

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Federal-State Joint Board on Universal Service) CC Docket No. 96-45

ORDER

Adopted: August 26, 2020

Released: August 26, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies three petitions for waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules.1 Specifically, we deny (1) Reservation Telephone Cooperative (Reservation) and Qwest Corporation d/b/a CenturyLink QC’s joint request to expand RTC’s Alexander exchange in North Dakota,2 (2) West River Telecommunications Cooperative’s (West River) request to expand its Elgin and St. Anthony’s exchanges in North Dakota,3 and (3) West River’s request to expand its Elgin exchange in North Dakota.4 We find that granting these petitions would not serve the public interest and are inconsistent with the efficient use of limited universal service funding.

II. BACKGROUND

2. A study area is a geographic segment of an incumbent local exchange carrier’s (LEC) telephone operations. Generally, a study area corresponds to an incumbent LEC’s entire service territory within a state. The Commission froze all study area boundaries effective November 15, 1984.5 The

1 See 47 CFR Part 36 App.

2 Joint Petition of RTC and CenturyLink for Waiver of the Definition of “Study Area” of the Appendix-Glossary of Part 36 of the Commission’s Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission’s Rules, CC Docket No. 96-45 (filed Mar. 20, 2019), https://ecfsapi.fcc.gov/file/103200345429667/Reservation%20Study%20Area%20Waiver%2003%2020%2019.pdf (RTC Petition).

3 Joint Petition of West River Telecommunications Cooperative and CenturyLink 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 Oct. 5, 2018) https://ecfsapi.fcc.gov/file/10052645127773/WRT%20Century%20Link%20Petition%20for%20Study%20Area%20Waiver%20St%20Anthony%20%26%20Elgin%20SA%26E.pdf (WRTC St. Anthony Petition).

4 Petition of WRTC 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 Oct. 5, 2018) https://ecfsapi.fcc.gov/file/10052275014092/WRT%20Century%20Link%20Petition%20for%20Study%20Area%20Elgin%20E.pdf (WRTC Elgin Petition).

5 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) adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 CFR Part 36 App.

Commission took this action to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support.⁶ A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze in order to sell or purchase additional exchanges.⁷

3. *RTC/CenturyLink Joint Petition for Waiver.* Reservation, a rate-of-return incumbent LEC, and CenturyLink, a price cap incumbent LEC, filed a joint petition for a waiver of the study area boundary freeze on March 20, 2019.⁸ The requested waiver, if granted, would permit Reservation to include parts of CenturyLink's Fairview and Sidney exchanges in Reservation's North Dakota study area and would allow CenturyLink to remove the same territory from its North Dakota study area.⁹ Reservation anticipates this move would add approximately 40 access lines to its Alexander exchange.¹⁰ CenturyLink currently provides voice service to these locations but does not provide broadband.¹¹ Reservation proposes to construct new facilities in the exchange to serve these new customers and will not acquire any assets from CenturyLink.¹² The North Dakota Public Service Commission (North Dakota PSC) has approved the requested transfer.¹³

4. Reservation currently receives approximately \$16 million per year, or \$1,273 per line, annually in high-cost universal service support within its existing study area.¹⁴ Reservation proposes to build fiber facilities to each of the newly added locations at a total construction cost of \$336,250.¹⁵ To provide broadband service to the newly added locations, Reservation estimates that its total USF high-cost support will increase by \$9,718 per year.¹⁶ Should the Bureau grant the petition, Reservation additionally requests waiver of Section 69.3(e)(11) of the Commission's rules to allow it to include the

⁶ *Connect America Fund, et al.*, WC Docket No. 10-90, CC Docket No. 96-45, Order, 31 FCC Rcd 10683, para. 2 (WCB 2016).

