

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

In the Matter of)
Federal-State Joint Board on Universal) CC Docket No. 96-45
Service)
Panora Communications Cooperative)
and)
Prairie Telephone Co., Inc.)
Joint Petition for Waiver of the Definition of)
"Study Area" Contained in Part 36 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 Panora Communications Cooperative (Panora) and Prairie Telephone Co., Inc. d/b/a Western Iowa Networks (Prairie) (collectively, the Petitioners) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. The study area waiver will permit Prairie to remove a territory from its Iowa study area and permit Panora to add that same territory to its existing Iowa study area. We deny, however, Panora's request for waiver of section 54.305 of the Commission's rules.

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. The Commission took this action to prevent carriers from establishing high-cost exchanges within existing service territories as separate study areas merely to maximize their receipt of universal service

1 See 47 C.F.R. Part 36 App.; Panora Communications Cooperative and Prairie Telephone Co., 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 July 15, 2009) (Petition).

2 See 47 C.F.R. § 54.305.

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); see also 47 C.F.R. Part 36 App.

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.* Panora and Prairie filed a joint petition for a waiver of the study area boundary freeze on July 15, 2009.⁷ Prairie has agreed to sell and transfer the subject area to Panora.⁸ On August 10, 2009, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.⁹ The area to be transferred from Prairie to Panora has 35 residential access lines in a 2.1 square mile area currently in Prairie's Yale, Iowa exchange, which is located on the north side of Lake Panorama within the Lake Panorama Association, a private residential development in Guthrie County.¹⁰ The Petitioners state that Panora is beginning a project to upgrade its exchange to provide fiber-to-the-home to all of its customers.¹¹ Panora would like to include the 35 residential lines in the subject area in this upgrade.¹² The Petitioners state that the proposed extension will enable Panora to provide the affected customers with basic and advanced telecommunications and information services, upgrade the quality of its existing cable television and Internet access services, and enhance the redundancy of its network routes, thereby improving the reliability of service to its existing and prospective customers.¹³ The Iowa Utilities Board (Iowa Board) has issued an order approving the transfer of the subject area.¹⁴

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 (ICLS), 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 Panora operates, as an incumbent LEC, approximately 1,895 access lines in one study area in the state of Iowa. Prairie operates, as an incumbent LEC, approximately 940 access lines in one study area in Iowa. *See* Petition at 1-2. Both Panora and Prairie are average schedule companies for purposes of interstate access settlements and universal service support. *See* Universal Service Fund, 2009 Submission of 2008 Data Collection Study Results by the National Exchange Carrier Association, Inc. (Sept. 30 2009).

⁸ Petition at 3.

⁹ *See Comment Sought on the Joint Petition of Panora Communications Cooperative and Prairie Telephone Co., Inc. to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 10600 (Wireline Comp. Bur. 2009). Comments were filed by the National Telecommunications Cooperative Association in support of the petition.

¹⁰ *See* Petition at 2. Maps of the Guthrie County exchanges, the Panora exchange, and Prairie's Yale exchange are included at Exhibit A of the Petition.

¹¹ *See* Petition at 2.

¹² *Id.*

¹³ *Id.* at 2-3.

¹⁴ *See* Letter from Gerald J. Duffy, counsel for Panora and Prairie, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Aug. 19, 2009) (attaching State of Iowa, Department of Commerce Utilities Board, Panora Communications Cooperative and Prairie Telephone Co., Inc., d/b/a Western

(continued....)

5. The Petitioners also request clarification that the provisions of section 54.305 do not apply to the subject transaction because the rules “refer expressly and exclusively to the sale or transfer of entire exchanges.”¹⁵ If the Commission determines that the provisions of section 54.305 do apply to the instant transaction, however, the Petitioners request a waiver of section 54.305 arguing that the transfer of a small portion of an exchange does not give rise to the concerns regarding the potential manipulation of universal service support that led to the adoption of section 54.305 of the Commission’s rules.¹⁶ The Petitioners further claim that increased accounting requirements associated with section 54.305 would be unduly expensive and burdensome and would substantially decrease the benefits and economic viability of the proposed transaction.¹⁷

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.¹⁸ 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.¹⁹

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 transfer the subject area as described above.²⁰

(...continued from previous page)

Iowa Networks, Order Approving Changes to Exchange Boundary Maps, Docket No. SPU-2009-0005 (July 30, 2009) (Iowa Board Order)).

