

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Kingsgate Telephone, Inc.)	
Petition for Waiver of the Definition)	
of "Study Area" in the Appendix –)	
Glossary of Part 36)	

ORDER

Adopted: June 3, 2014

Released: June 3, 2014

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part and denies in part a petition filed by ETS Telephone Company, Inc. (ETS).¹ We are not persuaded by ETS' argument that it is not required to obtain a study area waiver, but we grant ETS' request to allow it to amend its prior study area waiver request, and maintain the status quo until a decision is issued on the amended request.²

II. BACKGROUND

2. A study area is a geographic territory in which an incumbent local exchange carrier (LEC) operates. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Historically, study area boundaries have been important primarily because incumbent LECs perform jurisdictional separations at the study area level and receive high-cost loop support on a study area basis. The Commission froze all study area boundaries effective November 15, 1984.³ The Commission took this action to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze before creating new study areas or reconfiguring existing study areas.⁴

¹ Request of ETS Telephone Company, Inc., AAD 96-51, CC Docket No. 96-45 (filed Mar. 12, 2008) (Petition). We note that ETS was formerly called Kingsgate Telephone.

² *Id.* at 12.

³ See 1984 Joint Board Recommended Decision, 49 Fed. Reg. 48325; 1985 Order Adopting Joint Board Recommendation, 49 Fed. Reg. 939. See also 47 C.F.R. pt. 36 App.

⁴ See 1984 Joint Board Recommended Decision, 49 Fed. Reg. at 48337-38, para. 66; 1985 Order Adopting Joint Board Recommendation, 50 Fed. Reg. at 939, para. 1.

3. ETS is a LEC that operates in suburban Houston, Texas. While ETS operates as a competitive LEC before the Public Utility Commission of Texas,⁵ it has received high-cost support in the manner of a rate-of-return LEC for an area that falls within the boundaries of multiple price cap carrier study areas.⁶ ETS also states that it is a member of the National Exchange Carrier Association.⁷ ETS filed a petition requesting a study area waiver on March 29, 1996.⁸ In response, the Common Carrier Bureau (now known as the Wireline Competition Bureau) issued an order stating that “carriers are not required to seek study area waivers if: (1) a separately incorporated company is establishing a study area for a previously unserved area; (2) a company is combining previously unserved territory with one of its existing study areas in the same state; and (3) a holding company is consolidating existing study areas in the same state.”⁹ The Common Carrier Bureau found that because ETS “create[d] a new study area when it began serving a previously unserved territory,” its study area waiver petition was unnecessary and should therefore be dismissed as moot.¹⁰

4. In 2004, the Commission adopted the *Skyline Order*, which stated that “the Commission has never enunciated an exception to its study area waiver requirements for unserved areas [and] that treating an area as unserved when it was previously within an existing study area would be inconsistent with the purpose of the study area freeze.”¹¹ It clarified that “a study area waiver request 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.”¹²

5. In 2008, ETS filed a petition arguing that the *Skyline Order* was inapplicable to ETS because no carrier provided service to any locations within ETS’ study area before it filed its petition for a study area waiver in 1996.¹³ It argues that even if the holding of the *Skyline Order* were to apply, it “would not alter the status of study areas such as ETS’ that already existed at the time of that order.”¹⁴ ETS also requested that, should the Bureau find that ETS must obtain a study area waiver, the Bureau should reconsider its 1996 dismissal of ETS’ study area waiver petition or “grant ETS leave to amend its prior

⁵ See Public Utility Commission of Texas, Competitive Local Exchange Carriers – CLEC Report, http://www.puc.texas.gov/industry/communications/directories/clec/report_clec.aspx?ID=CLSQL01DB1245201000001 (last visited May 19, 2014).

⁶ ETS was founded and initiated operations to construct new facilities to serve new subdivisions outside of Houston, Texas. See Reply Comments of ETS Telephone Company, Inc. CC Docket No. 96-45, AAD 96-51 at 3 (filed July 1, 2008).

⁷ *Id.* at 4.

⁸ Petition at 2.

⁹ *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” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules*, Memorandum Opinion and Order, AAD 95-175, AAD 96-29, AAD-96-51, 11 FCC Rcd 8156, 8160, para. 9 (Com. Car. Bur. 1996).

¹⁰ *Id.* at 8161, para 10.

¹¹ *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, 6766, para. 11 (2004) (*Skyline Order*).

¹² *Id.* at para. 13

¹³ Petition at 2-3.

¹⁴ *Id.* at 3.

request for waiver and preserve the status quo” until the Bureau issues a decision on the new waiver request.¹⁵ No action was taken in response to that petition.

6. In November 2012, the Bureau adopted an order requiring incumbent LECs to submit study area boundary data necessary to implement universal service reforms.¹⁶ In response to the Bureau’s study area boundary data collection, ETS filed information regarding the boundaries of its service territory, which overlap those of neighboring price cap carriers.¹⁷

III. DISCUSSION

7. We find that the Commission’s *Skyline Order* on its face applies to ETS. ETS, like Skyline, sought to create a new study area from within one or more existing study areas. Over the years, it has expanded the scope of its geographic operations as it has extended service to newly built subdivisions. ETS now is operating within the existing study areas of Consolidated Communications, AT&T, Verizon, Windstream and Centel.¹⁸ We are not persuaded by ETS’ argument that the *Skyline Order* is inapplicable. The Commission’s statement in *Skyline* that “[o]ur conclusions herein are limited to the issues raised in this matter” refers to the situation when a company seeks to serve an area within the boundaries of an existing study area. That is precisely the situation before us here.

8. Under *Skyline*, ETS must obtain a study area waiver in order to alter the study area boundaries of the other incumbent providers and to recognize ETS’ service territory in Texas as a study area for federal regulatory purposes. Therefore, we require ETS to refile its study area waiver petition, demonstrating how it meets the standards for a study area waiver, within 45 days of the date of this Order so that the Bureau can resolve this issue expeditiously.¹⁹ We direct ETS to specify in its revised study area waiver petition the dates upon which it commenced providing service in the different geographic areas, or neighborhoods, that it currently serves. We grant ETS’ request to maintain the status quo until a ruling on its study area waiver request. Thus, ETS will continue to receive high-cost universal service support pending a decision on its refiled study area waiver petition.

9. Finally, we deny ETS’ request that the Bureau reconsider its dismissal of the 1996 study area waiver petition.²⁰ We do not believe waiving the 30-day deadline for issuing a *sua sponte* reconsideration

¹⁵ *Id.* at 4, 12.

¹⁶ *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 27 FCC Rcd 13528, 13529, para. 2 (Wireline Comp. Bur. 2012).

¹⁷ See <http://apps.fcc.gov/wcb/sabdata>.

¹⁸ Preliminary staff analysis shows that some of the census blocks in ETS’ service area would be subject to the offer of model-based support to price cap carriers for Connect America Phase II.

¹⁹ The Commission’s standards for evaluating petitions for study area waiver are: (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer and (2) the transfer must be in the public interest. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17762, para. 265 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. argued Nov. 19, 2013).

²⁰ Petition at 12. ETS argues that the Bureau has authority to waive the 30-day limitation for issuing a *sua sponte* reconsideration order for good cause or where such action would serve the public interest. *Id.* at 4 n.9; see 47 C.F.R. (continued...)

decision would serve the public interest in this case. We find that ETS' 1996 petition does not provide adequate information for the Bureau to make a determination regarding whether such a waiver is in the public interest. Moreover, ETS has expanded the area that it serves since it originally filed its study area waiver request in 1996. The decision on the study area waiver should be based on the factual circumstances and regulatory framework that exists today, not the situation that existed two decades ago.

IV. 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 1.41 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.41, that the request filed by ETS IS GRANTED IN PART AND DENIED IN PART, as described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

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§ 1.108 (*sua sponte* reconsideration permissible within 30 days from the date of public notice of the underlying action).