

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

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**ORDER**

**Adopted: November 22, 2022**

**Released: November 22, 2022**

By the Chief, Pricing Policy Division:

**I. INTRODUCTION**

1. By this Order, the Wireline Competition Bureau (Bureau) addresses a petition filed by Yukon-Waltz Telephone Company (Yukon-Waltz) requesting a waiver of section 69.605(c) of the Commission's rules to allow it to convert from cost-based interstate settlements to average schedule-based settlements.<sup>1</sup> We find that Yukon-Waltz fails to show the special circumstances necessary to justify a waiver permitting such a conversion. Yukon-Waltz makes no claim of hardship or inequity beyond that experienced by other carriers receiving cost-based settlements. Additionally, while the timing of Yukon-Waltz's conversion from average schedule to cost-based settlements in 2011 may have resulted in fewer benefits than the carrier likely expected, this result alone is not enough to support a waiver. Accordingly, we deny Yukon-Waltz's request to convert back to average schedule-based interstate settlements.

**II. BACKGROUND**

2. *Cost and Average Schedule Companies.* The National Exchange Carrier Association (NECA) is responsible for developing interstate access tariffs for rate-of-return incumbent local exchange carriers (LECs) that wish to participate in the NECA access charge tariff pooling process.<sup>2</sup> Historically, carriers that participated in the NECA tariff pooling process recovered interstate costs from the pools as either cost companies or average schedule companies.<sup>3</sup> Cost companies calculated the costs they incurred in providing interstate access by conducting individual cost studies.<sup>4</sup> Rather than being compensated based on their own costs, average schedule companies received payments based on formulas developed by NECA and approved by the Commission.<sup>5</sup> The formulas were designed to allow average schedule

<sup>1</sup> 47 CFR § 69.605(c); Yukon-Waltz Tel. Co. Petition for Waiver of 47 CFR § 69.605(c), WC Docket No. 10-90, et al., at 1, 5 (filed May 6, 2021) (Petition).

<sup>2</sup> Carriers who decline to participate in the NECA access charge tariff pooling process must file their own interstate access tariffs.

<sup>3</sup> See 47 CFR §§ 69.605(c), 69.606. See also *BPS Tel. Co. Petition for Waiver of Section 69.605(c) of the Comm'n's Rules*, AAD Docket No. 95-67, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 13820, 13821, para. 2 (AAD 1997); *MTS and WATS Market Structure: Average Schedule Cos.*, CC Docket No. 78-72, Phase I, Report and Order, 103 FCC 2d 1017, 1019, para. 4 (1986). As members of NECA, average schedule companies and cost companies are rate-of-return carriers. 47 CFR §§ 69.3, 69.601.

<sup>4</sup> Cost companies performed studies of their costs in accordance with parts 32, 36, and 64 of the Commission's rules to determine their actual interstate costs. See 47 CFR pts. 32, 36, 64.

<sup>5</sup> See *ALLTEL Corp. v. FCC*, 838 F.2d 551, 553 (D.C. Cir. 1988).

companies “to receive compensation that is patterned after the compensation that a cost company would receive.”<sup>6</sup>

3. Section 69.605(c) of the Commission’s rules states, in pertinent part, that “a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company.”<sup>7</sup> On December 22, 1982, the Commission adopted a comprehensive system of tariffed charges, generally known as the access charge plan, for the recovery of incumbent LEC costs associated with the origination and termination of interstate calls.<sup>8</sup> The Commission maintained the average schedule status of incumbent LECs already participating in average schedule settlements, based on the assumption that these small carriers lacked sufficient financial resources or expertise to justify a requirement that they perform jurisdictionally-separated cost studies.<sup>9</sup> The average schedule procedure provided the advantage of reducing the costs and administrative burdens associated with the required cost studies.<sup>10</sup>

4. While the Commission allowed small carriers to maintain their average schedule status, they were not required to do so.<sup>11</sup> Thus, average schedule settlement companies may convert to cost settlement status at any time. Cost companies, however, cannot convert to average settlements absent a waiver from the Commission.<sup>12</sup> Although average schedule-based settlements can result in reduced regulatory burdens and costs for pooling carriers, the Commission determined that allowing cost companies to convert to average schedule status is likely to harm interstate ratepayers because the conversion may result in higher rates.<sup>13</sup> For this reason, waivers permitting carriers to convert to average schedule-based settlements have been granted only in very limited instances when carriers have been able to show special circumstances, such as “individualized hardship or inequity.”<sup>14</sup>

5. In 1987, the Bureau, then known as the Common Carrier Bureau, established a limited window during which it allowed cost companies to convert to average schedule status.<sup>15</sup> Since then, cost

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<sup>6</sup> *MTS and WATS Market Structure*, 103 FCC at 1020, para. 4; 47 CFR § 69.606(a).

<sup>7</sup> 47 CFR § 69.605(c).

<sup>8</sup> *MTS and WATS Market Structure: Average Schedule Cos.*, CC Docket No. 78–72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983); *BPS Tel. Co. Petition For Waiver of Section 69.605(c) of the Comm’n’s Rules*, AAD Docket No. 95-67, Memorandum Opinion and Order, 12 FCC Rcd 4702, 4703, para. 3 (AAD 1997).

<sup>9</sup> *BPS Tel. Co.*, 12 FCC Rcd at 4704, para. 6.

<sup>10</sup> *MTS and WATS Market Structure*, 103 FCC 2d at 1019, para. 2; *BPS Tel. Co.*, 12 FCC Rcd at 4703, para. 3.

<sup>11</sup> *MTS and WATS Market Structure: Average Schedule Cos.*, CC Docket No. 78–72, Phase I, Memorandum Opinion and Order, 3 FCC Rcd 834 (1986). According to the Commission, “any exchange carrier that believes the average schedules do not provide appropriate compensation, however, is entitled to be compensated on a cost basis.” *Id.* at para. 2.

<sup>12</sup> 47 CFR § 69.605(c); *Nat’l Utilities, Inc. and Bettles Tel. Co., Petition for Waiver of Section 69.605(c) of the Comm’n’s Rules*, Report and Order, 8 FCC Rcd 8723, para. 1 (CCB 1993).

<sup>13</sup> *Petition of Waiver Filed by Heartland Commc’ns Co. of Iowa and Hickory Tech Corp.*, AAD Docket No. 96-94, Memorandum Opinion and Order, 14 FCC Rcd 13661, 13662, para. 3 (1999).

<sup>14</sup> *BPS Tel. Co.*, 12 FCC Rcd at 13822, para. 5; see e.g., *Papago Tribal Util. Auth. Petition for Waiver of Section 69.605(c) of the Comm’n’s Rules*, Memorandum Opinion and Order, 2 FCC Rcd 6631 (CCB 1987).

<sup>15</sup> Responding to a request from NECA, the Bureau established a one-time opportunity for exchange carriers serving 5,000 or fewer access lines to convert from cost-based to average schedule settlements due to changed circumstances occurring since section 69.605(c) was adopted. The Bureau agreed with NECA “that prior to December 1, 1982, many exchange carriers had elected cost study treatment because: (1) during the twelve years preceding that date, the average schedules had not been updated with sufficient frequency to reflect rapidly increasing costs; and (2) some states had required exchange carriers to perform cost studies for intrastate

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carriers have had to apply individually for a waiver to convert to average schedule status. The Bureau has granted waivers only where carriers have shown that they are very small companies lacking resources and operational expertise;<sup>16</sup> and for transactions involving companies using both cost-based and average schedule-based settlements.<sup>17</sup> For instance, the Bureau granted a number of section 69.605(c) waivers in the context of carrier transactions to ensure a smooth settlement process where average schedule companies acquired cost companies and the combined companies needed to merge into one average schedule study area. In each case, the waivers adopted were limited in scope and, in the case of transactions, the Bureau often adopted conditions to “ensure that the waivers will not result in unintended effects on the petitioners’ interstate revenue requirements or result in an administrative burden on the Commission or NECA.”<sup>18</sup>

6. The Bureau has rejected prior requests for waiver of section 69.605(c), even where the impact on a carrier’s interstate revenue requirements would be *de minimis*, and thus, would not result in an increase in end-user rates.<sup>19</sup> In rejecting those requests, the Bureau sought to protect against the potential for starting an industry-wide move to convert from cost to average schedule. The Bureau also expressed concern that granting such petitions would increase carriers’ incentives to “game” the system to the detriment of interstate ratepayers, contrary to the purpose underlying section 69.605(c).<sup>20</sup>

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settlements.” *NECA’s Proposed Waiver of Section 69.605(c) of the Comm’n’s Rules*, CC Docket No. 78–72, Phase I, Memorandum Opinion and Order, 2 FCC Rcd 3960, para. 2 (CCB 1987). It concurred that, by 1987, circumstances had changed in that: (1) the average schedules had been, and were likely to be, updated with greater frequency than had been the case prior to December 1, 1982; (2) the average schedules more closely reflected the costs of providing interstate exchange access services; and (3) requiring cost studies for interstate settlements in states that had eliminated cost studies for intrastate purposes imposes unnecessary administrative costs upon small exchange carriers. *Id.*; see also *Petitions Seeking Average Schedule Settlements for Affiliated Cost Cos. with 5,000 or Fewer Access Lines*, Memorandum Opinion and Order, 3 FCC Rcd 6003 (CCB 1988) (granting a “one time opportunity to all exchange carriers with fewer than 5,000 access lines” to elect average schedule settlements). The Bureau has denied a request to extend a similar opportunity to exchange carriers serving 10,000 or fewer access lines. *NECA Revision of Section 69.605 of the Comm’n’s Rules to Allow Small Cost Settlement Cos. to Elect Average Schedule Settlement Status*, AAD Docket No. 96-122, Order, 11 FCC Rcd 16504, 16509, paras. 12-14 (CCB 1996).

<sup>16</sup> For example, Papago Tribal Utility Authority falls into this category, serving fewer than 400 lines in a 700 square mile area and lacking the operational expertise of a parent company. *Papago Tribal Util. Auth.*, 2 FCC Rcd at 6631, para. 2. The situation in *Nat’l Utilities, Inc. and Bettles Tel. Co.* can also be seen as an accommodation for very small exchange carriers in light of significant changes in their state regulatory environment. National Utilities, Inc. served 2,350 access lines from eleven exchanges, and Bettles Tel. Co. served 50 access lines from one exchange. *Nat’l Utilities, Inc. and Bettles Tel. Co.*, 8 FCC Rcd at 8723, n. 3. Changes in the Alaska Public Utilities Commission’s regulations prompted the two companies to file their petition. *Id.* at 8723, para. 3.

<sup>17</sup> See, e.g., *Petitions for Waivers Filed by Baltic Telecom Coop., Inc., East Plains Telecom, Inc., and US West Commc’ns, Inc.*, AAD Docket No. 96-95, Memorandum Opinion and Order, 12 FCC Rcd 2433 (CCB 1997); *Petitions Filed by Alpine Commc’ns, et al.*, Memorandum Opinion and Order, AAD Docket No. 96-94, 12 FCC Rcd 2367 (CCB 1997); *Petitions for Waivers Filed by Accent Commc’ns, et al.*, AAD Docket No. 95-124, Memorandum Opinion and Order, 11 FCC Rcd 11513 (CCB 1996); *Petitions for Waivers Filed by BEK Commc’ns Inc., et al.*, AAD Docket No. 95-72, Memorandum Opinion and Order, 11 FCC Rcd 10855 (CCB 1996). “Because jurisdictional separations and [Universal Service Fund (USF)] calculations are performed at the study area level, all affiliates in a single study area must be under the same settlement method.” *Baltic Telecom*, 12 FCC Rcd at 2440, para. 19.

<sup>18</sup> *Baltic Telecom*, 12 FCC Rcd at 2440, para. 20. See, e.g., *Accent Commc’ns*, 11 FCC Rcd at 11532-33, para. 44; *Alpine Commc’ns*, 12 FCC Rcd at 2373-75, n.35, para. 16; *Baltic Telecom*, 12 FCC Rcd at 2441, para. 21; *BEK Commc’ns*, 11 FCC Rcd at 10872, para. 39.

<sup>19</sup> *BPS Tel. Co.*, 12 FCC Rcd at 13826-27, para. 15.

Additionally, the small size of a provider alone, and the possibility of reduced administrative burdens, is not sufficient to meet the burden of proving that the request is in the public interest. Indeed, the Bureau observed that hundreds of smaller carriers, serving a number of lines ranging from fewer than 100 to just over 3,000, were able to operate on a cost-based status.<sup>21</sup> The Bureau explained that “a policy in favor of reducing administrative burdens simply does not outweigh the Commission’s public interest obligation to protect interstate ratepayers or eliminate the requirement for unique circumstances to justify a waiver.”<sup>22</sup>

7. *The USF/ICC Transformation Order.* In the *USF/ICC Transformation Order*, the Commission comprehensively reformed the intercarrier compensation (ICC) system to provide more predictability to regulated carriers.<sup>23</sup> In particular, the Commission adopted bill-and-keep as the default methodology for all ICC charges, and established a transition path to move certain terminating ICC charges to bill-and-keep.<sup>24</sup> The Commission also adopted a recovery mechanism to partially mitigate revenue reductions that incumbent LECs would experience as a result of these ICC reforms.<sup>25</sup> Under the Commission’s rules, a carrier may recover a portion of any revenues it has “lost” due to the ICC reforms through a fixed monthly charge, called the Access Recovery Charge (ARC), that it can assess on its end users. If the projected revenues that a carrier is permitted to recover through the ARC are not sufficient to cover the entire amount a rate-of-return LEC is entitled to recover in each year of the transition (called Eligible Recovery), the rate-of-return carrier may elect to collect the remainder in Connect America Fund (CAF) ICC support.<sup>26</sup> The total amount of money a carrier can recover from these mechanisms decreases every year.

8. The calculation of a rate-of-return LEC’s Eligible Recovery begins with its Base Period Revenue.<sup>27</sup> 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,<sup>28</sup> and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.<sup>29</sup> The Base Period Revenue for rate-of-return carriers is

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<sup>20</sup> *Id.*; see also *Nat’l Utilities, Inc. and Bettles Tel. Co.*, 8 FCC Rcd at 8724, n.16 (“The Commission prohibits cost companies from converting to average schedule status in order to prevent local exchange companies from possibly ‘gaming’ the system by inflating revenue requirements through depreciation of plant to the ‘cross over’ point and then converting to average schedule status when plant investment diminishes.”).

<sup>21</sup> *BPS Tel. Co.*, 12 FCC Rcd. at 13827, para. 16, n.49 (“Examples include Border to Border Communications (79 access lines), Hat Island Telephone Company (98 access lines), Beehive Telephone Company (553 access lines), Pottawatomie Telephone Company (2104 access lines), Egyptian Telephone Coop. Ass’n (2702 access lines), and Happy Valley Telephone Company (3067 access lines). NECA Universal Service Fund Submission of 1995 Study Results (filed October 1, 1996).”)

<sup>22</sup> *Id.* at 13827, para. 16.

<sup>23</sup> See *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, 18026-28, paras. 970-71 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>24</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, 17932, paras. 740, 798; see also 47 CFR § 51.713.

<sup>25</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17956-87, paras. 847-904.

<sup>26</sup> *Id.* at 17994-95, para. 918; 47 CFR §§ 51.915(d-f); 51.917(d-f). CAF ICC support, for carriers that are eligible and elect to receive it, is explicit universal service support equal to the remainder of Eligible Recovery not recovered through ARCs. *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918, n.1818.

<sup>27</sup> See 47 CFR § 51.917(b)(7).

<sup>28</sup> For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. See 47 CFR § 51.903(e).

<sup>29</sup> See 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.<sup>30</sup> 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.<sup>31</sup> 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; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue for each year of the transition.<sup>32</sup> To avoid double recovery by a carrier, the Commission required a carrier to reduce its Eligible Recovery by the amount of any costs or revenues it received from another source if those amounts were already being recovered through the ARC or CAF ICC.<sup>33</sup>

9. One of the elements that comprises the Base Period Revenue for rate-of-return carriers is the 2011 Interstate Switched Access Revenue Requirement.<sup>34</sup> For companies that participated in the 2011 NECA pooling process, the 2011 Interstate Switched Access Revenue Requirement is defined as the projected interstate switched access revenue requirement associated with the NECA tariff filing for the July 1, 2011 to June 30, 2012 tariff year.<sup>35</sup> This projected interstate switched access revenue requirement was determined differently for cost and average schedule companies. The revenue requirement for cost companies was determined using costs established by cost studies.<sup>36</sup> The revenue requirement for average schedule companies, by contrast, was determined using the average schedule formulas.<sup>37</sup> Thus, the decision to participate in the NECA pooling process as a cost or average schedule carrier affected a rate-of-return carrier's 2011 Interstate Switched Access Revenue Requirement and hence, the Base Period Revenue used to calculate the Eligible Recovery in every subsequent year.

10. *Yukon-Waltz Waiver Requests.* Yukon-Waltz is an incumbent, rate-of-return regulated carrier that serves "386 access lines in a service area covering approximately 10 square miles in southwestern Pennsylvania."<sup>38</sup> Yukon-Waltz is an affiliate of LHTC Broadband, having been acquired in 2008 by LHTC (then called Laurel Highland Tel. Co.).<sup>39</sup> Yukon-Waltz provides local, long distance, and broadband services throughout its service area, and is a recipient of cost-based Connect America Fund Broadband Loop Support.<sup>40</sup>

11. Effective October 1, 2011, Yukon-Waltz elected to base settlements with the NECA pools on its costs, instead of average schedule formulas.<sup>41</sup> Because the Base Period Revenue used to calculate CAF ICC recovery includes a rate-of-return carrier's projected 2011-2012 Interstate Switched

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<sup>30</sup> *Id.*

<sup>31</sup> *See id.* § 51.917(b)(3).

<sup>32</sup> 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. *Id.* § 51.917(d).

<sup>33</sup> *Id.* § 51.917(d)(1)(vii).

<sup>34</sup> *See id.* § 51.917(b)(7)(i).

<sup>35</sup> *Id.* § 51.917(b)(1)(i).

<sup>36</sup> *Id.* § 51.917(b)(4).

<sup>37</sup> *Id.*

<sup>38</sup> Yukon-Waltz Petition at 1.

<sup>39</sup> LHTC Broadband provides local phone, long distance, Internet, and cable television services to customers across 200 square miles in rural Pennsylvania. LHTC Broadband homepage, <http://lhtcbroadband.com/our-company/> (last visited Nov. 22, 2022).

<sup>40</sup> Yukon-Waltz Petition at 1.

<sup>41</sup> *Id.*

Access Revenue Requirement, Yukon-Waltz was required to use projected average schedule settlements for that tariff year in its Base Period Revenue calculation even though it converted to cost prior to the December 2011 effective date of the new ICC rules.<sup>42</sup> Yukon-Waltz's other interstate revenue requirements and rates are "determined with cost-based methods, including High-Cost Loop Support (the Company receives zero), Common Line rate elements, and certain special access rate elements."<sup>43</sup> As a result, Yukon-Waltz claims that it is subject to a "hybrid interstate rates and revenue regime – part average schedule and part cost."<sup>44</sup>

12. In 2013, Yukon-Waltz filed a petition seeking waiver of the Eligible Recovery rules to "adjust 2011 interstate switched access revenue requirements to reflect the actual revenue requirements calculated pursuant to the Commission's rules instead of the average schedule settlements received during a portion of 2011."<sup>45</sup> Yukon-Waltz argued that the recovery rule requiring it to use average schedule settlements in its Base Period Revenue calculation deprived it of the benefits of its conversion to a cost company and would result in recovery amounts that were "unrealistically and unreasonably low."<sup>46</sup>

13. On October 17, 2016, the Commission denied Yukon-Waltz's 2013 Petition.<sup>47</sup> Although the Commission recognized that the timing of the election made by Yukon-Waltz to convert from average schedule settlements to cost was not beneficial to the company, it found that Yukon-Waltz was, or should have been, aware that the Commission was considering comprehensive reform of its universal service and ICC rules, and that such reform could affect ICC and related revenues.<sup>48</sup> The Commission found that the fact that Yukon-Waltz would receive more recovery using actual revenue requirements rather than average schedule settlements did not constitute a special circumstance warranting a waiver.<sup>49</sup> Likewise, it found no facts that would distinguish Yukon-Waltz from other rate-of-return carriers that could have made more profitable elections had they been able to better predict regulatory developments. Accordingly, the Commission denied Yukon-Waltz's 2013 Petition for Waiver.<sup>50</sup>

14. On May 6, 2021, Yukon-Waltz, sought a waiver of section 69.605(c) of the Commission's rules so it could convert "from cost-based interstate settlements to average schedule-based settlements."<sup>51</sup> Yukon-Waltz argues that the waiver would serve the public interest by reducing administrative and regulatory costs, "thereby allowing the Company to divert those scarce resources to where they matter most – the provision and deployment of services."<sup>52</sup> In its Petition, Yukon-Waltz

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<sup>42</sup> See 47 CFR § 51.917(b)(7) (defining 2011 Rate-of-Return Carrier Base Period Revenue).

<sup>43</sup> Yukon-Waltz Petition at 2.

<sup>44</sup> *Id.*

<sup>45</sup> See Laurel Highland Tel. Co. and Yukon-Waltz Tel. Com. Petition for Limited Waiver of 47 CFR § 51.917(b)(4), WC Docket No. 10-90 *et al.* (filed Apr. 11, 2013) at 2 (2013 Petition) (seeking a waiver of section 51.917(b)(4) in order to permit the use of actual costs to determine the 2011 Interstate Switched Access Revenue Requirement Yukon-Waltz used in its Base Period Revenue calculation); *see also* 47 CFR § 51.917(b)(4) (defining Revenue Requirement, including, specifically, the Revenue Requirement for an average schedule carrier).

<sup>46</sup> 2013 Petition at 4.

<sup>47</sup> *Connect America Fund, Developing a Unified Intercarrier Compensation Regime Petitions for Waiver of Section 51.917 of the Comm'n's Rules*, WC Docket No. 10-90, *et al.*, Order, 31 FCC Rcd 12021 (2016).

<sup>48</sup> *Id.* at 12029, para. 22.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 47 CFR § 69.605(c); Yukon-Waltz Petition at 1, 5.

<sup>52</sup> Yukon-Waltz Petition at 5.

claims that allowing it to use average schedule formulas will “allow Yukon-Waltz to harmonize its rates and revenue methods, decrease administrative burden, and better incorporate the Company’s mission to provide all customers with quality, affordable voice and broadband internet access services.”<sup>53</sup> It explains that, if the waiver is granted, Yukon-Waltz’s administrative burdens will decrease, it will be freed from certain record keeping obligations, and it will enjoy cost savings from a reduction in regulatory compliance costs associated with cost-based settlements.<sup>54</sup> Finally, Yukon-Waltz argues that granting the Petition “will allow the Company to better focus limited time and resources on providing service, maintaining its network, and deploying broadband-capable facilities in conjunction with its obligations under the Commission’s high-cost universal service rules.”<sup>55</sup> Yukon-Waltz therefore requests that it be permitted to convert back to an average schedule company in order to “harmonize its methods for determining interstate rates and revenues.”<sup>56</sup>

15. On June 8, 2021, the Bureau released a public notice soliciting comments on the Petition.<sup>57</sup> No comments were filed.

### III. DISCUSSION

16. Generally, the Commission’s rules may be waived for “good cause shown.”<sup>58</sup> The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the general rule; and (c) such deviation will serve the public interest.<sup>59</sup> In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.<sup>60</sup> Yukon-Waltz offers two justifications in support of its Petition, claiming that a waiver would allow the company to: (1) “harmonize” the regulatory treatment of its interstate services, which it claims are currently subject to a “hybrid” of cost and average schedule-settlements; and (2) avoid the burden of performing cost studies.<sup>61</sup> As discussed below, the Bureau finds that Yukon-Waltz has failed to meet its burden of demonstrating that a waiver permitting conversion to average schedule-based settlements is warranted.

17. Although Yukon-Waltz may be subject to average-schedule settlements for Eligible Recovery and cost-based rates for other services, those circumstances do not result in the type of hardship or inequity required to justify a waiver. As an initial matter, we do not agree with Yukon-Waltz’s assertion that it is subject to two different methodologies for its rates and revenue requirements. While Yukon-Waltz is correct that its CAF ICC support “is based on average schedule settlements in place prior to the Company’s conversion to cost, pursuant to the Commission’s CAF ICC rules,”<sup>62</sup> this CAF ICC

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<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Wireless Telecommunications Bureau Seeks Comment on Yukon-Waltz Tel. Co.’s Petition for Waiver of Comm’n Rules to Allow It to Convert From Cost-Based Settlements to Average Schedule-Based Settlements*, WC Docket No. 10-90, et al., Public Notice, DA 21-662 (WCB June 8, 2021).

<sup>58</sup> 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>59</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>60</sup> *BPS Tel. Co.*, 12 FCC Rcd. at 13823, para. 9.

<sup>61</sup> See Yukon-Waltz Petition at 4-5 (examples of potential cost savings include “approximately \$5,000 in annual costs – a result that is not incented by cost-based regulatory regimes and settlements. In addition, by converting to average schedule-based settlements, the need for annual separations (cost) studies is eliminated. This alone is expected to save the Company annual cost study preparation costs of approximately \$46,000.”).

calculation is unrelated to Yukon-Waltz's ongoing rates and revenue requirements. None of Yukon-Waltz's current rates or revenue requirements are calculated based on the average schedule methodology – only its Eligible Recovery, as discussed below. Thus, despite its claims, Yukon-Waltz is not subject to a “hybrid” regime as it relates to rates and revenue requirements.

18. Yukon-Waltz's Eligible Recovery is calculated using its Base Period Revenue, one component of which is its 2011 Interstate Revenue Requirement, which was based on average schedule formulas. Eligible Recovery is calculated each year as the difference between a carrier's Base Period Revenue, adjusted downward by 5 percent per year, and the sum of its (1) projected terminating intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue during the relevant tariff year. Yukon-Waltz's Base Period Revenue was calculated in 2012 and, pursuant to the Commission's rules, is fixed from that point forward. As a result, there is no ongoing calculation that must be harmonized, as Yukon-Waltz claims.<sup>63</sup> Based on the information provided, we cannot conclude that Yukon-Waltz's current situation results in the type of hardship or inequity sufficient to support grant of the waiver.

19. We further find that the costs and burdens associated with performing cost studies do not constitute special circumstances justifying grant of a waiver. Cost studies were always a requirement for carriers electing cost-based settlements and Yukon-Waltz was aware of such requirements before it elected to convert to a cost company. As in 2013, when the Commission denied Yukon-Waltz's earlier petition, the fact that Yukon-Waltz now believes that it would receive more recovery using average schedule settlements as compared with actual revenue requirements does not constitute a special circumstance that warrants a waiver. In fact, Yukon-Waltz's most recent waiver request perfectly illustrates the Commission's concerns that allowing carriers to switch back and forth between cost and average schedule settlements could lead to increased revenue for the carrier with no corresponding benefit to end-user customers.<sup>64</sup> As a cost company, Yukon-Waltz will recover all of its legitimate interstate costs, including the interstate portion of costs associated with performing the cost studies and a fair return on its investment, through the NECA pools. Therefore, we find no hardship or inequity that justifies the requested waiver.

20. Yukon-Waltz fails to meet its burden of showing that granting its Petition is in the public interest. Yukon-Waltz claims that grant of the Petition is in the public interest because it will reduce the company's administrative and regulatory burdens which, in turn, will result in reduced costs.<sup>65</sup> The Commission previously explained that, although the average schedule procedure reduces carriers' costs and administrative burdens, those reductions do not outweigh the Commission's public interest obligation to protect interstate ratepayers and are not sufficient to justify a waiver.<sup>66</sup> The Commission has also recognized that a conversion from cost to average schedule settlements may result in inflated interstate revenue requirements.<sup>67</sup> The record is silent on the impact that grant of the Petition would have on interstate revenue requirements and resulting rates. While the Petition focuses on how a waiver would allegedly reduce the company's costs, the Petition does not provide any analysis or commitment

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<sup>62</sup> *Id.* at 2.

<sup>63</sup> In its Petition, Yukon-Waltz makes reference to the burden of “maintaining records and regulatory compliance for both methods of interstate ratemaking and settlement.” *Id.* at 4. Yukon-Waltz provides no further detail as to what this compliance involves. Nor does it attempt to quantify this alleged burden.

<sup>64</sup> *Heartland Commc'ns Co.*, 14 FCC Rcd at 13662, para. 3. Yukon-Waltz provided no evidence in either of its petition requests that interstate ratepayers would benefit from the Commission granting the petitions.

<sup>65</sup> Yukon-Waltz Petition at 5.

<sup>66</sup> *BPS Tel. Co.*, 12 FCC Rcd at 13827, para. 16.

<sup>67</sup> *Id.* at 13821-22, para. 4.



regarding how such savings would flow through to Yukon-Waltz's customers. Thus, Yukon-Waltz has failed to demonstrate that grant of its Petition is in the public interest.

21. Finally, Yukon-Waltz fails to establish that the company meets any of the special circumstances the Bureau has found in other instances warranted grant of a waiver of section 69.605(c). Although Yukon-Waltz serves only 386 access lines in 10 square miles of Pennsylvania,<sup>68</sup> it is owned by a sophisticated and experienced parent company that offers telecommunications, broadband, and cable services.<sup>69</sup> Thus, there is no evidence that Yukon-Waltz lacks the resources or operational expertise to operate on a cost-study basis. This finding is further supported by the fact that Yukon-Waltz has been operating on a cost-study basis for almost a decade. Likewise, the waiver request is not based on any company transaction that would result in conflicting settlement methodologies.

22. Yukon-Waltz has shown no special circumstances to warrant a deviation from the general rule, nor has it shown that granting its Petition is in the public interest. Accordingly, we deny the Petition.

#### **IV. ORDERING CLAUSE**

23. Accordingly, IT IS ORDERED, pursuant to 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 filed by Yukon-Waltz Telephone Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel  
Chief, Pricing Policy Division

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<sup>68</sup> Yukon-Waltz Petition at 1.

<sup>69</sup> See LHTC Broadband homepage, <http://lhtcbroadband.com/our-company> (last visited Nov. 22, 2022).