

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

In the Matter of)
)
Applications Filed by Frontier) WC Docket No. 09-95
Communications Corporation and Verizon)
Communications Inc. for Assignment or)
Transfer of Control)
Verizon California Inc., Verizon South Inc.)
and)
Frontier Communications Corporation)
Joint Petition for Waiver of the Definition of)
"Study Area" Contained in Part 36 of the)
Commission's Rules)

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant, with one condition, a joint request from Verizon California Inc. (Verizon California), Verizon South Inc. (Verizon South), and Frontier Communications Corporation (Frontier) (collectively Petitioners) for waivers of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. One study area waiver will permit Verizon California to remove seven exchanges from its current study area and permit Frontier to create a new California study area consisting of those same seven exchanges. The other study area waivers will permit Verizon South to remove exchanges from its North Carolina study area, with the exception of its facilities and customers located in the Knotts Island exchange; permit Frontier to create a new North Carolina study area consisting of those same exchanges; and permit Verizon South to create a new North Carolina study area consisting solely of the Knotts Island exchange. The study area waiver requests are in connection with Verizon's transfer of 4.8 million access lines in 14 states to Frontier, which the Commission approved on May 21, 2010.

1 See 47 C.F.R. Part 36 App.; Verizon California Inc., Verizon South Inc., and Frontier Communications Corporation, Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, WC Docket No. 09-95 (filed Jan. 20, 2010) (Petition).

2 See Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Docket No. 09-95, Memorandum Opinion and Order, FCC 10-87 (rel. May 21, 2010) (Frontier/Verizon Order).

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, 1984.³ The Commission took this action to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of universal service high-cost support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer exchanges.⁴

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 universal service high-cost support for which the acquired exchanges were eligible prior to their transfer.⁵ This rule is meant to discourage a carrier from acquiring an exchange merely to increase its share of universal service high-cost support.⁶

4. *The Petition for Waiver.* Verizon California, Verizon South, and Frontier filed a joint petition for waivers of the study area boundary freeze on January 20, 2010.⁷ On February 24, 2010, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.⁸ Verizon California and Frontier seek a waiver to transfer seven exchanges from Verizon California's existing California study area to a newly created Frontier study area in California.⁹ Verizon South and Frontier seek a waiver of the study area boundary freeze to transfer all exchanges from the former Contel study area, with the exception of the Knotts Island exchange, to a newly created Frontier study area in North Carolina.¹⁰ Finally, Verizon South seeks a waiver to create a new North Carolina study area

³ 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*); 47 C.F.R. Part 36 App.

⁴ *Part 67 Order*, 50 Fed. Reg. at 939, para. 1.

⁵ 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support (HCLS) and local switching support (LSS). 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) or interstate access support (IAS), which are not subject to the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

⁶ 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).

⁷ Prior to the transaction, Verizon had, as an incumbent LEC, approximately 3.4 million access lines in three study areas in the state of California. Frontier had, as an incumbent LEC, approximately 139,000 access lines in four study areas in California. See Petition at Exhibit B. Verizon had, as an incumbent LEC, approximately 255,000 access lines in two study areas in North Carolina. See Universal Service Fund, 2009 Submission of 2008 Data Collection Study Results by the National Exchange Carrier Association, Inc. (Sept. 30, 2009). Frontier currently does not operate in North Carolina.

⁸ See *Comment Sought on the Joint Petition of Verizon California Inc., Verizon South Inc., and Frontier Communications Corporation to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*, WC Docket No. 09-95, Public Notice, 25 FCC Rcd 1813 (Wireline Comp. Bur. 2010). No comments were filed.

⁹ See Petition at 2-3. The seven California exchanges to be transferred are Alpine, Coleville, Earp Big River, Havasu Landing, Parker Dam, Blythe, and Palo Verde. There are approximately 11,000 access lines in the seven exchanges. *Id.* at 2. Frontier requests permission to operate its newly created study area separately from its existing California study areas. *Id.* at 3.

¹⁰ *Id.* at 3. Verizon South will continue to operate a study area in North Carolina consisting solely of the Knotts Island exchange. *Id.* Prior to the sale of exchanges to Frontier, Verizon South operated two study areas in North

(continued....)

consisting solely of the Knotts Island exchange.¹¹ Both the California Public Utilities Commission (California Commission) and the North Carolina Utilities Commission (North Carolina Commission), respectively, have issued orders approving the transfers of the exchanges in the subject areas.¹² In addition, on May 21, 2010, the Commission approved the transfer of 4.8 million access lines from Verizon to Frontier in 14 states in the West, Midwest, and South.¹³ The Commission found that the transfer would serve the public interest by improving service quality in the transaction market areas and accelerating the availability of broadband services.¹⁴

5. Standard for Waiver. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission applies a three-part 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, the Commission analyzes 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

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Carolina. The former Contel study area (study area code 230509, approximately 115,000 lines) is the subject of this waiver request; the former GTE study area (study area code 230479, approximately 117,000 lines) is to be transferred to Frontier in its entirety and is not subject to this waiver request. See Letter from Karen Zacharia, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-95 (filed May 21, 2010) (Verizon *Ex Parte* Letter).

¹¹ See Petition at 3.

¹² See Petition at Exhibit A (attaching *Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc., New Communications ILEC Holdings, Inc., New Communications of the Southwest Inc., Verizon West Coast Inc. (U1020C), Verizon California Inc. (U1002C), New Communications Online and Long Distance, Inc., Verizon Long Distance, LLC (U5732C) and Verizon Enterprise Solutions, LLC (U5658C) for Approval of the Sale of Assets, Transfer of Certificates and Customer Bases, and Issuance of Additional Certificates.*, Decision 09-10-056, California Public Utilities Commission (Oct. 29, 2009) (*California Order*)); Petition at Exhibit C (attaching *Joint Application of New Communications of the Carolinas Inc., New Communications Online and Long Distance, Inc., Verizon South Inc., Verizon Long Distance LLC, and Verizon Enterprise Solutions, LLC, for Certificates of Convenience and Necessity and Approval of Requests for Abandonment of Service, Adoption of a Price Cap Plan, and Waiver of Slamming Rules*, Docket Nos. P-1488, P-1489, P-100, P-19, P-574, and P-517, North Carolina Utilities Commission (Nov. 30, 2009)). The North Carolina Commission also submitted a letter stating that it does not object to the granting of the requested study area waiver. See Letter from Edward S. Finley, Jr., Chairman, North Carolina Utilities Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-95 (filed May 20, 2010) (North Carolina Letter).

¹³ See *Frontier/Verizon Order*.

¹⁴ See *id.* at para. 56.

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; *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).

B. Discussion

6. For the reasons discussed below, we conclude that the Petitioners have satisfied the three-part standard that the Commission applies to determine whether a waiver is warranted. We therefore 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 the petitioners to modify their study area boundaries as described.¹⁷

7. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected by granting any of these study area waivers. Section 54.305(b) of the Commission's rules limits HCLS and LSS for acquired exchanges to the same per-line support levels for which the exchanges were eligible prior to their transfer.¹⁸

8. In California, Frontier is acquiring approximately 11,000 lines and thus Frontier's new California study area will be a rural study area.¹⁹ Frontier is therefore limited to the same per-line levels of universal service support that Verizon California was receiving prior to the transfer.²⁰ Although Frontier may be eligible to receive safety valve support and IAS based on the acquired lines, there is nothing in the record to suggest such eligibility would significantly increase the overall size of high-cost support or would come close to the one-percent threshold.²¹

9. In North Carolina, the former Contel study area subject to this proceeding includes approximately 114,400 lines to be transferred to Frontier's new study area.²² As a non-rural incumbent LEC subject to price cap regulation, Frontier is not eligible to receive HCLS or ICLS in its new study area.²³ Frontier will be eligible to receive IAS in its new North Carolina study area; however, there is nothing in the record to suggest that such support could approach one percent of total annual universal

¹⁷ Generally, the Commission's rules may be waived for good cause shown. 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. *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. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ 47 C.F.R. § 54.305(b).

¹⁹ See Petition at 2 & note 4, 9; 47 U.S.C § 153(37).

²⁰ 47 C.F.R. § 54.305(b). Verizon California, a non-rural study area, does not receive high-cost model support (HCMS). See Petition at 10. Frontier, as a price cap carrier, will be eligible for IAS in both California and North Carolina pursuant to section 54.801(d) of the Commission's rules. See 47 C.F.R. § 54.801(d).

²¹ Safety valve support is capped at 50 percent of any positive difference between a rural carrier's calculated HCLS 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 HCLS 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). We find it highly unlikely that any increases in high-cost support, as a result of this transaction, could approach the current one-percent threshold of \$45 million. See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Third Quarter 2010, Table HC02 (Apr. 30, 2010) (projecting total annual high-cost support of approximately \$4.5 billion) (USAC Third Quarter 2010 Projection).

²² See Verizon *Ex Parte* Letter.

²³ *Id.* Non-rural price-cap incumbent LECs are eligible for HCMS and IAS. See 47 C.F.R §§ 54.309, 54.801.

service support.²⁴ The petitioners state that Verizon South does not receive and Frontier will not receive any support from the non-rural HCMS mechanism based on the transferred North Carolina lines.²⁵

10. After the transfer, Verizon South's new North Carolina study area will include only the Knotts Island exchange, which consists of approximately 625 lines. The new Verizon South study area will be a rural study area.²⁶ Although the new Verizon South study area may be eligible for HCLS or LSS, Verizon South voluntarily commits that it will not request any support from the rural high-cost mechanisms, with the potential exception of safety valve support, if it is eligible.²⁷ We condition the grant of this study area waiver on Verizon South's compliance with this voluntary commitment, which shall constitute a binding and enforceable condition of our approval.

11. *Position of State Commission.* The California and North Carolina Commissions previously issued orders approving the transfers of the exchanges.²⁸ Thus, we find that the state commissions with regulatory authority over the transferred areas do not oppose the transfers.

12. *Public Interest Analysis.* The Petitioners state that Frontier and its operating companies: 1) are dedicated to providing their customers high quality service at reasonable rates; 2) have a rich history of providing telecommunications and broadband service throughout the United States; 3) pursued a strategy of focusing on and enhancing their local presence in the communities in which they operate; and 4) are committed to broadband deployment.²⁹ Moreover, we note that the Commission's *Frontier/Verizon Order* concluded that Frontier is more likely to improve service quality in the transaction market areas than Verizon would, absent the transaction, and that Frontier would likely accelerate the availability of broadband services.³⁰ Based on the totality of these representations and conclusions, we are persuaded that the public interest is served by grant of the requested waivers of the study area freeze rule to permit Verizon California and Verizon South to transfer the subject areas to Frontier as described.

III. ORDERING CLAUSES

13. 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 Verizon California Inc., Verizon South Inc., and Frontier Communications Corporation on January 20, 2010, IS GRANTED as set forth herein.

²⁴ Again, we find it highly unlikely that any increases in high-cost support, as a result of this transaction, could approach the current one-percent threshold of \$45 million. See USAC Third Quarter 2010 Projection.

²⁵ See Petition at 11.

²⁶ 47 U.S.C. § 153(37).

²⁷ See Petition at 11; 47 C.F.R. Part 36, Subpart F-Universal Service Fund; 47 C.F.R. § 54.301.

²⁸ See *supra* note 12; North Carolina Letter.

²⁹ See Petition at 12.

³⁰ See *Frontier/Verizon Order* at para. 56.

14. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau