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Accepted / Filed

March 10, 2015

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Via Hand-Delivery

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED

MAR 11 2015

FCC-Competition Policy Division

Re: Consolidated Communications Holdings, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules

Dear Ms. Dortch:

On behalf of Consolidated Communications Holdings, Inc., enclosed please find an original and four (4) copies of the Petition for Waiver of Section 61.41(c) of the Commission's Rules.

Please date-stamp the enclosed extra copy and return it in the envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Russell M. Blau
Danielle Burt

Counsel for Consolidated

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Accepted / Filed

MAR 10 2015

Federal Communications Commission
Office of the Secretary

WC Docket No. 15-

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FCC-Competition Policy Division

In the Matter of)
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Consolidated Communications Holdings, Inc.)
Petition for Waiver of Section 61.41(c) of the)
Commission's Rules)
)
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**PETITION OF CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. FOR
WAIVER OF SECTION 61.41 OF THE COMMISSION'S RULES**

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*Attorney for Consolidated Communications
Holdings, Inc.*

Dated: March 10, 2015

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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WC Docket No. 15- _____

**PETITION OF CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. FOR
WAIVER OF SECTION 61.41 OF THE COMMISSION'S RULES**

Consolidated Communications Holdings, Inc. ("Petitioner" or "Consolidated"), by its undersigned counsel and pursuant to Section 1.3 of the Commission's Rules,¹ respectfully requests a waiver of Section 61.41(c) of the Commission's rules, which is referred to as the price cap all-or-nothing rule, and requires the conversion of rate of return carriers to price cap carriers within one year of being acquired by a price cap carrier.² Consolidated is an incumbent local exchange carrier ("ILEC") holding company with price cap carrier subsidiaries. Consolidated recently acquired control of three companies operated as rate of return carriers. In accordance with past precedent, Consolidated requests that it be granted a waiver of the price cap all-or-nothing rule to maintain the subsidiaries as rate of return carriers.³

¹ 47 C.F.R. §1.3.

² 47 C.F.R. §61.41(c).

³ See, e.g., *Iowa Telecommunications Services, Inc., Petition for Waiver of Section 61.41 of the Commission's Rules*, Opinion, 24 FCC Rcd 8963 (2009) ("*Iowa Telecom Opinion*"); *Valor Communications Group, Inc. (New Valor)*, Order, 21 FCC Rcd 859 (2006); *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd 25544 (2002); *ALLTEL Corporation et al. Petition for Waiver of Section 61.41*, Memorandum Opinion and Order, 17 FCC Rcd 27694 (2002); *Puerto Rico*

I. BACKGROUND

On October 14, 2014, Consolidated gained indirect control of ILECs Mankato Citizens Telephone Company (“Mankato”); Mid-Communications, Inc. (“Mid-Communications”); and Heartland Telecommunications Company of Iowa (“Heartland”) (collectively, the “Subsidiaries”) through a merger with Enventis Corporation.⁴ Mankato and Mid-Communications each operate in Minnesota. Heartland operates in Iowa, South Dakota, and Minnesota. Each of the Subsidiaries is an ILEC that is regulated as a cost company under 47 CFR § 61.39. Each of the Subsidiaries is an issuing carrier in Olsen Thielen & Co., Ltd. Tariff FCC No. 2.

Prior to consummation, Petitioner received guidance from the Wireline Competition Bureau for several universal service issues associated with the acquisition of the Subsidiaries.⁵ In particular, the guidance addressed transition issues to remove the study areas of the Subsidiaries from the high-cost loop support mechanism (“HCLS”) and become subject to Connect America Phase I and Phase II.

II. ALL-OR-NOTHING RULE

Section 61.41 of the Commission’s rules is “designed to ensure that all of a carrier’s study areas and affiliates are subject to a single form of pricing regulation – either price cap regulation or rate-of-return regulation.”⁶ Section 61.41(c) specifically provides that when a rate of return and price cap carriers merge or acquire one another, the rate of return carrier must

Telephone Co. Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission’s Rules, 15 FCC Rcd 9680 (2000).

⁴ See *Notice of Consummation*, WC Docket No. 14-111, filed Oct. 22, 2014.

⁵ *Connect America Fund, Connect America Phase II Challenge Process, High-Cost Universal Service Support*; Order, DA 14-1447 (rel. Oct.3, 2014).

⁶ *Iowa Telecom Opinion* at ¶ 2.

convert to price cap regulation within one year of consummation.⁷ The all-or-nothing rule is intended to (1) prevent a carrier from attempting to shift costs from its price cap affiliates to its non-price cap affiliates and (2) prevent a carrier from attempting to “game the system” by switching back and forth between rate of return regulation and price cap regulation.⁸

The Commission has granted a number of waivers of the all-or-nothing rule in the context of mergers and acquisitions to allow a price cap carrier to continue to be subject to rate or return regulation in connection with the purchased, rate of return companies.⁹ The Commission granted these waivers pending the outcome of a rulemaking to review the all-or-nothing rule.¹⁰ That rulemaking remains pending.¹¹ Moreover, the Commission raised this issue again last year in a separate proceeding involving universal service reforms and potential alternative forms of interstate rate regulation for rate of return carriers.¹²

⁷ 47 C.F.R. § 61.41(c)(2). In comparison, an average schedule company may retain their average schedule status without a waiver. 47 C.F.R. § 61.41(c)(3).

⁸ *Iowa Telecom Opinion* at ¶2 (citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC RCd 19613, ¶261 (2001)).

⁹ *See infra*, fn. 3.

¹⁰ *Id.*; *see also*, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, ¶ 94 (2004).

¹¹ *See* CC Docket Nos. 00-256 and 96-45.

¹² *Connect America Fund, et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, ¶ 298 (rel. June 10, 2014) (“*Connect America FNPRM*”) (“We also invite parties to comment on the regulatory treatment if an electing rate-of-return carrier in the future becomes affiliated with a price cap carrier”).

III. CONSOLIDATED'S PETITION IS IN THE PUBLIC INTEREST

Pursuant to Section 1.3, the Commission may grant a waiver of any of its rules "for good cause shown."¹³ The Commission may waive a rule where the specific facts make strict compliance with the rule inconsistent with the public interest.¹⁴ It may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Thus, the Commission may waive its rules if special circumstances warrant such a waiver, and the waiver will serve the public interest.¹⁶ Such conditions justifying a waiver are present in this Petition.

The Subsidiaries are small rural telephone companies and are not the type of company that the Commission has forced to become a price cap carrier.¹⁷ Consolidated has been operating the Subsidiaries for only a short time and does not have sufficient experience to determine whether price cap regulation would be appropriate for the size and operating territories of the Subsidiaries. Requiring conversion of the Subsidiaries would cause substantial financial and administrative burdens, particularly when the Commission may modify the rule in the future to make such conversion unnecessary. It would be prudent, and consistent with prior precedent, to allow Consolidated to maintain the separate forms of regulation until a decision is made about modifying or eliminating the all-or-nothing rule.

¹³ 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See *Policy and Rules Concerning Rate for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) (requiring the Bell Operating Companies and GTE to convert to price cap regulation).

There is no reasonable basis for concern that Consolidated will be able to engage in the kinds of cost shifting that the all-or-nothing rule was intended to prevent. The operations of the Subsidiaries will continue to be subject to the jurisdiction of the FCC and state public utility commissions for Minnesota, Iowa, and South Dakota, as applicable. The Subsidiaries will operate in their own study areas and will have separate books of account which would reveal any unlawful cost-shifting. Also, there will be no switching back and forth from one type of regulation to another because the type of regulation for the respective exchanges of the Subsidiaries and Consolidated's price cap subsidiaries have been and will continue to be maintained in the same way they were before Consolidated gained control of the Subsidiaries.

Granting a waiver would also serve the public interest because of the number of outstanding proposals in connection with universal service reforms for rate of return carriers. These potential reforms include, among others, a stand-alone broadband funding mechanism for rate of return carriers; a voluntary, two-phase transition to model-based support including participation in Connect America Phase II; and modifying or eliminating the all-or-nothing rule.¹⁸ It is difficult to determine how these potential reforms may impact conversion of the Subsidiaries to price cap regulation, and the Commission should therefore allow the Subsidiaries to maintain their existing rate of return regulation until decisions are made on these issues.

The Commission has consistently granted (or extended) waivers of the all-or-nothing rule to allow carriers to maintain rate of return regulation following an acquisition by a price cap carrier until the Commission concludes its review of the all-or-nothing rule. Good cause exists to

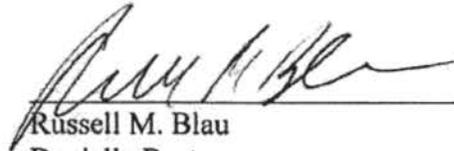
¹⁸ *Connect America FNPRM* at ¶¶267-299; see also, *Connect America Fund et al.*, Report and Order, FCC 14-190, ¶100 (rel. Dec. 18, 2014) (noting that action is not being taken at this time on any proposals for long term reform of rate of return carriers).

grant a similar waiver to Consolidated until such time as the Commission concludes its review of the all-or-nothing rule as well as other universal service reforms for rate of return carriers.

IV. CONCLUSION

For the reasons provided herein, Consolidated submits that good cause has been shown for a waiver of Section 61.41(c), and it respectfully requests the Commission grant the requested waiver to permit it to continue to operate Mankato, Mid-Communications, and Heartland as rate of return carriers until the Commission concludes its review of the regulatory regime applicable to rate of return ILECs.

Respectfully submitted,



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