

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

In the Matter of	)	
	)	
Iowa Telecommunications Services, Inc.,	)	WC Docket No.09-25
Petition for Waiver of Section 61.41	)	
of the Commission's Rules	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 2, 2009**

**Released: July 2, 2009**

By the Acting Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we grant the amended petition of Iowa Telecommunications Services, Inc. (Iowa Telecom) for waiver of the Commission's "all-or-nothing" rule.<sup>1</sup> By granting this petition, we allow Iowa Telecom, a price cap carrier,<sup>2</sup> to operate Lakedale Telephone Inc. (Lakedale),<sup>3</sup> a recently acquired rate-of-return local exchange carrier (LEC), under rate-of-return regulation. In addition, this grant recognizes that upon completion of its acquisition, Iowa Telecom will transfer the assets of Sherburne County Rural Telephone Corp. (SCRTC), a rate-of-return LEC, to its Lakedale subsidiary and will also operate those assets pursuant to rate-of-return regulation.<sup>4</sup>

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<sup>1</sup> See 47 C.F.R. § 61.41; Iowa Telecommunications Services, Inc., Petition for Waiver of Section 61.41 of the Commission's Rules, WC Docket No. 09-25 (filed Feb. 17, 2009); Iowa Telecommunications Services, Inc. Petition for Waiver of Section 61.41 of the Commission's Rules, WC Docket No. 09-25 (filed Feb. 24, 2009) (Amended Petition). The Bureau sought comment on Iowa Telecom's petition on April 24, 2009. *Pleading Cycle Established for Iowa Telecommunications Services, Inc., Petition for Waiver of Section 61.41 of the Commission's Rules*, WC Docket No. 09-25, Public Notice, DA 09-581 (rel. Apr. 24, 2009). No comments were filed.

<sup>2</sup> Amended Petition at 2-3. In addition to its customers in Iowa, Iowa Telecom serves a small number of cross-border customers in Missouri from an Iowa exchange. Service to these customers is subject to the jurisdiction of the Iowa Utilities Board. It also owns the Montezuma Telephone Co., which is an average schedule telephone company in Iowa. *Id.* at n.2.

<sup>3</sup> Iowa Telecom acquired Bishop Communications Corp. and its wholly owned subsidiary, Lakedale, on July 18, 2008. *Id.* at 1. Lakedale provides incumbent local exchange services to residential and business customers in Minnesota, serving approximately 11,600 access lines in six exchanges. *See id.* at 2. Iowa Telecom requested a grant of its petition in advance of July 18, 2009, when it otherwise would be required to convert Lakedale to price cap regulation. *See id.* at 3.

<sup>4</sup> *Id.* at 2. The Commission granted a section 214 application for the transfer of control of SCRTC on April 13, 2009. *See Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 09-20, Public Notice, DA 09-821 (rel. Apr. 13, 2009). SCRTC also provides incumbent local exchange services to residential and business customers in Minnesota, serving approximately 17,040 access lines in nine exchanges. *See* Amended Petition at 2. Iowa Telecom will operate Lakedale and the transferred SCRTC assets as separate study areas and these study areas will participate in the interstate access tariffs filed by NECA. *See id.*

## II. BACKGROUND

2. Section 61.41 of the Commission's rules is designed to ensure that all of a carrier's study areas and affiliates are subject to a single form of pricing regulation—either price cap regulation or rate-of-return regulation.<sup>5</sup> This rule is commonly referred to as the all-or-nothing rule. Specifically, section 61.41 provides that if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also do so, except for those using average schedules.<sup>6</sup> This section also provides that if a price cap carrier enters into a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction.<sup>7</sup> In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year.<sup>8</sup> These requirements address two concerns the Commission has regarding mergers and acquisitions involving price cap and non-price cap companies. First, a carrier might attempt to shift costs from its price cap affiliates to its non-price cap affiliates.<sup>9</sup> This would allow the non-price cap affiliate to charge higher rates than would otherwise be permitted to recover its higher revenue requirement, while simultaneously increasing the profits of the price cap affiliate as a result of these cost savings.<sup>10</sup> Second, a carrier might attempt to “game the system” by switching back and forth between rate-of-return regulation and price cap regulation.<sup>11</sup> A rate-of-return carrier could build a large rate base in order to raise rates, and then return to price cap regulation and reduce costs to an efficient level, thereby maximizing its profits at the expense of ratepayers.<sup>12</sup>

3. The continued utility of the all-or-nothing rule is under consideration in the *MAG Second Further Notice*.<sup>13</sup> In the *MAG Second Further Notice*, the Commission stated that it was looking at issues affecting alternative regulation plans for rate-of-return carriers and the modification or retention of the all-or-nothing rule as it relates to the ability of rate-of-return carriers to elect an alternative regulation plan for only some of its study areas.<sup>14</sup> The Commission tentatively concluded that any alternative regulation plan would be optional on the part of the rate-of-return carrier and would permit a rate-of-return carrier to elect participation in the alternative plan by study area.<sup>15</sup> Finally, addressing outstanding waivers of the all-or-nothing rule, the Commission tentatively concluded that, whatever final rule it adopts with respect

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<sup>5</sup> 47 C.F.R. § 61.41.

<sup>6</sup> 47 C.F.R. § 61.41(b).

<sup>7</sup> 47 C.F.R. § 61.41(c)(1).

<sup>8</sup> 47 C.F.R. § 61.41(c)(2).

<sup>9</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19781, para. 261 (2001) (*MAG Further Notice*).

<sup>10</sup> See *id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256 and 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4153-64, paras. 69-94 (2004) (*MAG Second Further Notice*). This examination is a continuation of the inquiry begun in the *MAG Further Notice*, 16 FCC Rcd at 19703-11, paras. 213-40, 19717-24, paras. 260-71.

