

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

In the Matter of)
Marne Elk Horn Telephone Company Petition for)
Waiver of Sections 51.909(a), 51.917(b)(1) and) WC Docket No. 21-281
51.917(b)(7) of the Commission’s Rules to modify)
access rate bands and charges, and 2011 Interstate)
Switched Access Revenue Requirement and 2011)
Base Period Revenue in connection with the)
merger of affiliated study areas in Iowa)

ORDER

Adopted: October 4, 2021

Released: October 4, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order we grant the petition filed by Marne Elk Horn Telephone Company¹ (METC) seeking waiver of certain of the Commission’s intercarrier compensation rules to allow it to consolidate two affiliated study areas into a single study area.² Based on the record before us, we find that grant of the unopposed waiver request will serve the public interest by resulting in cost savings for METC, which should, in turn, result in improved service (e.g., increased investment in broadband deployment) for the company’s customers, as well as ensuring no increase in demand on the federal universal service high-cost program.

II. BACKGROUND

A. Intercarrier Compensation Reform

2. In 2011, the Commission comprehensively reformed its regulation of intercarrier compensation in the USF/ICC Transformation Order.³ These reforms included the capping of reciprocal

¹ See Marne Elk Horn 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 Switched Access Revenue Requirement and 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa, WC Docket No. 21-281 (filed June 9, 2021), https://ecfsapi.fcc.gov/file/10630870303109/Marne%20Elk%20Horn%20Petition.pdf; Letter from Dan Davis, consultant to Marne Elk Horn Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-281 (filed July 22, 2021) (Revised Exhibit A of the Petition); Letter from Dan Davis, consultant to Marne Elk Horn Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-281 (filed Aug. 11, 2021) (filing the correct study area code for Marne Elk Horn Telephone Company) (collectively METC Petition or Petition).

² A study area is the geographic territory of an incumbent local exchange carrier’s telephone operations. See 47 CFR Part 36 App.; US West Communications, Inc. & Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix—Glossary of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995).

³ 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).

compensation and interstate switched access rates and most intrastate switched access rates at the levels in effect on December 29, 2011.⁴ The Commission also adopted a multi-year process for transitioning most terminating switched access rates to bill-and-keep.⁵ As part of that process, the Commission adopted a revenue recovery mechanism that allows incumbent local exchange carriers (LECs) to recover a portion of the intercarrier compensation revenues they lost due to the Commission's reforms, up to a defined amount.⁶ This amount, which is referred to as a carrier's "Eligible Recovery," decreases annually.⁷ An incumbent LEC may recover its Eligible Recovery each year from its end users through an Access Recovery Charge, subject to an annual cap.⁸ If the projected Access Recovery Charge revenues are not sufficient to cover the entire Eligible Recovery amount, rate-of-return carriers, such as METC, may elect to receive the remainder from the Connect America Fund in the form of Connect America Fund – Intercarrier Compensation (CAF/ICC) support.⁹

3. METC is a rate-of-return incumbent LEC. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue.¹⁰ 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 March 31, 2012, for services provided during Fiscal Year (FY) 2011,¹¹ and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.¹² 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.¹³ 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) certain projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.¹⁴

4. The Commission's rules for calculating Eligible Recovery are based on study area-specific data and do not address potentially necessary adjustments when study areas are consolidated.¹⁵ Because a carrier's Base Period Revenue and interstate revenue requirement are study area-specific, combining study areas requires deciding how best to combine the different Base Period Revenues and interstate revenue requirements of the merging study areas.¹⁶ Combining study areas also requires a

⁴ See 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempted from the rate cap.

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801, fig. 9. "Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary." *Id.* at 17676, para. 34.

⁶ See *id.* at 17956, para. 847.

⁷ See *id.* at 17957-58, paras. 850-851.

⁸ *Id.* at 17958-61, para. 852; 47 CFR §§ 51.917(d)-(e).

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

¹⁰ See 47 CFR § 51.917(b)(7).

¹¹ For purposes of the recovery mechanism, FY 2011 is defined as October 1, 2010 through September 30, 2011. See 47 CFR § 51.903(e).

¹² See 47 CFR § 51.917(b)(7) (specifying the revenues to be used to determine Base Period Revenue). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

¹³ See 47 CFR § 51.917(b)(3).

¹⁴ See 47 CFR § 51.917(d).

¹⁵ 47 CFR § 51.917(d)-(e). See e.g., *Butler-Panora Order*, 33 FCC Rcd at 1155, 1157, paras. 10, 15 (discussing relevant precedent and describing approach to calculating Eligible Recovery when study areas consolidate).

¹⁶ See e.g., *Butler-Panora Order*, 33 FCC Rcd at 1155, 1157, paras. 10, 15.

waiver of the Commission's rules governing Base Period Revenue and interstate revenue requirements calculations.¹⁷

B. The METC Petition

5. The METC Petition seeks waiver of the Commission's rules, as necessary, to allow it to consolidate two commonly-owned study areas in Iowa.¹⁸ METC owns the local exchange carrier that is also named Marne Elk Horn Telephone Company (Marne Elk Horn; Study Area Code 351237); and Walnut Telephone Company (Walnut; Study Area Code 351326). The two study areas will consolidate as a single study area as of January 1, 2022, which will also be referred to as the Marne Elk Horn Telephone Company (retaining Study Area Code 351237).¹⁹ Both are rate-of-return incumbent LECs operating in Iowa.²⁰

6. Like many other incumbent LECs, Marne Elk Horn and Walnut are currently both Issuing Carriers in the National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5 (traffic-sensitive tariff).²¹ METC seeks a waiver to tariff rates for the single consolidated study area in Rate Band 8 for Local Switching Service, Rate Band 9 for Dedicated Transport Service, and Rate Band 2 for Tandem Switching Service.²² METC also seeks a waiver to combine the 2011 interstate access revenue requirements for the two study areas into a single interstate access revenue requirement and combine the Base Period Revenues for the two study areas into a single Base Period Revenue for the newly consolidated study area.²³

7. On June 30, 2021, we issued a public notice seeking comment on the METC Petition.²⁴ No comments were filed in response to the public notice.

III. COMMISSION PRECEDENT RELATED TO STUDY AREA WAIVERS

8. Generally, the Commission's rules may be waived for good cause shown.²⁵ The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.²⁶ Waiver of the Commission's rules is therefore appropriate only if

¹⁷ 47 CFR § 51.917(b)(1); 47 CFR § 51.917(b)(7). See e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

¹⁸ METC Petition at 1. The rules METC asks us to waive can be found at 47 CFR §§ 51.909(a), 51.917(b)(1), and 51.917(b)(7).

¹⁹ *Id.* at 1-2.

²⁰ *Id.* at 2.

²¹ *Id.*

²² Revised Exhibit A of the Petition at 2. The current NECA rate bands for Marne Elk Horn are Local Switching: Rate Band 8, Dedicated Transport: Rate Band 8, Tandem Switched Transport Rate Band 2. The current NECA rate bands for Walnut are Local Switching: Rate Band 8, Dedicated Transport: Rate Band 10, and Tandem Switched Transport: Rate Band 1. METC Petition at 3.

²³ *Id.* at 3.

²⁴ See *Wireline Competition Bureau Seeks Comment on Marne Elk Horn Telephone Company Petition for Waiver of Commission Rules in Order to Merge Study Areas and Modify Access Rate Bands and Charges and 2011 Interstate Switched Access Revenue Requirement and Base Period Revenue*, Public Notice, WC Docket No. 21-281, DA 21-777 (WCB June 30, 2021).

²⁵ 47 CFR § 1.3.

²⁶ *Northeast Cellular Telephone Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.²⁷

9. In the interest of efficiency, and where warranted based on the specific record in each case, the Wireline Competition Bureau (Bureau) has facilitated the consolidation of study areas by granting waivers of sections 51.917(b)(1) and 51.917(b)(7) of the Commission's rules to allow the requesting carriers to add together certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during FY 2011, and the projected revenue requirements for interstate switched access services for the 2011-2012 tariff period.²⁸ These rule waivers allow the merging entity to calculate 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.

10. The Bureau has also used the waiver process to adjust the interstate switched access rate element(s) that the company seeking to consolidate study areas may assess. To facilitate study area consolidations for entities that participate in the NECA traffic-sensitive tariff, the Bureau has granted waivers of section 51.909(a) of the Commission's rules to allow NECA to place the consolidated study area in the rate bands that most closely approximate the combined entities' cost characteristics.²⁹ The rates for the rate bands then become the rate caps for the relevant switched access services in the consolidated study area.³⁰

IV. DISCUSSION

11. METC asserts that good cause exists to grant its Petition. METC argues that granting the requested waiver will serve the public interest by increasing administrative and operational efficiencies, permitting greater resources for network investment, and ultimately benefitting METC's customers.³¹ As previously noted, Commission precedent supports granting the requested relief to allow for more efficient operation of consolidated rate-of-return study areas.³²

12. First, we find that the efficiencies that arise from consolidating the two study areas constitute special circumstances that warrant granting the requested waiver and that good cause exists to grant METC's Petition.³³ To effectuate the consolidation of the two study areas, we find that combining

²⁷ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁸ See, e.g., *Ace Telephone Company of Michigan, 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 Michigan*, WC Docket No. 20-358, Order, DA 21-325 (WCB Mar. 17, 2021) (*Ace Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 1869 (WCB 2020) (*TrioTel-Farmers-ICTC Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd 9617 (WCB 2019) (*Sunflower-Lakeland Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd at 4777 (WCB 2019) (*Titonka-ITC-Northeast Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., 33 FCC Rcd 1152 (WCB 2018) (*Butler-Panora Order*) (granting two rate-of-return study area waiver petitions); *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 (WCB 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).

²⁹ See, e.g., *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10.

³⁰ See, e.g., *Sunflower-Lakeland Order*, 34 FCC Rcd at 9621, para. 10.

³¹ See METC Petition at 4-5.

³² See *supra* paras. 9-10.

³³ See, e.g., *Ace Order* at 5, para. 12; *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

the consolidating study areas' Base Period Revenues and interstate revenue requirements, as METC proposes, creates the appropriate base for the combined study area to use to calculate Eligible Recovery. Using the combined Base Period Revenue of the consolidating study areas and subtracting the requisite projected switched access revenues and net reciprocal compensation revenues of those study areas from this calculation for the consolidated study area will maintain the appropriate relationship between the components (Base Period Revenue and projected revenues) used in calculating the Eligible Recovery of the consolidated study area.³⁴

13. Second, we find the proposed rate band assignments to be reasonable.³⁵ As participants in the NECA traffic-sensitive tariff, Marne Elk Horn's and Walnut's local switching, dedicated transport and tandem switching rates in the consolidating study areas will be included in rate bands reflecting comparable cost groupings, per section 51.909(a) of the Commission's rules.³⁶ Post-consolidation, the combined study area will charge a single rate for each rate element. Combining the Marne Elk Horn and Walnut study areas in this way may warrant rates for one or more services being included in different rate bands after the consolidation.

14. The changes caused by the study area consolidation will result in some traffic being assigned to a higher rate band, some to the same rate band, while other traffic will be assigned to a lower rate band, than it was prior to the consolidation.³⁷ This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*.³⁸ The new rates for METC become the rate caps for the affected rate elements. METC states that combining the study areas will have no impact on the merged carrier's switched access revenues or CAF/ICC support.³⁹ We agree with this conclusion, and we therefore agree with METC that the study area consolidation will serve the public interest.⁴⁰ It will produce administrative cost savings and advance the Commission's goal of encouraging carriers to become more efficient and to increase productivity.⁴¹ This, over time, will tend to result in improved service, including increased investment in broadband deployment, while ensuring no increase in demand on the high-cost program.

15. Our grant of the METC Petition will be effective upon the date of the merger between Marne Elk Horn and Walnut.⁴²

³⁴ See, e.g., *Ace Order* at 5, para. 12; *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

³⁵ See METC Petition at 2-3.

³⁶ *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief et al.*, WC Docket No. 12-63, et al., 27 FCC Rcd 15753, 15765, para. 33 (2012) (*2012 Average Schedule Conversion Order*) (approving a methodology for establishing 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); 47 CFR § 51.909(a).

³⁷ See Letter from Dan Davis, consultant to Marne Elk Horn Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-281 (filed July 22, 2021) (Revised Exhibit A of the Petition).

³⁸ See generally *2012 Average Schedule Conversion Order*; see also *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4783, para. 13.

³⁹ METC Petition at 5.

⁴⁰ See *id.* at 4-5.

⁴¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.

⁴² See METC Petition at 2 ("To allow the Petitioner the efficiency of managing switched access, special access, and CAF-ICC compliance for a single study area, the Petitioner will merge the METC study area [351237] and the Walnut study area 351326 effective January 1, 2022.").

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, 254(g), and sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the Petition for Waiver filed by Marne Elk Horn Telephone Company on June 9, 2021 IS GRANTED AS PROVIDED HEREIN.

17. 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