

**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)	
)	
Petition for Waiver 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 request from Qwest Corporation (Qwest) 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 a certain territory in Laramie County from its Wyoming study area and permit RT Communications, Inc. (RT) to add that same territory to its parent company's existing Wyoming study area.² RT is a wholly owned subsidiary of the Range Telephone Cooperative (Range).³

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, 1984.⁴ The Commission took this action to prevent incumbent LECs from establishing separate study

¹ See 47 C.F.R. Part 36 App.; Qwest Corporation, 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 May 21, 2007) (Petition).

² Qwest filed the instant petition without RT's participation because Qwest was not able to initially secure RT's cooperation in making the filing. See Petition at 1. On February 15, 2008, RT submitted a filing acknowledging Qwest's petition and joined with Qwest in requesting that the petition be granted. See RT Communications, Inc. Acknowledgment and Agreement to Petition for Waiver, In the Matter of Qwest Corporation, 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 Feb. 15, 2008).

³ See Letter from Jason P. Hendricks, Government Affairs Manager, RT Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Sept. 25, 2009) (RT Letter).

⁴ 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.

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.⁵

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.⁶ Section 54.305(b) is meant to discourage a carrier from acquiring an exchange merely to increase its share of universal service high-cost support.⁷

4. *The Petition for Waiver.* Qwest filed a petition for a waiver of the study area boundary freeze on May 21, 2007.⁸ On August 8, 2007, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.⁹ The area to be transferred from Qwest to RT is located in Laramie County, Wyoming.¹⁰ Qwest claims that the study area boundaries should be adjusted because Qwest and RT received a request from a developer regarding a proposed subdivision which will extend into the certificated service areas of both companies.¹¹ Qwest states that the developer has requested that telecommunications services be provided to the subdivision by just one incumbent LEC.¹² RT's facilities are closer to the proposed subdivision and RT has agreed to provide service through the use of its existing facilities.¹³ RT already serves a few customers in the subject area.¹⁴ The subject area would become a part of RT's parent company's, i.e., Range's, Wyoming study area.¹⁵ The Wyoming Public Service Commission (Wyoming Commission) has issued an order approving the transfer of the subject area.¹⁶

⁵ *Part 67 Order*, 50 Fed. Reg. at 939, para. 1.

⁶ 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.

⁷ 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).

⁸ Qwest operates, as an incumbent LEC, approximately 169,000 access lines in one study area in Wyoming. Range, RT's parent company, operates, as an incumbent LEC, approximately 16,800 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*, Table HC05 (Jan. 29, 2010).

⁹ See *Comment Sought on the Joint Petition of 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, 22 FCC Rcd 15095 (Wireline Comp. Bur. 2007). No comments were filed.

¹⁰ See Petition at 1.

¹¹ See Petition at 2. RT estimates that there are potentially 69 customers to be served by RT. See RT Letter.

¹² See Petition at 2.

¹³ *Id.*

¹⁴ See RT Letter.

¹⁵ *Id.*

¹⁶ See Petition at Exhibit A (attaching *Joint Application of RT Communications, Inc., and Qwest Corporation for Authority to Transfer and Assign Certain Certificated Area from Qwest Corporation to RT Communications, Inc.*, Docket Nos. 70015-53-TA-06 and 70000-1245-TA-06 (Record No. 10590), Notice and Order (Wyoming Commission, Aug. 4, 2006) (Wyoming Order)).

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.¹⁷ 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.¹⁸

B. Discussion

6. For the reasons discussed below, we conclude that Qwest and RT 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 Qwest to transfer the territory to Range's Wyoming study area as described above.¹⁹

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 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.²⁰ 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 Range study areas in Wyoming do not involve transfers of facilities or customers.²¹ RT estimates that the Range study area would receive an additional \$184 per-line annually in universal service support as a result of this transaction.²² While the territory subject to this transaction is not bound by section 54.305(b), we find that any increase in universal service support as a result of this transfer will not have an adverse effect on the universal service

¹⁷ 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*).

¹⁸ 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).

¹⁹ 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.

²⁰ 47 C.F.R. § 54.305(b).

²¹ See Petition at 1-2; *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*). Because the per-line support limitation in section 54.305(b) does not apply to these transfers, Range will be eligible, as a rural carrier, to receive universal service high-cost support based on the average costs of all its lines. See generally 47 C.F.R. Part 36, Subpart F.

²² RT estimates annual per-line increases of \$79.06 for high-cost loop support, \$34.93 for interstate common line support, and \$69.87 in local switching support. See RT Letter.

fund.²³ We find that the circumstances in the instant petition meet our existing framework and precedents for granting such a waiver.²⁴

8. *Position of State Commission.* The Wyoming Commission previously 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.

9. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the proposed waiver of the study area freeze rule to permit Qwest to transfer the area in Laramie County to Range's study area as described. The subject area is closer to RT's existing facilities than Qwest's facilities and therefore RT is in a better position to provide service. RT's provision of service to the entire subject area will eliminate the potential for confusion among the residents if telecommunications services to the area were to be bifurcated between two incumbent LECs.

III. ORDERING CLAUSES

10. 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 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 on May 21, 2007, IS GRANTED.

11. 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

²³ Applying our standard for quantifying potential adverse effects on high-cost support, one percent of current high-cost support is approximately \$49 million. *See supra* para. 5. We find it highly unlikely that any increases in high-cost support, as a result of this transaction, could approach \$49 million. We find it more likely, due to the sizes of the proposed developments, that potential universal service support would only be a small fraction of one-percent of current high-cost support. *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., 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).

²⁵ *See supra* note 16.