<sup>14</sup> See *MAG Second Further Notice*, 19 FCC Rcd at 4161, para. 85.

<sup>15</sup> See *id.* at 4161, para. 86.

to the election of alternative regulation on a study area basis, that rule should also apply when carriers under different regulatory plans come together by merger or acquisition.<sup>16</sup> The Commission accordingly determined that all outstanding interim waivers of the all-or-nothing rule that depend on its review of the all-or-nothing rule shall continue in effect until the Commission issues a final order.<sup>17</sup>

### III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>18</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>19</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>20</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>21</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>22</sup>

5. We find good cause to grant Iowa Telecom's request for waiver of the Commission's all-or-nothing rule. When the Commission adopted this rule, it noted that it would entertain requests for its waiver because efficiencies created by the purchase and sale of exchanges may outweigh the threat of cost shifting or gaming the system.<sup>23</sup> In prior waiver orders, the Commission has observed that the public interest can be served by allowing smaller carriers to purchase exchanges.<sup>24</sup> The Commission also has noted that "rate-of-return carriers confront numerous serious and complex issues regarding universal service support whenever the 'all-or-nothing' rule requires them to convert to price cap regulation."<sup>25</sup>

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<sup>16</sup> See *id.* at 4164, para. 94.

<sup>17</sup> See *id.* at 4129 n.40.

<sup>18</sup> See 47 C.F.R. § 1.3.

<sup>19</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>20</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>21</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*, 897 F.2d at 1166.

<sup>22</sup> *Id.*

<sup>23</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637, 2706, n.207 (1991) (subsequent history omitted) (*LEC Price Cap Reconsideration Order*).

<sup>24</sup> See, e.g., *Citizens Telecommunications Company of Wyoming and Qwest Corp. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 16 FCC Rcd 3563, 3567, para. 11 (Com. Car. Bur. 2001) (*Citizens Waiver Order*); *Valor Telecommunications of Texas and GTE Southwest Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 15 FCC Rcd 15816, 15821, para. 11 (Com. Car. Bur. 2000). See generally *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9102, para. 323 (1995); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Notice of Proposed Rulemaking, 9 FCC Rcd 1687, 1704, para. 88 (1994).

<sup>25</sup> *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules*, WCB/Pricing File No. 02-26, Memorandum Opinion and Order, 17 FCC Rcd 25544, 25547 para. 8 (WCB 2002) (citing *ALLTEL Corporation et al. Petitions for Waiver of Section 61.41 of the Commission's Rules*, CCB/CPD Nos. 01-28, 99-01, 01-36, 01-30, and 99-36, Memorandum Opinion and Order, 17 FCC Rcd 27696, 27704, para. 20 (WCB 2002) (*ALLTEL Waiver Order*)). Iowa Telecom must obtain prior Commission approval should it seek to elect price cap

(continued...)

6. Iowa Telecom maintains that its petition for waiver of the all-or-nothing rule would serve the public interest and is consistent with prior Commission decisions granting similar waiver requests.<sup>26</sup> It argues that there is no reasonable basis for concern that Iowa Telecom would be able successfully to engage in the kind of cost shifting that the all-or-nothing rule was created to prevent.<sup>27</sup> Iowa Telecom also argues that waiver is appropriate pending the Commission's review of the all-or-nothing rule in its *MAG Second Further Notice*.<sup>28</sup> In granting Iowa Telecom's petition, we recognize that Iowa Telecom claims it will suffer substantial financial and administrative burdens if it is required to convert the acquired exchanges to price cap regulation.<sup>29</sup> We do not believe the public interest would be served by requiring Iowa Telecom to undertake the burdens of converting the acquired rate-of-return exchanges to price cap regulation based on a rule that may be modified or eliminated in the future. This resolution is consistent with prior waivers allowing price cap carriers to continue to operate acquired lines under rate-of-return regulation.<sup>30</sup> In sum, for the above reasons, we find good cause to grant the Iowa Telecom request for waiver of the Commission's all-or-nothing rule and to allow it to retain its current regulatory status until the Commission concludes its review of the all-or-nothing rule in the *MAG Second Further Notice*.<sup>31</sup>

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regulation for any of its rate of return regulated properties. At that time, the Commission can determine whether the transaction raises concerns intended to be addressed by section 61.41. See *ALLTEL Waiver Order*, 17 FCC Rcd at 27699, para. 9.

<sup>26</sup> See *id.* at 4.

<sup>27</sup> See *id.* at 4-5.

<sup>28</sup> See *id.* at 6.

<sup>29</sup> See *id.* at 4.

<sup>30</sup> For example, in 2006, the Commission granted a waiver to New Valor allowing it to operate the wireline properties of ALLTEL Holding Corp., a wholly-owned subsidiary of ALLTEL Corporation, under rate-of-return regulation while the study areas of Valor Communications Group, Inc. were allowed to continue operating under price cap regulation. *Valor Communications Group, Inc. (New Valor) Petition for Waiver*, WCB/Pricing No. 05-37, Order, 21 FCC Rcd 859, para. 1 (2006).

<sup>31</sup> In the event the Commission modifies the all-or-nothing rule, we anticipate that it will provide carriers with some period of time to evaluate any changes to the rule before carriers are required to elect a particular form of pricing regulation. In the event the Commission chooses not to modify the rule, we expect that it will specify the time period in which carriers with pending waivers must come into compliance with the rule.

**IV. ORDERING CLAUSES**

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Amended Petition for waiver of the Commission's rules, 47 C.F.R. §§ 61.41 filed by Iowa Telecommunications Services, Inc., IS GRANTED, to the extent described herein.

8. IT IS FURTHER ORDERED, that the order IS EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Acting Chief  
Wireline Competition Bureau