

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

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Qwest Corporation)
Iowa Telecommunications Services, Inc., d/b/a)
Iowa Telecom)
Joint Petition for Waivers of the Definition of)
"Study Area" Contained in Part 36, Appendix-)
Glossary of the Commission's Rules)
Hershey Cooperative Telephone Company)
Qwest Corporation)
Joint Petition for Waivers of the Definition of)
"Study Area" Contained in Part 36, Appendix-)
Glossary of the Commission's Rules)

ORDER

Adopted: June 30, 2010

Released: June 30, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant requests from Qwest and Iowa Telecommunications, Inc. d/b/a Iowa Telecom (Iowa Telecom), and from Qwest and Hershey Cooperative Telephone Company (Hershey) for waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. For the reasons discussed below, we conclude that the parties to these petitions have satisfied the three-part standard that the Commission applies to determine whether a study area 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 parties to the petitions to exchange territories as described below.

1 See 47 C.F.R. Part 36 App.; Qwest Corporation and Iowa Telecommunications, Inc., d/b/a Iowa Telecom, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary in Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed Dec. 5, 2007) (Qwest/Iowa Telecom Petition); Hershey Cooperative Telephone Company and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary in Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed Dec. 6, 2007) (Hershey/Qwest Petition).

2 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 (continued....)

II. 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. *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.⁷ 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.⁸

(...continued from previous page)

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.

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 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 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 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, at para. 5 (1995) (*PTI/Eagle Order*).

⁸ 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).

III. QWEST AND IOWA TELECOM

5. *The Petition for Waiver.* Qwest and Iowa Telecom filed a joint petition for a waiver of the study area boundary freeze on December 5, 2007.⁹ On January 9, 2008, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.¹⁰ Qwest and Iowa Telecom seek a waiver to transfer from Qwest's existing Iowa study area to Iowa Telecom's existing Iowa Telecom-North study area, a portion of an area in Qwest's Ankeny, Iowa exchange and from Iowa Telecom to Qwest an area in Iowa Telecom's Elkhart, Iowa exchange.¹¹

6. The petitioners state that the transfers at issue in this proceeding are in anticipation of the need to build new telecommunications facilities to meet future demand in a new subdivision that is being built which straddles the Ankeny and Elkhart exchanges of Qwest and Iowa Telecom, respectively.¹² The petitioners state that the current boundary between the two companies' study areas would require the subdivision to be served partly by Qwest and partly by Iowa Telecom which would be costly and inefficient.¹³ To avoid such result, the petitioners have agreed to a transfer of territory in which all of the new subdivision would be located in Qwest's Ankeny exchange.¹⁴ In return for the transfer of territory from Iowa Telecom to Qwest, Qwest has agreed to an exchange boundary modification that would transfer an unrelated portion of its Ankeny exchange to Iowa Telecom's Elkhart exchange. Qwest, however, currently serves five customers in the area to be transferred to Iowa Telecom. The petitioners state that those customers will be given the option of continuing to receive service from Qwest until they disconnect service or choose to receive service from Iowa Telecom or some other provider.¹⁵ The Petition states that all new service requests within the transferred area, however, will receive service from Iowa Telecom.¹⁶

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. Section 54.305(b) of the Commission's rules

⁹ Qwest operates, as an incumbent LEC, approximately 668,000 access lines in its Iowa study area. Iowa Telecom operates, as an incumbent LEC, approximately 184,000 access lines in three Iowa study areas. See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Third Quarter 2010, Table HC12 (Apr. 30, 2010).

¹⁰ See *Comment Sought on the Joint Petition of Qwest Corporation and All West Communications, Inc. to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules; Comment Sought on the Joint Petition of Qwest Corporation and Iowa Telecommunications Services, Inc. to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules; Comment Sought on the Joint Petition of Hershey Cooperative Telephone Company and Qwest Corporation to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 195 (Wireline Comp. Bur. 2008). No comments were filed.

¹¹ See Letter from Daphne E. Butler, Qwest Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed May 2, 2008) (clarifying that the Elkhart, Iowa exchange at issue in this proceeding is in the Iowa Telecom-North study area).

¹² See Qwest/Iowa Telecom Petition at 1.

¹³ *Id.* at 1-2. The parties maintain that for Iowa Telecom to serve its current portion of the development, it would have to trench under Interstate 35 and that depending on street design the two carriers may have to lay new facilities that run parallel to each other. *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

limits high-cost loop support and local switching support for acquired exchanges to the same per-line support levels for which the exchanges were eligible prior to their transfer.¹⁷ In this proceeding, however, neither Qwest, in the Ankeny exchange nor Iowa Telecom, in the Elkhart exchange, receive high-cost support.¹⁸ Although Qwest does not receive interstate access support (IAS) in the Ankeny exchange, Iowa Telecom estimated at the time the petition was filed it would receive an additional \$300 annually in IAS for the five new customers in the Elkhart exchange.¹⁹ Accordingly, we conclude that, consistent with precedent for granting such a waiver, this transaction will not adversely affect the universal service fund.²⁰

8. *Position of State Commission.* The Iowa Utilities Board (Iowa Board) issued an order approving the transfers at issue.²¹ Thus, we find that the state commission with regulatory authority over the transferred territories does not oppose the transfers.

9. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver. The petitioners assert that absent the transfer, Iowa Telecom would have to trench at considerable expense under an interstate highway to extend facilities from its Elkhart exchange to the new development.²² We conclude that having all of the new subdivision included in the study area of one incumbent LEC, Qwest, will reduce customer confusion as to which provider is the incumbent LEC serving subdivision residents. Also, the petitioners have committed that the five customers within the transferred area have the option to retain telecommunications services from Qwest until such time as they disconnect service.²³ Based on the totality of these representations, we conclude that the transfer of territories, as described above, between Qwest and Iowa Telecom is in the public interest.

10. *Effective Dates of Study Area Waiver.* We find that the transfer of territory from Iowa Telecom's Iowa study area to Qwest's Iowa study area shall be effective as of October 15, 2007, the date the Iowa Board approved the transaction.²⁴ We find that the transfer of territory from Qwest to Iowa

¹⁷ 47 C.F.R. § 54.305(b).

¹⁸ See Qwest/Iowa Telecom Petition at 3.

¹⁹ *Id.* We have no reason to believe the estimate of \$300 would be significantly different since the time the petition was filed and, nevertheless, any additional support for these five transferred lines would be *de minimis*.

²⁰ See, e.g., *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2 (hh) of the Commission's Rules*, Order, CC Docket No. 96-45, 19 FCC Rcd 6761, (2004) (*Skyline Order*); *Qwest Corporation, Pine Telephone Systems, Inc., Oregon Telephone Corporation, Qwest Corporation, Pine Telephone, Inc., Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, CC Docket No. 96-45, Order, 24 FCC Rcd 4986 (Wireline Comp. Bur. 2009).

²¹ See Qwest/Iowa Telecom Petition at 3 (attaching *Qwest and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket Nos. TF-07-165 and TF-07-166, Order Approving Changes to Exchange Boundary Maps (Iowa Utils. Bd. Oct. 15, 2007)).

²² See Qwest/Iowa Telecom Petition at 5.

²³ *Id.* at 2. We note that the Bureau granted, effective February 15, 2008, Qwest's application to discontinue service in the portion of its Ankeny, Iowa exchange that includes these five customers. See *Comments Invited on Application of Qwest Corporation to Discontinue Domestic Telecommunications Services*, Public Notice, 22 FCC Rcd 21608 (Wireline Comp. Bur. 2007).

²⁴ See *supra* note 21.

Telecom shall be effective as of February 15, 2008, the date the Bureau approved Qwest's discontinuance of service in the relevant portion of the Ankeny exchange.²⁵

IV. HERSHEY AND QWEST

11. *The Petition for Waiver.* Hershey and Qwest filed a joint petition for a waiver of the study area boundary freeze on December 6, 2007.²⁶ On January 9, 2008, the Bureau released a public notice seeking comment on the petition.²⁷ Hershey and Qwest seek a waiver to transfer from Qwest's existing Nebraska study area to Hershey's existing Nebraska study area an area containing three residential homes that receive telecommunications services from Hershey. The homes are located in Qwest's Nebraska study area.²⁸

12. The petitioners state that in July 2002, three households in a new subdivision contacted Qwest, the incumbent LEC, regarding the construction of telecommunications facilities to the new houses. The three households were not satisfied with Qwest's construction costs and therefore contacted Hershey, which is located approximately four miles away. After comparing construction estimates, the three households selected Hershey to provide service. Hershey agreed to provide service to the area, and Qwest agreed to allow Hershey to build facilities to the three houses. The families filed an application with the Nebraska Public Service Commission (Nebraska Commission) to allow Hershey to be their local exchange carrier.²⁹ On August 20, 2002, the Nebraska Commission granted the application.³⁰

13. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected by granting this study area waiver. Section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support for acquired exchanges to the same per-line support levels for which the exchanges were eligible prior to their transfer.³¹ Consistent with the Commission's finding in the *Skyline Order*, however, section 54.305(b) of the Commission's rules does not apply in this instance because the modifications to the Hershey and Qwest study areas in Nebraska do not involve transfers of Qwest facilities or customers to Hershey.³² The petitioners state that Hershey's and Qwest's respective annual high-cost support amounts are substantially less than one-percent of the total high-cost support fund for the pertinent year in which the Nebraska Commission approved the

²⁵ See *supra* note 23.

²⁶ Qwest operates, as an incumbent LEC, approximately 225,000 access lines in its Nebraska study area; Hershey operates, as an incumbent LEC, approximately 640 access lines in its Nebraska study area. See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Third Quarter 2010, Tables HC09 and HC12 (Apr. 30, 2010).

²⁷ See *supra* note 10.

²⁸ See Hershey/Qwest Petition at 2.

²⁹ *Id.*

³⁰ See Hershey/Qwest Petition (attaching *Application of Tim and Leigh Anne Hoatson; Mark and Deb Stickley; and Doug and Danella Campbell, all of Hershey, Nebraska, seeking authority to receive telephone service from Hershey exchange of the Hershey Cooperative Telephone Company, in what is currently considered Qwest service area*, Application No. C-2766 (Nebraska Public Service Commission, Aug. 20, 2002)).

³¹ 47 C.F.R. § 54.305(b).

³² *Skyline Order*, 19 FCC Rcd at 6766, para. 16. Because the per-line support limitation in section 54.305(b) does not apply to this transfer, Hershey will be eligible, as a rural carrier, to receive universal service high-cost support based on the average cost per loop of all its lines. See generally 47 C.F.R. Part 36, Subpart F.

exchange boundary modification.³³ Generally, we expect incumbent LECs requesting study area boundary modifications to provide an estimate of changes in dollars of high-cost support, not declarations that support is less than our standard for determining whether the changes in support adversely affect the universal service fund.³⁴ Nevertheless, because Hershey's Nebraska study area will receive approximately \$95,000 and \$64,000 in annual high-cost loop support and local switching support, respectively, and Hershey only added three subscribers pursuant to this 2002 transaction, we find that this transaction will not have an adverse effect on the universal service fund.³⁵

14. *Position of State Commission.* The Nebraska Commission issued an order approving the transfer at issue.³⁶ Thus, we find that the state commission with regulatory authority over the transferred territories does not oppose the transfer.

15. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver. We agree with the petitioners that Hershey has demonstrated its willingness and commitment to serve these customers.³⁷ Without Hershey's commitment, these customers may not have had access to affordable telecommunications services. Based on the totality of these circumstances, we conclude that the transfer of territory, as described above, from Qwest to Hershey serves the public interest.

16. *Effective Dates of Study Area Waiver.* We find that the transfer of territory from Qwest's Nebraska study area to Hershey's Nebraska study area shall be effective as of August 20, 2002, the date the Nebraska Commission approved the transaction.³⁸ Although we are granting a study area retroactive to 2002, Hershey can not seek additional universal service support as a result of the action we take today for any time period prior to the effective date of this order.

V. ORDERING CLAUSES

17. 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 to

³³ See Hershey/Qwest Petition at 3.

³⁴ Incumbent LECs requesting study area waivers must continue to provide estimates of changes in high-cost support, i.e., high-cost loop support, local switching support, interstate common line support, and interstate access support resulting from the transaction.

³⁵ 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).

³⁶ See *supra* note 30.

³⁷ See Hershey/Qwest Petition at 3.

³⁸ Although we are granting an effective date for a portion of a study area that was previously transferred approximately eight years ago, the applicable precedent at the time indicated that study area waivers were not required for the transfers or additions of unserved areas. See *Request for Clarification filed by the National Exchange Carrier Association, Inc., and Petitions for Waiver Filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc., Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 95-173, 96-29, 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160, at para. 9 (Com. Car. Bur. 1996). In the 2004 *Skyline Order*, however, the Commission clarified that "a study area waiver must be filed with the Commission where a company is seeking to create a new study area from within one or more existing study areas." See *Skyline Order*, 19 FCC Rcd at 6767, para. 13.

the authority delegated in 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 Qwest Corporation and Iowa Telecommunications, Inc. d/b/a Iowa Telecom on December 5, 2007, IS GRANTED, as described herein.

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 to the authority delegated in 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 Hershey Cooperative Telephone Company and Qwest Corporation on December 6, 2007, IS GRANTED, as described herein.

19. 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