¹⁵ See Petition at 6.

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 7.

¹⁸ 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*).

¹⁹ 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).

²⁰ 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.

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. As discussed more fully below, section 54.305 of the Commission's rules is applicable to this transaction.²¹ Panora is therefore limited to the same per-line levels of high-cost loop support and local switching support that Prairie was receiving prior to the transfer.²² Although Panora may be eligible for safety valve support and ICLS for investments in the acquired lines, there is nothing in the record to suggest such eligibility would significantly increase the high-cost fund or would come close to the one-percent threshold.²³ We find that the circumstances in the instant Petition meet our existing framework and precedents for granting such a waiver.²⁴

9. *Position of State Commission.* The Iowa Board has issued an order approving the transfer.²⁵ Thus, we find that the state commission with regulatory authority over the transferred area does not oppose the transfer.

10. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver of the study area freeze to permit Prairie to transfer the subject area to Panora as described. Panora represents that grant of the waiver will enable it to include these customers in its planned network upgrades and facilitate its ability to maintain network reliability.²⁶ Based on the totality of these circumstances, we conclude that the transfer of 35 access lines will serve the public interest.²⁷

III. WAIVER OF SECTION 54.305

11. The Petitioners request clarification that section 54.305 of the Commission's rules does not apply to the subject transaction because the rules "refer expressly and exclusively to the sale or transfer of

²¹ See *infra* para 11.

²² The Petitioners state that Prairie receives total support of \$30.48 per-line per month. See Petition at 6. We note that of the \$30.48 per-line per month support, \$14.52 of this amount is for ICLS which is not subject to the limits of support imposed by section 54.305(b) of the Commission's rules. See Petition at Exhibit B; 47 C.F.R. § 54.902.

²³ In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only approximately 35 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). 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 \$49 million. See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2010, Table HC02 (Jan. 29, 2010) (projecting total annual high-cost support of approximately \$4.9 billion).

²⁴ 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*, CC Docket No. 96-45, Order, 19 FCC Rcd 6761 (2004); *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).

²⁵ See *supra* note 14.

²⁶ See Petition at 8-9. The Petitioners state that the construction of facilities to the transferred lines will enable Panora to achieve route redundancy that will enhance the reliability of the entire network and will permit Panora to employ its construction crews and equipment in the most efficient and economic manner. *Id.*

²⁷ We note that the Bureau has granted transfer of control of a portion of Prairie's Yale, Iowa exchange to Panora. See *Notice of Non-Streamlined Domestic Section 214 Application Granted*, WC Docket No. 09-212, Public Notice, 25 FCC Rcd 112 (Wireline Comp. Bur. 2010).

entire exchanges.”²⁸ The Petitioners are incorrect in stating that section 54.305 refers to “entire” exchanges. Section 54.305 refers “to the sale or transfer of exchanges” and does not specify whether the rule is only applicable to transfers of exchanges in whole.²⁹ As in the *Sacred Wind Order*, Panora is acquiring exchange facilities and customers from Prairie; therefore, section 54.305 is applicable to the transfer. As discussed above, section 54.305 is meant to discourage a carrier from acquiring exchanges (in whole or in part) or access lines merely to increase its share of universal service high-cost support.³⁰

12. In the alternative, Panora requests a waiver of section 54.305 of the Commission’s rules so that the transferred lines are not subject to the limits of section 54.305.³¹ Panora states that good cause for waiver exists because the transfer of a small portion (35 access lines) of an exchange does not give rise to the concerns and issues regarding the potential manipulation of universal service high-cost support that led to the Commission’s adoption of section 54.305.³² Panora further asserts that the increased accounting requirements associated with section 54.305 would be unduly expensive and burdensome with respect to the minimal number of customers being transferred.³³

13. Panora is incorrect in arguing that the transfer of only 35 access lines does not give rise to the concerns of potential manipulation of universal service high-cost support that led to the adoption of section 54.305. Section 54.305 was adopted, among other reasons, in response to the Commission’s finding that some incumbent LECs had underestimated the universal service support effects of study area waiver transactions in their petitions for waiver and that the actual universal service support amounts for the transferred exchanges or lines ultimately exceeded their estimates significantly.³⁴ Section 54.305 is necessary to prevent such manipulation regardless of the number of lines being transferred.

14. We do not consider compliance with additional accounting requirements to constitute special circumstances that warrant a waiver of section 54.305. In any event, because Panora is an interstate average schedule company, only modest additional accounting requirements would apply under section 54.305 of the Commission’s rules.³⁵ Average schedule companies have been permitted by the Commission to estimate their access settlements and universal service support through the use of average schedule formulas, submitted by the National Exchange Carrier Association and as approved by the

²⁸ See Petition at 6.

²⁹ See 47 C.F.R. § 54.305(b); see also *Sacred Wind Communications, 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, Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication’s Rules*, Order, CC Docket No. 96-45, 21 FCC Rcd 9227, 9235-36, para. 20 (Wireline Comp. Bur. 2006) (*Sacred Wind Order*) (finding that section 54.305 was applicable to Sacred Wind’s study area transaction when Sacred Wind acquired exchange facilities and customers from Qwest, but did not acquire an entire exchange).

³⁰ See *supra* para. 3.

³¹ See Petition at 6-7.

³² *Id.* at 7.

³³ *Id.*

³⁴ See *PTI/Eagle Order*, 10 FCC Rcd at 1774, para. 20.

³⁵ Average schedule formulas, as approved by the Commission, are used to calculate universal service high-cost loop support and local switching support for average schedule companies. See, e.g., *National Exchange Carrier Association, Inc. and Universal Administrative Company, 2010 Modification of Average Schedule Universal Service Formulas, High-Cost Universal Service Support*, WC Docket No. 05-337, Order, 24 FCC Rcd 14748 (Wireline Comp. Bur. 2009).

Commission, to avoid the difficulties and expenses involved with conducting company-specific cost studies.³⁶

15. Moreover, we note that Panora has not demonstrated specific hardships or inequities, or specific benefits to the public interest if such a deviation from the rule were granted. Panora does not provide any evidence of adverse consequences that would result absent a waiver of section 54.305.³⁷ For example, Panora has not demonstrated that the subject area has low telephone penetration levels or high basic local service rates. We, therefore, deny Panora's request for waiver of section 54.305.

16. Finally, the Petitioners inquire whether Panora will be entitled to the \$30.48 per-line per month currently received by Prairie for the 35 access lines if the Commission's denies Panora's request for waiver of section 54.305.³⁸ Pursuant to section 54.305(b) of the Commission's rules, Panora will be eligible for the same per-line support for which Prairie was eligible prior to the transfer.³⁹ The Petitioners also inquire about the timing of Panora's receipt of safety valve support.⁴⁰ The timing of Panora's eligibility for safety valve support is addressed in section 54.305(d)(1) of the Commission's rules.⁴¹

IV. 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 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 Panora Communications Cooperative and Prairie Telephone Co., Inc. on July 15, 2009, IS GRANTED.

18. 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 request for waiver of section 54.305 of the Commission's rules, 47 C.F.R. § 54.305, filed by Panora Communications Cooperative and Prairie Telephone Co., Inc. on July 15, 2009, IS DENIED.

³⁶ *Id.* See, e.g., *ALLTEL Corp. v. FCC*, 838 F.2d 551, 553 (D.C. Cir. 1988).

³⁷ The Commission has granted only two waivers of section 54.305. See *Mescalero Apache Telecom, Inc., Request for Waiver of Section 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 16 FCC Rcd 1312 (2001) (*Mescalero Order*); *Sacred Wind Order*, 21 FCC Rcd 9227. In the *Mescalero Order*, the Commission concluded that Mescalero, a newly-formed, tribally-owned carrier, demonstrated that a deviation from the general rule was warranted because, among other things, Mescalero intended to bring additional service to a reservation where 52 percent of the residents on the reservation lacked telephone service. *Mescalero Order*, 16 FCC Rcd at 1316-18. Similarly, in the *Sacred Wind Order*, the Wireline Competition Bureau concluded that a waiver of section 54.305 was warranted because Sacred Wind intended to serve some areas that had no telephone service at all and that more than 50 percent of the population in the proposed service area had income levels at or below the poverty level. *Sacred Wind Order*, 21 FCC Rcd at 9231.

³⁸ See Petition at 7.

³⁹ See 47 C.F.R. § 54.305(b).

⁴⁰ Petition at 7.

⁴¹ See 47 C.F.R. § 54.305(d)(1).

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