

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

In the Matter of)	
)	
Rural Telephone Service Company, Inc.,)	
Nex-Tech, Inc., United Telephone Company of)	
Kansas, and United Telephone Company of)	
Eastern Kansas)	CC Docket No. 96-45
)	
Joint Petition for Waiver of the Definition of)	
“Study Area” Contained in Part 36, Appendix-)	
Glossary of the Commission’s Rules; Petition for)	
Waiver of Section 69.3(e)(11) of the)	
Commission’s Rules)	

ORDER

Adopted: October 25, 2006

Released: October 25, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we conditionally grant a joint request from Rural Telephone Service Company, Inc. (RuralTel), Nex-Tech, Inc. (Nex-Tech), and United Telephone Company of Kansas and United Telephone of Eastern Kansas (collectively, United) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules.¹ This waiver will permit United to remove twelve exchanges comprising approximately 5,400 lines from United’s Kansas study areas.²

¹ See 47 C.F.R. Part 36 App. See also Rural Telephone Service Company, Inc., Nex-Tech, 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, Petition for Waiver of Sections 69.3(e)(11) of the Commission’s Rules, CC Docket No. 96-45 (filed April 12, 2006) (Petition). On April 27, 2006, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition for waivers. See *Domestic Section 214 Application Filed for the Acquisition of Assets of United Telephone Company of Kansas and United Telephone of Eastern Kansas by Rural Telephone Service Company, Inc.*, WC Docket No. 06-80, *Rural Telephone Service Company, Inc., Nex-Tech, Inc., United Telephone Company of Kansas, and United Telephone of Eastern Kansas Seek Waiver of the Study Area Boundary Freeze as Codified in Part 36, and Rural Telephone Service Company, Inc., Seeks Waiver of Sections 69.3(e)(11) and of the Commission’s Rules*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 4395 (2006). The National Telecommunications Cooperative Association and the Western Telecommunications Alliance filed comments in support of the Petition. We note that the Bureau has granted transfer of control of the exchanges. See *Wireline Competition Bureau Grants Consent for the Acquisition of Assets of United Telephone Company of Kansas and United Telephone of Eastern Kansas by Rural Telephone Service Company, Inc.*, WC Docket No. 06-80, Public Notice, 21 FCC Rcd 6275 (2006).

² The Petition states that approximately 5,000 lines are subject to this transaction. See Petition at 3. In a subsequent letter, however, the number of lines subject to this transaction was updated to approximately 5,400. See *infra* note 3.

This waiver also will permit RuralTel to add those exchanges to its existing Kansas study area.³ We also grant RuralTel's request for waiver of section 69.3(e)(11) of the Commission's rules so that RuralTel can include the acquired exchanges in the National Exchange Carrier Association (NECA) common line tariff.⁴

II. STUDY AREA WAIVER

A. Background

2. Study Area. 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 universal service support.⁵ 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 loop support and local switching support for which the acquired exchanges were eligible prior to their transfer.⁷ Section 54.305(b) is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.⁸

4. Petition for Waiver. RuralTel, Nex-Tech, and United (collectively, the Petitioners) filed a joint petition for a waiver of the study area boundary freeze on April 12, 2006. A study area waiver would permit United to alter the boundaries of its Kansas and Eastern Kansas study areas by removing

³ RuralTel is acquiring approximately 4,100 lines from United Telephone Company of Kansas and approximately 1,300 lines from United Telephone Company of Eastern Kansas. See Letter from Tony S. Lee, Counsel for RuralTel, to Katherine King, Federal Communications Commission, CC Docket No. 96-45 (dated July 20, 2006). RuralTel is acquiring the Downs, Luray, Osborne, Paradise, and Russell exchanges from United Telephone Company of Kansas and the Burr Oak, Courtland, Esbon, Ionia, Lebanon, Republic, and Webber exchanges from United Telephone Company of Eastern Kansas. See Petition at 3. RuralTel and Gorham Telephone Company, Inc. (Gorham) have filed a separate study area waiver petition to transfer, upon completion of the transactions at issue in the instant proceeding, the Luray and Paradise exchanges to Gorham's Kansas study area. See Gorham Telephone Company, Inc., and Rural Telephone Service Company, Inc., 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 June 15, 2006). In a companion Order released today, the Bureau grants RuralTel's and Gorham's waiver request to transfer the Luray and Paradise exchanges to Gorham's Kansas study area. See *Gorham Telephone Company, Inc. and Rural Telephone Service Company, 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*, CC Docket No. 96-45, Order, DA 06-2112 (rel. Oct. 25, 2006).

⁴ 47 C.F.R. § 69.3(e)(11).

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 (ICLS), which is not subject to 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, para. 308 (1997) (subsequent history omitted).

twelve exchanges that it is transferring to RuralTel and would permit RuralTel to add the acquired exchanges to its existing Kansas study area.⁹ RuralTel owns and operates, as an incumbent local exchange carrier (LEC), approximately 10,758 access lines in 29 exchanges in the state of Kansas.¹⁰ United is an interstate access price cap incumbent LEC that owns and operates approximately 136,000 access lines in two study areas in the state of Kansas.¹¹ RuralTel's wholly-owned subsidiary, Nex-Tech, also operates approximately 915 access lines, as a competitive LEC, in the Osborne exchange it is acquiring from United.¹² Nex-Tech intends to discontinue its competitive LEC operations within the Osborne exchange and transfer those subscribers to RuralTel's incumbent LEC operations upon completion of the transaction with United.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶ 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 interstate common line support (ICLS).¹⁷

B. Discussion

6. We find that the pertinent facts in the instant proceeding are similar to those contained in the Commission's order conditionally granting a joint study area waiver request of Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc.¹⁸ Consistent with the

⁹ See *supra* note 3.

¹⁰ See Petition at 3.

¹¹ See Universal Service Fund, 2005 Submission of 2004 Study Results by the National Exchange Carrier Association, Inc. (Sept. 30, 2005).

¹² *Id.*

¹³ See Petition at 2.

¹⁴ 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*).

¹⁵ 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).

¹⁶ See *PTI/Eagle Order* at 1773, para. 13.

¹⁷ See *supra* note 7.

¹⁸ See *Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the*

(continued....)

Commission's findings in the *Heart of Iowa Order* and subject to the condition described below,¹⁹ 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 two Kansas study areas by removing the twelve exchanges that it is transferring to RuralTel.²⁰ We also find that, subject to the condition described below, good cause exists to permit RuralTel to add these exchanges to its existing study area. We conclude that the Petitioners have satisfied the three-prong standard that the Commission applies to determine whether a waiver is warranted. In making this assessment, we have considered the effect of Nex-Tech discontinuing its competitive LEC operations and transferring those lines to RuralTel after the transfer of the 5,400 lines from United is completed.

7. *Impact on the Universal Service Fund.* Because the proposed study area waiver will not result in a significant increase in high-cost support, we conclude that the universal service fund will not be adversely affected. With regard to the 5,400 lines that United proposes to transfer to RuralTel, section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support to the same per-line levels of support that United received prior to the transfer.²¹ United currently receives high-cost loop support for the 5,400 lines it is transferring to RuralTel.²² RuralTel will only be eligible to receive, for the acquired lines, the same per-line high-cost loop support that United received prior to transfer. Pursuant to Commission rules, RuralTel may be eligible for safety valve support for investments in the acquired lines. We have no reason, however, to believe that this amount would significantly increase the high-cost fund, and would fall well short of the one percent threshold.²³

8. As previously noted, Nex-Tech intends to discontinue its competitive LEC operations within the acquired Osborne exchange and transfer its competitive LEC subscribers to RuralTel's

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Commission's Rules, Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules, CC Docket No. 96-45, Order, 21 FCC Rcd 2858 (2006) (Heart of Iowa Order).

¹⁹ See *infra* para. 8-9.

²⁰ 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.

²¹ See 47 C.F.R. § 54.305(b).

²² For the calendar year 2006, NECA estimated that United Telephone of Kansas and United Telephone of Eastern Kansas, based on pre-transaction data, would receive approximately \$4.2 million (or \$61 per-loop) and \$6.6 million (or \$112 per-loop), respectively, in high-cost loop support. See Universal Service Fund, 2005 Submission of 2004 Study Results by the National Exchange Carrier Association, Inc. (September 30, 2005).

²³ According to USAC's most recent estimates, total high-cost support for 2006 is projected to be \$4,183,070,728. See USAC Quarterly Administrative Filing 2006, Fourth Quarter (4Q) Appendix, HC02 (filed August 2, 2006). We note that the proposed study area waiver directly involves the transfer of only 5,400 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).

incumbent LEC operations after the transaction between RuralTel and United is completed.²⁴ Consistent with the precedent established by the Commission in the *Heart of Iowa Order*, we allow Nex-Tech to transfer its competitive LEC lines to RuralTel's newly configured incumbent LEC study area subject to the condition set forth below. To prevent regulatory distortions and consistent with the intent of section 54.305, we find that these competitive LEC lines should be treated, for universal service purposes, in the same manner as the 5,400 lines acquired from United.²⁵

9. Approval of this study area waiver is therefore conditioned on RuralTel treating Nex-Tech's former competitive LEC lines as if these lines were acquired from an unaffiliated carrier and subject to the provisions of section 54.305. Moreover, our approval is effective only upon the merger of RuralTel's incumbent and Nex-Tech's competitive LEC operations.²⁶ Any new subscribers or lines that RuralTel adds within the boundaries of the acquired exchanges shall also be subject to the provisions of section 54.305 for universal service support purposes. We find that the application of section 54.305 to the former competitive LEC lines and to newly added lines will ensure that the universal service effects of this transaction will not have an adverse impact on the universal service fund.

10. RuralTel estimates that it may be eligible to receive an additional \$1,288,920 in ICLS for the remainder of 2006 after the acquisition of the 5,400 lines from United and for the former competitive LEC lines once Nex-Tech transfers those customers to RuralTel's incumbent LEC operations assuming the ICLS amount remains at its present level.²⁷ Furthermore, RuralTel estimates that it will receive an increase in ICLS over the pre-transaction amount of \$1,227,000 during 2007.²⁸ We conclude that the amount of additional ICLS to be provided to RuralTel as a result of this transaction, in addition to any amounts it may be eligible to receive in safety valve support, will not have an adverse impact on the universal service fund.

11. To further ensure that this transaction is in the public interest, we direct RuralTel as part of its annual universal service data submissions, to file a schedule showing its methodology for excluding the costs associated with the acquired access lines and the access lines previously operated by Nex-Tech as a competitive LEC from the costs associated with RuralTel's pre-acquisition exchanges.²⁹

12. State Commission Position. On July 27, 2006, the State Corporation Commission of the State of Kansas (Kansas Commission) issued an order indicating that it does not object to the Commission granting this study area waiver.³⁰ Thus, we find that the state commission with regulatory

²⁴ See *supra* para. 4

²⁵ See *Heart of Iowa Order*, 21 FCC Rcd 2858, 2862, para. 13, n.29. See also *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*, CC Docket Nos. 96-45, 00-256, 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, 11284, para. 97 (2001).

²⁶ We therefore direct RuralTel to notify the Bureau when it has merged its competitive LEC operations with its incumbent LEC operations.

²⁷ See Petition at Exhibit B, p. 2. RuralTel's estimate for the remainder of 2006 assumes a September 1, 2006, closing date for the transaction. Pursuant to section 54.902, ICLS for the acquired lines and the former competitive LEC lines will subsequently be trued-up based on actual costs incurred by RuralTel. See 47 C.F.R. 54.902.

²⁸ See Petition at Exhibit B, p. 2.

²⁹ See 47 C.F.R. §§ 36.611, 54.301. See also *Heart of Iowa Order*, 21 FCC Rcd 2858, 2864, para. 16, n.36.

³⁰ See *Joint Application of United Telephone Company of Kansas, Inc., United Telephone of Eastern Kansas, Inc., (United) and Rural Telephone Service Company, Inc., (RuralTel), for Permission of United to Cease Operating as a Telephone Public Utility in Twelve of its Kansas Exchanges, to Grant RuralTel a Certificate of Public Convenience*

authority over the transferred exchanges does not oppose the transfer.

13. *Public Interest Analysis.* We conclude that the public interest is served by a conditional waiver of the study area freeze rule because waiver will facilitate RuralTel's installation of fiber throughout the exchanges it acquires from United. This fiber build will enhance the redundancy and reliability of the network, as well as extend high-speed digital transmission capabilities to consumers throughout the exchanges.³¹ RuralTel further contends that, although the incorporation of Nex-Tech's lines into RuralTel's incumbent LEC operations in the Osborne exchange will remove a competitor from the market, there will be no adverse impact on competition because there are two other competitive LECs that provide local exchange service in the Osborne exchange, and others are seeking to provide wireless service or voice over Internet protocol service.³² As the Commission found in the *Heart of Iowa Order*, we also find that permitting RuralTel to acquire the twelve United exchanges and Nex-Tech to transfer its competitive operations to RuralTel's incumbent LEC operations serves the public interest because RuralTel will be able to operate more efficiently in these exchanges.³³ We fully expect consumers to benefit from these efficiencies.³⁴ We therefore conclude that RuralTel has demonstrated that the grant of this waiver request will serve the public interest.

