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

In the Matter of	)	
	)	
Ace Telephone Company of Michigan, Inc.	)	
Petition for Waiver of Sections 51.909(a),	)	WC Docket No. 20-358
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	)	

ORDER

Adopted: March 17. 2021 **Released: March 17, 2021**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,[1] we grant the petition filed by Ace Telephone Company of Michigan, Inc.[2] (Ace or Petitioner) seeking waiver of certain of the Commission's intercarrier compensation rules to allow it to consolidate four affiliated study areas into a single study area.[3] Based on the record before us, we find that grant of the unopposed waiver request will serve the public interest by promoting increased productivity and efficiencies that result in cost savings for Ace, which will in turn benefit consumers by, over time, reducing the rates charged to customers and demand on the high cost program while encouraging the company to invest in broadband deployment.

[1] *See e.g.*, *Connect America Fund et al.*, WC Docket No. 10-90 et al., 33 FCC Rcd 1152, 1157-58, paras. 15-16 (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, 5146, para. 15 (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).

[2] *See* 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 Switched Access Revenue Requirement and 2011 Base Period Revenue in connection with the merger of affiliated study areas in Michigan, WC Docket No. 20-358 (filed Nov. 2, 2020) (Ace Petition or Petition).

[3] 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).

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] In that same order, the Commission adopted a multi-year process for reducing most terminating switched access rates to bill-and-keep.[6] The Commission adopted a transitional revenue recovery mechanism that allows incumbent local exchange carriers (LECs) to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to a defined amount, which decreases during each year of the incumbent LEC's transition to bill-and-keep.[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, rate-of-return carriers may elect to receive the remainder from the Connect America Fund in the form of Connect America Fund – Intercarrier Compensation support.[10]

3. The Petitioner is a rate-of-return incumbent LEC. 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 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) certain projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.[15]

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[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.

[6] *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.

[7] *See id*. at 17956-57, paras. 847 & 850.

[8] *Id*. at 17957, para. 850.

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

[10] *USF/ICC Transformation Order*, 26 FCC Rcd 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) (specifying the revenues to be used to determine BPR). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

[14] *See* 47 CFR § 51.917(b)(3).

[15] *See* 47 CFR § 51.917(d).

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 consolidated.[16] Because a carrier's Base Period Revenue and interstate revenue requirement are study-area-specific, combining study areas requires a decision about how best to combine the different Base Period Revenues and interstate revenue requirements.[17] Combining study areas also requires a waiver of the Commission's rules governing Base Period Revenue calculations and interstate revenue requirements.[18]

B. Petitioner's Requests

5. Ace seeks waiver of the Commission's rules, as necessary, to allow it to consolidate four study areas in Michigan.[19] Ace Telephone Company of Michigan, Inc. (Ace; Study Area Code 310704); Ace Telephone Company of Michigan, Inc. – Old Mission (Ace – Old Mission: Study Area Code 310777); Ace Telephone of Michigan, Inc. – Allendale (Ace – Allendale; Study Area Code: 310669); and Ace Telephone Company of Michigan, Inc. – Drenthe (Ace – Drenthe; Study Area Code: 310692) (together the Ace Affiliates) are commonly-owned and operated by Ace and will consolidate as of July 1, 2021.[20] All are rate-of-return companies.[21]

6. Like many other small carriers, the four Ace Affiliates currently participate in group tariffs. Ace and Ace – Old Mission are Issuing Carriers in the National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5 (traffic-sensitive tariff).[22] Ace – Allendale and Ace – Drenthe are Issuing Carriers in the TCA Tariff F.C.C. No. 1.[23] To facilitate the consolidation of the four commonly-owned study areas, Ace – Allendale and Ace – Drenthe, "plan to withdraw from the TCA tariff and to participate in the NECA tariffs as an Issuing Carrier with respect to all of their interstate services and rates, effective July 1, 2021."[24] Ace proposes to tariff rates for the single consolidated Ace study area in Rate Band 6 for Local Switching Service, Rate Band 7 for Dedicated Transport Service, and Rate Band 1 for Tandem Switching Service.[25] Ace also seeks a waiver to combine the 2011 interstate access revenue requirements of the consolidated study area and combine the Base Period Revenues for the four study areas into a single Base Period Revenue for the newly consolidated study area.[26]

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[16] 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).

[17] *See e.g.*, *Butler-Panora Order*, 33 FCC Rcd at 1155, 1157, paras. 10 & 15.

[18] 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.

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

[20] Ace Petition at 1-2.

[21] *Id*. at 2. Letter from Gerard J. Duffy, Counsel to Ace Telephone Company of Michigan, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-358 (filed Feb. 5, 2021).

[22] Ace Petition at 2.

[23] *Id*. at 2.

[24] *Id*. at 2.

[25] "These rate band assignments are appropriate and consistent with the rates and rate band assignments of other NECA tariff participants that have cost characteristics similar to those of the consolidated Ace Michigan study area." *Id*. at 7; Exh. A.

[26] *Id*. at 8-9. Ace argues that any impact on access revenues is minor and will be "more than offset" by various public interest benefits. *Id.*

7. On November 9, 2020, we issued a public notice seeking comment on the Ace Petition.[27] 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.[28] The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.[29] 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.[30]

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 Fiscal Year (FY) 2011, and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.[31] These rule waivers allow the 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.[32]

10. The Bureau has also used the waiver process to adjust the interstate switched access rate element(s) that the company requesting to consolidate study areas may assess. To facilitate such consolidations 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 its rules to allow the requesting carriers to develop a weighted composite rate.[33] Such a waiver allows some previously capped rates to increase, while other rates are reduced.[34] The new, weighted composite rate then becomes the rate cap for the rate element(s) in question.[35] 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 band that most closely approximates the

[27] *See Wireline Competition Bureau Seeks Comment on Ace Telephone Company of Michigan, Inc. Petition for Waiver of Commission Rules in Order to Merge Study Areas and Modify Access Rate Bands and Charges and 2011 Revenue Requirement and Base Period Revenue*, Public Notice, WC Docket No. 20-358, DA 20-1332 (WCB Nov. 9, 2020).

[28] 47 CFR § 1.3.

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

[30] 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.

[31] *See, e.g., Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 20-217 (WCB Mar. 3, 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*).

[32] *See, e.g.*, *id*.

[33] *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 System Tariff F.C.C. No. 7*, WC Docket No. 12-63, Order, 27 FCC Rcd 15753 at 15764, para. 32 (2012) (*2012 Average Schedule Conversion Order*).

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

[35] *Id*.; 47 CFR § 51.909(a).

entities' cost characteristics.[36] The rate for that rate band then becomes the rate cap for that rate element in the consolidated study area.[37]

IV. DISCUSSION

11. Commission precedent supports granting the requested relief to allow for more efficient operation of consolidated rate-of-return study areas.[38] Ace estimates that the consolidation will save it between $140,000-$170,000 per year in administrative and other expenses.[39] As Ace explains, good cause exists to grant its Petition because granting the requested waiver will serve the public interest by "producing significant administrative cost savings that will increase efficiency and productivity, free up more scarce resources for critical broadband deployment and upgrades, and relieve some pressure for increases in customer rates and high cost support."[40]

12. First, we find that the efficiencies that arise from consolidating the four study areas constitute special circumstances that warrant granting the requested waiver and that good cause exists to grant Ace's petition. To effectuate the consolidation of the four Ace study areas, we find that combining the consolidating study areas' Base Period Revenues and combining the consolidating study areas' interstate revenue requirements, as the Petitioner 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.

13. Second, we find the proposed rate band assignments to be reasonable.[41] As participants in the NECA traffic-sensitive tariff, the Petitioners' 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.[42] Post-consolidation, the combined study area must charge a single rate for each rate element. Combining the Ace study areas in this way may warrant one or more rates being included in different rate bands after the consolidation.

14. The changes caused by the study area consolidation will result in some traffic being assessed at a higher rate, while other traffic will be assessed at a lower rate, than it was prior to the consolidation.[43] This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*.[44] The new rates for Ace become the rate caps for the affected rate elements. We recognize that, depending on the traffic mix, this may alter slightly the

[36] *See*, *e.g.*, *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10. Ace indicates that if the requested waivers are granted, the four study areas will all participate in the NECA traffic sensitive tariff as of July 1, 2021. Ace Petition at 4.

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

[38] *See supra* paras. 9-10.

[39] Ace Petition at 6.

[40] *Id*. at 4-5; *see also id*. at 4-9 (further describing why the requested waivers should be granted).

[41] *See supra* para. 6.

[42] *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15765, para. 33 (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).

[43] *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

[44] *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.

relative recovery between access revenues and Connect America Fund – Intercarrier Compensation support for the Petitioner.[45] We find these minimal differences to be more than offset by the public interest benefits from the efficiencies gained by consolidating the four study areas. We agree with Petitioner that the study area consolidation will also serve the public interest[46] by producing significant administrative cost savings and advancing the Commission's goal of encouraging carriers to become more efficient and to increase productivity,[47] which, in turn, will, over time, reduce the rates charged to consumers and demand on the high cost program, while facilitating increased investment in broadband deployment.

15. We also agree with the Petitioner that no waiver is necessary for Petitioner to withdraw the Ace – Allendale and Ace – Drenthe study areas from the TCA Tariff and re-enter those two study areas as full participants in the NECA Tariff F.C.C. No. 5 as of July 1, 2021, pursuant to the requirements provided in section 69.3 of the rules.[48] NECA will make several determinations, pursuant to section 51.909(a)(4) of the Commission's rules, to reflect the inclusion of the Ace – Allendale and Ace – Drenthe study areas in the NECA traffic-sensitive tariff.[49]

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 Ace Telephone Company of Michigan, Inc. on November 2, 2020 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

[45] Ace Petition at 9.

[46] *See id*. at 4-5.

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

[48] Ace Petition at 4. "Ace Michigan – Allendale and Ace Michigan – Drenthe will file any and all further documents and information necessary to participate in NECA Tariff F.C.C. No. 5 in a timely manner pursuant to the procedure and schedule in Section 69.3 of the Commission's Rules." *Id*. at 2. *See also* 47 CFR § 69.3.

[49] 47 CFR § 51.909(a)(4).