

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of	)	
	)	
Petitions for Waiver Concerning the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules	)	
	)	
Accent Communications, Inc.,	)	
Armour Independent Telephone Company,	)	CC Docket No. <u>96-45</u>
Bridgewater-Canistota Independent Telephone Company,	)	
James Valley Cooperative Telephone Company,	)	
RC Communications, Inc., and	)	
Roberts County Telephone Cooperative Association	)	
	)	
and	)	
	)	
Accipiter Communications, Inc.	)	AAD 96-35
	)	CC Docket No. 96-45
and	)	
	)	
Alenco Communications, Inc.	)	AAD 95-139
	)	CC Docket No. 96-45
and	)	
	)	
Alpine Communications, L.C.,	)	
Arapahoe Telephone Company,	)	
Great Plains Communications, Inc.,	)	CC Docket No. 96-45
Kennebec Telephone Company, Inc.,	)	
The Nebraska Central Telephone Company, and	)	
Western Telephone Company	)	
	)	
and	)	
	)	
Brazos Telecommunications, Inc. and	)	AAD 94-112
Brazos Telephone Cooperative, Inc.	)	CC Docket No. 96-45
	)	
and	)	
	)	
Cap Rock Telephone Cooperative, Inc.	)	AAD 95-139
	)	CC Docket No. 96-45
and	)	
	)	
Cass County Telephone Company	)	AAD 95-62
	)	CC Docket No. 96-45
and	)	
	)	
Central Texas Telephone Cooperative, Inc.	)	AAD 95-139

**Federal Communications Commission**

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	)	CC Docket No. 96-45
and	)	
	)	
Champlain Valley Telecom, Inc.,	)	CC Docket No. 96-45
Northland Telephone Company of Vermont and	)	AAD 95-30
Vermont Telephone Company, Inc.	)	
	)	
and	)	
	)	
Columbine Telephone Company, Inc. and	)	CC Docket No. 96-45
Silver Star Telephone Company, Inc.	)	
	)	
and	)	
	)	
Dickey Rural Telephone Cooperative,	)	
Dickey Rural Communications, Inc.,	)	
Gilby Telephone Company,	)	AAD 95-72
Griggs County Telephone Company,	)	CC Docket No. 96-45
Moore & Liberty Telephone Company,	)	
North Dakota Telephone Company,	)	
Northwest Communications Cooperative,	)	
Red River Telecom, Inc.,	)	
Turtle Mountain Communications, Inc.,	)	
United Telephone Mutual Aid Cooperative, and	)	
York Telephone Company	)	
	)	
and	)	
	)	
Ganado Telephone Co., Inc.	)	AAD 95-139
	)	CC Docket No. 96-45
and	)	
	)	
Guadalupe Valley Telephone Cooperative, Inc.	)	AAD 95-139
	)	CC Docket No. 96-45
and	)	
	)	
Interstate Telecommunications Cooperative, Inc. and	)	
Interstate Telephone Company, Inc.,	)	
Hanson Communications, Inc.,	)	CC Docket No. 96-45
Fort Randall Telephone Company, and	)	
Mt. Rushmore Telephone Company,	)	
Midstate Telephone Company and	)	
Heartland Communications, Inc.,	)	
Mobridge Telecommunications Company,	)	
Hanson County Telephone, Inc. and	)	
Hanson Communications, Inc. dba McCook Telecom,	)	
Splitrock Telecom Cooperative, Inc. and	)	
Splitrock Properties, Inc.	)	
	)	

Federal Communications Commission

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and )  
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Lincolnton Telephone Company and ) AAD 96-70  
Tidewater Telecom, Inc. ) CC Docket No. 96-45  
)  
and )  
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Maine Telephone Company, )  
Northland Telephone Company of Maine, Inc., ) CC Docket No. 96-45  
Sidney Telephone Company, and )  
Standish Telephone Company )  
)  
and )  
)  
Mid-Maine Telecom, Inc. ) AAD 96-70  
) CC Docket No. 96-45  
and )  
)  
Oregon-Idaho Utilities, Inc. ) AAD 93-20  
) CC Docket No. 96-45  
and )  
)  
Ozark Telephone Company ) AAD 95-62  
) CC Docket No. 96-45  
and )  
)  
Peoples Telephone Cooperative, Inc. ) AAD 95-139  
) CC Docket No. 96-45  
and )  
)  
Pioneer Telephone Cooperative, Inc. ) AAD 94-108  
) CC Docket No. 96-45  
and )  
)  
Roosevelt County Rural Telephone Cooperative, Inc. ) AAD 95-82  
) CC Docket No. 96-45  
and )  
)  
San Carlos Apache Telecommunications Utility, Inc. ) AAD 96-52  
) CC Docket No. 96-45  
and )  
)  
Santa Rosa Telephone Cooperative, Inc. ) AAD 94-111  
) CC Docket No. 96-45  
and )  
)  
Sunflower Telephone Company, Inc. and )  
Bluestem Telephone Company, )  
S&T Telephone Cooperative Association, Inc. and ) CC Docket No. 96-45

**Federal Communications Commission**

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S&T Communications of Dighton, Inc.,	)	
Golden Belt Telephone Association, Inc.,	)	
Northeast Missouri Rural Telephone Company and	)	
Modern Telecommunications Company	)	
	)	
and	)	
	)	
West River Cooperative Telephone Company and	)	AAD 95-124
State Line Telecommunications, Inc.	)	CC Docket No. 96-45
	)	
and	)	
	)	
Winnebago Cooperative Telephone Association	)	AAD 94-95
	)	CC Docket No. 96-45

**ORDER**

**Adopted:** August 3, 2000

**Released:** August 4, 2000

By the Deputy Chief, Common Carrier Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the requests of the above-captioned telephone companies (collectively, petitioners) for the removal of all remaining individual caps on high-cost loop support imposed in the past as part of the grant of study area waivers.<sup>1</sup> We remove these caps effective January 1, 2000. We deny petitioners' requests to remove individual caps on high-cost loop support prior to January 1, 2000. This action is consistent with the Common Carrier Bureau's (Bureau's) *September 9, 1999 Order* lifting nine individual caps on high-cost loop support.<sup>2</sup>

**II. BACKGROUND**

**A. Commission Precedent**

2. A study area is a geographic portion of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state, and incumbent LECs operating in a single state typically have a single study area. Study area boundaries are important because incumbent LECs perform jurisdictional separations, determine high-

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<sup>1</sup> A complete list of the above-captioned petitions is attached hereto as Appendix 1.

<sup>2</sup> *Petitions for Waiver and Reconsideration Concerning Section 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.*, AAD Nos. 93-93, 95-30, 95-72, 97-21, 97-23, 07-117, 98-44, 98-53, Memorandum Opinion and Order, DA 99-1845 (Com. Car. Bur. Sept. 9, 1999) (*September 9, 1999 Order*).

cost loop support,<sup>3</sup> and generally tariff their rates at the study area level.

3. Effective November 15, 1984, the Commission froze all study area boundaries.<sup>4</sup> An incumbent LEC must apply to the Commission for a waiver of the frozen study area rule if it wishes to sell or purchase an exchange and if that transaction would change the study area boundaries of either the seller or the buyer.<sup>5</sup> The purpose of the freeze was to ensure that any Commission policies developed in reliance on the number and size of existing study areas were not significantly undercut by study area boundary changes.<sup>6</sup> For instance, high-cost loop support is based on the level of study-area-wide average loop costs, in effect requiring low-cost regions within a study area to support high-cost regions within that study area. The study area freeze was implemented, in part, to help ensure that incumbent LECs did not undermine this decision by setting up high-cost exchanges as separate study areas within their existing service territories to increase interstate cost allocations, and therefore their high-cost loop support.<sup>7</sup>

4. Consistent with the reasons for the 1984 study area freeze described above, the Commission has been concerned about the potential adverse impact of study area waivers on the high-cost loop support mechanism.<sup>8</sup> When a low average-cost carrier sells a high-cost exchange, the acquiring carrier could substantially increase its high-cost loop support by including the new exchange in its study area, without any reduction in the low-cost carrier's support.<sup>9</sup> This concern was heightened in the early 1990's when large, low-cost, incumbent LECs began to sell substantial numbers of high-cost exchanges to smaller, mostly rural, incumbent LECs. In the absence of individual caps on high-cost loop support, the Bureau found that, even in a period of a few years, payments from the high-cost loop support

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<sup>3</sup> Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost. See 47 C.F.R. §§ 36.601-36.631.

<sup>4</sup> 47 C.F.R. Part 36 app. (defining "study area"). 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, Recommended Decision and Order, 49 Fed. Reg. 48325, 48337 (1984) (*1984 Joint Board Recommended Decision*); Decision and Order, 50 Fed. Reg. 939 (1985) (*1985 Order Adopting Recommendation*); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990) (*Study Area NPRM*).

<sup>5</sup> See 47 C.F.R. § 1.3; Part 36 app.

<sup>6</sup> See *1984 Joint Board Recommended Decision* at 48337-38; see also *Study Area NPRM* at 5975.

<sup>7</sup> *Id.*

<sup>8</sup> See *US West Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774 (1995) (*Eagle Telecommunications 1995 Study Area Waiver*) (citing *Nevada Bell and Oregon-Idaho Utilities, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 93-20, Memorandum Opinion and Order, 9 FCC Rcd 5236, 5238 (Com. Car. Bur. 1994) (*Oregon-Idaho Utilities Study Area Waiver*)).

<sup>9</sup> The selling carrier's support might not be reduced, for instance, because it may not have been receiving any form of high-cost support. Because high-cost loop support is based on costs averaged throughout a study area, a carrier could be low-cost for a particular study area where it is operating several low-cost exchanges and a few high-cost exchanges.

mechanism for some incumbent LECs rose by unexpected amounts.<sup>10</sup>

5. Partially in response to these events, the Commission adopted the Joint Board's recommendation for an overall indexed cap on high-cost loop support.<sup>11</sup> Moreover, consistent with the intent of the overall cap on high-cost loop support, the Bureau also began imposing caps on the high-cost loop support drawn by incumbent LECs acquiring exchanges from other incumbent LECs.<sup>12</sup> Specifically, study area waivers were granted subject to the condition that, absent explicit approval from the Bureau, the high-cost loop support provided to an acquiring carrier's study area could not exceed the amounts specified in the carrier's waiver petition.<sup>13</sup> The Bureau also began analyzing the impact of the proposed transaction on the distribution of high-cost loop support.<sup>14</sup> These steps were implemented in

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<sup>10</sup> See *Delta Telephone Co., Inc., Petition for Waiver of the Definition of "Study Area" in Part 36 Appendix-Glossary of the Commission Rules*, AAD 90-20, Memorandum Opinion and Order, 5 FCC Rcd 7100 (Com. Car. Bur. 1990) (high-cost loop support payments grew from \$82,500 in 1991 to \$445,700 in 1993); *US WEST and Gila River Telecomm., Inc., Petition for Waiver of the Definition of "Study Area" in Part 36 Appendix-Glossary of the Commission's Rules*, AAD 91-2, Memorandum Opinion and Order, 7 FCC Rcd 2161 (Com. Car. Bur. 1992) (Gila River estimated 1992 high-cost loop support would be \$169,155, yet actual 1992 payment was \$390,993, and the 1995 payment was approximately \$750,000).

<sup>11</sup> The Joint Board recommended, and the Commission adopted, interim rules that limit the rate of growth of the high-cost loop support mechanism to the rate of growth in the total number of working loops nationwide. See generally *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Recommended Decision, 9 FCC Rcd 334 (1993); *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993). The Commission extended these interim rules through July 1, 1996. *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 11 FCC Rcd 2538 (1995), summarized in 60 Fed. Reg. 65011 (1995). The Joint Board recommended, and the Commission adopted, an extension of the interim cap until final universal service rules become effective. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 11 FCC Rcd 7928 (1996); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 11 FCC Rcd 7920 (1996).

<sup>12</sup> See, e.g., *Oregon-Idaho Utilities Study Area Waiver*, 9 FCC Rcd at 5238; *US West Communications, Inc. and Wiggins Telephone Association, Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 92-70, Memorandum Opinion and Order, 8 FCC Rcd 6229, 6230 (Com. Car. Bur. 1993).

<sup>13</sup> Carriers that submitted petitions for study area waivers were required to submit an estimate of the amount of support they would be eligible to receive from the high-cost loop support mechanism following the completion of necessary and planned upgrades in the new study area. The carrier's own estimate was then used to establish a cap, limiting the carrier's draw from the high-cost loop support mechanism.

<sup>14</sup> Because of the operation of the indexed cap, any study area reconfiguration that increased the high-cost loop support of one recipient often reduced that of other recipients. In evaluating whether a study area change would have an adverse impact on the distribution or level of the high-cost loop support fund, the Commission determined that a "one-percent" guideline should be applied to study area waivers filed after January 5, 1995. Under this guideline, no study area waiver was granted if it resulted in an annual aggregate shift in high-cost loop support in an amount equal to or greater than one percent of the total high-cost loop support fund, unless the parties demonstrated an extraordinary public interest benefit. To prevent carriers from evading this limitation by disaggregating a single large sale of exchanges into a series of smaller transactions that in the aggregate have the same effect on the high-cost loop support fund, the Commission further required that the "one-percent" guideline be applied to all exchange transfers where either carrier was a party as a purchaser or seller and where a study area waiver request was submitted and granted within the previous twelve months. See *Eagle Telecommunications* (continued....)

order to prevent carriers from: (1) underestimating the effects the waiver may have on the high-cost loop support mechanism in order to increase the chances that the waiver would be granted; and (2) then revising the cost figures upward, once the waiver was granted, thereby substantially increasing their share of the high-cost loop support from the capped high-cost universal service fund.

6. In 1997 and 1998, nine rural carriers submitted requests to the Commission for removal of the individual caps on their high-cost loop support.<sup>15</sup> On September 9, 1999, the Bureau removed the individual caps for those nine companies, effective January 1, 2000, concluding that it was not necessary to accomplish the policies outlined above or in the public interest to limit, in perpetuity, the petitioners to the high-cost loop support estimated in their original study area waiver petitions.<sup>16</sup> The Bureau noted that, during the period the individual caps on the carriers' high-cost loop support were in place, the caps had 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.<sup>17</sup> The Bureau also concluded that lifting the caps on those petitioners' high-cost loop support may increase their incentive and ability to extend service to previously unserved areas and upgrade their networks. The Bureau, therefore, concluded that individual caps placed on those petitioners' high-cost loop support

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*1995 Study Area Waiver*, 10 FCC Rcd at 1774; *US West Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Petition for Waiver of Section 61.41(c) of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

<sup>15</sup> See Copper Valley Telephone, Inc., Midvale Telephone Exchange, Table Top Telephone Company, and US West Communications, Inc., Petition for Reconsideration, AAD 93-93 (March 23, 1995) and Copper Valley Telephone, Inc., Amended Petition for Clarification and/or Reconsideration, AAD 93-93 (May 21, 1999); BEK Communications I, Inc., CTC Communications, Inc., Dakota Central Telecom I, Inc., and West River Communications, Inc., Petition for Reconsideration, AAD 95-72 (May 19, 1995); Champlain Valley Telecom, Inc., and Northland Telephone Company of Vermont, Petitions for Reconsideration, AAD 95-30 (July 15, 1996); Table Top Telephone Company, Petition for Waiver, AAD 97-21 (December 23, 1996); and Midvale Telephone Exchange, Petition for Waiver, AAD 97-23 (January 16, 1997); BEK Communications I, Inc.; CTC Communications, Inc.; Dakota Central Telecom I, Inc.; Dickey Rural Communications, Inc.; Dickey Rural Telephone Cooperative; Gilby Telephone Company; Griggs County Telephone Company; Inter-Community Telephone Company II, Inc.; Moore & Liberty Telephone Company; Northwest Communications Cooperative; Red River Telecom, Inc.; RTC II, Inc.; Turtle Mountain Communications, Inc.; US West Communications, Inc.; United Telephone Mutual Aid Cooperative; West River Communications, Inc.; and York Telephone Company, Expedited Request for Elimination or Modification of Waiver Conditions, AAD 97-117 (December 22, 1997); Tularosa Basin Telephone Company, Expedited Request for Elimination or Modification of Waiver Conditions, AAD 98-44 (February 27, 1998); Sanborn Telephone Cooperative; Sancom, Inc.; Stockholm-Strandburg Telephone Company; Sully Buttes Telephone Cooperative, Inc.; Valley Cable & Satellite Communications, Inc.; Valley Telecommunications Cooperative Association, Inc.; and Venture Communications, Inc., Conditional Request to Raise Universal Service Caps, AAD 98-48 (March 27, 1998); Albion Telephone Company; BPS Telephone Company, Inc.; Cambridge Telephone Co., Inc.; Fremont Telecom; Leaco Rural Telephone Cooperative, Inc.; Midvale Telephone Exchange, Inc.; Rockland Telephone Company, Inc.; South Central Communications, Inc.; Table Top Telephone Co., Inc.; Tularosa Basin Telephone Company, Inc.; United Utilities, Inc.; and West River Telephone Cooperative, Inc., Petition for Expected Elimination or Modification of Waiver Conditions, AAD 98-53 (April 3, 1998).

<sup>16</sup> *September 9, 1999 Order* at para. 10.

<sup>17</sup> *Id.*

imposed as part of the grant of study area waivers should be removed, effective January 1, 2000.<sup>18</sup>

**B. Petitions**

7. In October and November 1999, 40 additional rural carriers filed 27 separate petitions requesting the same relief that the nine rural companies received in the *September 9, 1999 Order*, and asking for removal of their individual high-cost loop support caps effective January 1, 2000.<sup>19</sup> Several petitioners also suggest that the Commission, on its own motion, should remove all remaining individual caps on high-cost loop support imposed as part of the Bureau's approval of study area waivers.<sup>20</sup> On January 24, 2000, the Bureau released a public notice soliciting comments on the petitioners' requests.<sup>21</sup> Several parties filed comments in support of the petitioners' requests.<sup>22</sup>

8. Interstate, its co-petitioners, and the Western Telephone Company (Western) also have requested the removal of the individual caps on their high-cost loop support, effective January 1, 1998.<sup>23</sup> In addition, Vermont Telephone Company, Inc. (Vtel), has requested that the Commission provide it with increased high-cost loop support for 1999.<sup>24</sup> JSI supports Vtel's request.<sup>25</sup>

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<sup>18</sup> *Id*

<sup>19</sup> See, e.g., Brazos Petition at 2; Central Texas Petition at 1; Dickey Petition at 2; Guadalupe Valley Petition at 1; Lincolnville Petition at 1-2; Mid-Maine Petition at 1; Oregon-Idaho Petition at 1; Ozark Petition at 1; Pioneer Petition at 2; Peoples Petition at 1; San Carlos Petition at 1; Santa Rosa Petition at 1-2; West River Petition at 1-2; Winnebago Petition at 1-2. Petitioners also request that, to the extent the Commission does not grant the petitions before January 1, 2000, the Commission should make the order effective from January 1, 2000. See, e.g., Accent Petition at 10-11; Alpine Petition at 10-11; Columbine Petition at 8-9; Ex Parte Presentation of Accent Communications, Inc., et al., CC Docket No. 96-45 (April 11, 2000); Interstate Petition at 12-13; Sunflower Petition at 7.

<sup>20</sup> See, e.g., Alenco Petition at 2; Accipiter Petition at 2; Brazos Petition at 2; Cap Rock Petition at 2; Cass Petition at 2; Central Texas Petition at 2; Dickey Petition at 2; Ganado Petition at 2; Mid-Maine Petition at 2; Pioneer Petition at 2; Roosevelt Petition at 2. Oregon-Idaho requests that the Commission lift all remaining high-cost loop support caps that have been in effect for three or more years. See Oregon-Idaho Petition at 2.

<sup>21</sup> *Rural Telephone Companies Seek Removal of Individual Caps Placed on High Cost Loop Support*, Public Notice, DA 00-121 (rel. Jan. 24, 2000).

<sup>22</sup> See CenturyTel, Inc. Comments at 3; GVNW Consulting, Inc. Comments at 1; John Staurulakis, Inc. (JSI) Comments at 2; National Exchange Carrier Association, Inc. (NECA) Comments at 1; National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) Comments at 6; National Telephone Cooperative Association (NTCA) Comments at 3; TelAlaska, Inc. (TelAlaska) Comments at 1; Rural Telephone Companies Reply Comments at 2-3.

<sup>23</sup> See Interstate Petition at 10-11; Alpine Petition at 9-10.

<sup>24</sup> Champlain Valley Telephone, Inc., Northland Telephone Company of Vermont and Vermont Telephone Company, Amendment to Expedited Request for Modification of Waiver Conditions, CC Docket No. 96-45 (filed Oct. 12, 1999).

<sup>25</sup> JSI Comments at 5.

### III. DISCUSSION

9. Consistent with the *September 9, 1999 Order*, we remove the individual caps on petitioners' high-cost loop support imposed as part of the Bureau's grant of study area waivers. We agree with petitioners that limiting the petitioners to the high-cost loop support estimated in their original study area waiver petitions, in perpetuity, is not necessary to accomplish the policies outlined above.<sup>26</sup> We note that the caps imposed on petitioners' high-cost loop support have been in effect for over three years. 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. We concur with petitioners that their cost estimates for upgrading the acquired exchanges, although reasonable at that time, may no longer reflect the costs that they are now incurring.<sup>27</sup> We, therefore, conclude that limiting the duration of these caps is appropriate at this time.

10. We also grant petitioners' request that we remove the individual caps on high-cost loop support imposed as part of the grant of study area waivers effective as of January 1, 2000. Our decision to remove the caps effective January 1, 2000 will ensure that the petitioners are treated the same as the carriers that had their individual caps removed in the *September 9, 1999 Order*. In the *September 9, 1999 Order*, the Bureau removed individual high-cost loop support caps effective January 1, 2000.

11. For the reasons discussed above, we also agree that the individual caps on high-cost loop support, imposed as a condition of study area waivers, should be removed for all carriers. There are 15 carriers that currently are subject to high-cost loop support caps and have not filed petitions for removal of their caps.<sup>28</sup> Similar to the caps imposed on the petitioners, the individual high-cost loop support caps for these remaining carriers have been in place for at least three years. In light of the decision to remove individual high-cost loop support caps for the petitioners, we expect that these other carriers also may request the removal of the individual caps on their high-cost loop support. We note that the petitions filed thus far present substantially similar facts and requested relief and we would anticipate similar claims from the remaining affected carriers in the future. Therefore, on our own motion, we remove all remaining individual caps on high-cost loop support imposed as part of the grant of study area waivers, effective as of January 1, 2000.

12. Consistent with the Bureau's decision in the *September 9, 1999 Order* to remove individual caps on high-cost loop support effective January 1, 2000, we deny the request of Interstate, its co-petitioners, and Western to remove their individual caps for calendar years 1998 and 1999. In the *September 9, 1999 Order*, the Bureau removed the petitioners' individual caps on high-cost loop support effective January 1, 2000 and refused to remove the petitioners' individual caps on high-cost loop

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<sup>26</sup> See, e.g., Accipiter Petition at 4; Brazos Petition at 4; Cap Rock Petition at 4; Cass Petition at 4; Central Texas Petition at 4; Dickey Petition at 5; Ganado Petition at 4; Guadalupe Valley Petition at 4; Mid-Maine Petition at 4; Pioneer Petition at 4; Roosevelt Petition at 4.

<sup>27</sup> See, e.g., Accipiter Petition at 5; Brazos Petition at 4-5; Cap Rock Petition at 5; Cass Petition at 4-5; Central Texas Petition at 5; Dickey Petition at 5-6; Ganado Petition at 5; Guadalupe Valley Petition at 5; Mid-Maine Petition at 5; Oregon-Idaho Petition at 6; Pioneer Petition at 5; Roosevelt Petition at 4-5.

<sup>28</sup> See National Exchange Carrier Association Universal Service Fund 1999 Submission of 1998 Study Results, filed October 1, 1999.

support for prior periods.<sup>29</sup> Likewise, in this Order, we remove, effective January 1, 2000, all remaining individual caps on high-cost loop support associated with the grant of study area waivers. We recognize that high-cost loop support directed to average schedule companies is based on an average schedule formula, rather than reported costs; however, we do not agree with Interstate, its co-petitioners, and Western that we should remove their individual high-cost loop support caps, effective January 1, 1998, simply because certain other average schedule companies have been permitted to receive uncapped high-cost loop support.<sup>30</sup> We find that the capping of these average schedule companies' high-cost loop support was appropriate notwithstanding the fact that other average schedule companies received uncapped high-cost loop support. For example, we believe that the cap on Interstate's high-cost loop support served its purpose by preventing high-cost loop support to increase by unexpected amounts immediately following the approval of Interstate's study area waiver. In its original petition for a study area waiver, Interstate stated that it would receive no high-cost loop support subsequent to the approval of the study area waiver.<sup>31</sup> The Bureau relied upon Interstate's claim and granted the waiver, in part, because there would be no adverse impact on the universal service fund.<sup>32</sup> We emphasize that the Bureau set Interstate's high-cost loop support cap at zero based on Interstate's own estimate. We note, however, that in 1998 and 1999 Interstate would have received approximately \$326,651 and \$336,177, respectively, in high-cost loop support had individual caps on its high-cost loop support not been in place.<sup>33</sup> Therefore, if the Bureau had not imposed a cap on Interstate's high-cost loop support, support levels would have increased to unexpected amounts.

13. We also note that Interstate, its co-petitioners, and Western have not presented any evidence that they have been significantly disadvantaged (financially or otherwise) by the Commission's imposition of caps on their high-cost loop support in 1998 and 1999. We do agree with Interstate, its-co-petitioners, and Western that the Commission typically treats similarly situated parties alike.<sup>34</sup>

<sup>29</sup> See *September 9, 1999 Order* at paras. 11, 14.

<sup>30</sup> See *Alpine Petition* at 10; *Interstate Petition* at 12. Average schedule companies are those incumbent LECs that receive compensation for use of their interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies. See 47 C.F.R. § 69.606(a). Average schedule companies are able to avoid the administrative burden of performing interstate cost studies. Section 69.605(c) of the Commission's rules provides, in pertinent part, that "a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed an average schedule company." 47 C.F.R. § 69.605.

<sup>31</sup> See *Accent Communications, Inc. et al., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix Glossary, and Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c) of the Commission's Rules*, AAD 95-124, at 33-34 (filed Aug. 14, 1995).

<sup>32</sup> See *Accent Communications, Inc. et al., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix Glossary, and Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c) of the Commission's Rules*, AAD 95-124, Memorandum Opinion and Order, 11 FCC Rcd 11513, 11518-21 (1996).

<sup>33</sup> See *Universal Service Fund 1999 Submission of 1998 Study Results by the National Exchange Carrier Association, Inc.* (filed Oct. 1, 1999).

<sup>34</sup> See *Alpine Petition* at 10; *Interstate Petition* at 12. Interstate, its co-petitioners and Western argue that they are similarly situated to the parties recently relieved of individual caps on high-cost loop support associated with the grant of study area waivers. See *Alpine Petition* at 5; *Interstate Petition* at 9 (citing, e.g., *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 adequate justification for disparate treatment"))).

Consistent with this policy, we believe that granting Interstate, its co-petitioners, and Western uncapped high-cost loop support for 1998 and 1999 would grant them an unfair advantage over all carriers that also were subject to caps on their high-cost loop support during this period. We, therefore, do not believe that granting Interstate, its co-petitioners, and Western the additional relief for 1998 and 1999 would be in the public interest.

14. We also reject Vtel's request for increased high-cost loop support for 1999. We do not agree with Vtel that it should receive increased high-cost loop support for 1999 because "initial estimates have proven inaccurate."<sup>35</sup> It was Vtel and its co-petitioners that provided the Bureau with an estimate of their high-cost loop support when they sought a study area waiver.<sup>36</sup> The Bureau traditionally has relied upon such estimates in granting study area waivers.<sup>37</sup> As the Bureau stated in the order granting a study area waiver to Vtel and its co-petitioners, the very reason for imposing individual caps on high-cost loop support was because high-cost loop support estimates may later prove inaccurate and result in unexpected increases in high-cost loop support payments.<sup>38</sup> Therefore, it was incumbent on Vtel and its co-petitioners to conduct due diligence and investigation in order to accurately estimate their high-cost loop support needs prior to acquiring the exchanges.<sup>39</sup> We, therefore, deny Vtel's request for increased support for 1999.

15. For the reasons stated above, we grant the petitioners' requests to lift the individual caps placed on their high-cost loop support imposed as part of the grant of study area waivers, effective from January 1, 2000.<sup>40</sup> We also grant the petitioners' request that we remove all remaining individual caps on high-cost loop support. We deny the additional relief requested by Interstate and its co-petitioners,

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<sup>35</sup> Champlain Valley Telephone, Inc., Northland Telephone Company of Vermont and Vermont Telephone Company, Expedited Request for Modification of Waiver Conditions, AAD 95-30, at 1-2 (March 23, 1999) (*Vtel Request*). In its petition, Vtel states that its "cost per loop has increased due to upgrades made in its telecommunications infrastructure and an increase in the number of Vtel's working loops." *Id.* at 3. Vtel also states that it supplied the Commission with inaccurate cost allocation estimates used in determining caps on the high-cost loop support of Vtel, Champlain Valley Telecom, Inc. (Champlain), and Northland Telephone Company (Northland). *Id.*

<sup>36</sup> *Champlain Valley Telecom, Inc., Northland Telephone Company of Vermont, and Vermont Telephone Company, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 95-30, Memorandum Opinion and Order, 11 FCC Rcd 7111, 7115, 7119 (Acc. & Aud. Div. 1996) (*Vermont Study Area Waiver*) (citing Joint Petition at Exhibit 2). Vtel, Champlain, and Northland estimated that their required annual high-cost loop support would be \$1,045,558, \$1,819,419, and \$547,800, respectively. *Id.* at 7115 n. 21.

<sup>37</sup> Vtel itself concedes that the Bureau relied on estimates provided by Vtel, Champlain and Northland in establishing their capped high-cost loop support amounts. *Vtel Request* at 2.

<sup>38</sup> *Vermont Study Area Waiver* at 7119.

<sup>39</sup> See, e.g., *September 9, 1999 Order* at para. 14.

<sup>40</sup> We do not address certain commenters' request that the Commission lift the overall cap on the high-cost support fund. See Montana Telecommunications Association (MTA) Comments at 3; NRTA/Opastco Comments at 6; NTCA Comments at 4. The removal of the overall cap on the high-cost support fund is outside the scope of the petitioners' request for removal of individual caps on high-cost loop support. See *First Report and Order* at 8889, 8917-8918.

Western, and Vtel.

**IV. ORDERING CLAUSES**

16. Accordingly, IT IS ORDERED, pursuant to sections 4, 5, 201, 202, 219-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, 201, 202, 219-220, 254, and sections 1.3, 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91, and 0.291, that the petitioners' requests for removal of individual caps on high-cost loop support imposed as part of the grant of study area waivers ARE GRANTED, as described herein.

17. IT IS FURTHER ORDERED, pursuant to sections 4, 5, 201, 202, 219-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, 201, 202, 219-220, 254, and sections 1.3, 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91, and 0.291, that all remaining individual caps on high-cost loop support imposed as part of the grant of study area waivers ARE HEREBY REMOVED, as described herein.

18. IT IS FURTHER ORDERED, pursuant to sections 4, 5, 201, 202, 219-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, 201, 202, 219-220, 254, and sections 1.3, 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91, and 0.291, that the requests of Interstate Telecommunications Cooperative, Inc., its co-petitioners, and Western Telephone Company for uncapped high-cost loop support for 1998 and 1999 ARE DENIED.

19. IT IS FURTHER ORDERED, pursuant to sections 4, 5, 201, 202, 219-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, 201, 202, 219-220, 254, and sections 1.3, 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91, and 0.291, that the request of Vermont Telephone Company, Inc. for increased high-cost loop support for 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey, Deputy Chief  
Common Carrier Bureau

APPENDIX 1

List of Petitions

Accent Communications, Inc., Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company, James Valley Cooperative Telephone Company, RC Communications, Inc., Roberts County Telephone Cooperative Association, Request to Remove Universal Service Caps, CC Docket No. 96-45 (October 25, 1999) (Accent Petition)

Accipiter Communications, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 96-35, CC Docket No. 96-45 (November 3, 1999) (Accipiter Petition)

Alenco Communications, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45 (October 15, 1999) (Alenco Petition)

Alpine Communications, L.C., Arapahoe Telephone Company, Great Plains Communications, Inc., Kennebec Telephone Company, Inc., The Nebraska Central Telephone Company, and Western Telephone Company, Request to Remove Universal Service Caps, CC Docket No. 96-45 (October 25, 1999) (Alpine Petition)

Brazos Telecommunications, Inc. and Brazos Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 94-112, CC Docket No. 96-45, (November 5, 1999) (Brazos Petition)

Cap Rock Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45 (October 22, 1999) (Cap Rock Petition)

Cass County Telephone Company, Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-62, CC Docket No. 96-45 (November 22, 1999) (Cass Petition)

Central Texas Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45 (October 12, 1999) (Central Texas Petition)

Columbine Telephone Company, Inc. and Silver Star Telephone Company, Inc., Request to Remove Universal Service Caps, CC Docket No. 96-45 (October 22, 1999) (Columbine Petition)

Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc., Gilby Telephone Company, Griggs County Telephone Company, Moore & Liberty Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Red River Telecom, Inc., Turtle Mountain Communications, Inc., United Telephone Mutual Aid Cooperative, and York Telephone Company, Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-72, CC Docket No. 96-45 (November 5, 1999) (Gilby Petition)

Ganado Telephone Co., Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45, (October 26, 1999) (Ganado Petition)

Guadalupe Valley Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45 (October 7, 1999) (Guadalupe Petition)

**Federal Communications Commission**

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Interstate Telecommunications Cooperative, Inc. and Interstate Telephone Company, Inc., Hanson Communications, Inc., Fort Randall Telephone Company, and Mt. Rushmore Telephone Company, Midstate Telephone Company and Heartland Communications, Inc., Mobridge Telecommunications Company, Hanson County Telephone, Inc. and Hanson Communications, Inc. dba McCook Telecom, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc., Petition for Removal of Individual Caps on High Cost Loop Support, CC Docket No. 96-45 (November 17, 1999) (Interstate Petition)

Lincolnvile Telephone Company and Tidewater Telecom, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 96-70, CC Docket No. 96-45 (November 2, 1999) (Lincolnvile Petition)

Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, Request to Remove Universal Service Caps, CC Docket No. 96-45 (October 28, 1999) (Maine Telephone Petition)

Mid-Maine Telecom, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 96-70, CC Docket No. 96-45 (October 8, 1999) (Mid-Maine Petition)

Oregon-Idaho Utilities, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 93-20, CC Docket No. 96-45 (October 7, 1999) (Oregon-Idaho Petition)

Ozark Telephone Company, Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-62, CC Docket No. 96-45 (November 1, 1999) (Ozark Petition)

Peoples Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-139, CC Docket No. 96-45 (October 26, 1999) (Peoples Petition)

Pioneer Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 94-108, CC Docket No. 96-45 (November 5, 1999) (Pioneer Petition)

Roosevelt County Rural Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-82, CC Docket No. 96-45 (November 1, 1999) (Roosevelt Petition)

San Carlos Apache Telecommunications Utility, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 96-52, CC Docket No. 96-45 (October 20, 1999) (San Carlos Petition)

Santa Rosa Telephone Cooperative, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 94-111, CC Docket No. 96-45 (November 5, 1999) (Santa Rosa Petition)

Sunflower Telephone Company, Inc. and Bluestem Telephone Company, S&T Telephone Cooperative Association, Inc. and S&T Communications of Dighton, Inc., Golden Belt Telephone Association, Inc., Northeast Missouri Rural Telephone Company and Modern Telecommunications Company, Petition for Removal of Individual Caps on High Cost Loop Support, CC Docket No. 96-45 (November 4, 1999) (Sunflower Petition)

**Federal Communications Commission**

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West River Cooperative Telephone Company and State Line Telecommunications, Inc., Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 95-124, CC Docket No. 96-45 (November 12, 1999) (West River Petition)

Winnebago Cooperative Telephone Association, Request for Removal of Waiver Condition Consistent with Commission Policy, AAD 94-95, CC Docket No. 96-45 (October 25, 1999) (Winnebago Petition)