

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

| | | |
|--------------------------------------------------------------------------------|---|-----------|
| In the Matter of |) | |
| |) | |
| Accipiter Communications, Inc. |) | |
| |) | |
| Application for Review of a Decision by the Common Carrier Bureau |) | |
| |) | |
| |) | |
| Accipiter Communications, Inc. |) | |
| |) | |
| Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules |) | AAD 96-96 |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 2004

Released: September 27, 2004

By the Commission:

1. In this Memorandum Opinion and Order, we dismiss as moot Accipiter Communications, Inc.'s (Accipiter) Application for Review of a decision by the Accounting and Audits Division of the Common Carrier Bureau (Bureau) made on delegated authority, denying Accipiter's request for waiver of 36.611 and 36.612 of the Commission's rules.¹

2. High-cost loop support is calculated using historical cost data provided by incumbent local exchange carriers (LECs) filed pursuant to sections 36.611 and 36.612 of the Commission's rules.² Requests for waiver of sections 36.611 and 36.612 have been granted to permit newly established carriers initiating service in predominantly unserved areas to receive accelerated support based on projected costs until historical costs became available.³ Accipiter sought a waiver of our rules to obtain high-cost loop support based on projected (rather than historical) data and prior to the period for which it was eligible.⁴ Accipiter has been receiving high-cost loop support based on its historical costs since 1998. Because Accipiter currently has historical cost data that is required to calculate high-cost loop support, we find that

¹ *Accipiter Communications, Inc., Petition for Waiver of Section 36.611 and 36.612 of the Commission's Rules*, Order, AAD 96-96, 13 FCC Rcd 3142 (Acct. Aud. Div. 1998) (*Accipiter*); Application for Review, by Accipiter, filed March 23, 1998 (Application for Review). The Accounting and Audits Division subsequently became the Accounting Policy Division. The Accounting Policy Division and the Common Carrier Bureau subsequently became the Telecommunications Access Policy Division and the Wireline Competition Bureau, respectively, pursuant to the Commission's reorganization in March 2002.

² See 47 C.F.R. §§ 36.611, 36.612.

³ See, e.g., *Border to Border Communications, Inc., Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, AAD 94-61, 10 FCC Rcd 5055 (Com. Car. Bur. 1995) (*Border to Border*).

⁴ *Accipiter*, 13 FCC Rcd at 3144.

its request for waiver of sections 36.611 and 36.612 of the Commission's rules is moot.

3. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that this MEMORANDUM OPINION AND ORDER is ADOPTED.

4. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that the Application for Review filed by Accipiter Communications, Inc., on March 23, 1998 is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary