

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

In the Matter of
United Telephone Company of Kansas
United Telephone Company of Eastern Kansas
and
Twin Valley Telephone, Inc.
Joint Petition for Waiver of the Definition of
“Study Area” Contained in Part 36 of the
Commission’s Rules; Petition for Waiver of
Section 69.3(e)(11) of the Commission’s Rules.
Petition for Clarification or Waiver of Section
54.305 of the Commission’s Rules.
CC Docket No. 96-45

ORDER

Adopted: September 11, 2006

Released: September 11, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a joint request from United Telephone Company of Kansas and United Telephone Company of Eastern Kansas (collectively, United) and Twin Valley Telephone, Inc. (Twin Valley) (collectively, the Petitioners) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules. The study area waiver will permit United to remove thirteen exchanges comprising approximately 5,300 access lines from two of its Kansas study areas. The waiver also will permit Twin Valley to add these exchanges to its existing Kansas study area.

1 See 47 C.F.R. Part 36 App.; Twin Valley Telephone, Inc., United Telephone Company of Kansas, and United Telephone of Eastern Kansas, Joint Petition for Waiver of the Definition of “Study Area” of the Appendix-Glossary of Part 36 of the Commission’s Rules, CC Docket No. 96-45 (filed Oct. 26, 2005) (Petition). The Petition also includes a request by Twin Valley for waiver of section 69.3(e)(11) of the Commission’s rules. Id. On October 26, 2005, Twin Valley filed a separate petition seeking a clarification or expedited waiver of section 54.305 of the Commission’s rules. See Twin Valley Telephone, Inc., Petition for Clarification or Expedited Waiver, CC Docket No. 96-45 (filed Oct. 26, 2005) (Section 54.305 Petition).

2 Twin Valley is acquiring the Clifton, Clyde, Delphos, Glasco, Leonardville, Longford, Milford, Olsburg, Riley, and Wakefield exchanges from the United Telephone Company of Kansas study area and the Aurora, Green, and Morganville exchanges from the United Telephone Company of Eastern Kansas study area. See Letter from Richard (continued...)

We also grant Twin Valley a waiver of section 69.3(e)(11) of the Commission's rules in order to allow it to continue to use the National Exchange Carrier Association (NECA) as its tariff pool administrator.³ We reject, however, Twin Valley's request for clarification or waiver of section 54.305.⁴

II. STUDY AREA WAIVER

A. BACKGROUND

2. Study Area. A study area is a geographic segment of an incumbent local exchange carrier's (LEC) telephone operations. The Commission froze all study area boundaries effective November 15, 1984.⁵ The Commission took this action to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost universal service support. 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.⁶

3. Universal Service Support. Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.⁷ Section 54.305(b) is meant to discourage a carrier from transferring an exchange merely to increase its share of high-cost universal service support.⁸

4. The Petition for Waiver. United and Twin Valley filed a joint petition for a waiver of the study area boundary freeze on October 26, 2005.⁹ A study area waiver would permit United to alter the boundaries of its Kansas and Eastern Kansas study areas by removing the thirteen exchanges that it is transferring to Twin Valley and would permit Twin Valley to add the acquired exchanges to its existing

(...continued from previous page)

Juhnke, Vice President, Federal Regulatory Affairs, Sprint, to Marlene Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed Jan. 25, 2006) (Sprint Letter).

³ See 47 C.F.R. § 69.3(e)(11).

⁴ See 47 C.F.R. § 54.305.

⁵ 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.

⁶ *Part 67 Order* at para. 1.

⁷ 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support and local switching support. A carrier's acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism. See 47 C.F.R. § 54.305(d)-(f). A carrier acquiring exchanges also may be eligible to receive interstate common line support, which is not subject the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (subsequent history omitted).

⁹ On November 29, 2005, the Wireline Competition Bureau released a public notice seeking comment on the petitions. See *Domestic Section 214 Application Filed for Transfer of Control of the Local Exchange Assets of United Telephone Company of Kansas and United Telephone Company of Eastern Kansas to Twin Valley Telephone, Inc., Non-Streamlined Pleading Cycle Established*, WC Docket No. 05-30; *Twin Valley Telephone, Inc., United Telephone Company of Kansas and United Telephone Company of Eastern Kansas Seek Waiver of the Study Area Boundary Freeze, as Codified in Part 36 and Waiver of Section 69.3(e)(11); Twin Valley Petitions for Clarification or Seeks Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 19229 (2005). We note that the Bureau has granted transfer of control of the exchanges. See *Notice of Streamlined Domestic 214 Applications Granted*, Public Notice, WC Docket No. 05-30, 21 FCC Rcd 3 (2006).

Kansas study area.¹⁰ The Petitioners argue that granting of the waiver is in the public interest.¹¹ Moreover, the Petitioners state that the change in study area boundaries will not adversely affect the universal service fund because of the operation of section 54.305 of the Commission's rules.¹² The Petitioners note, however, that Twin Valley may be eligible for additional support for new investment pursuant to the Commission's "safety valve" rules and for additional interstate common line support (ICLS).¹³ The Petitioners also submitted a copy of the order issued by the State Corporation Commission of the State of Kansas (Kansas Commission) approving Twin Valley's application for a certificate of convenience and authority to provide incumbent LEC services in the thirteen exchanges.¹⁴

5. 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) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfer must be in the public interest.¹⁵ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, we analyze whether a study area waiver will result in an annual aggregate shift in an amount equal to or greater than one percent of high-cost support in the most recent calendar year.¹⁶ The Commission began applying the one-percent guideline in 1995 to limit the potential adverse impact of exchange sales on the overall fund, also recognizing that, because high-cost loop support is capped, an increase in the draw of any fund recipient necessarily reduces the amounts that other LECs receive from the fund.¹⁷ After the Commission adopted section 54.305, it continued to apply the one-percent guideline to determine the impact on the universal service fund in light of the adoption of safety valve support and ICLS.¹⁸

B. DISCUSSION

6. We find that good cause exists to waive the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules to permit United to alter the boundaries of its

¹⁰ United owns and operates, as a price cap incumbent LEC, approximately 127,000 access lines in 145 exchanges in four study areas in the state of Kansas. Twin Valley owns and operates approximately 2,300 access lines in one study area in the state of Kansas. See Petition at 2-3

¹¹ See Petition at 6-7. See also *infra* para. 9.

¹² See Petition at 5. See also 47 C.F.R. § 54.305(b).

¹³ See Petition at 5; 47 C.F.R. §§ 54.305(d)-(f) and 54.902(b).

¹⁴ See *infra* note 27.

¹⁵ See, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995) (*PTI/Eagle Order*).

¹⁶ See *id.* at 1774, paras. 14-17. See also *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, and Petition for Waiver of Section 61.41(c) of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

¹⁷ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, para. 13.

¹⁸ See *supra* note 7. See also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, and Report and Order*, 16 FCC Rcd 19613, 19667-69, paras. 155-57 (2001), *recon. pending*.

existing Kansas and Eastern Kansas study areas by removing the thirteen exchanges that it is transferring to Twin Valley.¹⁹ We also find that good cause exists to permit Twin Valley to add the thirteen acquired exchanges to its existing Kansas study area. For the reasons discussed below, we conclude that the Petitioners have satisfied the three-prong standard that the Commission applies to determine whether a waiver is warranted.

7. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected by granting this study area waiver. With regard to the 5,300 lines that United is transferring to Twin Valley, section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support.²⁰ Twin Valley is limited to the same per-line levels of support that United was receiving prior to the transfer. Although Twin Valley may be eligible for safety valve support for investments in the acquired lines, there is nothing in the record to suggest such eligibility would significantly increase the high-cost fund or would come close to the one-percent threshold.²¹ As stated above, ICLS is not subject to the limitations of section 54.305(b) of the Commission's rules.²² The Petitioners estimate that as a result of this transaction Twin Valley's ICLS will increase by approximately \$1,438,000 annually.²³ United estimates that its interstate access support (IAS) will be reduced by \$640,364 annually as a result of this transaction.²⁴ Although there is a net increase of approximately \$797,636 in universal service support as a result of this transaction, we find the benefits of the transfer outweigh the minimal impact on the universal service fund.

8. *Position of State Commission.* On November 21, 2005, the Kansas Commission issued an order approving Twin Valley's application for a certificate of convenience and authority to provide incumbent LEC services in the thirteen exchanges.²⁵ Thus, we find that the state commission with regulatory authority over the transferred exchanges does not oppose the transfer.

¹⁹ Generally, the Commission may waive its rules for good cause shown. See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *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. 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.

²⁰ See 47 C.F.R. § 54.305(b). We deny Twin Valley's separate petition seeking clarification or waiver of section 54.305. See *infra* para. 12.

²¹ In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only approximately 5,300 access lines. Moreover, safety valve support is capped at 50 percent of any positive difference between a rural carrier's calculated high-cost loop support for the transferred exchanges and the index year amount. See 47 C.F.R. § 54.305(d). Also, the total amount of safety valve support available to rural carriers is capped at five percent of annual high-cost loop support available to rural carriers in any particular year, thereby providing an additional limitation on the amount of safety valve support available to carriers. See 47 C.F.R. § 54.305(e).

²² See *supra* note 7.

²³ See Petition at 6.

²⁴ See Sprint Letter at 1. As an interstate price cap LEC, United is eligible for IAS. See 47 C.F.R. §§ 54.800, *et seq.*

²⁵ See Letter from David Cosson, Counsel for Twin Valley, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Jan. 18, 2006) (attaching In the Matter of the Joint Application of United Telephone Company of Kansas, Inc., United Telephone of Eastern Kansas, Inc. (United) and Twin Valley Telephone, Inc. (Twin Valley) for Permission of United to Cease Operating as a Telephone Public Utility in Thirteen of its Exchanges, to Grant Twin Valley a Certificate of Public Convenience for the Same Thirteen Exchanges, and for Authority to Transfer Property, Plant and Equipment of United Located in the Thirteen

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9. *Public Interest Analysis.* Finally, we are persuaded that the public interest is served by a waiver of the study area freeze rule to permit United to remove from its Kansas and Eastern Kansas study areas the thirteen exchanges and to permit Twin Valley to add the acquired exchanges to its existing Kansas study area. The Petitioners state that Twin Valley will provide the customers with new services from a locally-based carrier specializing in meeting the communications needs of the rural communities, including installing all new outside plant with fiber-to-the-home and packet switching capability and offering advanced services, such as high-speed Internet access and video services.²⁶ Based on the totality of these representations, we conclude that the transfer of the thirteen exchanges to Twin Valley will serve the public interest by, among other things, providing increased access to advanced services in rural areas.

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

A. BACKGROUND

10. Under section 69.3 of the Commission's rules, annual access tariffs, including the tariffs filed by NECA on behalf of companies that participate in NECA's access tariffs, go into effect on July 1 of each year.²⁷ To minimize the complexity of administering NECA's common line pool, any change in NECA common line tariff participation resulting from a merger or acquisition of telephone properties is effective on the next annual access tariff filing effective date following the merger or acquisition.²⁸ Because the next annual access tariff filing effective date is July 1, 2007,²⁹ Twin Valley would have to wait until that date to participate in NECA's access tariffs and would be required to file its own interstate tariff for the interim period. To avoid the burdens associated with filing its own tariff during this interim period, Twin Valley has requested a waiver of section 69.3(e)(11) of the Commission's rules.³⁰ The waiver would enable Twin Valley to include the acquired access lines in the NECA carrier common line tariff upon the closing date of its acquisition transaction with United. The Petition indicates that the inclusion of the small number of access lines that it is acquiring from United in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation.³¹ NECA has indicated that it has no objection to the inclusion of the acquired lines in the NECA common line tariff.³²

B. DISCUSSION

11. We find that Twin Valley has demonstrated that special circumstances warrant a deviation from section 69.3(e)(11) of the Commission's rules and that it would be in the public interest to grant Twin Valley's waiver request.³³ NECA "has no objection to the inclusion of the additional

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Exchanges to Twin Valley and Complete All Matters Incident to the Transfer, State Corporation Commission of the State of Kansas, Order and Certificate, Docket No. 06-TWVT-116-COC (Nov. 21, 2005)).

²⁶ See Petition at 6-7.

²⁷ See 47 C.F.R. § 69.3(a).

²⁸ 47 C.F.R. § 69.3(e)(11). See *Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions*, CC Docket No. 89-2, Report and Order, 5 FCC Rcd 231, 248 (1989).

²⁹ See 47 C.F.R. § 69.3(a).

³⁰ See Petition at 7-8.

³¹ *Id.*

³² See Letter from Regina McNeil, NECA, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed Jan. 6, 2006).

³³ See *supra* note 19.

exchanges in the NECA tariff as this would create no undue administrative burden for NECA.”³⁴ Based on NECA’s representation in its letter, we conclude that including the acquired access lines in the NECA carrier common line tariff represents a minimal increase in NECA common line pool participation. Also, we believe that it would be administratively burdensome for Twin Valley to develop and file its own interstate tariff for use only until July 1, 2007 for a relatively small number of access lines.

Consequently, we find that Twin Valley presents special circumstances to justify a waiver of section 69.3(e)(11). Moreover, we believe that a waiver of section 69.3(e)(11) is in the public interest because it allows Twin Valley to devote its resources to providing improved telecommunications services to the affected rural areas rather than spending those resources on a tariff filing. We therefore conclude that good cause exists to grant a waiver of section 69.3(e)(11) to Twin Valley.

IV. PETITION FOR CLARIFICATION OR WAIVER OF SECTION 54.305

12. Twin Valley requests clarification or, if necessary, a waiver of section 54.305 of the Commission’s rules regarding the calculation of universal service support for its transferred exchanges.³⁵ We disagree with Twin Valley’s interpretation of how the per-line high-cost loop support amount should be determined pursuant to section 54.305 of the Commission’s rules. We also deny Twin Valley’s request for waiver of section 54.305.

13. Twin Valley argues that the amount of per-line support it receives for the transferred exchanges “should be determined with reference to the role of [t]he [e]xchanges in generating the current level of support to United.”³⁶ Specifically, Twin Valley claims that its support, pursuant to section 54.305, should be calculated based on a comparison of United’s annual support amount before the sale of the exchanges and United’s estimated annual support amount after the sale of the exchanges.³⁷ Twin Valley claims that the transferred exchanges have higher costs than the exchanges United retains, so the transferred exchanges should receive higher per-line support amounts.³⁸ Twin Valley estimates, using this methodology, that it would receive approximately \$1.2 million in high cost loop support.³⁹

14. We disagree with Twin Valley’s interpretation of section 54.305. Section 54.305(b) clearly states that the acquiring “carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.”⁴⁰ As Twin Valley points out, because “United has elected not to disaggregate its high-cost support, its support is calculated at the overall study area level.”⁴¹ As a result, the per-line high-cost loop

³⁴ *Id.*

³⁵ See Section 54.305 Petition. See *supra* para. 4 for a description of section 54.305 of the Commission’s rules.

³⁶ See Section 54.305 Petition at 3.

³⁷ *Id.*

³⁸ *Id.* at 3-4

³⁹ We estimate that Twin Valley would receive approximately \$310,000 in high-cost loop support using the correct application of section 54.305. Therefore, Twin Valley would receive an additional \$890,000 in high-cost loop support under its proposed interpretation. We have not verified the accuracy of Twin Valley’s estimate, nor could we until United sells these exchanges and recalculates its costs.

⁴⁰ 47 C.F.R. § 54.305(b).

⁴¹ See Section 54.305 Petition at 3. Prior to the *Rural Task Force Order*, all rural carriers received the same support for all of their lines within a study area. See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001), as corrected by Errata, CC Docket Nos. 96-45 (Acc. Pol. Div. rel. June 1, 2001) (*Rural Task*

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support that the exchanges subject to this transaction receive has been averaged across all lines in the study area. Twin Valley's interpretation of section 54.305(b) would require that its per-line support be calculated *after* the sale of the exchanges. We find this interpretation inconsistent with the plain meaning of the rule, which requires post-sale support to be at the same level as those exchanges received pre-sale. Therefore, we find that universal service support to be provided to Twin Valley, pursuant to section 54.305, shall be based on the average per-line support for all lines in these two study areas prior to this transaction.

15. In the alternative, Twin Valley requests a waiver of section 54.305 to allow it to receive support for the acquired exchanges based upon its interpretation of the rule. We deny Twin Valley's request for waiver.⁴² Twin Valley has demonstrated neither hardship or inequities that would result from application of the rule, nor has it shown that any special circumstances exist that warrant a waiver. Twin Valley also has failed to demonstrate any specific benefits to the public interest if such a deviation from the rule were granted. Indeed, Twin Valley's lone public interest argument for granting a waiver is that, "[s]ufficient and predictable support will be transferred from the selling company to the purchasing company to insure that the objectives of Sections 254(b)(1), (2) and (3) of the Act are achieved for the customers of the transferred exchanges."⁴³ Twin Valley does not provide any evidence of the adverse consequences that would result absent a waiver of section 54.305.⁴⁴ We, therefore, deny Twin Valley's request for waiver of section 54.305.⁴⁵

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Force Order). In the *Rural Task Force Order*, however, the Commission recognized that the costs of providing service within a study area likely varied, and, because high-cost support is portable, not permitting carriers to disaggregate and target per-line support into geographic areas below the study area level could lead to uneconomic incentives for competitive entry. See *Rural Task Force Order*, 16 FCC Rcd at 11303, para. 145. Therefore, section 54.315 of the Commission's rules required rural carriers to select a disaggregation path by May 15, 2002. Rural carriers were permitted to choose not to disaggregate and to continue to receive support that is averaged across all lines in the study area. See 47 C.F.R. § 54.315(a)-(b)(1). Twin Valley states that its interpretation of section 54.305 "simply creates the situation that would have occurred upon disaggregation of support for the exchanges by [United]." See Section 54.305 Petition at 5. However, the record in this proceeding does not indicate that Twin Valley or any other party petitioned the Kansas Commission, as permitted under section 54.315 (b)(4) of the Commission's rules, to require United to disaggregate and target support under a different path. See 47 C.F.R. § 54.315(b)(4).

⁴² See *supra* note 19.

⁴³ See Section 54.305 Petition at 6.

⁴⁴ The Commission has granted only two waivers of section 54.305. See *Mescalero Apache Telecom, Inc., Request for Waiver of Section 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 16 FCC Rcd 1312 (2001) (*Mescalero*); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, Order, CC Docket No. 96-45, DA 06-1645 (rel. Aug. 15, 2006) (*Sacred Wind*). In *Mescalero*, the Commission concluded that Mescalero, a newly-formed, tribally-owned carrier, warranted a deviation from the general rule because, among other things, Mescalero intended to bring additional service to a reservation where 52 percent of the residents on the reservation lacked telephone service. Similarly, in *Sacred Wind*, the Wireline Competition Bureau concluded that a waiver of section 54.305 was warranted because Sacred Wind intends to serve some areas that have no telephone service at all and that more than 50 percent of the population in the proposed service area has income levels at or below the poverty level.

⁴⁵ The Commission has emphasized on two occasions that carriers seeking a waiver of section 54.305 must bear a heavy burden and that routine waivers of the rule will not be granted. See *Federal-State Joint Board on Universal Service, Valor Telecommunications of Texas, L.P. Request for Waiver of Section 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 20 FCC Rcd 782, 786 para. 12 (2005) (denying Valor's request for a waiver of section 54.305); *Mescalero*, 16 FCC Rcd at 1320, para. 13.

V. OTHER MATTERS

16. Section 61.45(d) of the Commission's rules grants us discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.⁴⁶ Accordingly, we require United to adjust its price cap indices to reflect the removal of the transferred access lines from its Kansas and Eastern Kansas study areas.

17. Finally, 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, 2001.⁴⁷ In the *Separations Freeze Order*, the Commission addressed how an incumbent LEC acquiring exchanges from another incumbent LEC shall recalculate its frozen separations factors.⁴⁸ Accordingly, Twin Valley is required to recalculate its jurisdictional separations factors pursuant to the *Separations Freeze Order* and the Commission's rules.⁴⁹

VI. 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 joint petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by United Telephone Company of Kansas, United Telephone Company of Eastern Kansas and Twin Valley Telephone, Inc. on October 26, 2005, IS GRANTED, as described herein.

19. 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 clarification or waiver of section 69.3(e)(11) of the Commission's rules, 47 C.F.R. § 69.3(e)(11), filed by Twin Valley Telephone, Inc. on October 26, 2005, IS GRANTED, as described herein.

20. 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 clarification or waiver of section 54.305 of the Commission's rules, 47 C.F.R. § 54.305, filed by Twin Valley Telephone, Inc. on October 26, 2005, IS DENIED, as described herein.

21. 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 United Telephone Company of Kansas and United Telephone Company of Eastern Kansas SHALL ADJUST its price cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

⁴⁶ See 47 C.F.R. § 61.45(d).

⁴⁷ See generally *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*). The Commission extended the separations freeze on May 15, 2006. See generally *Jurisdictional Separations and Referral to the Federal-State Joint Board, Order and Further Notice of Proposed Rulemaking*, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006). See also 47 C.F.R. § 36.3(c) and (d).

⁴⁸ See *Separations Freeze Order*, 16 FCC Rcd at 11405-07, paras. 48-53.

⁴⁹ See 47 C.F.R. § 36.3(d).

22. 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, 36.3(d), and 36.3(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 36.3(d), and 36.3(e), that Twin Valley Telephone, Inc. SHALL ADJUST its jurisdictional separations factors to reflect this transaction, consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau