

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

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|---|---|-------------------|
| In the Matters of |) | |
| Petitions for Waivers Filed by |) | CC Dkt. No. 96-45 |
| |) | |
| Champlain Valley Telecom, Inc., |) | |
| Northland Telephone Company of |) | AAD 95-30 |
| Vermont and Vermont Telephone |) | |
| Company, Inc. |) | |
| |) | |
| Concerning the Definition of "Study Area" |) | |
| in the Part 36 Appendix-Glossary |) | |
| of the Commission's Rules |) | |

To: Chief, Common Carrier Bureau

**REPLY COMMENTS OF
VERMONT TELEPHONE COMPANY, INC.
ON EXPEDITED REQUEST FOR
MODIFICATION OF WAIVER CONDITIONS**

Vermont Telephone Company, Inc. ("VTel"), by its attorney, hereby submits its reply to the joint comments of Waitsfield-Fayston Telephone Company, Inc. ("Waitsfield") and Northland Telephone Company of Vermont ("Northland") opposing VTel's March 12, 1999 Expedited Request for Modification of Waiver Conditions ("Request").¹ The Request asks the Common Carrier Bureau ("Bureau") to modify and correct the capped amount of universal service funding ("USF") authorized to VTel in *Champlain Valley Telecom, Inc. et al.*, 11 F.C.C.Rcd. 7111 (Com. Car. Bur. 1996) ("Waiver Order") based on more accurate and updated financial and demand data than the 1992 data available at the time the cap was established. In the Request, VTel

¹ By *Public Notice*, DA 99-573, released March 26, 1999, the Commission called for comments on VTel's Request to be filed by April 15, 1999 and reply comments to be filed by April 26, 1999.

demonstrated the necessity for the correction and further demonstrated that the correction would not result in reductions of current USF payments to either Waitsfield² or Northland.³

Waitsfield and Northland oppose the VTel Request, in spite of the fact that it would have no adverse impact on either of those carriers' 1999 USF payments. Waitsfield and Northland provide no credible basis for denial of VTel's Request and instead rely on entirely misplaced arguments in their opposition. Contrary to the Waitsfield/Northland contentions, the Request is *not* an untimely request for reconsideration of the *Waiver Order*, VTel has provided relevant and compelling justification for its Request, and has indeed suggested an equitable modification of the USF caps set in the *Waiver Order* that would not harm any of the three carriers. Accordingly, the VTel Request should be granted.

I. VTEL'S REQUEST IS AUTHORIZED AND IS NOT AN UNTIMELY PETITION FOR RECONSIDERATION OF THE WAIVER ORDER.

Perhaps because there is no credible substantive basis for opposing the VTel Request, Waitsfield/Northland attempt to characterize the Request as an untimely petition for reconsideration of the Bureau's 1996 *Waiver Order*. In fact, all three carriers filed timely petitions for reconsideration of the *Waiver Order*. VTel's petition has been

² Champlain Valley Telecom, Inc. originally participated, along with VTel and Northland, in the 1995 joint petition for study area waivers that resulted in the *Waiver Order*. See Waitsfield/Northland Comments at 2-3. Champlain Valley Telecom, Inc., an affiliate of Waitsfield, was subsequently merged into Waitsfield.

³ Waitsfield's 1999 USF payment would remain at its authorized amount of \$1,176,704 and Northland's 1999 USF payment would be \$652,616, an increase over its capped amount. See Request at 6.

granted,⁴ and the separate petitions of Waitsfield and Northland remain pending. The Request was submitted in response to the Bureau's finding that the USF caps set in the *Waiver Order* could not be exceeded by the carriers without explicit approval from the Bureau:

Although we find no reason to question petitioners' estimates of the USF impact, we nonetheless are concerned that those estimates may later prove inaccurate. For example, we have found that, even in a period of a few years, the USF payments for some LECs filing study area waivers have risen by unexpected amounts.

* * * *

We therefore find that the waivers should be subject to the condition that, *absent explicit approval from the Bureau*, the annual USF support provided to petitioners' study areas shall not exceed the USF amounts estimated in the joint petition except for Champlain.

