PUBLIC NOTICE

Federal Communications Commission
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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON ETS TELEPHONE COMPANY, INC. PETITION TO WAIVE THE DEFINITION OF "STUDY AREA" AS CODIFIED IN PART 36 OF THE COMMISSION'S RULES

CC Docket No. 96-45

Comment Date: October 22, 2014
Reply Comment Date: November 6, 2014

The Wireline Competition Bureau (Bureau) seeks comment on a petition filed by ETS Telephone Company, Inc. (ETS) for waiver of the definition of the study area boundary rules codified in part 36 of the Commission's rules.[1] The purpose of the petition is to permit ETS to continue to operate as an incumbent local exchange carrier throughout its existing study area that was created pursuant to an order by the Commission in 1996.[2] In addition, ETS seeks waiver of any Commission rule to the extent deemed necessary to permit ETS to continue to receive high-cost universal service support throughout its study area, subject to the generally-applicable reforms being implemented by the Commission.[3]

We find that it is not appropriate to process this study area waiver petition via the streamlined study area waiver rules adopted in the *USF/ICC Transformation Order*.[4] In that *Order*, the Commission streamlined its rules governing study area waiver requests, creating a method similar to the Bureau's processing of routine section 214 transfer of control applications.[5] Under the revised process, if the

[1] Petition of ETS Telephone Company, Inc. for waiver of the definition of the "Study Area" boundary rules codified in part 36 of the Commission's rules, CC Docket No. 96-45. (filed Sept. 17, 2014) (Petition).

[2] Petition at 1.

[3] Petition at 1-2; *see also* 47 C.F.R. Part 36 App. (defining "study area"). Effective November 15, 1984, the Commission froze all study area boundaries to prevent incumbent local exchange carriers (LECs) 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 Fed. Reg. 939 (1985) (*Part 67 Order*). A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to transfer or acquire additional exchanges.

[4] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17763, paras. 266-67 (2011) (*USF/ICC Transformation Order*), *aff'd In re: FCC,* 11-161, 753 F.3d 1015 (10th Cir. 2014).

[5] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17763, paras. 266-67.

Bureau concludes that a petition is appropriate for streamlined treatment, the petition will be deemed granted 60 days after the reply comment due date unless the Bureau issues a public notice stating otherwise.[6] Most petitions for study area waiver are routine in nature and are granted as filed without modification, and the Commission's new streamlined procedures were created to specifically address such routine study area waivers.[7] However, if the Bureau has concerns with any aspect of a petition for study area waiver or related waivers, it may find that such petition is inappropriate for streamlined treatment and that it should be subject to further analysis and review.[8] Given the complexities of the issues raised in the Petition, the Bureau finds that the Petition is inappropriate for streamlined treatment and should be subject to further analysis and review. Accordingly, the Bureau will issue an order either granting or denying the Petition after considering the record, including the record received in response to this public notice.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before the dates indicated above.[9] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[10]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B431, Washington, DC 20554; e-mail: Abdel-Hamid.Eqab@fcc.gov**;**

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[6] *See id.*; 47 C.F.R. § 36.4.

[7] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17763, para 266.

[8] *See id*. at para. 267; *see also* 47 C.F.R. § 36.4(a).

[9] 47 C.F.R. §§ 1.415, 1.419.

[10] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov;

(3) Craig Glenn, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A100, Washington, DC 20554; e-mail: Craig.Glenn@fcc.gov; and

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[11] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

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[11] 47 C.F.R. §§ 1.1200 *et seq.*