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

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Titonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to modify 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa	)	WC Docket No. 18-69
Interstate Telecommunications Cooperative, Inc., Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota	)	WC Docket No. 18-331
Northeast Nebraska Telephone Company Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Nebraska	)	WC Docket No. 19-31

ORDER

Adopted: June 10, 2019 **Released: June 10, 2019**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,[1] we grant the petitions for waiver filed by Titonka Telephone Company and The Burt Telephone Company (together Titonka and Burt Telephone);

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[1] *See e.g.*, *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief; Consolidated Communications Companies Tariff F.C.C. No. 2; Frontier Telephone Companies Tariff F.C.C. No. 10; Windstream Telephone Systems Tariff F.C.C. No. 7*, Order, 27 FCC Rcd 15753 (2012) (*2012 Average Schedule Conversion Order*) (approving a methodology for establishing

Interstate Telecommunications Cooperative, Inc., (Interstate); and Northeast Nebraska Telephone Company (Northeast) (collectively Petitioners), seeking waivers of certain of the Commission's intercarrier compensation rules to allow them to merge existing study areas.[2] Based on the record before us, we find that grant of the unopposed waivers will serve the public interest by promoting increased productivity and efficiencies that result in cost savings for the companies, which will in turn benefit consumers by encouraging the companies to invest in broadband deployment.[3]

II. BACKGROUND

A. Intercarrier Compensation Reform

2. In the *USF/ICC Transformation Order*,[4] the Commission capped reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.[5] The Commission adopted a multi-year process reducing most terminating switched access rates to bill-and-keep.[6] The Commission adopted a transitional revenue recovery mechanism that allows incumbent LECs to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to an amount defined for each year of the incumbent LEC's transition.[7] These defined amounts are referred to as "Eligible Recovery."[8] An incumbent LEC may recover its Eligible Recovery each year from its end users through an Access Recovery Charge, subject to an annual cap.[9] If the projected Access Recovery Charge revenues are not sufficient to cover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in Connect America Fund – Intercarrier Compensation support.[10]

3. All of the Petitioners are rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue.[11] A rate-of-return carrier's Base Period Revenue is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by

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initial interstate switched and special access rates for the study areas in new tariff filings in order to allow the requesting carriers to operate more efficiently post waiver); *CenturyLink Petition for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief,* WC Docket No. 14-23, Order, 29 FCC Rcd 5140 (2014) (allowing CenturyLink to establish a single interstate access tariff with blended switched and special access rates for three consolidating study areas and simultaneously allowing the three affiliates requesting the waiver to withdraw from the NECA pool).

[2] *See* Titonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to modify 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa, WC Docket No. 18-69 (filed Feb. 9, 2018) (Titonka and Burt Telephone Petition); Interstate Telecommunications Cooperative, Inc., Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota, WC Docket No. 18-331 (filed Nov. 5, 2018) (Interstate Petition); Northeast Nebraska Telephone Company Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Nebraska, WC Docket No. 19-31 (filed Feb. 12, 2019) (Northeast Petition). A study area is the geographic territory of an incumbent local exchange carrier's (LEC's) telephone operations. *See* 47 CFR Part 36 App.

[3] Titonka and Burt Telephone Petition at 5-6; Interstate Petition at 4-5; Northeast Petition at 4-5.

[4] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) *aff'd, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *See* 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

March 31, 2012, for services provided during Fiscal Year (FY) 2011,[12] and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.[13] The Base Period Revenue for rate-of-return carriers was reduced by 5% initially and is reduced by an additional 5% in each year of the transition.[14] A rate-of-return LEC's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question less, for each relevant year of the transition, the sum of (1) projected intrastate switched access revenue;[15] (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.[16] A rate-of-return LEC's Base Period Revenue is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.[17]

4. The Commission's rules for calculating Eligible Recovery are based on study-area-specific data, and do not address what adjustments may be necessary when study areas are merged after one company acquires another with a separate study area. Because a carrier's Base Period Revenue and interstate revenue requirement are study-area-specific, combining two study areas requires a decision about how best to combine two different Base Period Revenues and interstate revenue requirements, and a waiver of the Commission's rules governing Based Period Revenue calculation and interstate revenue requirements.