⁷ *Part 67 Order* at para. 1. In 2011, the Commission adopted a streamlined process for processing study area waiver petitions under which the waiver is deemed granted on the 60th day after the reply comment due date unless the Bureau provides notice that the petition requires further analysis and review. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17763, para. 267 (2011) (*USF/ICC Transformation Order*) *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). Because of the complex issue presented in these petitions, they were not eligible for streamlined processing.

⁸ RTC Petition. Reservation Telephone Cooperative has approximately 8,610 access lines and 4,035 data only lines in North Dakota study area 381632. CenturyLink serves North Dakota study area 385144. See Universal Service Administration Company, Federal Universal Support Mechanism, Fund Size Projection for the Second Quarter 2020, Tables HC 12 and HC 08. (Jan 31, 2020). The Wireline Competition Bureau (Bureau) released a public notice seeking comment on the Petition. See *Wireline Competition Bureau Seeks Comment on the Joint Petition of Reservation Telephone Cooperative and Qwest Corporation D/B/A CenturyLink QC to Waive the Definition of "Study Area" Contained in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 19-325 (WCB 2019). No comments were filed in response to this request.

⁹ See RTC Petition at 2.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.* at 3; *Commission Motion to Approve Changes to Exchange Boundaries*, Case No. PU-18-325, Motion, State of North Dakota Public Service Commission (Nov. 20, 2019) (RTC Motion).

¹⁴ See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2020, Table HC 01 (Jan 31, 2020). For this study area, RTC receives \$913,152 annually in CAF-ICC support, \$3,764,700 annually in HCL support, and \$11,020,164 annually in BLS support.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

expanded exchange area access lines, revenues, and investment in the National Exchange Carrier Association tariff process.¹⁷ No comments were filed in response to this petition.

5. *WRTC's St. Anthony Petition.* West River filed a petition for waiver of the study area boundary freeze on October 5, 2018.¹⁸ West River requests that it be allowed to include parts of CenturyLink's Morristown and Mandan exchanges in West River's Elgin and St. Anthony's exchanges within its North Dakota study area, and allow CenturyLink to remove the same territory from its North Dakota study area.¹⁹ West River anticipates this grant would add approximately 8 access lines to its Elgin and St. Anthony's exchanges.²⁰ West River proposes to construct new facilities in the exchange to serve these new customers and will not acquire any assets from CenturyLink.²¹ The North Dakota PSC approved the requested transfer.²²

6. The Bureau received five comments in response to the West River Public Notice.²³ Some residents support granting the WRTC St. Anthony Petition because West River will build a wired connection to their area.²⁴ They state that they need connectivity so the children in the family can complete schoolwork and to prevent the children from being at a disadvantage vis-à-vis their peers. Currently, they use a Hughes satellite connection for Internet service which they claim is not sufficient to allow family members to complete school homework assignments, engage in remote therapy sessions, or work from home.²⁵ Conversely, other residents oppose granting the WRTC St. Anthony Petition.²⁶ These commenters have, for several years, petitioned West River to provide high-speed internet to their homes to no avail.²⁷ BEK Communications has offered to provide them with a high-speed broadband connection as well as telephone and cable service, more services than West River has offered to provide.²⁸ BEK Communications is more "proactive" than West River and has already done equipment installation with no funding from the Commission.²⁹ Therefore, they do not want West River to expand its study area to include their homes because West River's "service and support won't be timely moving forward."³⁰

¹⁷ *Id.*; see also 47 CFR § 69.3(e)(11).

¹⁸ WRTC St. Anthony Petition. West River is an incumbent LEC and serving 11,934 access lines in North Dakota study area 381637. See Universal Service Administration Company, Federal Universal Support Mechanism, Fund Size Projection for the Second Quarter 2020, Tables HC 12 and HC 08. (Jan. 31, 2020). On March 13, 2020, the Bureau released a Public Notice seeking comment on the WRTC St. Anthony Petition as well as the WRTC Elgin Petition, discussed below. See *Wireline Competition Bureau Seeks Comment on the Joint Petition of West River Telecommunications Cooperative and CenturyLink to Waive the Definition of "Study Area" Contained in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 20-271 (WCB 2020) (WRTC Public Notice).

