

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Petition of Butler-Bremer Mutual Telephone Company, Inc. for a 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 in connection with merger of affiliated Study areas in Iowa)	WC Docket No. 15-118
)	
Petition of Panora Communications Cooperative and Prairie Telephone Company, Inc. for Waiver of Sections 51.909(a), 51.917(b)(1), 51.917(b)(2), 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 study area waivers in Iowa)	WC Docket No. 15-166
)	

ORDER

Adopted: February 5, 2018

Released: February 5, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,¹ we grant to the extent provided for herein the Petitions for Waiver filed by Butler-Bremer Mutual Telephone Company, Inc., Panora Communications

¹ See e.g., *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; Telephone Systems Tariff F.C.C. No. 7*, Order, 27 FCC Rcd 15753 (2012) (*2012 Average Schedule Conversion Order*) (order approving a methodology for establishing initial interstate switched and special access rates for the study areas in new tariff filings in order to allow the requesting carriers to operate more efficiently post waiver); *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 (2014) (*2014 CenturyLink Waiver Order*) (order allowing CenturyLink to establish a single interstate access tariff with blended switched and special access rates for three study areas and simultaneously allowing the three affiliates requesting the waiver to withdraw from the NECA pool); see *supra* para. 9.

Cooperative, and Prairie Telephone Co., Inc. (collectively Petitioners),² to permit the Petitioners to modify their capped switched access charge rates to utilize different Rate Bands in the National Exchange Carrier Association (NECA) tariff to efficiently implement mergers and consolidations of certain study areas.³ Based on the record before us, we find that allowing the consolidating carriers to offer modified switched access charge rates will serve the public interest by promoting increased productivity and efficiencies that result in cost savings for the companies, which will in turn benefit consumers by encouraging the companies to invest in broadband deployment.

2. At the same time, we deny Panora and Prairie's request for waiver of the imputation rule.⁴ By deciding to merge prior to receiving this waiver, the two companies voluntarily reduced the rate assessed on local switching in the Prairie exchange.⁵ Therefore, consistent with the Commission's rules, Panora and Prairie must impute the local switching rate for the Prairie traffic at the higher rate from April 1, 2015, the date the merger was closed, to the effective date of this Order.

II. BACKGROUND

3. In the *USF/ICC Transformation Order*,⁶ the Commission among other things, established new rules requiring local exchange carriers (LECs) to adjust, over a period of years, many of their switched access charges, with the ultimate goal of transitioning to a bill-and-keep regime. As part of that transition to bill-and-keep, the Commission adopted section 51.909(a), which capped reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.⁷

4. The Commission also adopted a recovery mechanism to mitigate the impact of reduced intercarrier compensation (ICC) revenues on incumbent LECs and to facilitate continued investment in

² See Petition of Butler-Bremer Mutual Telephone Company, Inc. 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 in connection with merger of affiliated study areas in Iowa, WC Docket No. 15-118 (filed May 12, 2015) (Butler-Bremer Petition); Petition of Panora Communications Cooperative and Prairie Telephone Co., Inc. for Waiver of Sections 51.909(a), 51.917(b)(1), 51.917(b)(2), 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 study area waivers in Iowa, WC Docket No. 15-166 (filed July 20, 2015) (Panora and Prairie Petition).

³ A study area is the geographic territory of an incumbent local exchange carrier's telephone operation. See 47 CFR Part 36 App. Effective November 15, 1984, the Commission froze all study-area boundaries to prevent incumbent local exchange carriers from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support. See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 FR 939 (1985).

⁴ See 47 CFR § 51.917(b)(2).

⁵ As Panora and Prairie discussed in their Petition, since their April 1, 2015 merger "Panora has been billing for Local Switching Service at the Rate Band 5 rates in the National Exchange Carrier Association ('NECA') Tariff No. 5, and was not authorized to bill at the higher Rate Band 6 rates." Panora and Prairie Petition at 4.

⁶ *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).

⁷ See 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

broadband infrastructure while providing greater certainty and predictability going forward.⁸ The recovery mechanism allows incumbent LECs to recover ICC revenues reduced due to the ICC reforms, up to an amount defined for each year of the transition, which is referred to as “Eligible Recovery.”⁹ A rate-of-return carrier initially may recover its Eligible Recovery each year from its end users through the Access Recovery Charge (ARC) subject to an annual cap.¹⁰ If the projected ARC revenues do not recover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in CAF-ICC support.¹¹

5. The Commission determined that for rate-of-return LECs, the calculation each year of a carrier’s Eligible Recovery begins with a determination of its Base Period Revenue (BPR).¹² A rate-of-return carrier’s BPR is the sum of certain ICC intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during FY 2011,¹³ and the projected revenue requirement for interstate switched access services provided during the 2011-2012 tariff period.¹⁴ The BPR for rate-of-return carriers was reduced by five percent initially and is reduced by an additional five percent in each year of the transition.¹⁵ A rate-of-return LEC’s Eligible Recovery is equal to the adjusted BPR 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.¹⁶ A rate-of-return LEC’s BPR is calculated only one time, but is used during each step of the ICC recovery mechanism calculations for each year of the transition.¹⁷

6. The Commission emphasized that the reforms adopted in the *USF/ICC Transformation Order* provide incentives for carriers to become more efficient.¹⁸ As the Commission explained, the BPR framework allows rate-of-return carriers to profit from increased productivity, which ultimately benefits consumers through lower end-user charges.¹⁹

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17956, para. 847.

⁹ *Id.* at 17956-57, paras. 847, 850.

¹⁰ *Id.* at 17958, para. 852.

¹¹ *Id.* at 17994-95, para. 918; 47 CFR §§ 51.915(d-f), 51.917(d-f).

¹² *See* 47 CFR § 51.917(b)(7).

¹³ *Id.* For purposes of the recovery mechanism, Fiscal Year 2011 (FY 2011) is defined as October 1, 2010 to September 30, 2011. *See* 47 CFR § 51.903(e).

¹⁴ *See* 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

¹⁵ *See* 47 CFR § 51.917(b)(3).

¹⁶ *See* 47 CFR § 51.917(d).

¹⁷ *Id.*

¹⁸ *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902. The Commission explained that its analysis was informed by the Commission’s prior findings regarding the advantages that can arise from regulatory frameworks that encourage more efficient investment. *Id.* at n.1758 (citing *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 21 (1990)).

¹⁹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902. The Commission also observed that this framework – in conjunction with the overall reforms adopted in the Order – “provides revenue certainty, stability, and predictable support, as well as promoting continued investment, consistent with advantages some historically have associated with rate-of-return regulation.” *Id.* (internal citations omitted); *see also id.* at 17679, para. 39.

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ 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.²²

A. Relevant Precedent

8. The Commission, has previously allowed rate adjustments (both increases and decreases) similar to those requested in these waiver petitions and we follow that precedent here. For example, in the *2012 Average Schedule Conversion Order*, the Commission waived section 51.909(a) to allow the requesting carriers to establish a single interstate access tariff, pursuant to the rules for rate-of-return LECs, for its average schedule study areas exiting the NECA interstate access tariffs, and approved a methodology for establishing initial interstate switched and special access rates using NECA switched and special access rates that were adjusted to reflect the extent to which the exiting study areas were either a net contributor to, or a net recipient from, the NECA traffic-sensitive pool.²³ The Commission concluded, among other things, that the composite switched access rates developed for the study areas included in the tariff would be the rates that are capped by section 51.909(a) for the exiting carriers.²⁴ NECA's switched access rate caps were also adjusted—upward in that case—pursuant to Commission rules governing entry and exit of the NECA pools.²⁵ The Commission explained that the waivers would further the public interest by providing the carriers incentives to maintain and promote more efficient operations.²⁶

9. Similarly, in the *2014 CenturyLink Waiver Order*, the Wireline Competition Bureau (Bureau) granted a waiver allowing CenturyLink to establish a single interstate access tariff with composite switched and special access rates for three study areas and to develop switched and special access rates under the net-contribution approach employed in the *2012 Average Schedule Conversion Order*.²⁷ The Bureau found that granting the waiver was consistent with the intent of the *USF/ICC Transformation Order* in that it would “further the public interest by providing the carrier incentives to maintain and promote intercarrier compensation reform.”²⁸

10. The Bureau later approved another CenturyLink waiver petition to allow CenturyLink to consolidate its incumbent LECs and their switched access rates, and to calculate the combined entity's

²⁰ 47 CFR § 1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15760-61, para. 17.

²⁴ *Id.*

²⁵ *Id.* at 15764, para. 32.

²⁶ *Id.* at 15753, para. 1.

²⁷ *2014 CenturyLink Waiver Order*, 29 FCC Rcd at 5143, para. 8.

²⁸ *Id.* at 5140, para. 1.

Eligible Recovery on the basis of the surviving study area in a state.²⁹ The Bureau found good cause to grant the waiver because the “proposed consolidations and restructuring will have no material adverse effect on carrier or retail customers . . . , be revenue neutral . . . , and result in no material change to CenturyLink’s eligible recovery in each affected area.”³⁰

11. Similarly, in a 2016 waiver order the Bureau allowed Mutual Telephone Company of Sioux Center, Iowa and Winnebago Cooperative Telecom Association to allocate BPR amounts using a “simple average of the access line count for FY 2011.”³¹ The Bureau found this approach to calculating the appropriate BPR reasonable and the petition to be in the public interest.³²

B. Butler-Bremer Petition

1. Background

12. Butler-Bremer filed a petition for waiver³³ seeking to merge and consolidate its Butler-Bremer Iowa study area into its jointly-owned Shell Rock Iowa study area, which is a cost company.³⁴ According to Butler-Bremer, the merged company will convert from an average-schedule company to a cost company so that the new study area will utilize the cost study methodology.³⁵ Butler-Bremer seeks a waiver of rules 51.917(b)(1) and 51.917(b)(7) to combine the BPRs for the merging study areas into a single BPR for the merged study area.³⁶ It contends that the consolidation of the BPRs produces no adverse impact on the CAF-ICC mechanism, because CAF-ICC support will be \$819 less than support received before the merger.³⁷

13. Butler-Bremer also seeks a waiver of section 51.909(a) of the Commission’s rules so that it can modify its capped access charge rates in order to establish consolidated rate bands and access rates

²⁹ See *Petition of CenturyLink for a Waiver of Sections 51.907 and 51.915 of the Commission’s Rules, as Applicable*, WC Docket No. 15-324, Order, 31 FCC Rcd 3748 (WCB 2016).

³⁰ *Id.* at 3752, para. 12.

³¹ See generally *Connect America Fund; Federal-State Joint Board on Universal Service; Joint Petition for Waiver of the Definition of “Study Area” or the Appendix-Glossary of Part 36 of the Commission’s Rules filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications; Winnebago Cooperative Telecom Association*, WC Docket No. 10-90, CC Docket No. 96-45, 31 FCC Rcd 10683 at 10691, para. 27 (WCB 2016) (*Mutual/Winnebago Order*) (internal quotations omitted).

³² See generally *Mutual/Winnebago Order*.

³³ Butler-Bremer Petition at 1-2. The Butler-Bremer Iowa study area includes approximately 1,697 access lines, and the Shell Rock Iowa study area has approximately 682 access lines. *Id.* at 2.

³⁴ A cost company is a rate-of-return carrier that determines its rates based on its own costs, as opposed to determining its costs based on average schedule formulas. See, e.g., *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 at 5298, para. 5, n.16 (2008). An average schedule company is a rate-of-return company 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 an average schedule company. See 47 CFR § 69.606.

³⁵ Butler-Bremer Petition at 2. Butler-Bremer believes that it is not required to seek a study area waiver from the Commission’s 1984 Boundary Freeze Order because it is a holding company that is consolidating existing study areas in the same state. *Id.* (citing *Request for Clarification Filed by the National Exchange Carriers’ Association, Inc.*, 11 FCC Rcd 8156, 8160, para. 9 (IB 1996)). *Id.*

³⁶ Butler-Bremer Petition at 3.

³⁷ *Id.* at 3-4; see also Letter from David B. Cohen, Esq., Senior Policy Advisor, GVNW Consulting, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-118 at 1 (filed Mar. 29, 2017).

for its merged study area in the NECA traffic-sensitive access tariff.³⁸ Butler-Bremer proposes to establish consolidated rate bands and access rates for its merged study area by using a revenue-neutral approach so that the revenues of the consolidated study area are equal to those of its pre-merger components.³⁹ The Butler-Bremer study area is in Rate Band 8 for Local Switching Service and Rate Band 10 for Dedicated Transport Services, while the Shell Rock study area is in Rate Band 6 for Local Switching Service and Rate Band 8 for Dedicated Transport Services.⁴⁰ Using its approach, Butler-Bremer states that the merged study area will be in Rate Band 8 for Local Switching Service and Rate Band 9 for Dedicated Transport Service.⁴¹ Tandem Switching Service will remain in Rate Band 2 for the combined company.⁴²

14. Butler-Bremer contends that by facilitating the merger, waiver of the Commission's rules will benefit the combined companies and the public. According to Butler-Bremer, the merger will save the company approximately \$45,000 per year in accounting, reporting, and other administrative costs.⁴³ Butler-Bremer also argues that the merger of commonly-owned study areas in the same state tends to reduce USF draws or create other savings, and is consistent with Commission policy that study area consolidation is generally in the public interest.⁴⁴ The Commission sought comment on the Butler-Bremer petition but no comments were filed.⁴⁵

2. Discussion

15. Consistent with precedent, we find good cause exists to grant Butler-Bremer's petition for waiver. We first address Butler-Bremer's request for waiver to facilitate the merger of study areas that participate in the NECA traffic-sensitive access tariff. A waiver of sections 51.917(b)(1) and 51.917(b)(7) is warranted because combining the carrier's BPRs and interstate revenue requirements reflects the merging of the two carriers' operations into a single operation and therefore is the base from which to begin calculating Eligible Recovery for the merged entity. Allowing the carriers to combine BPRs and interstate revenue requirements upon merging is consistent with Commission precedent to allow carriers to use composite switched access rates from several study areas, as it did when Consolidated, Frontier, and Windstream left the NECA access tariffs.⁴⁶ Only by combining the BPRs of

³⁸ Butler-Bremer Petition at 2-3.

³⁹ *Id.* at 3-4.

⁴⁰ As of July 1, 2017, the NECA local switching rates are: Band 6—originating \$0.039056, terminating \$0.003567; Band 8—originating \$0.048822, terminating \$0.003567. The NECA tariff contains several dedicated transport rates depending on what is ordered. For example, as of July 1, 2017, dedicated transport rates are: Direct Trunked Transport – Direct Trunked Facility, Per Mile: for DS3: Band 8 = \$139.05; Band 9 = \$180.48; Band 10 = \$241.17; Direct Trunked Transport – Direct Trunk Termination, Per Termination: for DS3: Band 8 = \$531.78; Band 9 = \$690.29; Band 10 = 922.39.

⁴¹ Butler-Bremer Petition at 4.

⁴² *Id.*

⁴³ *Id.* at 2. See also Letter from David B. Cohen, Esq., Senior Policy Advisor, GVNW Consulting, to Marlene Dortch, Secretary, FCC, WC Docket No. 15-118 at 1 (filed Apr. 20, 2016).

⁴⁴ Butler-Bremer Petition at 3.

⁴⁵ *Wireline Competition Bureau Seeks Comments On Butler-Bremer Mutual Telephone Company, Inc. Petition for Waiver of The Commission's Rules for Modifying Access Rate Bands and Charges, 2011 Switched Access Revenue Requirement, and 2011 Base Period Revenue*, WC Docket No. 15-118, Public Notice, 30 FCC Rcd 4839 (WCB 2015).

⁴⁶ See generally *2012 Average Schedule Conversion Order*.

the study areas whose rates went into the composite rate can the Eligible Recovery be maintained at the same level for the included group of study areas. Moreover, the merger serves the public interest by producing significant administrative cost savings.⁴⁷

16. We also find that good cause exists for a waiver of section 51.909(a) for Butler-Bremer. As participants in the NECA traffic-sensitive tariff, the local switching and dedicated transport rates of the merging carriers are included in rate bands reflecting comparable cost groupings. The combined operation of the merged carriers produces a cost characteristic of the merged entity that warrants one or more rates being included in different rate bands after the merger. This results in some traffic being rated at a higher rate, while other traffic is assessed at a lower rate.⁴⁸ This banding process is the pooling equivalent of composite rate development approved in the *2012 Average Schedule Conversion Order*. We recognize that, depending on the traffic mix, this may alter slightly the relative recovery between access revenues and CAF-ICC support. While not producing exact switched access revenue equality, we find the minimal differences to be more than offset by the public interest benefits resulting from efficiencies gained from implementation of the mergers. The waivers will offer the type of public interest benefits contemplated by the Commission in the *USF/ICC Transformation Order*, such as facilitating the Commission's goal of encouraging carriers to become more efficient and to increase productivity.⁴⁹ These new rates will become the rate caps for the affected rate elements for purposes of section 51.909(a).

C. Panora and Prairie Petition

1. Background

17. Panora and Prairie seek waiver of several Commission rules in conjunction with the transfer of 144 access lines from Prairie to Panora.⁵⁰ Both carriers participate in the NECA traffic-sensitive tariff and closed the transaction on April 1, 2015, prior to filing their waiver petition. Panora and Prairie request a waiver of rules 51.917(b)(1) and 51.917(b)(7) to recalculate for the revised Panora and Prairie Iowa study areas the BPR used to determine CAF-ICC support.⁵¹ They also seek a waiver of rule 51.909(a) to revise Panora's Rate Band for local switching service from Rate Band 5 to Rate Band 6 in the NECA traffic-sensitive access tariff for its revised Iowa study area.⁵² Finally, Panora and Prairie seek a waiver of section 51.917(b)(2) to exempt Panora from having to impute local switching revenues at the higher Rate Band 6 for the period from April 1, 2015 until the petition for waiver is granted.⁵³ Panora and Prairie assert that they were unaware of the need to obtain a waiver of the "relatively new" rule and that requiring imputation of the default transition rate would penalize the carriers.⁵⁴

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

⁴⁸ The use of a composite rate also involves some traffic being assessed a higher rate, while some traffic has lower rates. *2012 Average Schedule Conversion Order*, 27 FCC Rcd at 15764, para. 32.

⁴⁹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.

⁵⁰ Panora and Prairie Petition at 1-2. The Yale exchange at issue is adjacent to Panora's study area and is approximately 120-130 miles away from Prairie's other two exchanges in southwestern Iowa. *Id.* at 2.

⁵¹ *Id.* at 1. Panora and Prairie assert that the revisions for the reconfigured study areas produces no adverse impact on the Connect America Fund ICC mechanism. *Id.* at 4.

⁵² *Id.* at 1.

⁵³ *Id.* at 4.

⁵⁴ *Id.*

18. Panora and Prairie contend that good cause exists for granting the requested waivers because the revision of Panora's local switching rate band in the NECA tariff, from Band 5⁵⁵ to Band 6, is consistent with other carriers of Panora's size and the revisions of the BPR for the reconfigured Panora and Prairie Iowa study areas produces no adverse impact on the CAF-ICC mechanism.⁵⁶ The Commission sought comment on Panora and Prairie's petition but no comments were filed.⁵⁷

2. Discussion

19. Consistent with precedent, we find good cause exists to grant Panora and Prairie waivers of sections 51.917(b)(1) and 51.917(b)(7) to permit them to adjust the BPRs and interstate revenue requirements of the two study areas to reflect the effects of the transfer of the 144 lines. We waive the rules to allow the carriers to reduce Prairie's BPR and increase Panora's BPR by an amount equal to Prairie's BPR multiplied by the ratio of transferred access lines over total Prairie access lines measured using 2011 data. We agree that this waiver is consistent with the public interest by promoting the efficiencies associated with a consolidated BPR, and will produce no adverse impact on the CAF-ICC support mechanism. Doing so also is consistent with Bureau precedent in the recent Mutual-Winnebago waiver proceeding in using relative access lines when allocating BPR between study areas.⁵⁸ We accordingly grant the waiver of sections 51.917(b)(7) and 51.917(b)(1) effective as of the date the transaction closed.

20. We also find that good cause exists to grant a waiver of section 51.909(a) to allow Panora to charge local switching rates from Rate Band 6 in the NECA traffic-sensitive tariff beginning on the effective date of this Order. The record indicates that after the access line transfer, the local switching cost characteristic of the post-merger Panora warrants its assessing rates from Rate Band 6 rather than Rate Band 5, while reducing the number of minutes being assessed at the Band 8 rate by Prairie. This approach is comparable to the composite rate and rate banding analysis discussed above. We find that grant of the requested relief will offer the type of public interest benefits contemplated by the Commission in the *USF/ICC Transformation Order*, such as facilitating the Commission's goal of encouraging carriers to become more efficient and to increase productivity by allowing the companies to save costs.⁵⁹ The Rate Band 6 rates will become Panora's rate cap for the Local Switching rate element for purposes of section 51.909(a).

21. Finally, we do not find good cause to grant Panora and Prairie's request for waiver of section 51.917(b)(2) of the Commission's rules and do not find a waiver to be in the public interest. By closing the transaction and reducing the rates on switched access services originating or terminating on the transferred lines without obtaining a Commission waiver, the companies voluntarily assessed a lower rate than the default transition rate. The Petitioners here have not provided sufficient evidence of special circumstances to warrant a grant of a waiver of 51.917(b)(2).⁶⁰ Petitioners voluntarily closed the

⁵⁵ The July 1, 2017 Band 6 rate in NECA tariff 5 is \$0.034175 for originating and \$0.03567 for terminating.

⁵⁶ Panora and Prairie Petition at 3-4.

⁵⁷ *Wireline Competition Bureau Seeks Comment On Panora Communications Cooperative (Panora) and Prairie Telephone Company Petition for Waiver of the Commission's Rules for Modifying Access Rate Bands and Charges, Imputation Of The Higher Rate Band, 2011 Switched Access Revenue Requirement, and 2011 Base Period Revenue*, WC Docket No. 15-166, Public Notice, 30 FCC Rcd 7303 (WCB 2015).

⁵⁸ See *Mutual/Winnebago Order*, 31 FCC Rcd at 10691, para. 27 (finding that it was reasonable to use an averaging approach in apportioning BPR upon a sale of exchanges).

⁵⁹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902.

⁶⁰ While Panora and Prairie present the requested imputation waiver as involving Rate Band 6, the rate that was voluntarily reduced was the Rate Band 8 rate from the NECA tariff that Prairie was charging. In accordance with

transaction, admit that the rules require imputation but request waiver because the rule “is relatively new and its interpretation still somewhat unclear.”⁶¹ Being unaware of how to implement a requirement is not adequate grounds to support a waiver.⁶² Therefore, we deny this part of the Panora and Prairie Petition. For purposes of reflecting the imputation in Tariff Review Plan (TRP) forms, we require Panora to make the imputation and file any revised TRPs with the Commission and Universal Service Administrative Company because the demand is included in its BPR. Panora shall reflect the imputation for the period from the date the transfer was concluded to the effective date of this Order.

IV. ORDERING CLAUSES

22. 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, and 254(g), 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 filed by Butler-Bremer Mutual Telephone Company, Inc. IS GRANTED.

23. IT IS FURTHER 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, and 254(g), 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 filed by Panora Communications Cooperative, and Prairie Telephone Co., Inc. IS GRANTED IN PART AND DENIED IN PART.

24. 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

(Continued from previous page)_____

the requirements of the Commission’s rules, the parties must use the Rate Band 8 local switching rate to determine projected and trued-up local switching revenues in calculating the merged entities’ Eligible Recovery.

⁶¹ Panora and Prairie Petition at 4.

⁶² See generally *Northeast Cellular*.