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

A. Background

14. 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.³⁵ 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.³⁶ Because the next annual access tariff filing effective date is July 1, 2007,³⁷ RuralTel 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, RuralTel has requested a waiver of section 69.3(e)(11) of the Commission's rules.³⁸ The waiver

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for the Same Twelve Exchanges, and for Authority to Transfer Property, Plant and Equipment of United Located in the Twelve Exchanges to RuralTel and Complete All Matters Incident to the Transfer, State Corporation Commission of the State of Kansas, Docket No.06-RRLT-963-COC, Order Approving Stipulation and Agreement and Granting Certificate to Rural Telephone Company and Canceling the Certificate of Nex-Tech, Inc., Upon the Conversion of the Sale of the Exchanges, at para. 18 (dated July 27, 2006).

³¹ See Petition at 8.

³² *Id.* at 8-9. In its Petition, RuralTel notes that "[s]everal carriers, including USCOC of Nebraska/Kansas LLC, and RCC Minnesota, Inc., have been designated as eligible telecommunications carriers in the Osborne exchanges." *Id.* at 9.

³³ See *Heart of Iowa Order*, 21 FCC Rcd 2858, 2864, para. 19.

³⁴ *Id.*

³⁵ See 47 C.F.R. § 69.3(a).

³⁶ 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).

³⁷ See 47 C.F.R. § 69.3(a).

³⁸ See Petition at 11.

would enable RuralTel to include the acquired access lines in the NECA carrier common line tariff. RuralTel 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.³⁹ NECA has indicated that it has no objection to the inclusion of the acquired lines in its common line tariff.⁴⁰ NECA also has indicated that it has no objection to including in such tariff the competitive LEC lines Nex-Tech intends to transfer to RuralTel's incumbent LEC operations.⁴¹

B. Discussion

15. We find that RuralTel 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 RuralTel's waiver request.⁴² NECA has no objection to including both RuralTel's acquired exchanges and Nex-Tech's former competitive LEC operations within the Osborne exchange in the NECA tariff, as this would create no undue administrative burden for NECA.⁴³ Based on NECA's representation in its letter, we conclude that including the acquired access lines and the former competitive LEC 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 RuralTel 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 RuralTel 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 RuralTel 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 RuralTel.

IV. OTHER MATTERS

16. Section 61.45(d) of the Commission's rules grants it discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.⁴⁴ Accordingly, we require United to adjust its price cap indices to reflect the removal of the transferred access lines from its Kansas study areas.

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, 2001.⁴⁵ In the *Separations Freeze Order*, the Commission addressed how an incumbent LEC acquiring exchanges from another incumbent LEC shall recalculate its frozen separations factors.⁴⁶ Accordingly, RuralTel is

³⁹ *Id.* at 12.

⁴⁰ See Letter from Tracey E.J. Saltenberger, NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (May 5, 2006) (NECA Letter).

⁴¹ *Id.*

⁴² See *supra* note 20.

⁴³ See NECA Letter.

⁴⁴ See 47 C.F.R. § 61.45(d).

⁴⁵ 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*). On May 15, 2006, the Commission extended the separations freeze an additional three years. See *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).

⁴⁶ See *Separations Freeze Order*, 16 FCC Rcd at 11405-7, paras. 48-53.

required to recalculate its jurisdictional separations factors pursuant to the *Separations Freeze Order* and the Commission's rules.⁴⁷

V. 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 the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Rural Telephone Service Company, Inc., Nex-Tech, Inc., United Telephone Company of Kansas, and United Telephone of Eastern Kansas on April 12, 2006, IS CONDITIONALLY 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 Rural Telephone Service Company, Inc., SHALL SUBMIT, as part of its annual universal service data submissions to the fund administrator, a schedule showing the methodology for excluding costs associated with the acquired access lines and the lines previously operated by Nex-Tech, Inc. as a competitive local exchange carrier, from costs associated with its pre-acquisition study area.

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 waiver of section 69.3(e)(11) of the Commission's rules, 47 C.F.R. § 69.3(e)(11), filed by Rural Telephone Service Company, Inc., on April 12, 2006, IS GRANTED, 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 of Eastern Kansas SHALL ADJUST their price cap indices in their annual price cap filings to reflect cost changes resulting from this transaction, consistent with this Order.

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, and 1.3, 36.3(d) and 36.3(e), that Rural Telephone Service Company, 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

⁴⁷ See 47 C.F.R. § 36.3(d).