B. Petitioners' Requests

5. Titonka and Burt Telephone seek a waiver of the Commission's rules, as necessary, to allow the consolidation of two existing study areas in the same state.[18] More than three decades ago Titonka purchased Burt Telephone and has operated the two study areas as a single company for many years.[19] The study areas for Titonka (study area code 351510) and Burt Telephone (study area code 351114), however, have remained separate. Titonka and Burt Telephone's board of directors has decided that the company should now formally combine the two study areas and Titonka and Burt Telephone therefore seek a waiver to combine Titonka and Burt Telephone's 2011 interstate access revenue requirements and to combine the Base Period Revenues for the two study areas into a single Base Period

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[6] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801.

[7] *Id*. at 17956-57, para. 847.

[8] *Id*. at 17956-57, para. 850.

[9] *Id*. at 17958, para. 852; 47 CFR § 51.917(e); 47 CFR § 51.917(d).

[10] *Id*. at 17994-95, para. 918; 47 CFR § 51.917(f).

[11] *See* 47 CFR § 51.917(b)(7).

[12] For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. *See* 47 CFR § 51.903(e).

[13] *See* 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

[14] *See* 47 CFR § 51.917(b)(3).

[15] The carrier would reflect forward any required true ups resulting from the operation of the pre-mergers study areas in the proper year for the merged study area. 47 CFR § 51.915(b)(13).

[16] *See* 47 CFR § 51.917(d).

[17] *Id*.

[18] Titonka and Burt Telephone Petition at 1-2. The rules at issue can be found at 47 CFR §§ 51.917(b)(1), and 51.917(b)(7).

[19] *Id.* at 2.

Revenue for the merged study area.[20] Titonka and Burt Telephone do not seek a waiver of section 51.909(a) because "[t]he study areas are in the same rate bands for switched access service set forth in National Exchange Carrier Association ("NECA") Tariff F.C.C. No. 5, and therefore, no waiver is required under Section 51.909(a)."[21]

6. Interstate seeks a waiver of the Commission's rules, as necessary,[22] in conjunction with a merger of two commonly-owned study areas—"ITC SAC" and "ITC fka Stockholm-Strandburg SAC"—in South Dakota that are "administered as cost companies receiving legacy support."[23] Interstate seeks a waiver to allow it to tariff rates in Rate Band 7 for Dedicated Transport Service for the merged study area.[24] Local Switching Service will remain in Rate Band 3 and Tandem Switching Service will remain in Rate Band 2 for the merged study area.[25] Interstate also seeks to combine the 2011 interstate access revenue requirements of the merging study areas and to combine the Base Period Revenues for the two study areas into a single Base Period Revenue for the newly merged study area.[26]

7. Northeast seeks a waiver of the Commission's rules, as necessary, to allow it to merge two commonly-owned Nebraska study areas, the Clarks study area and the Northeast study area, both of which are served by cost companies that receive legacy support.[27] Northeast acquired Clarks Telecommunications Co. (Clarks) as a "wholly-owned subsidiary corporation in June 2007, and the two entities have operated as separate legal entities since that time. However, Northeast plans to merge Clarks corporation into the Northeast cooperative entity effective December 31, 2019."[28] Upon merger, Northeast seeks to tariff rates for the merged entity in Rate Band 7 for Local Switching Service and Rate Band 2 for Tandem Switching Service.[29] Dedicated Transport Service will remain in Rate Band 11 for the merged study area.[30] Northeast also seeks a waiver to combine 2011 interstate access revenue requirements of the merging study areas and to combine the Base Period Revenues into a single Base Period Revenue for the merged study area.[31]

[20] *Id.* at 3.

[21] *Id*. *See also id.* at 4.

[22] The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

[23] Interstate Petition at 2. "Stockholm-Strandburg was acquired by Interstate as a wholly-owned subsidiary corporation in February 2006, was subsequently merged into the surviving Interstate entity in January 2013 and has operated under a single corporate cooperative structure since that time. However, the ITC fka Stockholm-Strandburg SAC and ITC SAC have remained as separate study areas." *Id*.

[24] *Id*. at Exh. A. The Interstate study area is in Rate Band 8 for Dedicated Transport Service, while the Interstate fka Stockholm-Strandburg study area is in Rate Band 5 for Dedicated Transport Service. *Id*. at 3. Interstate does not currently have any direct trunks and did not have any when revenue requirements were frozen in 2011. *Id*. at 5.