¹⁹ WRTC St. Anthony Petition at 2.

²⁰ *Id.* at 1-2.

²¹ *Id.* at 2.

²² *Id. Commission Motion to Approve Changes to Exchange Boundaries*, Case No. PU-18-90, Motion, State of North Dakota Public Service Commission (May 29, 2018) (WRTC Motion).

²³ See Jim Hauge Comments; Jacy Hauge Comments; Jennifer Hauge Comments; Steve & Kim Bamhardt Comments; and Jason Thomas, et al. Comments.

²⁴ Jim Hauge Comments; Jacy Hauge Comments; Jennifer Hauge Comments.

²⁵ *Id.*

²⁶ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

²⁷ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

²⁸ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

²⁹ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

³⁰ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

7. *WRTC's Elgin Petition.* West River filed an additional petition for waiver of the study area boundary freeze on October 5, 2018. Here, West River requests to include parts of CenturyLink's Morristown exchange in WRTC's Elgin exchange in its North Dakota study area, and allow CenturyLink to remove the same territory from its North Dakota study area.³¹ West River anticipates this grant would add approximately 2 access lines to its expanded Elgin exchange.³² West River proposes to construct new facilities in the exchange to serve these new customers and will not acquire any assets from CenturyLink.³³ The North Dakota PSC approved the transfer.³⁴

8. West River currently receives approximately \$11.7 million per year, or \$984 per line, annually in high-cost universal service support within its existing study area.³⁵ To serve the customers included in the WRTC St. Anthony Petition, West River would incur construction costs of \$87,159 and receive an annual increase of \$1,162 for CAF-BLS support, \$6,764 in HCLS, and \$872 for CAF-ICC.³⁶ To serve the customers included in the WRTC Elgin Petition, West River would incur construction costs of \$32,475 and receive an additional annual increase of \$341 for CAF-BLS, \$1,986 for HCLS, and \$218 for CAF-ICC.³⁷

III. DISCUSSION

9. *Standard for Waiver.* Generally, the Commission's rules may be waived for good cause shown.³⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴⁰ 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.⁴¹

10. In the *USF/ICC Transformation Order*, the Commission set forth its current approach to evaluating petitions for study area waivers, concluding that it would apply two standards: First, the state commission having regulatory authority over the transferred exchanges does not object to the transfer and, second, the transfer is in the public interest.⁴² The Commission stated that its evaluation of the public interest benefits of a proposed study area waiver will include: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in

³¹ WRTC Elgin Petition at 2.

³² *Id.* at 1.

³³ *Id.* at 2.

³⁴ *Id.* See also WRTC Motion.

³⁵ See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2020, Table HC 01 (Nov. 2, 2018). For this study area, WRTC receives \$1,127,268 annually in CAF-ICC support, \$4,102,752 annually in HCL support, and \$6,515,508 annually in BLS support.

³⁶ WRTC St. Anthony Petition at 3.

³⁷ *Id.*

³⁸ 47 CFR § 1.3.

³⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴¹ *Northeast Cellular*, 897 F.2d at 1166.

⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17762, para. 265.

consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, i.e., reduction in cost per line due to the increased number of lines.⁴³

11. We find that good cause does not exist to waive the study area boundary freeze to permit the transfers described herein.⁴⁴ We conclude that Reservation and West River have not demonstrated that a waiver would serve the public interest. In light of the upcoming Rural Digital Opportunity Fund auction to be held later this year, grant of these petitions would likely result in an unnecessary increase in support to provide broadband services to these customers.

A. State Commission Authority

12. The Petitioners have demonstrated that the state commission with regulatory authority over the transferred exchanges does not object to the requested study area transfers. With each of the petitions, the petitioners submitted into the record a letter from the North Dakota PSC stating that the North Dakota PSC is the only state commission with regulatory authority over the subject exchanges that will be affected by the study area waivers and that there is no opposition to the subject waivers.⁴⁵

B. Public Interest Analysis

13. We conclude that, on balance, the requested study area boundary freeze waivers would not serve the public interest.

1. Number of Lines at Issue

14. The requested study area boundary freeze waivers would result in a relatively small number of lines being removed from CenturyLink's exchanges in North Dakota. In the RTC Petition, Reservation seeks to provide service to 40 locations in CenturyLink's exchanges.⁴⁶ In the WRTC St. Anthony Petition, West River seeks to provide service to an additional 8 locations inside of CenturyLink's study area.⁴⁷ Finally, in the WRTC Elgin Petition, West River seeks to provide service to an additional 2 locations inside of CenturyLink's study area.⁴⁸ If the Bureau were to grant these waivers, CenturyLink would lose less than 1% of the access lines in its North Dakota study area. Thus, the number of lines at issue is relatively small, which minimizes any adverse effects.

2. Projected Universal Service Fund Cost Per Line

15. We conclude that the requested study area waiver will result in a higher than necessary increase in USF support cost per line. In the *USF/ICC Transformation Order*, the Commission undertook comprehensive reform of the universal service and intercarrier compensation programs to ensure that robust, affordable voice and broadband services are available to all Americans.⁴⁹ The Commission created the Connect America Fund and adopted a new framework for providing ongoing support in areas served by price cap carriers, including most of the large and mid-sized incumbent telephone carriers, that would use a combinations of "a new forward-looking model of the cost of constructing modern multi-purpose networks" and competitive bidding.⁵⁰ Following up on this success, in 2020 the Commission

⁴³ *Id.*

⁴⁴ 47 CFR Part 36 App.

⁴⁵ See RTC Motion; see also WRTC Motion.

⁴⁶ RTC Petition at 4.

⁴⁷ WRTC St. Anthony Petition at 1.

⁴⁸ WRTC Elgin Petition at 1.

⁴⁹ *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, 17667, para. 1 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵⁰ *Id.* at 17725, para. 156.

established the Rural Digital Opportunity Fund to allocate \$20.4 billion to price cap carriers for unserved and underserved rural locations throughout the country.⁵¹ The *Rural Digital Opportunity Fund Order* established a multi-round, reverse, descending clock auction to allocate its funding to “ensure that the greatest possible number of Americans will be connected to the best possible networks, all at a competitive cost.”⁵²

16. The locations currently in the CenturyLink study area that West River and Reservation wish to annex will be included in the areas eligible for bidding during the Rural Digital Opportunity Fund auction process. We expect 24 of the 32 blocks in the RTC Petition that contain locations will be included in Phase I of the Rural Digital Opportunity Fund auction, as will both locations in WRTC’s Elgin Petition.⁵³ Of the eight locations in the WRTC St. Anthony petition, two locations are going to receive service from an alternative provider, as noted above. The remaining six locations, as well as any locations in the eight Census blocks in the RTC Petition that are not included in Phase I of the Rural Digital Opportunity fund auction will likely be included in the Phase II round of that auction, once the Commission has collected more granular data, if they remain unserved at that time.⁵⁴ Carriers that seek to provide service to these areas will be able to enter the competitive bidding process to receive high-cost support for that area.

17. The Commission’s experience with auctions has shown that the areas typically are won at support amounts well below the reserve price and will likely be lower amounts than would be recovered by a rate-of-return company that receives support based on its own costs. Moreover, commenters point out that some of the locations at issue are now being served without any additional high-cost support.⁵⁵ Although the Commission has approved some line transfers in the recent past, those resulted in *de minimis* annual increases in support, ranging from \$350-\$648.⁵⁶ Allowing additional areas to be funded by rate-of-return mechanisms, a less efficient method of support allocation, is not in the public interest. As the Commission has previously noted, rate-of-return regulation provides incentives for carriers to operate inefficiently and unnecessarily increase operating expenses and capital spending to increase profits.⁵⁷

⁵¹ *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*).

