

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

In the Matter of)
)
Consolidated Communications of Pennsylvania)
Company, Inc.)
)
Consolidated Communications of Maine Company,)
Inc.)
)
Petition for Waiver of Section 61.41(c)(2)) WC Docket No. 19-275
Of the Commission’s Rules, and Such Other Relief)
as May Be Necessary, To Preserve Bifurcated)
Regulation Following the Merger of Marianna and)
Scenery Hill Telephone Company and Bentleyville)
Communications Corporation With and Into)
Consolidated Communications of Pennsylvania)
Company, Inc., and the Merger of Community)
Service Telephone Company With and Into)
Consolidated Communications of Maine Company,)
Inc.)

ORDER

Adopted: April 1, 2022

Released: April 1, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) grants to the extent provided herein a petition for waiver of the “all-or-nothing” rule¹ filed by Consolidated Communications of Pennsylvania Company, Inc. (Consolidated-Pennsylvania) and Consolidated Communications of Maine Company, Inc. (Consolidated-Maine) (collectively, Petitioners) to allow each price cap incumbent local exchange carrier (LEC or carrier) to continue operating affiliated study areas subject to rate-of-return regulation.² While the Petitioners filed their petition for waiver within one year following the effective date of the merger that triggered their obligations to subject a cost-based rate-of-return affiliate to price cap regulation and file price cap tariffs,³ due to the passage of time, we grant a retroactive waiver of the

¹ 47 CFR § 61.41.

² See 47 CFR § 61.41(c)(2); Consolidated Communications of Pennsylvania Company, Inc.; Consolidated Communications of Maine Company, Inc.; Petition for Waiver of Section 61.41(c)(2) Of the Commission’s Rules, and Such Other Relief as May Be Necessary, To Preserve Bifurcated Regulation Following the Merger of Marianna and Scenery Hill Telephone Company and Bentleyville Communications Corporation With and Into Consolidated Communications of Pennsylvania Company, Inc., and the Merger of Community Service Telephone Company With and Into Consolidated Communications of Maine Company, Inc., WC Docket No. 19-275 (filed Sept. 11, 2019), https://www.fcc.gov/ecfs/filing/1092013197850 (Petition).

³ See 47 CFR § 61.41(c)(2) (“Where a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that is not subject to price cap regulation,

all-or-nothing rule dating back to the effective date of the internal reorganization as described below. We also grant limited retroactive waivers of parts 51 (subpart J), 61, and 69 of the Commission's rules, which govern intercarrier compensation and tariffing requirements, to the extent necessary to effectuate waiver of the all-or-nothing rule.⁴ In so doing, we find that allowing these mergers does not raise concerns about cost-shifting and gamesmanship because the Petitioners' interstate rates and Universal Service Fund support for the relevant study areas are no longer calculated based on recorded costs. We also find that these internal reorganizations are consistent with recent Commission reforms regarding Universal Service Fund support and will promote the Commission's policy of encouraging the deployment of broadband infrastructure in rural areas.

II. BACKGROUND

A. The "All-or-Nothing" Rule

2. Section 61.41 of the Commission's rules, referred to as the "all-or-nothing rule," prohibits, in most instances, price cap carriers from being affiliated with rate-of-return carriers.⁵ The rule specifies that a price cap carrier involved in a merger, acquisition, or similar transaction must continue to operate under price cap regulation after the transaction.⁶ The rule further provides that when a rate-of-return carrier and a price cap carrier merge or acquire one another, the rate-of-return carrier must convert its study areas to price cap regulation within one year of the transaction and file price cap tariffs consistent with part 61 of the Commission's rules.⁷ However, an exception to the rule allows a rate-of-return carrier that is an "average schedule company" to retain its average schedule status when it "acquires, is acquired by, merges with, or otherwise becomes affiliated with" a price cap carrier.⁸

3. The Commission adopted the "all-or-nothing rule" to limit opportunities for cost-shifting and "gaming" that might occur due to the differences in price cap and rate-of-return rate regulation.⁹ Traditional, cost-based rate-of-return carriers set rates based on operating costs plus a prescribed return on investment, whereas price cap carriers set rates based on price cap formulas that reward carriers for cost-saving productivity and efficiency.¹⁰ The rule prevents a holding company from shifting costs between overlapping price cap and rate-of-return operations, inflating their rate-of-return operations' cost-based

the latter telephone company shall become subject to price cap regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file price cap tariffs to be effective no later than that date in accordance with the applicable provisions of this part 61.")

⁴ See Petition at 7-8. Petitioners also requested a limited waiver of part 54; however, for the reasons discussed herein, we find that such waiver is not necessary to provide the relief requested in the petition.

⁵ See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6819-20, para. 271-279 (1990) (*Price Cap Order*) (subsequent history omitted); see also 47 CFR § 61.41.

⁶ 47 CFR § 61.41(c)(1).

⁷ *Id.* § 61.41(c)(2); see *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637, 2642, para. 10 (1991) (*Price Cap Reconsideration Order*) (subsequent history omitted); see also 47 CFR § 61.41(b) ("If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas.")

⁸ 47 CFR § 61.41(c)(3). An "average schedule company" is a rate-of-return carrier that determines its costs based on formulas approved by the Commission that are designed to produce disbursements that would be received based on the costs of a company that is representative of average schedule companies. See 47 CFR § 69.606.

⁹ See *Price Cap Order*, 5 FCC Rcd at 6819-21, paras. 271-281.

¹⁰ See *id.* at 6789, para. 22; 47 CFR §§ 61.42-61.49 (price cap tariffing rules); *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3172, para. 229 (2016) (discussing rate of return formula); 47 CFR §§ 61.38, 61.39 (rate-of-return tariffing rules).

rates and increasing revenues for their price cap operations based on the realized cost savings.¹¹ Further, without the all-or-nothing rule, for example, a price cap carrier could convert to rate-of-return regulation before making large network investments and/or increasing its operating costs to levels that would support significant rate increases. Then, after it adopts higher rates that ensure it recovers the appropriate rate of return based on its higher costs, it could convert back to price cap regulation, increasing its profits by virtue of the cost savings it would realize.¹² Such cost-shifting and gaming harms consumers by raising the rates they must pay for a carrier's services.

4. The Commission specified that it would entertain requests for waiver of the all-or-nothing rule where efficiencies created by the purchase and sale of exchanges might, in a particular case, outweigh the threat of cost-shifting or gaming.¹³ Balancing these interests, the Bureau has granted waivers of the all-or-nothing rule to facilitate the merger and consolidation of rate-of-return carriers with price cap carriers, where the record warranted such a waiver.¹⁴

B. FairPoint-Consolidated Merger

5. On May 8, 2017 the Bureau adopted the *Consolidated-FairPoint Transfer Order* granting applications filed pursuant to sections 214 and 310(d) of the Act approving the transfer of control of licenses and authorizations held by FairPoint Communications, Inc. (FairPoint) to Consolidated Communications Holdings, Inc. (Consolidated Holdings).¹⁵ Of particular relevance to this Order, the Bureau approved Consolidated Holdings' acquisition of former FairPoint rate-of-return affiliates operating in Pennsylvania (Bentleyville Communications Corporation, an average schedule company, and Marianna and Scenery Hill Telephone Company, a cost-based company) and a rate-of-return affiliate operating in Maine (Community Service Telephone Company, an average schedule company).¹⁶ The Bureau found good cause to waive the all-or-nothing rule to allow Consolidated Holdings to continue operating rate-of-return affiliates acquired from FairPoint under rate-of-return regulation despite being affiliated with price cap carriers.¹⁷ The Bureau found that the public interest would not be served by requiring the FairPoint subsidiaries to undertake the financial and administrative costs of converting to

¹¹ *Price Cap Reconsideration Order*, 6 FCC Rcd at 2706, para. 148.

¹² See *Price Cap Order*, 5 FCC Rcd at 6819, para. 272; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19718, para. 261 (2001) (*MAG Order*).

¹³ See *Price Cap Reconsideration Order*, 6 FCC Rcd at 2706, n.207; *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3831, para. 32.

¹⁴ See *Joint Application of Consolidated Holdings, Inc. and FairPoint Communications, Inc., to Transfer Indirect Control of Authorization Holders to Consolidated Communications Holdings, Inc.*, WC Docket No. 16-417, Memorandum Opinion and Order, 32 FCC Rcd 3820, 3830-32, paras. 27-32 (2017) (*Consolidated-FairPoint Transfer Order*); *Consolidated Communications Holdings, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules*, WC Docket No. 15-74, Order, 30 FCC Rcd 10844 (WCB 2015) (*2015 Consolidated Waiver Order*); *China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 10-47, 25 FCC Rcd 4824 (WCB 2010).

¹⁵ *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3830-32, paras. 27-32.

¹⁶ See *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3820, para. 1; Consolidated Communications Holdings, Inc. and FairPoint Communications, Inc. Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to Transfer Indirect Control of Domestic and International Section 214 Authorization Holders to Consolidated Communications Holdings, Inc., WC Docket No. 16-417, at 13-14 & Exh. A (filed Dec. 21, 2016), https://ecfsapi.fcc.gov/file/122060849815/FINAL_CCH%20FairPoint%20Section%20214%20Transfer%20Application.pdf.

¹⁷ See *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3830, para. 27.

price cap regulation given the minimal threat of cost-shifting or gaming.¹⁸ The Bureau, however, emphasized that the relief granted “is subject to any future reforms or rule revisions regarding intercarrier compensation, the regulation of business data services, price cap regulation, or universal service requirements that the Commission may adopt in the future.”¹⁹

C. Relevant Regulatory Reforms

6. In recent years, the Commission adopted a number of reforms affecting the regulatory treatment of rate-of-return and price cap carriers. In the 2011 *USF/ICC Transformation Order*, the Commission comprehensively reformed the intercarrier compensation and Universal Service Fund regimes.²⁰ The Commission adopted a regulatory framework for transitioning terminating switched and certain transport access charges to “bill-and-keep” whereby carriers first recover their costs from their customers, then from Connect America Fund–Inter-carrier Compensation (CAF ICC) support, where necessary.²¹ To minimize disruption to consumers and carriers, the Commission adopted a multi-year transition schedule for carriers to move their interstate and intrastate terminating end office switched access and certain transport rate elements to bill-and-keep. The six-year rate transition for price cap carriers ended on July 1, 2018 and the nine-year rate transition for rate-of-return carriers ended on July 1, 2020.²² To ensure that no rates increased during the transition and to prevent cost-shifting, the Commission capped all price cap and rate-of-return carriers’ interstate switched access rates and terminating intrastate rates, and capped price cap carrier’s originating intrastate rates.²³ To partially offset intercarrier compensation revenues carriers might have lost due to the reforms, the Commission allowed carriers to elect to receive CAF ICC support. This support was phased-out for price cap carriers on July 1, 2019, but the Commission did not adopt a specific CAF ICC support sunset date for rate-of-return carriers.²⁴

7. In addition to creating CAF ICC support as part of the *USF/ICC Transformation Order*, the Commission also adopted broad reforms to existing high-cost Universal Service Fund support. Initially, high-cost Universal Service Fund support amounts were based on a carrier’s recorded costs, which provided poor incentives for carriers to operate and invest efficiently.²⁵ In 2011, the Commission froze legacy high-cost Universal Service Fund support for price cap carriers and their rate-of-return affiliates (CAF Phase I), and adopted a plan for moving carriers from legacy support mechanisms to new mechanisms whereby support would be determined by a forward-looking cost model or competitive bidding (CAF Phase II).²⁶ The Commission also began treating rate-of-return carriers affiliated with price cap holding companies for which the majority of access lines are regulated under price caps as price cap carriers for purposes of CAF Phase I support.²⁷ As a result, rate-of-return affiliates of price cap carriers

¹⁸ *Id.*

¹⁹ *Id.* at 3832, para. 32.

²⁰ *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*), *pet. for review denied*, 753 F.3d 1015 (10th Cir. 2014).

²¹ *Id.* at 17904, para. 737.

²² *Id.* at 17904-956, paras. 736-846, 801 & fig. 9; 47 CFR §§ 51.907(h), 51.909(j).

²³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17932, 17934, paras. 798, 801, fig. 9; 47 CFR §§ 51.907(a), 51.909(a).

²⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17996, paras. 918-920; 47 CFR §§ 51.915(f)(5), 51.917(f).

²⁵ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4564-65, para. 21 (2011).

²⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17713, para. 129.

²⁷ *Id.*; 47 CFR § 54.312(a).

now receive the same type of fixed Universal Service Fund support as their price cap affiliates (i.e., frozen or model-based—as opposed to cost-based—Universal Service Fund support).²⁸

8. In 2018, the Commission allowed rate-of-return carriers receiving fixed or model-based Universal Service Fund support to elect to transition their business data services offerings from cost-based, rate-of-return regulation to incentive regulation.²⁹ The Commission required carriers making this election to do so at the holding-company level for study areas in all states where that carrier receives fixed or model-based support.³⁰ Business data services provided by rate-of-return carriers that elected incentive regulation for such services are either deregulated or subject to incentive regulation based on price cap formulas.³¹ To prevent potential gaming opportunities, the Commission provided eligible carriers with two election opportunities—one effective July 1, 2019, and a second effective July 1, 2020³²—and prohibited electing carriers from returning their study areas to rate-of-return regulation.³³

D. Waiver Request

9. On September 11, 2019, Consolidated-Maine and Consolidated-Pennsylvania, two price cap carriers, filed a joint petition for limited waiver of sections 61.41(c)(2)-(c)(3) and parts 51 (subpart J) (transitional access service pricing rules), 54 (universal service), 61 (tariffing), and 69 (access charges) of the Commission’s rules, as necessary, to continue operating study areas in Pennsylvania and Maine under rate-of-return regulation after rate-of-return affiliates that provided service to those study areas merged with price cap carriers and ceased to exist as separate corporate entities.³⁴ Petitioners explain that such waivers would allow them to continue operating the relevant study areas as “rate-of-return”—i.e., subject to the rules applicable to rate-of-return carriers—even though the Petitioners are price cap carriers.³⁵

10. Consolidated-Maine and Consolidated-Pennsylvania are wholly-owned subsidiaries of Consolidated Communications, Inc. (CCI), a wholly-owned subsidiary of Consolidated Holdings.³⁶ Both Consolidated-Maine and Consolidated-Pennsylvania are subject to price cap regulation. According to Petitioners, beginning in 2018, “CCI began an internal reorganization...resulting in the consolidation of many of its subsidiaries (but not involving any change of control of any of the affected companies).”³⁷ As part of CCI’s internal reorganization, Community Service Telephone Company, an average schedule rate-of-return carrier operating in Maine, along with five price cap carriers operating in Maine, merged with

²⁸ See *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., 33 FCC Rcd 10403, 10406, para. 8 (2018) (*Rate-of-Return BDS Order*).

²⁹ *Id.* at 10409-10, paras. 16-17. Carriers eligible to make this election include carriers receiving Alternative Connect America Fund (ACAM) support, rate-of-return carriers affiliated with price cap carriers receiving fixed universal service support, Alaska Plan carriers, and rate-of-return carriers that accept future offers of ACAM support or otherwise transition away from legacy support. *Id.* at 10410-11, paras. 19-20; 47 CFR § 61.50(b).

³⁰ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10416, para. 22; see *Wireline Competition Bureau Announces Rate-of-Return Carriers Electing Incentive Regulation for Their Business Data Services*, WC Docket No. 17-144, Public Notice, 34 FCC Rcd 4846 (WCB 2019) (*BDS Election Public Notice*).

³¹ See 47 CFR § 61.50(c), (k).

³² *Rate-of-Return BDS Order*, 33 FCC Rcd at 10412, para. 23.

³³ *Id.* at 10413, para. 25. If carriers were allowed to switch back-and-forth between rate-of-return and incentive regulation for their business data services offerings, electing carriers could inflate their rate base under rate-of-return regulation in order to raise rates before electing or returning to incentive regulation thereby inflating their initial rates before reducing costs to efficient levels. See *id.*

³⁴ Petition at 1, 7-8.

³⁵ *Id.*

³⁶ *Id.* at 1-2.

³⁷ *Id.* at 5.

and consolidated into Consolidated-Maine, effective March 6, 2019.³⁸ Additionally, two rate-of-return carriers operating in Pennsylvania, Marianna and Scenery Hill Telephone Company, a cost-based company, and Bentleyville Communications Company, an average schedule company, merged with and were consolidated into Consolidated-Pennsylvania, effective May 15, 2019.³⁹ Following this internal reorganization, the rate-of-return affiliates ceased to exist as separate corporate entities; Consolidated-Pennsylvania and Consolidated-Maine are the surviving entities.⁴⁰ Because this internal reorganization did not result in a change in the carriers' ultimate ownership or control,⁴¹ CCI was authorized to undertake this internal reorganization as a *pro forma* transaction without seeking prior Commission approval.⁴²

11. Petitioners seek a waiver of various Commission rule sections to allow them to continue operating the three study areas—those formerly served by Community Service Telephone Company, Marianna and Scenery Hill Telephone Company, and Bentleyville Communications Company (collectively, “the Study Areas”)—subject to rate-of-return regulation for purposes of intercarrier compensation, CAF ICC support, and Universal Service Fund support.⁴³ Petitioners seek these waivers because “the Commission’s rules do not squarely address the acquisition and merger of rate-of-return study areas by and into a company that operates price cap study areas but wishes to continue to keep separate the rate-of-return and price cap operations.”⁴⁴ Petitioners contend that enforcement of the rules would create undue hardship without furthering any Commission policies.⁴⁵ Petitioners assert that a waiver is in the public interest because it “will permit a significant administrative expense reduction” and, therefore, “can be expected to permit greater investment by [P]etitioners in rural broadband infrastructure by freeing up scarce resources.”⁴⁶ We sought comment on Petitioners’ waiver request.⁴⁷ No comments were filed in response to the Bureau’s public notice seeking comment on the Petition.

III. DISCUSSION

12. We find that good cause exists, under the facts presented, to grant Petitioners’ request for waiver of the all-or-nothing rule, to the extent described herein. We find that, under the special circumstances described in the Petition, the public interest would be served by avoiding unnecessary financial and administrative burdens associated with converting the Study Areas to price cap regulation, especially considering the lack of opportunity for cost-shifting or gaming—the concerns underlying the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 5; *see id.* at 21 (“The study areas that formerly were operated by Marianna and Scenery Hill Telephone Company, Bentleyville Communications Corporation, and Community Service Telephone Company....are very small study areas serving rural areas.”)

⁴¹ *Id.* at 5.

⁴² *See* 47 CFR § 63.03(d)(1) (“Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, is authorized to undertake any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate...Under this rule, a transfer of control of a domestic line or authorization to operate is considered *pro forma* when, together with all previous internal corporate restructurings, the transaction does not result in a change in the carrier’s ultimate ownership or control...”).

⁴³ Petition at 5-8.

⁴⁴ *Id.* at i.

⁴⁵ *Id.*

⁴⁶ *Id.* at i.

⁴⁷ *See Wireline Competition Bureau Seeks Comment on Consolidated Communications of Pennsylvania’s and Consolidated Communications of Maine’s Petition for Waiver of Commission’s “All-or-Nothing” Rule*, WC Docket No. 19-275, Public Notice, 34 FCC Rcd 8170 (WCB 2019).

“all-or-nothing” rule.⁴⁸ We also find that depriving these Study Areas in rural Pennsylvania and Maine of CAF ICC support would not serve the public interest. Finally, we find good cause to grant Petitioner’s other requests for waiver of our rules to the extent necessary to effectuate the waiver of the all-or-nothing rule.

A. Waiver Standard

13. Generally, the Commission’s rules may be waived for “good cause shown.”⁴⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵⁰ 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.⁵¹ The Commission may, on an individual basis, consider evidence of hardship, equity, and more effective implementation of overall policy.⁵²

B. Waiver of the Part 61 All-or-Nothing Rule

14. We first find that waiver of section 61.41(c)(2) of the Commission’s rules is necessary for Petitioners, both price cap carriers, to continue operating the Study Areas subject to rate-of-return regulation.⁵³ Prior to reorganization, Marianna and Scenery Hill Telephone Company, a cost-based, rate-of-return carrier, was operating subject to rate-of-return regulation despite being affiliated with price cap carriers pursuant to the all-or-nothing waiver granted in the *Consolidated-FairPoint Transfer Order*.⁵⁴ Since Bentleyville Communications Corporation and Community Service Telephone Company were average schedule rate-of-return carriers, they were exempt from the all-or-nothing rule, and the waiver granted in the *Consolidated-FairPoint Transfer Order* did not apply to them.⁵⁵ Consolidated-Pennsylvania and Consolidated-Maine tariff rates, terms, and conditions of service applicable to end user access, certain special access services, and other miscellaneous services pursuant to Consolidated Communications Companies’ F.C.C. Tariff No. 9.⁵⁶ Consolidated Communications Companies’ rate-of-return carriers regulated under F.C.C. Tariff No. 9 participate in the National Exchange Carriers Association (NECA) tariff for switched access services.⁵⁷ Accordingly, Petitioners tariff rates for the Study Areas subject to rate-of-return regulation pursuant to the NECA F.C.C. Tariff No. 5.

15. As a result of CCI’s internal reorganization, all three rate-of-return carriers—Bentleyville Communications Corporation, Community Service Telephone Company, Marianna and Scenery Hill

⁴⁸ See *Price Cap Reconsideration Order*, 6 FCC Rcd at 2706, n.207.

⁴⁹ 47 CFR § 1.3.

⁵⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵¹ *Id.*

⁵² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁵³ See Petition at 5-6 (noting that “CCI believed that its 2019 consolidation of subsidiaries in Pennsylvania and Maine was permitted under the all-or-nothing rule waivers it had been granted in 2010, 2014 and 2017” but that “in informal conversations with Commission staff, it was suggested to CCI that a new waiver of Section 61.41(c)(2) of the Commission’s rules may be necessary for [Consolidated-Pennsylvania and Consolidated-Maine], both price cap companies, to operate the acquired rate-of-return study areas without converting them to price cap regulation within one year.”).

⁵⁴ *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3830-32, paras. 27-32.

⁵⁵ See 47 CFR § 61.41(b).

⁵⁶ See Consolidated Communications Companies, F.C.C. Tariff No. 9, Transmittal No. 113, Exh. 1 (filed Sept. 16, 2021).

⁵⁷ See Consolidated Communications Companies, Tariffs No. 1-9, Transmittal No. 111, Description & Justification at 3 (June 16, 2021). NECA prepares and files access charge tariffs on behalf of telephone companies that do not file separate tariffs. See 47 CFR § 69.601(a).

Telephone Company—ceased to exist as separate corporate entities.⁵⁸ The Study Areas formerly served by these three rate-of-return carriers are now operated by price cap carriers. Because the three rate-of-return affiliates no longer exist and the entities that survived reorganization are price cap carriers, Petitioners required a waiver of the all-or-nothing rule in order to continue operating the Study Areas subject to rate-of-return regulation, rather than under price cap regulation, as required by part 61 of the Commission’s rules.⁵⁹

16. Based on the facts presented, we find good cause to grant Petitioners a waiver of the all-or-nothing rule for the Study Areas.⁶⁰ Absent a waiver, converting the Study Areas to price cap regulation would result in immediate termination of CAF ICC support because price cap carriers are no longer eligible for such support.⁶¹ We find that such a result would not be in the public interest. Granting the requested waiver avoids an expedited CAF ICC support phase-out that would impose unnecessary costs and disruption on Petitioners without any attendant public interest benefits.⁶² This is consistent with the Commission’s *Rate-of-Return BDS Order*, in which the Commission allowed rate-of-return carriers electing incentive regulation for their business data services offerings to continue on the transition path for rate-of-return carriers rather than having to convert to the price cap transition schedule.⁶³

17. Granting a waiver is also in the public interest because it will permit Petitioners to devote scarce resources to improving rural broadband infrastructure rather than to converting the Study Areas to price cap regulation.⁶⁴ In addition to the costs Petitioners would have to incur to convert the Study Areas to price caps—including the filing of a new price cap tariffs—the conversion would also result in a

⁵⁸ See Petition at 5.

⁵⁹ See 47 CFR § 61.41(b); *id.* § 61.43 (“Price cap local exchange carriers shall submit annual price cap tariff filings.”); see also 47 CFR § 63.03(d)(3) (“Notwithstanding any other provision in this part, any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, including a carrier that begins providing service through a differently named subsidiary after an internal corporate restructuring, remains subject to all applicable conditions of service after an internal restructuring, such as rules governing slamming and tariffing.”).

⁶⁰ The Study Areas that this waiver applies to are those previously served by Marianna and Scenery Hill Telephone Company (SAC 170185), Bentleyville Communications Corporation (SAC 170145), and Community Service Telephone Company (SAC 100015). See FCC, Study Area Boundaries, <https://www.fcc.gov/reports-research/maps/study-area-boundaries/> (last visited Dec. 2, 2021).

⁶¹ See 47 CFR § 51.915(f)(5) (“Beginning July 1, 2019, a Price Cap carrier may no longer recover any amount related to revenue recovery under this paragraph from CAF ICC Support.”).

⁶² See Petition at 8-9; *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3831-32, para. 32; 47 CFR § 51.915(f).

⁶³ See *Rate-of-Return BDS Order*, 33 FCC Rcd at 10414, para. 27; 47 CFR §§ 51.909, 51.917. There, as here, moving the carriers to the shorter transition schedule for price cap carriers would have eliminated CAF ICC support for the carriers in question.

⁶⁴ See Petition at 17 (“Complying with 61.41(c)(2)’s price cap tariff requirement... would... detract from the resources that otherwise would be available for investment in broadband communications infrastructure.”); see also *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269, Fourteenth Broadband Deployment Report, 36 FCC Rcd 836, 837, para. 1 (2021) (recognizing that “[o]ver the last four years, the Commission’s top priority has been closing the digital divide, in recognition that high-speed broadband and the digital opportunity it brings” and that “Americans in rural and remote regions continue to rely on broadband to stay connected to services and opportunities that are physically in distant locations.”); *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 687, para. 1 (2020) (recognizing that “[b]ringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the... Commission’s top priority” and that, “[w]ithout access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social engagement it provides.”).

significant loss of revenues due to reductions in access charges and the elimination of CAF ICC support.⁶⁵ These losses would substantially reduce the resources Petitioners would otherwise have available to invest in broadband infrastructure—a result that is contrary to the public interest.⁶⁶ For all the reasons outlined above, we find that granting Petitioners’ waiver request at this time is in the public interest notwithstanding the passage of time since the relevant mergers were consummated.⁶⁷

18. We also find no risk that Petitioners could engage in the type of gaming or cost-shifting that the all-or-nothing rule was designed to prevent, because:

- The interstate switched access rates in the Study Areas generally were capped as part of the *USF/ICC Transformation Order* reforms and, therefore, there is little, if any concern that this waiver will lead to higher rates being charged in the three Study Areas at issue.⁶⁸
- Because Petitioners’ Universal Service Fund support is model-based and no longer based on recorded costs,⁶⁹ Petitioners therefore cannot influence the amount of Universal Service Fund support they receive by cost-shifting.
- CCI elected at the holding company-level to convert its rate-of-return affiliates’ lower-capacity business data service offerings to incentive regulation pursuant to section 61.50 of our rules;⁷⁰ thus rates for these services provided in the Study Areas are no longer determined based on recorded costs, eliminating the risk of cost-shifting.⁷¹
- Petitioners’ price cap study areas do not overlap with any of the Study Areas, nor do the Study Areas share any telecommunications plant with each other, further reducing the risks of cost-shifting.⁷²

19. Our decision to waive the all-or-nothing rule maintains the CAF ICC support and Universal Service Fund support Petitioners receive for the Study Areas consistent with the intent of the Commission’s rules. We agree with Petitioners that the Universal Service Fund support associated with

⁶⁵ Petition at 17-18.

⁶⁶ *Id.*

⁶⁷ Petitioners’ rate-of-return affiliates merged with price cap carriers effective May 15, 2019 and March 6, 2019. *See* Petition at 5. Absent the Bureau granting Petitioner’s request for waiver of the all-or-nothing rule, Petitioners’ rate-of-return affiliates were required to convert to price cap regulation no later than May 15, 2020 and March 6, 2020, respectively, one year following the effective date of the transactions. *See* 47 CFR § 61.41(c)(2). Petitioners’ filed their Petition requesting waiver of the all-or-nothing rule on September 11, 2019. *See* Petition. Accordingly, Petitioners’ request for waiver of the all-or-nothing rule was pending at the time they were required to convert their Study Areas to price cap regulation and file price cap tariffs.

⁶⁸ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17932-34, paras. 798, 800-01.

⁶⁹ *See* Petition at 10; *Wireline Competition Bureau Authorizes FairPoint to Receive Over \$37 Million in Connect America Phase II Support in 14 States*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8435 (WCB 2015) (*FairPoint CAF Phase II Authorization Public Notice*) (authorizing FairPoint, including former FairPoint subsidiaries that are currently wholly-owned subsidiaries of CCI, to receive over \$37 million in annual CAF Phase II model-based support in 14 states, including Pennsylvania and Maine).

⁷⁰ *See* 47 CFR § 61.50; Letter from Barbara Galardo, Director of Cost and Access Tariffs, Consolidated Communications, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 17-144 (dated Apr. 23, 2019); *BDS Election Public Notice*, 34 FCC Rcd at 4847, Appx.; Petition at 12.

⁷¹ *See* 47 CFR § 61.50(c); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10416, para. 33. As a result of CCI’s election, Community Service Telephone Company’s, Marianna and Scenery Hill Telephone Company’s, and Bentleyville Communications Company’s higher-capacity business data service offerings above a DS3 bandwidth level are no longer subject to *ex ante* pricing regulation and tariffing and, therefore, are also unaffected by the waiver. *See* 47 CFR § 61.50(k)(1); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440-43, paras. 106-115.

⁷² *See* Petition at 5.

each of the Study Areas “may be calculated in the same manner” and that “the service obligations, whether defined by study area or by census block, will remain unchanged.”⁷³ As former FairPoint rate-of-return affiliates, the merging rate-of-return affiliates were authorized under part 54 to receive model-based CAF Phase II support, which they continued to receive as CCI affiliates.⁷⁴ Thus, such support is already determined in the same manner as support received by CCI’s price cap affiliates and other price cap carriers.⁷⁵ As a result, waiver of the all-or-nothing rule will not impact Universal Service Fund support obligations or the Universal Service Fund support programs. Therefore, at this time, we find that Petitioner’s request for limited waiver of the Commission’s part 54 rules is unnecessary.⁷⁶

20. For all these reasons, we find good cause to grant Petitioners a waiver of the all-or-nothing rule codified in section 61.41(c) of the Commission’s rules.

C. Other Requested Waivers

21. We also grant limited waivers of the part 51 (subpart J) transition rules, part 61 tariffing rules, and part 69 access charge rules, to the extent necessary to effectuate the waiver of section 61.41(c) of the Commission’s rules. In order for Petitioners to continue operating the Study Areas as they do today, those areas must continue to be subject to the rules applicable to rate-of-return carriers, even though there is no separate carrier or company operating in those study areas. To accomplish this, we grant Petitioners limited waivers so references to a rate-of-return “company” or “carrier” in the enumerated rules can be read to apply to the Study Areas.⁷⁷ Without these waivers, Petitioners would be unable to benefit from our waiver of the all-or-nothing rule because the rate-of-return affiliates—Bentleyville Communications Corporation, Community Service Telephone Company, Marianna and Scenery Hill Telephone Company—ceased to exist as separate corporate entities.⁷⁸ Thus, the same public interest benefits that lead us to waive the all-or-nothing rule also lead us to grant limited waivers of these other rules. Grant of waiver of the part 51 (subpart J) transitional access service pricing rules and CAF ICC support rules is retroactive dating back to the effective dates of the internal reorganization. The Study Areas may continue to receive CAF ICC support for rate-of-return carriers⁷⁹ subject to switched access and reciprocal compensation rules adopted in the *USF/ICC Transformation Order*.⁸⁰ Finally, Petitioners may continue to tariff rates subject to price cap regulation in F.C.C. Tariff No. 9, but have the Study Areas participate in the NECA tariff subject to rate-of-return regulation.

IV. CONCLUSION

22. In sum, we grant Petitioners’ unopposed request for waivers, to the extent described herein, because it serves the public interest by avoiding the financial and administrative costs Petitioners

⁷³ See *id.* at 14-15.

⁷⁴ See 47 CFR § 54.310; Petition at 9-11; *FairPoint CAF Phase II Authorization Public Notice*, 30 FCC Rcd at 8435-36 (authorizing FairPoint, including former FairPoint subsidiaries that are currently wholly-owned subsidiaries of CCI, to receive over \$37 million in annual Connect America Fund Phase II model-based support in 14 states including Pennsylvania and Maine); see *Consolidated-FairPoint Transfer Order*, 32 FCC Rcd at 3829, para. 24 n.76; see also *Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost \$950 Million in Phase II Connect America Support*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8577 (WCB 2015) (authorizing Consolidated Holdings to receive over \$13.9 million in annual CAF Phase II model-based support in six states including Pennsylvania).

⁷⁵ See Petition at 10-11 (citing *Rate-of-Return BDS Order*, 33 FCC Rcd at 10406, para. 8).

⁷⁶ See *id.* at 21-22.

⁷⁷ Petition at 14.

⁷⁸ See Petition at 5.

⁷⁹ See 47 CFR § 51.917(f) (CAF ICC recovery for rate-of-return carriers).

⁸⁰ See generally 47 CFR pt. 51 (subpart J); *USF/ICC Transformation Order*, 26 FCC Rcd at 17904-17956, paras. 736-846 (comprehensively reforming intercarrier compensation).

would incur if they were required to convert the Study Areas to price cap regulation. Under the circumstances presented, we find that the benefits of this waiver clearly outweigh any potential risk of harm.

23. Finally, we remind carriers to file timely requests for waiver of the all-or-nothing rule, which requires price cap conversion no later than one year following the effective date of the transaction.⁸¹ In this case, we determine that the public interest favors granting Petitioners' waiver request even though Petitioners filed their request after the transactions were completed.⁸² In the future, however, we encourage carriers to file a request for waiver of the all-or-nothing rule prior to the effective date of any transaction triggering the one-year period provided by the rule. Otherwise, carriers risk having their waiver request rejected and facing the choice of either converting their rate-of-return study areas to price-cap regulation or being in violation of the all-or-nothing rule.⁸³

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, and 201-203 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, and 201-203, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver of the Commission's rules, 47 CFR § 61.41(c)(2)-(c)(3) and parts 51 (subpart J), 61, and 69, filed by Consolidated Communications of Pennsylvania Company, Inc. and Consolidated Communications of Maine Company, Inc., dated September 11, 2019, IS GRANTED AS PROVIDED HEREIN to allow study area codes 170185, 170145, and 100015 to continue operating pursuant to rules applicable to rate-of-return incumbent local exchange carriers.

25. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau

⁸¹ See 47 CFR § 61.41(c)(2).

⁸² We note that Petitioners filed their waiver request on September 11, 2019 after their rate-of-return affiliates merged with price cap carriers effective May 15, 2019 and March 6, 2019. See Petition at 5.

⁸³ Absent a waiver, rate-of-return carriers merging with price cap carriers must convert their study areas to price cap regulation and file price-cap tariffs within one year of the effective date of the transaction. 47 CFR § 61.41(c)(2).