[25] *Id*. at Exh. A.

[26] *Id*. at 3.

[27] Northeast Petition at 1. The rules at issue can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

[28] *Id*. at 2.

[29] *Id*. at Exh. A.

[30] *Id*. at Exh. A. The Clarks study area is in Rate Band 8 for Local Switching Service, Rate Band 11 for Dedicated Transport Service, and Rate Band 1 for Tandem Switching Service. The Northeast study area is in Rate Band 6 for Local Switching Service, Rate Band 11 for Dedicated Transport Service, and Rate Band 2 for Tandem Switching Service. *Id*. at 3. Northeast argues that the overall impact of the consolidation on switched access revenue is minimal and offset by public interest benefits. *Id*. at 5.

III. COMMISSION PRECEDENT RELATED TO MERGING STUDY AREA WAIVERS

8. Generally, the Commission's rules may be waived for good cause shown.[32] The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.[33] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[34]

9. In the interest of efficiency, the Bureau has consistently facilitated the merging of study areas by granting waivers of sections 51.917(b)(1) and 51.917(b)(7) of the rules to allow carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011-2012 interstate revenue requirement of the merging study areas.[35] This calculation creates a combined Base Period Revenue which serves as the baseline for calculating the Eligible Recovery of the company serving the combined study area going forward.[36]

10. The Commission has also used the waiver process to adjust the interstate switched access rate element(s) that the company requesting to merge study areas may assess. To facilitate such mergers for entities that do not participate in the NECA traffic-sensitive tariff the Commission has waived the rate cap requirement in section 51.909(a) of the rules to allow the requesting carriers to develop a weighted composite rate.[37] Such a waiver allows some previously capped rates to increase, while other rates are reduced.[38] The new, weighted composite rate then becomes the rate cap for the rate element(s) in question.[39] For carriers that participate in the NECA traffic-sensitive tariff, the Bureau has used a comparable, although not identical, approach taking into account the NECA tariff's rate bands. Under rate banding, carriers are placed in a rate band with other carriers that have similar cost characteristics.[40] The Bureau has granted waivers of section 51.909(a) of the rules to allow NECA to place the consolidated

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[31] *Id.* at 3-4.

[32] 47 CFR § 1.3.

[33] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

[34] The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[35] *See Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Petition of Butler-Bremer Mutual Telephone Company, Inc. for a Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue in Connection with Merger of Affiliated Study Areas in Iowa; Petition of Panora Communications Cooperative and Prairie Telephone Company, Inc. for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue Requirement and 2011 Base Period Revenue in Connection with Study Area Waivers in Iowa*, WC Docket Nos. 10-90, 15-118, 15-166; CC Docket No. 01-92, Order, 33 FCC Rcd 1152, at 1157-58, para. 16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions); *Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Telapex, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Mississippi; Venture Communications Cooperative Petition for Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota*, WC Docket Nos. 10-90, 17-252, 17-323; CC Docket No. 01-92, Order, 33 FCC Rcd 11764 (WCB 2018) (*Telapex-Venture Order*); *see also Federal-State Joint*

study area in the rate band that most closely approximates the merged entities' cost characteristics.[41] The rate for that rate band then becomes the rate cap for that rate element in the merged study area.

IV. DISCUSSION

11. The Commission's precedent supports waiver of our rules to allow merging the study areas in question. Petitioners each assert that grant of their petitions will serve the public interest by allowing increased "administrative and operational efficiencies" because the companies will no longer be required to maintain separate books and conduct other regulatory requirements for two study areas.[42] We find that the efficiencies that arise from operating the merged study areas constitute special circumstances that warrant a deviation from the general rule, and good cause exists to grant the petitions for waiver filed by Titonka and Burt Telephone, Interstate and Northeast. First, in each case, combining the merging carriers' Base Period Revenues and separately combining the merging carriers' interstate revenue requirements reflects the merging of the carriers' operations into a single operation and therefore is the appropriate base from which to begin calculating Eligible Recovery for the newly merged entities. The use of the combined Base Period Revenues of the merging study areas and the projected switched access revenues of the merging entities that will be subtracted from the Base Period Revenue of the merged study area will maintain the appropriate relationship between the components (Base Period Revenue and projected revenues) used in calculating the Eligible Recovery of the merged entity.

12. Second, as participants in the NECA traffic-sensitive tariff, the merged carriers' local switching, dedicated transport, and tandem switching rates in the merging study areas will be included in rate bands reflecting comparable cost groupings, per section 51.909(a) of the rules.[43] After they merge, each of the combined carriers must charge a single rate for each rate element. For Interstate and Northeast the combined operation of the merged carriers produces a cost characteristic of the newly merged entities that warrants one or more rates being included in different rate bands after the mergers.[44] For Interstate, this produces no actual rate change because, although local transport is in different rate bands for each of the merging study areas, there was no demand for local transport in 2011 and there is no

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Board on Universal Service; Joint Petition for Waiver of the Definition of "Study Area" or the Appendix-Glossary of Part 36 of the Commission's Rules filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications; Winnebago Cooperative Telecom Association, WC Docket No. 10-90, CC Docket No. 96-45, Order, 31 FCC Rcd 10683 at 10691, para. 27 (WCB 2016) (approving allocating Base Period Revenue amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

[36] *See Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

[37] *2012 Average Schedule Conversion Order,* 27 FCC Rcd at 15759-60, para. 16.

[38] *See Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

[39] *Id*.; 47 CFR § 51.909(a).

[40] *See Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16.

[41] *See, e.g.*, *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Telapex-Venture Order*, 33 FCC Rcd at 11768-69, para. 11.

[42] Titonka and Burt Telephone Petition at 5-6; *see also* Interstate Petition at 4-6; Northeast Petition at 4-6.

[43] *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15765, para. 33; 47 CFR § 51.909(a).

[44] Because the study areas for Titonka and Burt Telephone are "assigned to the same switched access rate bands," the companies did not request a waiver of section 51.909(a). Titonka and Burt Telephone Petition at 1.

demand for it currently.[45] As such, we agree that the rate band changes for Interstate are "limited to assignment of the Local Transport rate bands . . . which ultimately amount to zero impact."[46]

13. For Northeast, the rate band changes resulting from the merger will result in some traffic being assessed at a higher rate, while other traffic is assessed at a lower rate than it was prior to the merger.[47] We find the proposed rate band assignments to be reasonable.[48] This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*.[49] We recognize that, depending on the traffic mix, this may alter slightly the relative recovery between access revenues and Connect America Fund – Intercarrier Compensation support for Northeast. We find these minimal differences to be more than offset by the public interest benefits of efficiencies gained from implementation of the merger of Northeast's study areas. These new rates will become the rate caps for the affected rate elements. We agree with Petitioners that the mergers will serve the public interest[50] by producing significant administrative cost savings and facilitating the Commission's goal of encouraging carriers to become more efficient and to increase productivity,[51] which will facilitate increased investment in broadband deployment.

14. Grant of the Titonka and Burt Telephone Petition and the Interstate Petition will be effective upon release of this Order. Grant of the Northeast Petition will become effective upon the date of the merger of Northeast and Clarks.[52]

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, and 201-203 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, and 201-203, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver filed by Titonka Telephone Company and The Burt Telephone Company on February 9, 2018 IS GRANTED.

16. IT IS FURTHER ORDERED, pursuant to sections 4(i), 5, and 201-203 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver filed by Interstate Telecommunications Cooperative, Inc., on November 5, 2018 IS GRANTED.

17. IT IS FURTHER ORDERED, pursuant to sections 4(i), 5, and 201-203 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254(g), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for

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[45] Interstate Petition at 3, 5 (also explaining that local switching and tandem switched transport for the two study areas are in the same rate bands).

[46] *Id*. at 5.

[47] The use of a composite rate also involves some traffic being assessed a higher rate, while some traffic has lower rates. *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

[48] *See supra* paras. 6-7.

[49] *See Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Telapex-Venture Order*, 33 FCC Rcd at 11768-69, para. 11.

[50] Titonka and Burt Telephone Petition at 5-6; Interstate Petition at 4-6; Northeast Petition at 4-6.

[51] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.

[52] "Northeast plans to merge the Clarks corporation into the Northeast cooperative entity effective December 31, 2019." Northeast Petition at 2.

Waiver filed by Northeast Nebraska Telephone Company on February 12, 2019 IS GRANTED AS PROVIDED HEREIN.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau