

**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
)	
Dubois Telephone Exchange, Inc.)	
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: May 19, 2010

Released: May 19, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a joint request from Dubois Telephone Exchange, Inc. (Dubois) and Qwest Corporation (Qwest) (collectively Petitioners) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules.¹ The study area waiver will permit Qwest to remove the Carbon County territory from its Wyoming study area and permit Dubois to add that territory to its existing Wyoming study area.

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, to prevent incumbent LECs from establishing separate study areas made up of only high-cost exchanges to maximize their receipt of universal service high-cost support.² A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer territories.³

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

¹ See 47 C.F.R. Part 36 App.; Dubois Telephone Exchange, 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, CC Docket No. 96-45 (filed Mar. 12, 2008) (Petition).

² 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.

³ *Part 67 Order*, 50 Fed. Reg. at 939, para. 1.

transfer.⁴ This rule is meant to discourage a carrier from acquiring an exchange merely to increase its share of universal service high-cost support.⁵

4. *The Petition for Waiver.* Dubois and Qwest filed a joint petition for a waiver of the study area boundary freeze on March 12, 2008.⁶ On May 16, 2008, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.⁷ The requested waiver would permit Qwest to remove an area within Carbon County, Wyoming from its Wyoming study area and permit Dubois to add that area to its Wyoming study area.⁸

5. The Petitioners state that in 2007, the Petitioners received requests for telecommunications services in the subject area; however, Qwest has no facilities in the area and Dubois has facilities relatively close to the locations requesting service and is willing and able to provide service.⁹ The Petitioners state that the Public Service Commission of Wyoming (Wyoming Commission) approved the transfer on January 10, 2008.¹⁰ The Petitioners contend that, consistent with the Commission's finding in the *Skyline Order*, section 54.305 of the Commission's rules does not apply in this instance because no facilities or customers are to be transferred between the parties.¹¹

6. *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.¹² In evaluating whether a study area boundary change will have an adverse impact on the

⁴ 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.

⁵ 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).

⁶ Dubois operates, as an incumbent LEC, approximately 2,300 access lines in one study area in Wyoming; Qwest operates, as an incumbent LEC, approximately 154,000 access lines in one study area in Wyoming. See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2010, Tables HC09 and HC12 (Jan. 29, 2010).

⁷ See *Comment Sought on the Joint Petition of Dubois Telephone Exchange, Inc. 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 7953 (Wireline Comp. Bur. 2008). No comments were filed in this proceeding.

⁸ The area to be transferred subject to this proceeding is specifically described in the Petition. See Petition at 1-2.

⁹ *Id.*

¹⁰ See Petition at Exhibit B (attaching *Joint Application of Dubois Telephone Exchange, Inc., and Qwest Corporation for Authority to Transfer, Assign, and Acquire Certain Certificated and Uncertificated Areas*, Docket No. 70000-1361-TA-07, Docket No. 70007-48-TA-07 (Record No. 11464), Order (Wyoming Commission, Jan. 10, 2008)).

¹¹ See Petition at 3-4; *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*, CC Docket No. 96-45, Order, 19 FCC Rcd 6761, 6767, para. 16 (2004) (*Skyline Order*). The Petitioners claim that the incremental universal service support to be received by Dubois as a result of this transaction is zero. See Petition at 4.

¹² 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*).

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.¹³

B. Discussion

7. For the reasons discussed below, we conclude that the Petitioners 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 Petitioners to exchange territories as described above.¹⁴

8. *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.¹⁵ 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 Qwest and Dubois study areas in Wyoming do not involve transfers of Qwest facilities or customers to Dubois.¹⁶ The Petitioners state that Dubois will not receive additional universal service support as a result of this transaction.¹⁷ We find that the circumstances in the instant petition meet our existing framework and precedents for granting such a waiver.¹⁸

9. *Position of State Commission.* The Wyoming Commission previously issued an order approving the transfer at issue.¹⁹ Thus, we find that the state commission with regulatory authority over the transferred territories does not oppose the transfer.

¹³ 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).

¹⁴ 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.

¹⁵ 47 C.F.R. § 54.305(b).

¹⁶ See Petition at 2; *Skyline Order*, 19 FCC Rcd at 6767, para. 16. Because the per-line support limitation in section 54.305(b) does not apply to these transfers, Dubois will be eligible, as a rural carrier, to receive universal service high-cost support based on its embedded costs. See generally 47 C.F.R. Part 36, Subpart F.

¹⁷ See Petition at 4.

¹⁸ See, e.g., *Skyline Order*, 19 FCC Rcd 6761; *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).

¹⁹ See *supra* note 10.

10. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver. Dubois has facilities relatively close to the area and is willing and able to provide service.²⁰ Based on the totality of these circumstances, we conclude that the transfer of the territory from Qwest to Dubois, as described in the petition, will serve the public interest by, among other things, providing access to telecommunications services to areas that were previously without such services.

III. ORDERING CLAUSES

11. 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 Dubois Telephone Exchange, Inc. and Qwest Corporation on March 12, 2008, IS GRANTED.

12. 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

²⁰ See Petition at 1-2.