

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
OCT 2 2 1998

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OFFICE OF
MANAGING DIRECTOR

Stephen G. Kraskin, Esquire
Sylvia Lesse, Esquire
Kraskin & Lesse
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

86-285

Re: Fee Control # 9705098140141002

Dear Mr. Kraskin and Ms. Lesse:

This will respond to your request for refund of an application fee filed on behalf of Five Area Telephone Cooperative, Inc. and its affiliate West Plains Telecommunications, Inc. (collectively referred to as "Five Area") in connection with its petition for waiver of sections 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612.

You represent that Five Area is a "small, rural local exchange carrier" that "provides telephone service to high-cost rural service areas." You further represent, and our records reflect, that Five Area recently had acquired and received an associated study area waiver for "five exchanges from GTE Southwest Incorporated." Given that recent acquisition and study area waiver grant, Five Area had sought waiver of sections 36.611 and 36.612 to enable it to receive retroactive high cost loop support based on current, as opposed to historical, costs in order "to expedite [its provision of] quality, reasonably-priced local telephone service to residents of rural Texas."

You assert that the imposition of a filing fee in this instance would increase the overall cost of service and impose an unnecessary financial burden, which Five Area's subscribers would ultimately bear, contrary to the Commission's goals and policies. You therefore request a waiver of the filing fee requirement.

The Commission may waive filing fees only upon a showing of good cause and a finding that the public interest will be served thereby. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1987); see also 47 C.F.R. §1.1117. You have represented in general terms that the imposition of the \$5,665.00 filing fee for waiver of Part 36 would represent a significant expense for Five Area and ultimately Five Area's subscribers, and thus a financial hardship. The Commission recognizes that in certain instances the payment of required fees may impose financial hardship and has waived fees where "a compelling case of financial hardship" is shown. Cf. Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995).

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Sylvia Lesse, Esquire
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In order to establish a compelling case of financial hardship, a more detailed showing is required. In this connection, you may submit information such as a balance sheet, a profit and loss statement (audited, if available), a cash flow projection (with an explanation of how it was calculated, and with and without the receipt of anticipated USF support), a list of officers and their individual compensation, together with a list of the highest paid employees and the amount of their compensation, or similar such information. At this juncture, however, you have not made a showing sufficient to warrant waiver of the fee payment.

Therefore, based on the present state of the record, we are denying Five Area's request for waiver without prejudice. Five Area's refund request will be reinstated upon a more persuasive, detailed showing of financial hardship. If you have questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer

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9705048/4014002
Helly
KRASKIN & LESSE, LLP
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

Federal Communications Commission

Office of Secretary

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2120 L Street, N.W., Suite 520
Washington, D.C. 20037

May 7, 1997

Andrew S. Fishel, Managing Director
Office of Managing Director
Federal Communications Commission
Room 852
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Mr. Thomas Holleran

**Re: Five Area Telephone Cooperative, Inc., and West Plains
Telecommunications, Inc.
Request for Refund of Filing Fee**

Dear Mr. Fishel:

Pursuant to Sections 1.3 and 1.1113(a)(5) of the Rules of the Federal Communications Commission, Five Area Telephone Cooperative, Inc. and its affiliate West Plains Telecommunications, Inc. (together as "Five Area"), respectfully request a refund of the \$ 5,665 filing fee associated with its filing of a Petition for Expedited Waiver of Section 36.611 of the Commission's Rules ("Petition").¹

Five Area submitted the required \$ 5,665 filing fee along with its Petition for Expedited Waiver in order to expedite action on its request.²

Five Area is a small, rural local exchange carrier which acquired five exchanges from GTE Southwest Incorporated in 1995. In its Petition, Five Area seeks waiver of the referenced rules so that it may receive Universal Service Fund ("USF") payments consistent with both its actual ongoing loop cost levels and the public interest policies which the Accounting and Audits Division ("AAD") previously identified in granting a study area waiver. Grant of its Petition will enable Five Area to expedite quality, reasonably-priced local telephone service to residents of rural Texas.

¹ See *In the Matter of Five Area Telephone Cooperative, Inc. and West Plains Telecommunications, Inc., Petition for Expedited Waiver of Section 36.611 of the Commission's Rules*, filed with the Chief, Common Carrier Bureau on May 7, 1997.

² See Attachment 1.

Andrew S. Fishel
May 7, 1997
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As demonstrated in its Petition, Five Area provides telephone service to high-cost rural service areas and is, therefore, eligible to receive USF. The Commission's Rules provide for the calculation of USF payments based on historical annual cost information; however, in this case, the use of historical data would produce an anomalous result because the data contains only a partial year of loop related expenses. The modification requested in the Petition will result in a more reasonable level of interstate cost allocation. This will allow Five Area to continue with planned upgrades to the acquired West Plains network and will avoid inequitable cost allocation and recovery and potential penalization of the subscribers of Five Area.

Five Area's Petition seeks to avoid burdening ratepayers located in high cost areas with unreasonable and inequitable levels of allocated costs. The imposition of a filing fee in this instance would increase the overall cost of service provision and impose a counter-productive financial burden which Five Area's subscribers would ultimately bear, contrary to the Commission's goals and policies. Accordingly, Five Area respectfully requests that the filing fee for its May 7, 1997 Petition be refunded expeditiously.

Should you have any questions concerning this matter, please feel free to contact the undersigned.

Respectfully submitted,

FIVE AREA TELEPHONE COOPERATIVE, INC.
AND WEST PLAINS TELECOMMUNICATIONS, INC.

By: Stephen G. Kraskin
Stephen G. Kraskin

Its Counsel

Attachments

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

In the Matter of)
Five Area Telephone Cooperative, Inc.)
and West Plains Telecommunications, Inc.)
)
Petition for Waiver of Section 36.611)
of the Commission's Rules)

To: Chief, Common Carrier Bureau

PETITION FOR EXPEDITED WAIVER

Five Area Telephone Cooperative, Inc., ("Five Area"), together with its affiliate West Plains Telecommunications, Inc., ("West Plains")(collectively, "Petitioner"), pursuant to Sections 0.91 and 1.3 of the Commission's Rules,¹ respectfully requests waiver of Section 36.611 of the Commission's Rules² related to the decision in DA 95-1481 and AAD 94-110 released by the Chief of the Accounting and Audits Division ("AAD") on June 30, 1995.³ Petitioner seeks changes in the terms of the initial waiver to allow Universal Service Fund ("USF") reporting and USF expense adjustment cost recovery that are consistent with both the facts and the public interest policies on which the AAD relied in the *Waiver Order*.⁴ Without modification of the

¹ 47 C.F.R. §§ 0.91, 1.3.

² 47 C.F.R. § 36.611.

³ *Memorandum Opinion and Order*, In the Matter of GTE Southwest Incorporated, Five Area Telephone Cooperative, Inc. and West Plains Telecommunications, L.L.C., Joint Petition for Waiver of Section 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, released June 30, 1995 in DA 95-1481 and AAD 94-110 ("*Waiver Order*").

⁴ Petitioner characterizes this request as a modification of the original *Waiver Order*. However, Petitioner is aware that staff members of the AAD have asked that a request of this

(continued...)

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9705098140141002	FIVE AREA TELEPHONE COOPERATIV PO BOX 448 302 UVALDE MULESHOE TX 79347	0756111577	05/07/97

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$5,665.00	\$5,665.00	1	BEA	1		FIVE AREA TELEPHONE COOPERATIV			\$5,665.00	1	PMT
Total									<u>\$5,665.00</u>		

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9705098140141002	FIVE AREA TELEPHONE COOPERATIV PO BOX 448 302 UVALDE MULESHOE TX 79347	0756111577	05/07/97

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\$5,665.00	\$5,665.00	1	BEA	1		FIVE AREA TELEPHONE COOPERATIV			\$5,665.00	1	PMT
Total	1								\$5,665.00		