⁵² *Id.* at 688, para. 5.

⁵³ *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, 35 FCC Rcd 2685 (WCB 2020).

⁵⁴ *RDOF Order* at 688, para. 5 (“By relying on a two-phase process, we can move expeditiously to commence an auction in 2020 for those areas we already know with certainty are currently unserved, while also ensuring that other areas are not left behind by holding a second auction once we have identified any additional unserved locations through improvements to our broadband deployment data collection” (footnote omitted)).

⁵⁵ Steve & Kim Bamhardt Comments; Jason Thomas, et al. Comments at 1.

⁵⁶ See *Wireline Competition Bureau Seeks Comment on the Joint Petition of CenturyLink QC and Nunn Telephone Company to Waive the Definition of “Study Area” as Codified in Part 36 of the Commission’s Rules*, Public Notice, 32 FCC Rcd 7664 (WCB 2017) (The Petition, which projected a \$648 annual increase in universal service support, was granted through the streamlined process); see also *Wireline Competition Bureau Seeks Commons on the Joint Petition of Cheyenne River Sioux Tribe Telephone Authority and CenturyLink QC to Waive the Definition of “Study Area” Contained in Part 36 of the Commission’s Rules*, Public Notice, 32 FCC Rcd 7668 (WCB 2017) (The Petition, which projected a \$350 annual increase in universal service support, was granted through the streamlined process).

⁵⁷ See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3041, para. 139 (2020)).

18. Both Reservation and West River propose to provide service to locations within CenturyLink's study area that currently receive only voice service from CenturyLink.⁵⁸ Reservation and West River seek to construct new facilities to provide broadband access to these locations. Reservation estimated it would be eligible for annual net increases of as much as \$9,718 in universal service high-cost support after acquiring the subject territory.⁵⁹ West River estimated it would be eligible for annual net increases of as much as \$7,926 in universal service high-cost support after acquiring the subject territory.⁶⁰ If the Bureau granted these petitions, the total increase to the USF budget could total over \$17,000 annually. Moreover, this increase is just an estimate from West River; the actual increase could be much greater. The Bureau concludes that granting these petitions will thus result in a higher than necessary increase in USF support cost per line.

3. Whether Such a Grant Would Result in Consolidation or Study Areas that Facilitate Reductions in Cost

19. Granting the petitions would not result in consolidation or study areas that facilitate reductions in cost. As noted above, the Commission has determined that the auction process is a more efficient method of allocating resources so allowing the areas at issue to be included in the Rural Digital Opportunity Fund will likely result in those areas receiving broadband at a lower build-out cost and with less high-cost support. Both Reservation and West River propose to build new facilities with estimated construction costs of nearly half a million dollars and would require universal service support from the rate-of-return mechanism. The Bureau concludes that granting these petitions would thus not facilitate any reductions in cost because in some cases private companies have already shown interest in serving some of these locations without any universal support and other locations are likely to require less universal service support if such support is awarded through the upcoming auctions.

20. *Petition for Waiver of Section 69.3(e)(11)*. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing date following the merger or acquisition.⁶¹ Because we deny Reservation's request to add the subject territory to its existing study area, Reservation's requested waiver of section 69.3(e)(11) is dismissed without prejudice as moot.

IV. ORDERING CLAUSES

21. 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 CFR §§ 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 Reservation Telephone Cooperative and Qwest Corporation d/b/a CenturyLink QC, IS DENIED, as described herein.

22. IT IS FURTHER 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 CFR §§ 0.91, 0.291, and 1.3 that the petitions for waiver of the study area boundary freeze as codified in Part 36, Appendix Glossary, of the Commission's rules, filed by West River Telecommunication Cooperative ARE DENIED, as described herein.

⁵⁸ RTC Petition at 4; WRTC St. Anthony Petition at 3; WRTC Elgin Petition at 3.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.*

⁶¹ *Id.*

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau