submit quarterly updates of its actual costs in accordance with the Commission's rules, so that NECA may determine whether adjustments for the 2005 and 2006 high-cost loop support amounts are necessary.³⁹ Payments for periods subsequent to December 2006 will be based on historic data in

³² Once Adak Telephone begins receiving universal service support and participating in NECA pools and tariffs, the Alaska Commission will require it to reduce local service rates to reflect those sources of revenues. See Petition at 11.

³³ The Bureau most recently granted such a request in *Mescalero*. See *Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's Rules*, Order, CC Docket No. 96-45, 16 FCC Rcd 3813 (Acc. Pol. Div. 2001) (*Mescalero*) (granting waiver of sections 36.611 and 36.612 of the Commission's rules to newly-formed, tribally-owned carrier expanding service to unserved residences on American Indian reservation).

³⁴ *Mescalero*, 16 FCC Rcd at 3825-26, paras. 28-30.

³⁵ *Id.*, 16 FCC Rcd at 3824, para. 26. See also 47 U.S.C. § 254(b).

³⁶ 47 U.S.C. § 254(b). Section 254(b) of the Act provides, among other things, that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

³⁷ We note that Adak Telephone requests high-cost loop support effective January 1, 2005. See Petition at 1. The Alaska Commission designated Adak an ETC on May 25, 2005, and section 254(e) of the Act states that only an ETC designated under section 214(e) shall be eligible to receive federal universal service support. See Alaska Commission Comments at 3, Appendix A. See also 47 U.S.C. §§ 214(e), 254(e).

³⁸ See, e.g., *Mescalero*, 16 FCC Rcd at 3824-26, paras. 26-30.

³⁹ See 47 C.F.R. § 36.612.

accordance with the Commission's rules.⁴⁰ In its petition, Adak Telephone provided projections of its high-cost loop support for 2005.⁴¹ Based on Adak Telephone's filings, we expect that Adak Telephone will receive approximately \$302,658 in projected high-cost loop support for 2005, which is substantially less than one percent of the fund.⁴² In the future, we expect that Adak Telephone will receive support based on its actual costs.

C. Waiver of Sections 54.301(b), 54.314(d), and 54.903(a)(3).

11. *Rules 54.301(b), 54.314(d), and 54.903(a)(3).* Adak Telephone seeks waiver of Commission rules 54.301(b), 54.314(d), and 54.903(a)(3) so that it may receive immediate universal service support payments. Pursuant to section 54.314 of the Commission's rules, a state that desires rural incumbent LECs within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative Company (USAC).⁴³ The certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of the subsequent calendar year, and by January 1 to receive support beginning in the second quarter. In addition, once a carrier is granted ETC status, it must file certain data with USAC before universal support payments can begin to flow. Section 54.301(b) of the Commission's rules provides that incumbent LECs file certain data with USAC by October 1 of each year to receive LSS for the following calendar year.⁴⁴ Section 54.903(a)(3) of the Commission's rules provides that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.⁴⁵ In addition, section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.⁴⁶

12. We find that good cause exists to waive the applicable filing deadlines in sections 54.301(b), 54.314(d), and 54.903(a)(1) and (3) in order that Adak Telephone may be eligible to receive universal service support as of May 25, 2005, the date it received ETC designation from the Alaska Commission. Having concluded earlier that Adak Telephone should be eligible for immediate high-cost loop support in order to provide affordable telecommunications services, the granting of these waivers is necessary in order for Adak Telephone to be eligible to receive all available universal service support as of the date of its ETC designation, May 25, 2005.

13. Specifically, we grant Adak Telephone a waiver of the January 1, 2005 state certification filing deadline, pursuant to section 54.314(d) so that it may be eligible to receive LSS and high-cost loop

⁴⁰ See 47 C.F.R. §§ 36.611-.612.

⁴¹ See Petition at 9 (projecting this amount to be \$499,865). See also Letter from Dean D. Thompson, Counsel for Adak Telephone, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed Oct. 24, 2005).

⁴² In its petition, Adak Telephone states that its projected high-cost loop support for 2005 would be approximately \$499,865. See Petition at 9. Because we are approving Adak Telephone's request based on its ETC designation date of May 25, 2005, the pro-rated amount of high-cost loop support for 2005 should be approximately \$302,658. We expect Adak Telephone's high-cost loop support to increase to its projected annual amount of approximately \$499,865 in 2006.