Waiver Order at ¶¶ 22, 23 (footnotes omitted, emphasis supplied). Thus, the *Waiver Order* acknowledged that the USF estimates might prove inaccurate, and was concerned about runaway, unchecked growth in USF payments without Bureau oversight. *See Waiver Order* at ¶ 20. The Bureau addressed this concern by finding that changes in the USF caps would be permitted only after careful review and explicit approval by the Bureau. Clearly, the only way for VTel to obtain explicit approval from the Bureau to exceed the cap set in the *Waiver Order* is to ask, and common sense dictates that VTel cannot ask until its underlying financial and demand data justify such action. That is exactly what VTel has done in its Request. The Bureau should recognize Waitsfield/Northland's attempt to characterize the VTel Request as an untimely petition

⁴ See *Order on Reconsideration, Petition for Waiver Filed by Vermont Telephone Company, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 95-30, DA 98-2635 (Com.Car.Bur., released December 28, 1998).

for reconsideration for what it is--an effort to distract the Bureau from its lack of substantive arguments in opposition.

II. VTEL'S REQUEST IS FULLY JUSTIFIED AND WILL HAVE NO ADVERSE IMPACT ON WAITSFIELD OR NORTHLAND.

Waitsfield/Northland completely miss the point of VTel's Request. The estimates provided by the carriers and relied on in the *Waiver Order* were just that--estimates--and those estimates were predicated on now-outdated cost data. Since Contel of Vermont had operated the VTel, Waitsfield and Northland exchanges as a whole, the cost data provided at the time covered all of these exchanges combined. This combined cost information was then used in an attempt to allocate appropriate costs to the exchanges acquired by each of the three carriers. This allocation was obviously a "best guess" prospect. While Waitsfield/Northland make much of VTel's operation of its exchanges for seven months by the time the 1995 joint petition was filed (Waitsfield/Northland Comments at 7-8), seven months of separate operation is hardly sufficient to accurately determine separate costs, particularly when the base line information used was, at best, an educated guess on the division of costs from Contel of Vermont's combined operations. Subsequent experience has demonstrated that the original allocation of Contel of Vermont costs among the three carriers was based on erroneous assumptions and applications. Grant of the Request would help rectify these earlier errors.

In any event, more than six years later it is not unreasonable that costs have changed and that the cost data now available would reflect those changes.⁵ Indeed, the Bureau anticipated such cost changes, and to accommodate those changes required only

⁵ See Universal Service Fund 1998 Submission of 1997 Study Results by the National Exchange Carrier Association, Inc., October 1, 1998.

that the carriers get explicit approval from the Bureau to obtain USF support in excess of the caps set in the *Waiver Order*.⁶ In the Request and the exhibits attached thereto, VTel has specifically described and justified a modification of the *Waiver Order* USF cap based on its particular circumstances.⁷ Thus, Waitsfield/Northland's assumptions about what impact VTel's installation of DMS-100 switches *should* have had on its loop costs or loop-related USF support are completely inappropriate and unsupported, as is their conclusion that in some unspecified instances additional switching investment would reduce a carrier's cost per loop. Waitsfield/Northland Comments at 8-9. Such unsupported generalizations are totally irrelevant to VTel's specific, and specifically justified, Request. VTel's Request is based on its particular and concrete cost data and not on some general assumptions that Waitsfield/Northland would prefer be taken as gospel.

Waitsfield/Northland's main objection to the Request appears to be their belief that VTel is proposing a reduction or limitation of the Waitsfield and Northland USF caps. This is simply not the case, and a more careful reading of the Request by Waitsfield/Northland would have established this. Contrary to Waitsfield/Northland's assertion, VTel is *not* asking the Bureau to reduce, on a dollar for dollar basis, any individual carrier's USF support to offset or pay for an increase in the USF support for an

⁶ See *Waiver Order* at ¶ 23.

⁷ Accordingly, Waitsfield/Northland's assertion that VTel offers no evidence that the initial loop cost allocations and USF estimates were inaccurate is misplaced. The Request and accompanying exhibits contain this evidence.

unrelated carrier. Waitsfield/Northland Comments at 10.⁸ In fact, Northland's USF support would *increase* under VTel's proposal, while Waitsfield's would remain at what has already been authorized for 1999, since Waitsfield's costs do not justify USF support over that amount. Why Waitsfield and Northland object to this is beyond VTel's comprehension. The total cap for the three carriers would not be exceeded,⁹ and Waitsfield would receive all of the 1999 USF support that its costs justify. Waitsfield's costs have not yet justified USF support that approaches its cap, so to characterize its current USF support amount as a reduction is inappropriate. Waitsfield can only receive its entire USF capped amount if its costs justify that amount, and its costs in support of its 1999 payments do not.

Northland's objections to the VTel Request are even more perplexing, since it can only benefit from VTel's proposal. Northland's USF support is currently capped at \$547,800, and under the VTel proposal it would receive \$652,616 for 1999. This increase, and VTel's corresponding increase, are not at the expense of Waitsfield, since Waitsfield is not eligible for any more than its currently authorized 1999 USF support amount of \$1,176,704. Indeed, Waitsfield/Northland are correct that "[a] cap does not entitle the carrier to the capped amount of the USF support of its actual loop costs during a particular year warrant a lesser amount." Waitsfield/Northland Comments at 11. Likewise, VTel agrees that caps are not reduced for future years if actual costs result in USF support which falls below the capped amount during a particular year. *Id.* VTel's

⁸ Waitsfield/Northland's emphasis on "unrelated" carriers is more than slightly misplaced. While Waitsfield, Northland and VTel are certainly unrelated now, the USF caps proposed in the 1995 joint petition and set in the *Waiver Order* were based on combined cost data for the three carriers' exchanges which the carriers had attempted to distribute among themselves.

⁹ In the 1995 joint petition, the three carriers had agreed to accept Contel of Vermont's USF cap as their total combined USF capped amount. *See* Waitsfield/Northland Comments at 4.

proposal does not suggest otherwise. The Request proposes specific USF support amounts only for 1999.¹⁰

VTel disagrees, however, with Waitsfield/Northland's contention that, assuming USF caps in general continue to be valid, particular cap amounts cannot be modified. Waitsfield/Northland Comments at 11-12. The *Waiver Order* does not support that contention; instead, it indicates that the USF cap amount will govern unless and until a carrier receives explicit approval from the Bureau to receive USF support in a higher amount. As VTel has previously explained, this approval requirement ensures that any increase in USF support is justified and passed on by the Bureau, thus avoiding the unexpected growth in USF payments the Bureau has previously experienced.¹¹ Thus, Waitsfield/Northland's dire predictions of a floodgate of "unpredictable and uncontrollable" fluctuations in USF support payments if the VTel Request is granted are completely unfounded.

VTel suspects that what is really driving Waitsfield/Northland's is fear that grant of the Request will have an adverse impact on their respective outstanding petitions for reconsideration of the *Waiver Order*. Both Waitsfield's and Northland's petitions for reconsideration ask that the USF cap imposed in the *Waiver Order* be rescinded.¹² While VTel believes it made clear in its Request that there would be no adverse impact,¹³ it bears repeating here. Waitsfield, Northland and others have asked the Commission to

¹⁰ It is for this reason that VTel asked that consideration of its Request be expedited and be retroactive to January 1, 1999--so that its proposal could be timely implemented for the 1999 calendar year.

¹¹ See *Waiver Order* at n. 35, 36 and accompanying text.

¹² See Petitions for Reconsideration of Northland Telephone Company of Vermont, Inc. and Champlain Valley Telecom, Inc., AAD 95-30, both filed July 15, 1996.

¹³ See Request at n. 14.

rule that the Commission's May 8, 1997 Universal Service Order¹⁴ supercedes USF caps imposed on carriers acquiring exchanges prior to May 7, 1997. Should the Commission make that determination, VTel's request would be rendered moot. VTel submitted the Request as an interim measure and subject to any ruling by the Commission on the overall validity of USF caps.

II. CONCLUSION.

Waitsfield/Northland have no plausible basis for their opposition to VTel's Request. Both their procedural and substantive arguments are without merit, and any underlying fears of an adverse impact on Waitsfield's or Northland's USF support payments are simply unfounded. Accordingly, VTel respectfully submits that its Request should be granted on an expedited basis.

Respectfully submitted,

Vermont Telephone Company, Inc.

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Dated: April 26, 1999

¹⁴ *Federal-State Joint Board on Universal Service*, 12 F.C.C.Rcd. 8776 (1997).

CERTIFICATE OF SERVICE

I, Theresa Fenelon Falk, hereby certify that I am an attorney with the law firm of Pillsbury Madison & Sutro, LLP, and that on this 26th day of April, 1999, I caused to be sent by first class United States mail, postage prepaid, a copy of the foregoing REPLY COMMENTS OF VERMONT TELEPHONE COMPANY, INC. ON EXPEDITED REQUEST FOR MODIFICATION OF WAIVER CONDITIONS to the following:

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