

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

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

**AMENDMENT TO EXPEDITED REQUEST FOR
MODIFICATION OF WAIVER CONDITIONS**

Vermont Telephone Company, Inc. ("VTel"), by its attorney, respectfully submits this amendment to its March 12, 1999 Expedited Request for Modification of Waiver Conditions ("Expedited Request"). The Expedited Request asked 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 FCC Rcd. 7111 (Com. Car. Bur. 1996) ("*Waiver Order*"). On April 15, 1999, Waitsfield-Fayston Telephone Company, Inc. ("Waitsfield") and Northland Telephone Company of Vermont ("Northland") filed joint comments opposing the Expedited Request. On April 26, 1999 VTel filed its reply comments. The Expedited Request is pending before the Bureau.

On September 9, 1999, the Bureau released *Petitions for Waiver and Reconsideration Concerning Sections 36.611, 36.612, 61.41(c)(2), 69.605(c), 69.3(e)(11)*

and the Definition of “Study Area” Contained in Part 36 Appendix-Glossary of the Commission’s Rules Filed By Copper Valley Telephone, Inc., et al., DA 99-1845 (“Sept. 9 MO&O”). The relief granted in the Sept. 9 MO&O significantly impacts the Expedited Request, and VTel now amends the Expedited Request and revises the relief it seeks to reflect the actions taken in the Sept. 9 MO&O. In light of the Sept.9 MO&O, VTel requests that the Bureau grant the Expedited Request for USF payments for 1999, and further requests that its USF cap be removed, like those of Waitsfield and Northland, effective January 1, 2000.

I. The Expedited Request Should be Granted for 1999 USF Payments.

In the Expedited Request, VTel asked that the Bureau allow for a change in VTel’s capped USF payments based upon updated financial and demand data and subject to the parameters of the total amount of USF authorized for VTel, Waitsfield and Northland in the *Waiver Order*.¹ The *Waiver Order* had imposed USF caps on each of the companies. *Waiver Order* at ¶ 23. VTel had asked, based on subsequent experience and updated data, that its USF cap be recalculated within the confines of the total authorized USF amount for the three carriers.² Expedited Request at p. 2. VTel noted that for 1999 such a recalculation would not result in a decrease in the USF amounts for either Waitsfield or Northland and that, in fact, Northland would receive more USF funding than it would otherwise receive under its own USF cap. Expedited Request at p. 6. VTel further requested that the allocation methodology it employed to arrive at

¹ In the *Waiver Order*, the Bureau granted study area waivers to the three companies as a result of their acquisition of exchanges from Contel of Vermont.

² The total authorized amount for the three carriers was slightly more than the amount previously received by Contel of Vermont. See Expedited Request at p. 2.

its recalculations for 1999 be utilized on an annual basis for determining USF payments to the three carriers (VTel, Waitsfield and Northland) until the impact of the Commission's May 8, 1997 universal service decision³ on USF capping had been resolved.

Waitsfield and Northland opposed the Expedited Request, to which VTel responded on reply. The overriding concern of both carriers was that grant of the Expedited Request would have an adverse impact on their respective outstanding petitions for reconsideration of the *Waiver Order* asking that the USF caps imposed on them by the *Waiver Order* be rescinded. This concern has been obviated by the *Sept. 9 MO&O*. The Bureau granted both Waitsfield's and Northland's requests that the USF caps imposed in the *Waiver Order* be removed going forward (*i.e.*, as of January 1, 2000). *Sept. 9 MO&O* at ¶¶ 16, 28. As a result, the major stumbling block to grant of the Expedited Request has been removed since Waitsfield and Northland have no USF caps going forward and their USF payments for 1999 would not be decreased by the recalculation VTel proposed for 1999. Accordingly, VTel requests that its Expedited Request be granted with respect to USF payments for 1999. Obviously, its suggestion that its allocation methodology be used on an annual basis going forward is rendered moot by the *Sept. 9 MO&O*.

II. VTel's USF Cap Should Be Removed Effective January 1, 2000.

As a further result of the *Sept. 9 MO&O* and in accordance with the provisions of paragraph 23 of the *Waiver Order*, VTel also respectfully requests that the Bureau

³ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776 (1997).

remove the USF cap imposed on VTel in the *Waiver Order*.⁴ In the *Sept. 9 MO&O*, the Bureau removed USF caps that had been imposed on a number of carriers, including Waitsfield and Northland, as a condition to granting study area waivers to those carriers. The *Sept. 9 MO&O* addressed various carriers' petitions for reconsideration or petitions for waiver, some of which were filed as long ago as early 1995.⁵

The *Sept. 9 MO&O* does not remove the caps of the petitioning carriers because of facts and circumstances particular to each carrier. Rather, the Bureau recited the underlying rationale for the Commission's policy of imposing caps in the first place, *i.e.*, a concern about the adverse impact study area waivers could have on the high cost loop support mechanism, particularly after the Commission adopted the Joint Board's recommendation for an overall indexed cap on that mechanism. *Sept. 9 MO&O* at ¶ 9. The Bureau found that "[a]lthough the concerns that prompted the Commission to impose these caps persist, we conclude that limiting the duration of these caps is appropriate. We therefore remove the caps on petitioners' high cost support on a going-forward basis." *Id.*

The Bureau further found that limiting the petitioning carriers to their original high cost loop support estimates in perpetuity was not necessary to accomplish the Commission's policies. *Id.* at ¶ 10. The Bureau continued "[w]e also believe that caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers." *Id.*

⁴ Paragraph 23 of the *Waiver Order* states 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" In light of the *Sept. 9 MO&O*, VTel amends its Expedited Request to seek this Bureau approval for removal of its USF cap as well.

⁵ Waitsfield's and Northland's petitions for reconsideration were filed in July 1996.

The Bureau noted that the caps imposed on petitioners have been in effect in excess of three years and that “in that time, the individual caps placed on the carriers’ high cost loop support have served their purpose by preventing the carriers from underestimating the effect the transfer of exchanges would have on the high cost loop support mechanism immediately following the transfer.” *Id.*

All of the reasons given for removing the USF caps of the carriers subject to the *Sept. 9 MO&O* apply equally to VTel. VTel, Waitsfield and Northland were the three buyers that acquired the rural telephone operations of Contel of Vermont on August 1, 1994. VTel’s USF cap was imposed at the same time as those of Waitsfield and Northland, and too has been in effect for more than three years. As VTel pointed out in its Expedited Request, it has spent significant time and money upgrading the facilities and services it acquired from Contel of Vermont, and continues to implement new and improved services to its existing and potential customers. *See Expedited Request* at p. 6. For example, VTel has upgraded all of its exchanges to DMS-100 technology, and is the first telephone company in Vermont to offer ADSL. Further advancements in service offerings, however, could be hindered by the continued imposition of VTel’s USF cap, as the Bureau recognized in removing the caps in the *Sept. 9 MO&O*.

Additionally, continued imposition of the USF cap on VTel at this point is unfair because VTel is similarly situated to those carriers whose caps were removed by the *Sept. 9 MO&O* and is identically situated to Waitsfield and Northland. There is no justification for treating VTel differently. *See Melody Music, Inc. v. FCC*, 345 F.2d 730,732 (D.C. Cir. 1965); *see also McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir.

1993) (“we remind the Commission of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment”).

Wherefore, VTel respectfully requests that the Bureau grant VTel’s Expedited Request, as amended herein, to allow modification of VTel’s capped USF amount for 1999 as calculated in the Expedited Request, and to remove VTel’s USF cap entirely effective January 1, 2000. Good cause having been shown, VTel respectfully requests this grant on an expedited basis.

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Dated: October 7, 1999

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 7th day of October, 1999, I caused to be hand delivered copies of the foregoing AMENDMENT TO EXPEDITED REQUEST FOR MODIFICATION OF WAIVER CONDITIONS to the following:

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