⁴³ 47 C.F.R. § 54.314. If a state misses the October 1 deadline, it must file the certification by January 1 for support to begin in the second quarter of the year, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. See 47 C.F.R. § 54.314(d)(1)-(4).

⁴⁴ 47 C.F.R. § 54.301(b). Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS. See 47 C.F.R. § 54.301.

⁴⁵ 47 C.F.R. § 54.903(a)(3).

⁴⁶ 47 C.F.R. § 54.903(a)(1).

support, pursuant to sections 54.301 and Part 36, Subpart F, effective May 25, 2005. We note that the Alaska Commission submitted the required certification to the Commission and USAC, pursuant to section 54.314(a), on June 10, 2005.⁴⁷ In addition, we grant Adak Telephone a waiver of the October 1, 2004 and October 1, 2005 data filing deadlines, pursuant to section 54.301(b) so that it may be eligible to receive LSS as of May 25, 2005.⁴⁸ Effectively, our granting of a waiver of the October 1, 2004 deadline allows Adak Telephone to be eligible to receive LSS from the date of its ETC designation through the end of 2005. Our granting of a waiver of the October 1, 2005 deadline allows Adak Telephone to receive LSS for 2006. We also grant Adak Telephone a waiver of the March 31, 2005, and July 31, 2005 data filing deadlines set forth in sections 54.903(a)(1) and 54.903(a)(3) of the Commission's rules for ICLS.⁴⁹ A waiver of these deadlines allows Adak Telephone to be eligible to receive ICLS support as of May 25, 2005.

D. Waiver of Section 69.2(hh) and 69.3(e)(6) and related waivers.

14. *Rules 69.2(hh) and 69.3(e)(6)*. Adak Telephone requests a waiver of section 69.2(hh) in order that it may become a member of NECA, participate in NECA pools and receive federal universal service support.⁵⁰ Adak Telephone also requests a waiver of section 69.3(e)(6) of the Commission's rules to allow it to expeditiously enter NECA's tariff outside the annual election period.⁵¹ The Commission's rules regarding participation in NECA tariffs and pools, and its rules regarding universal service support for incumbent LECs, do not specifically address companies, such as Adak Telephone, that come into existence after the enactment of the Telecommunications Act of 1996.⁵² In order to be a member of NECA and to participate in the NECA tariffs and pools, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.⁵³ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent LEC as defined in section 251(h)(1) of the Act.⁵⁴ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act, or a successor or assign of an incumbent LEC.⁵⁵ For purposes of calculating universal service support, Part 36 of the Commission's rules applies to incumbent LECs, and Part 54 of the Commission's rules distinguishes between incumbent

⁴⁷ See Letter from Kate Giard, Chairman, Regulatory Commission of Alaska to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed June 10, 2005).

⁴⁸ Adak Telephone is only eligible to receive universal service support as of the date of its ETC designation. See *supra* para. 12.

⁴⁹ In order to receive ICLS, Adak Telephone is required to file with the fund Administrator and the Commission, on the date it first files its line count information pursuant to section 54.903, a certification that all ICLS support provided to Adak Telephone will be used only for the provision and maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.903, 54.904.

⁵⁰ See Petition at 15.

⁵¹ *Id.* at 17

⁵² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁵³ See 47 C.F.R. § 69.601.

⁵⁴ 47 C.F.R. § 69.2(hh).

⁵⁵ See 47 U.S.C. § 251(h)(1).

LECs and competitive ETCs.⁵⁶ Incumbent LEC for purposes of Part 54 of the Commission's rules has the same meaning as that term is defined in section 251(h)(1) of the Act.⁵⁷

15. We grant Adak Telephone's request for waiver of sections 69.2(hh) and 69.3(e)(6) of the Commission's rules in order to allow the carrier to join NECA and to participate immediately in NECA tariffs and pools. Adak Telephone, a newly-formed company, is neither a successor nor assign of an incumbent LEC because the Navy, as the previous operator of communications services on Adak Island, was not an incumbent LEC. Therefore, Adak Telephone does not meet the definition of an incumbent LEC as defined in sections 54.5 and 69.2(hh) of the Commission's rules and section 251(h)(1) of the Act.⁵⁸

16. We conclude that Adak Telephone has demonstrated that special circumstances warrant a waiver of sections 69.2(hh) and 69.3(e)(6) of the Commission's rules. We also grant Adak Telephone, on our motion, a waiver of the definition of incumbent LEC in Part 36 and section 54.5. Participation in NECA will allow Adak Telephone to avoid the costs of filing and maintaining its own company-specific interstate tariffs. Adak Telephone estimates that it has between 75 to 160 subscribers, depending on the season.⁵⁹ Because Adak Telephone has relatively few customers, the costs of preparing company-specific tariffs could be disproportionately excessive. Therefore, we find that it is in the public interest to permit Adak Telephone and its customers to benefit from the cost savings and lower rates available through immediate NECA participation. Without such participation in NECA's pools it is likely that Adak Telephone's company-specific interstate access rates would be prohibitively high.⁶⁰

E. Other Matters

17. 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, 2001.⁶¹ In that order, the Commission addressed the recalculation of frozen allocation factors when a carrier converts from average schedule-based interstate settlements to cost-based interstate settlements.⁶² In those circumstances, the carrier has not previously performed cost studies to separate certain types of costs. To address this issue, the Commission provided that rate-of-return carriers that convert from average schedule to cost company status during the freeze "shall calculate new factors based on the twelve-month period immediately following the conversion and then freeze the new factors for the remainder of the freeze."⁶³ Because Adak Telephone has not previously performed such cost studies, it is appropriate to apply the same

⁵⁶ For example, section 36.611 of the Commission's rules governs the submission of data to NECA for purposes of calculating high-cost support and only applies to incumbent LECs. Competitive ETCs file line count data and their support is calculated pursuant to section 54.307 of the Commission's rules. *See* 47 C.F.R. §§ 36.611, 54.307.

⁵⁷ *See* 47 C.F.R. §§ 51.5, 54.5. Unlike Parts 54 and 69 of the Commission's rules, Part 36 does not include an explicit definition of incumbent LEC. The term "incumbent local exchange carrier" is used throughout Part 36, however, and in some cases references the Commission's definition of rural incumbent LEC in section 54.5 of the Commission's rules. *See, e.g.*, 47 C.F.R. § 36.622(a).

⁵⁸ *See* 47 U.S.C. § 251(h)(1); 47 C.F.R. §§ 51.5, 54.5, 69.2(hh).

⁵⁹ Petition at 5.

⁶⁰ We note that NECA does not object to Adak Telephone participating in its pools. *See* Letter from Tracey E.J. Saltenberger, NECA, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed Sept. 30, 2005).

⁶¹ *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*).

⁶² *See Separations Freeze Order*, 16 FCC Rcd at 11406 n.123.

⁶³ *Id.*, 16 FCC Rcd at 11407, para. 53.

requirement, thus “eliminating the need for waiver requests to calculate new factors”⁶⁴ Specifically, we require Adak Telephone for the first twelve months of operation to categorize the telecommunications plant and expenses and develop separations factors in accordance with the separations procedures in effect as of December 31, 2000.⁶⁵

IV. ORDERING CLAUSES

18. 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 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 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612, filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

19. IT IS FURTHER 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 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 54.301(b), 54.314(d), 54.903(a)(1) and 54.903(a)(3) of the Commission's rules, 47 C.F.R. §§ 54.301(b), 54.314(d), 54.903(a)(1) and 54.903(a)(3), filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

20. IT IS FURTHER 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 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 69.2(hh) and 69.3(e)(6) of the Commission's rules, 47 C.F.R. §§ 69.2(hh) and 69.3(e)(6), filed by Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, on February 9, 2005, IS GRANTED, as described herein.

21. IT IS FURTHER 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 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 waiver of the definition of incumbent LEC in Part 36 and section 54.5 of the Commission's rules, 47 C.F.R. Part 36 and § 54.5, IS GRANTED, as described herein, to Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility.

22. IT IS FURTHER 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 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 Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility is required for the first twelve months of operation

⁶⁴ See *id.*

⁶⁵ See 47 C.F.R. § 36.3(e).

to categorize its telecommunications plant and expenses and develop separations factors pursuant to section 36.3(e) of the Commission's rules, 47 C.F.R. § 36.3(e).

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau