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FEDERAL COMMUNICATIONS COMMISSION

REMITTANCE ADVICE

PAGE NO. 1 OF 1

APPROVED BY OMB 3060-0589

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SECTION A - PAYER INFORMATION

(2) PAYER NAME(if paying by credit card, enter name exactly as it appears on your card): Qwest Corporation

(3) TOTAL AMOUNT PAID (dollars and cents): $ 6,220.00

(4) STREET ADDRESS LINE NO. 1: Suite 700

(5) STREET ADDRESS LINE NO. 2: 1020 19th Street, N.W.

(6) CITY: Washington

(7) STATE: DC

(8) ZIP CODE: 20036

(9) DAYTIME TELEPHONE NUMBER (Include area code): 303-672-2811

(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME(if paying by credit card, enter name exactly as it appears on your card)

(12) STREET ADDRESS LINE NO. 1

(13) STREET ADDRESS LINE NO. 2

(14) CITY

(15) STATE

(16) ZIP CODE

(17) DAYTIME TELEPHONE NUMBER (Include area code)

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SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21A) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK 20A	FCC USE ONLY
	B E A		$	

(23A) FCC CODE 1	(24A) FCC CODE 2

(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	FCC USE ONLY
			$	

(23B) FCC CODE 1	(24B) FCC CODE 2

(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	FCC USE ONLY
			$	

(23C) FCC CODE 1	(24C) FCC CODE 2

(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK 20D	FCC USE ONLY
			$	

(23D) FCC CODE 1	(24D) FCC CODE 2

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN: 0 8 4 0 2 7 3 8 0 0

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2) APPLICANT TIN

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT

I, Kristi Jones (PRINT NAME), Certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, infomation and belief. SIGNATURE Kristi Jones

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28) MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION DATE: MONTH YEAR

☐ MASTERCARD

☐ VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization(s) herein described. →

AUTHORIZED SIGNATURE

DATE

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FCC FORM 159 JULY 1997 (REVISED)

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(15) STATE:

(16) ZIP CODE:

(17) DAYTIME TELEPHONE NUMBER (Include area code):

(18) COUNTRY CODE (if not in U.S.A.):

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	B E A		$	

(23A) FCC CODE 1:

(24A) FCC CODE 2:

(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	FCC USE ONLY
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(23B) FCC CODE 1:

(24B) FCC CODE 2:

(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	FCC USE ONLY
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(23C) FCC CODE 1:

(24C) FCC CODE 2:

(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK 20D	FCC USE ONLY
			$	

(23D) FCC CODE 1:

(24D) FCC CODE 2:

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN: 0 8 4 0 2 7 3 8 0 0

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2) APPLICANT TIN:

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT

I, Kristi Jones (PRINT NAME), Certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, infomation and belief. SIGNATURE Kristi Jones

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28)

☐ MASTERCARD — MASTERCARD/VISA ACCOUNT NUMBER: — EXPIRATION DATE: MONTH YEAR

☐ VISA — I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization(s) herein described. → AUTHORIZED SIGNATURE — DATE

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Qwest

Qwest Services Corporation
198 Inverness Dr. West
Englewood, Colorado 80112
(800) 796-6220

Bank of America, N.A.
Atlanta, Dekalb County, Georgia

5024998
CHECK NO.

64-1278
611

PAY SIX THOUSAND TWO HUNDRED TWENTY DOLLARS AND NO CENTS

VOID AFTER 180 DAYS

TO THE ORDER OF

FEDERAL COMMUNICATIONS COMM.
ACCOUNTING & AUDITS, COMMON
CARRIER PO BOX 358140
PITTSBURGH PA 15251-5140

DATE 09/19/00

CHECK AMOUNT **********6,220.00

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈5024998⑈ ⑆061112788⑆ 329 996 7135⑈

"Duplicate"

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
All West Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. and Qwest Corporation	)	
	)	
Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix--Glossary of the Commission's Rules;	)	CC Docket No. 96-45
	)	
Petition for Waiver of Section 61.41(c) and (d), 69.3(e)(11) and 69.605(c) of the Commission's Rules	)	

EXPEDITED JOINT PETITION FOR WAIVERS

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Attorney for

QWEST CORPORATION

Of Counsel,
Dan L. Poole

October 6, 2000

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APPENDIX H-1 SUMMARY OF ACCOUNTING ENTRIES

APPENDIX H-2 MAP

ATTACHMENT I STATE ORDER

SUMMARY

Qwest Corporation ("Qwest") has agreed to sell twelve of its Utah exchanges to All West Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company ("Manti"), Skyline Telecom ("Skyline") and UBET Telecom, Inc. (referred to hereinafter collectively as "Acquiring Companies"). These twelve exchanges serve approximately 35,600 access lines. By this Joint Petition for Expedited Waivers ("Petition"), Qwest seeks a waiver to delete these exchanges from its Utah study area. The Acquiring Companies are existing companies that seek a waiver to add these exchanges to their respective existing study areas. The Acquiring Companies will add these exchanges on a cost or average schedule settlement basis, which is what they currently use.

Additionally, the Acquiring Companies, with the exception of Skyline and Manti, seek a waiver of the Federal Communications Commission's ("Commission") Rule 61.41(c) so that they may be regulated under rate of return once they acquire these exchanges from Qwest. Skyline and Manti request a waiver of Section 69.605(c), if needed, so that they may continue to operate as average schedule companies with the acquired exchanges. A waiver of Section 69.3(e)(11), if necessary, and as appropriate, is also requested in order to allow the Acquiring Companies to utilize the National Exchange Carrier Association as its tariff pool administrator.

Qwest and the Acquiring Companies respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent, and the facts involved in this Petition clearly demonstrate that the public interest will be served by an expeditious grant.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
All West Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. and Qwest Corporation	)	
	)	
Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix--Glossary of the Commission's Rules;	)	CC Docket No. 96-45
	)	
Petition for Waiver of Section 61.41(c) and (d), 69.3(e)(11) and 69.605(c) of the Commission's Rules	)	

EXPEDITED JOINT PETITION FOR WAIVERS

I. INTRODUCTION

Qwest Corporation[1] ("Qwest") has agreed to sell twelve of its Utah exchanges to All West Communications, Inc. ("All West"), Carbon/Emery Telcom, Inc. ("Carbon/Emery"), Central Utah Telephone, Inc. ("Central Utah"), Hanksville Telcom, Inc. ("Hanksville"), Manti Telephone Company ("Manti"), Skyline Telecom ("Skyline") and UBET Telecom, Inc. ("UBET") (referred to hereinafter collectively as "Acquiring Companies"). These twelve exchanges serve approximately 35,600 access lines. By this Joint Petition for Expedited Waivers ("Petition"), Qwest seeks a waiver to delete these exchanges from its Utah study area. Except for Carbon/Emery, Hanksville and UBET, the Acquiring Companies are existing companies that seek a waiver to add these exchanges to their existing study areas.

[1] On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

Carbon/Emery, Hanksville and UBET are newly-formed, wholly-owned subsidiaries of existing, small local exchange companies operating in rural areas of Utah which seek to add the exchanges being acquired by the listed subsidiaries to the parents' existing study areas. The Acquiring Companies will add these exchanges on a cost or average schedule settlement basis, which is what they currently use.

Additionally, the Acquiring Companies, with the exception of Skyline and Manti, seek a waiver of the Federal Communications Commission's ("Commission") Rule 61.41(c)[2] so that they may be regulated under rate of return once they acquire these exchanges from Qwest. Skyline and Manti request a waiver of Section 69.605(c), if needed, so that they may continue to operate as average schedule companies with the acquired exchanges.

The Commission should move expeditiously to review and approve this Petition. This Petition raises no new issues of law, and the facts involved in this Petition are similar to those involved in similar waiver requests that have been recently approved.[3]

---

[2] See 47 C.F.R. § 61.41(c).

[3] See, e.g., In the Matter of Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation Joint Petition for Waiver of Definition of "Study Area" Contained in Part 36, Appendix--Glossary of the Commission's Rules; and Sully Buttes Telephone Cooperative, Inc. Petition for Waiver of Sections 61.41(c) and (d) and 69.3(e)(11) of the Commission's Rules, CC Docket No. 96-45, Order, DA 00-1894, rel. Aug. 18, 2000; In the Matter of Citizens Telecommunications Company of North Dakota and U S WEST Communications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1548, rel. July 12, 2000; In the Matter of Petition for Waivers Filed by Union Telephone Company, Inc. and U S WEST Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 1840 (1997); In the Matter of Petitions for Waivers Filed by Alpine Communications, L.C., Butler-Bremer Mutual Telephone Company, Clarksville Telephone Company, Dumont Telephone Company, Grand River Mutual Telephone Corporation, Heartland Corporation, South Central Communications., Inc., Universal Communications, Inc., and U S WEST

II. WAIVER OF THE PRICE CAP RULE'S "ALL OR NOTHING" REQUIREMENT AND "PERMANENT CHOICE" RULE IS IN THE PUBLIC INTEREST AND SHOULD BE GRANTED

The Commission's rules establish two primary regulatory regimes for the provision of interstate exchange access by local exchange carriers ("LEC") -- rate of return[4] and price caps.[5] Further, the Commission's price cap rules require that any non-average schedule company, when purchasing a price cap company or a portion of a price cap company, must then be subject to price caps.[6] Moreover, the Commission's rules require that a company, once it has elected price caps, must continue under price caps.[7] In the instant case, and in the absence of the requested waiver, the Acquiring Companies, non-average schedule companies, would be subject to interstate price cap regulation for their provision of exchange access because Qwest is currently a price cap company.[8] As demonstrated below, application of the

---

Communications, Inc. Concerning Sections 61.41(c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 2367 (1997).

[4] See generally 47 C.F.R. §§ 61.38 and 61.39.

[5] See generally 47 C.F.R. § 61.41. A third method of interstate regulation of LECs' exchange access services, "optional incentive regulation," also is provided for within the Commission's rules. See 47 C.F.R. § 61.50. However, these rules are not at issue herein.

[6] See 47 C.F.R. § 61.41(c)(2) and (3). This rule provision is also known as the "All or Nothing" rule.

[7] See 47 C.F.R. § 61.41(d). This rule provision is also known as the "Permanent Choice" rule.

[8] The Commission can take official notice of this fact as several similar petitions involving Qwest have previously been granted. See In the Matter of Petition for Waivers Filed by East Plains Telecom, Inc., Fort Randall Telephone Company, U S WEST Communications, Inc., and Vivian Telephone Company Concerning Sections 69.3(e)(11), 69.3(i)(4), and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 21525 (1997); In the Matter of Petition for Waivers Filed by Northland Telephone Company d/b/a PTI Communications, Inc. and U S WEST Communications, Inc. Concerning Sections 61.41(c)(2), 69(e)(6) and the

"All or Nothing" rule and, subsequently, the "Permanent Choice" rule to the Acquiring Companies would be inconsistent with the public interest. Accordingly, waiver of these rules, as they may be applied to the Acquiring Companies, is justified.[9]

The Commission's decision to substitute price cap regulation for rate of return regulation was based on several factors and presumptions. As a result, mandatory price cap regulation was applied only to the largest LECs in the country, and specifically made optional for smaller LECs such as the Acquiring Companies. The considerations which led the Commission to refrain from imposing price cap regulations on small, rural companies are equally applicable to this situation.

All West

All West provides local exchange and other telecommunication services within Rich, Summit and Wasatch Counties in the state of Utah serving approximately 4,100 access lines as of year end 1999 (representing .35% of the access lines in the state of Utah and approximately .0022% of the access lines nationally). Rich, Summit and Wasatch Counties comprise rural areas within the state of Utah with a population density of less than 1.8, 14 and 11.6 persons per square mile, respectively (metropolitan Salt Lake County has 1,144.2 persons per square mile). The Coalville exchange, which All West proposes to acquire, is located in Summit County.

Carbon/Emery

Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 13329 (1997).

[9] The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the "public interest." Wait Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert denied, 93 S.Ct. 461 (1972).

Carbon/Emery is a newly-formed, wholly-owned subsidiary of Emery Telephone, which as described below, provides local exchange and other telecommunications services within the state of Utah in Emery and Grand Counties. Carbon/Emery will operate the exchange that it proposes to acquire from Qwest pursuant to a certificate of convenience and necessity issued by the Public Service Commission of Utah ("Utah PSC"). Emery Telephone currently provides public telecommunications services to approximately 5,256 access lines as of the end of 1999 (representing .45% of the total access lines in the state of Utah and approximately .0029% of the access lines nationally) in portions of Emery and Grand Counties in the state of Utah. Emery and Grand counties are extremely rural and remote areas within the state of Utah with population densities of less than 2.4 and 2.5 persons per square mile (metropolitan Salt Lake County has 1,144.2 persons per square mile). The exchanges which Carbon/Emery proposes to acquire are contiguous with the service territory of Emery Telephone.

Central Utah

Central Utah provides local exchange and other telecommunications services in portions of Carbon, Sanpete, Utah and Wasatch Counties in the state of Utah and had approximately 1,587 access lines at the end of 1999 (representing .13% of the total access lines in the state of Utah and approximately .0008% of the access lines nationally). The exchange that Central Utah proposes to acquire is contiguous with its service territory. The areas served by Central Utah in Carbon, Sanpete, Utah and Wasatch Counties are extremely rural and remote areas within the state of Utah and have population densities of less than 13.5 and 11.6 persons per square mile (metropolitan Salt Lake County has 1,144.2 persons per square mile).

Hanksville

Hanksville is a wholly-owned subsidiary of Emery which, as described above, provides local exchange and other telecommunications services within the state of Utah pursuant to a certificate of convenience and necessity issued by the Utah PSC. The exchange which Hanksville proposes to acquire is located in Wayne County, Utah, and is contiguous with the service territory of its parent corporation, Emery Telephone. Wayne County is an extremely remote and rural area in the state of Utah with a population density of one person per square mile (metropolitan Salt Lake County has 1,144.2 persons per square mile).

Manti

Manti provides local exchange and other telecommunications services in a portion of Sanpete County to approximately 1,605 access lines at the end of 1999 (representing .13% of the total access lines in the state of Utah and approximately .0008% of the access lines nationally). Sanpete County is a remote, rural area in the state of Utah with a population density of 13.6 persons per square mile (metropolitan Salt Lake County has 1,144.2 persons per square mile). The exchange which Manti proposes to acquire is contiguous with its current service territory.

Skyline

Skyline provides local exchange and other telecommunications services in portions of Juab, Sanpete and Utah Counties to approximately 1,609 access lines as of the end of 1999 (representing .13% of the total access lines in the state of Utah and approximately .0008% of the access lines nationally). The exchanges which Skyline proposes to acquire are located in Tooele County, Utah. Juab, Sanpete and Tooele Counties are remote, rural areas in Utah with population densities of 2.4, 13.4 and 5.2 persons per square mile (metropolitan Salt Lake County has 1,144.2 persons per square mile).

UBET

UBET is a wholly-owned subsidiary of Uintah Basin Telecommunications Association, Inc. ("UBTA") which provides local exchange and other telecommunications services in portions of Duchesne, Uintah and Wasatch Counties to approximately 3,240 access lines as of the end of 1999 (representing .0027% of the total access lines in the state of Utah and approximately .0017% of the access lines nationally). The exchanges which UBET proposes to acquire are contiguous with the current service territory of its parent, UBTA. Duchesne, Uintah and Wasatch Counties are in remote, rural areas of Utah with population densities of 4.4, 5.6 and 11.6 persons per square mile (representing 1.37% of the total access lines in the state of Utah and approximately .0087% of the access lines nationally).

The Commission implemented price caps as an incentive to encourage efficiencies and thereby promote competitiveness within the industry. Price cap regulation, however, is applied on a mandatory basis only to the Regional Bell Operating Companies and GTE, in recognition that these companies share similarities which support price cap regulation -- geographic diversity, enormous subscriber bases, high activity levels in both regulated and nonregulated markets, and access to national markets. The Commission specifically targeted the appropriate companies to be regulated under the price cap system: "large, publicly-traded firms, that compete daily for sales of nonregulated products and services, in the financial markets, and in the labor markets."[10] Thus, the Commission's regulatory framework was premised upon its application to companies with a diverse and broad scope of operation.

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[10] In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6790-91 ¶ 33 (1990) ("Price Cap Order"); see also Order on Reconsideration, 6 FCC Rcd. 2637 (1991), aff'd sub nom., National Rural Telecom As'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

In refusing to impose price cap regulation universally upon all LECs, the Commission itself acknowledged the potential adverse effects of this regulatory structure when applied to smaller LECs. Noting that small and mid-size companies may have fewer opportunities to achieve cost savings and efficiencies, the Commission acknowledged that these companies are less viable candidates for price caps. In particular, the Commission recognized that a major component of its price cap regime, the productivity factor element, was potentially inapplicable to these types of companies.[11] The Commission concluded that "evidence accumulated in [the price cap] proceeding casts doubt on whether all carriers below the largest eight in size can reasonably attain the productivity goal required by the price cap index."[12]

Based on the Commission's policy pronouncements noted above, the Acquiring Companies are exactly the type of small, rural carrier which the Commission previously found to be an inappropriate candidate for price cap regulation. Accordingly, in balancing the benefits to be gained under price cap regulation against the costs that would be incurred by these small, rural LECs, it is clear that the public interest is better served by a grant of the instant waiver request.[13]

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[11] See Price Cap Order, 5 FCC Rcd. at 6799 ¶ 103.

[12] Id. ¶ 104.

[13] Past Commission actions have shown that the Commission is sensitive to minimizing regulatory and administrative burdens upon small LECs. See In the Matter of Regulation of Small Telephone Companies, Report and Order, 2 FCC Rcd. 3811 (1987) ("Small Company Order"), In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, 8 FCC Rcd. 4545, 4548 ¶ 21, 4556 ¶ 76, 4559-60 ¶ 96 (1993) ("Small Company Optional Incentive Order"), pets. for recon. denied, pet. for clarification granted, Order on Reconsideration, 12 FCC Rcd. 2259 (1997).

Finally, the Commission has indicated that its two primary concerns regarding price cap waivers are "cost-shifting between affiliates"[14] and "gaming the system," i.e., "building up a large rate base under rate of return regulation, then opting for price caps again and cutting its costs to an efficient level."[15] Neither situation is present here.

First, upon completion of this transaction, the Acquiring Companies will operate the to-be-acquired exchanges separate and apart from Qwest. This transaction culminated as a result of months of negotiations and is an "arms-length" transaction between competent, stand-alone organizations. No ownership, directorate or management affiliation between the Acquiring Companies and Qwest will arise from this transaction. With regard to concerns about "gaming the system," as operationally distinct entities, it is not possible for Qwest to gain any economic benefit from a grant of this requested waiver to the Acquiring Companies. Further, even assuming the possibility exists, the Commission would be in a position to investigate its

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[14] See In the Matter of U S 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 and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1775 ¶¶ 23-24 (footnote omitted) (1995) ("Eagle Decision"), aff'd on recon., Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 4664 (1997).

[15] Id. ¶ 23 (footnote omitted). A similar set of criterion also was considered by the Commission's Accounting and Audits Division. See In the Matter of US West Communications, Inc., Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Petition for Waiver of Section 61.41(c) of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 3373, 3376-77 ¶ 18 (1995) ("Copper Valley"), aff'd on recon., Memorandum Opinion and Order, DA 99-1845, rel. Sep. 9, 1999.

concerns in a subsequent proceeding because, as the Commission has previously noted, any Qwest "reacquisition would require a second study area waiver."[16]

As demonstrated herein, Qwest and the Acquiring Companies submit that the efficiencies created by the purchase and sale of the twelve Utah exchanges to the Acquiring Companies outweighs any concern over "gaming of the system." The Acquiring Companies are not affiliated with Qwest and are not within the class of carrier deemed by the Commission to be a candidate for price cap regulation. Accordingly, in that the public interest would best be served by permitting the Acquiring Companies to operate the twelve Utah exchanges under interstate rate of return regulation, the Acquiring Companies submit that a narrow waiver of the "All or Nothing" rule, and, subsequently, the "Permanent Choice" rule, is both appropriate and consistent with existing Commission policy.[17]

III. SKYLINE AND MANTI REQUEST WAIVER OF SECTION 69.605(c) SO THAT THEY MAY CONTINUE TO OPERATE AS AVERAGE SCHEDULE COMPANIES

Skyline and Manti seek to retain their average schedule status. Section 69.605(c) of the Commission's rules defines an "average schedule company" as a telephone company that was participating in average schedule settlements on December 1, 1982.[18] Thus, these two companies request waiver of Section 69.605(c), if necessary, so that they may retain their average schedule status when they add the exchanges they are purchasing from Qwest to their

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[16] Copper Valley, 10 FCC Rcd. at 3377 ¶ 20.

[17] The Acquiring Companies are not aware of any instance where the Commission has denied a request for a Price Cap waiver where, as here, a small LEC desires to remain under rate of return regulation. See, e.g., Eagle Decision, 10 FCC Rcd. 1771, Copper Valley, 10 FCC Rcd. 3373.

[18] See 47 C.F.R. § 69.605(c).

existing average schedule study areas. As discussed below, grant of these waivers is consistent with Commission precedent.

The grant of a waiver of Section 69.605(c) is consistent with the Commission's goals in permitting settlements on the basis of average schedules. The Commission has stated:

> Average schedule companies are those exchange carriers that have been assumed, because of their small size, not to have sufficient financial resources or expertise to justify a requirement that they perform jurisdictionally separated cost studies for determining their compensation in originating and terminating interstate telecommunications services. Historically, in recognition of the limitations that average schedule companies face, this Commission permitted those companies to be compensated on the basis of jurisdictionally separated cost characteristics that were deemed to be representative of an "average" exchange carrier of limited size. This procedure had the advantage of substantially reducing the costs that were imposed upon small exchange carriers in receiving compensation for their interstate services, with the concomitant benefit to the public of reducing the expenses of accounting and separations studies that otherwise would have to be borne, in part, by interstate ratepayers.[19]

Permitting these two companies to settle on the basis of average schedules is justified by their small size and by the savings that will be realized by their not having to perform cost studies. Both companies are small, by any measure. Skyline currently has 1,609 access lines and is acquiring approximately 1,407 access lines. Manti currently has 1,605 access lines and is acquiring approximately 1,887 access lines. Manti and Skyline will serve far fewer than the 10,000 access lines considered by the National Exchange Carrier Association ("NECA") to be the maximum for application of the small exchange portion of its Traffic Sensitive average

[19] MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2d 1017, 1018-19 ¶ 2 (1986) (emphasis added).

schedule central office formula,[20] and significantly fewer than the 100,000 access lines used by the Commission to define small rural telephone companies.

Furthermore, there are no downsides to continuing to grant average schedule status to these two companies. For example, a grant of a waiver of Section 69.605(c) would not have any effect on the tariffed rates charged by these companies. Regardless of whether they retain average schedule status or become cost companies, these two companies will participate in NECA tariffs. Thus, the interstate access rates they charge will be the same.

Also, these two companies are not -- and cannot be -- "gaming the system." The Common Carrier Bureau ("Bureau") stated its concern that LECs could "game the system" by "inflating revenue requirement through depreciation of plant to the 'cross over' point and then converting to average schedule status when plant investment diminishes."[21] Here, the two companies are not converting existing properties from cost to average schedule, but are purchasing properties from Qwest. Thus, the Bureau's concern that the companies could have depreciated plant does not apply. These two companies did not participate in Qwest's decisions concerning equipment purchases or depreciation.

In sum, because these companies will be small local exchange companies who do not want to bear the expense and administrative burden of performing cost studies, and because their retaining average schedule status will not affect their tariffed access rates and is not

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[20] See Public Notice: Commission Requests Comment on NECA's Proposed Additional Revisions to the Average Schedules, 6 FCC Rcd. 2082 (1991).

[21] In the Matter of National Utilities, Inc. and Bettles Telephone Co., Inc.; Petition for Waiver of Section 69.605(c) of the Commission's Rules, Report and Order, 8 FCC Rcd. 8723, 8724 n.16 (1993).

indicative of any attempt to "game the system," average schedule status constitutes the only reasonable alternative for Skyline and Manti.

IV. WAIVER OF SECTION 69.3(e)(11), IF NECESSARY AND AS APPROPRIATE, IS REQUESTED IN ORDER TO ALLOW THE ACQUIRING COMPANIES TO UTILIZE NECA AS ITS TARIFF POOL ADMINISTRATOR

The Acquiring Companies plan on utilizing NECA as their interstate tariff administrator. While it is not altogether clear whether a waiver of Section 69.3(e)(11) is required for the Acquiring Companies arising from this transaction, the Acquiring Companies request a waiver of Section 69.3(e)(11) to the extent that "common line tariff participation" may be precluded until "the next annual access tariff filing effective date following consummation of the merger or acquisition transaction."[22]

A literal interpretation of Section 69.3(e)(11) would require the Acquiring Companies to file interstate tariffs, and assume the cost and administrative burden associated therewith, until July 1, 2001. This would be required due to the fact that July 1, 2001, is the "next" effective date of NECA's "annual access tariff filing," and this transaction is likely to close prior to July 1, 2001. The Acquiring Companies submit that such a result is clearly not in the public interest.

The Commission established NECA, in part, to ensure that excessive tariffing administrative burdens would not be imposed upon small LECs such as the Acquiring Companies.[23] This burden should not be imposed upon the Acquiring Companies merely because of this proposed transaction. Rather, resources should be concentrated on the

[22] 47 C.F.R. § 69.3(e)(11).

[23] See 47 C.F.R. § 69.603.

provision of high quality telecommunications services to the affected rural areas.[24] Moreover, the financial impact upon the NECA pools from the Acquiring Companies adding these exchanges to the pools is anticipated to be minimal.[25]

Accordingly, since this transaction will not close prior to the time required for the Acquiring Companies to provide NECA with the proper notice, and in light of the administrative burden that would be placed upon the Acquiring Companies in the absence of this request, the Acquiring Companies respectfully request a waiver of Section 69.3(e)(11) to the extent necessary for them to add these exchanges to their current study areas and include them in the NECA pools upon the closing date of this acquisition.

V. THE COMMISSION'S STUDY AREA FREEZE SHOULD BE WAIVED

Part 36 of the Commission's rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984.[26] This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate

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[24] See generally, Small Company Order, 2 FCC Rcd. 3811; see also Small Company Optional Incentive Order, 8 FCC Rcd. 4545.

[25] The approximate 35,600 access lines in this transaction lines represent an increase of only .34% of the approximate 10.5 million access lines within the NECA common line pools that NECA reported in its 1999 Access Charge Filing.

[26] See 47 C.F.R. Part 36, Appendix--Glossary.

study areas to maximize high cost support."[27] At the same time, the Commission also recognized that its rules were not aimed at discouraging "the acquisition of high cost exchanges or the expansion of service to cover high cost areas."[28] Indeed, the Bureau has implemented this policy decision by holding that changes in study areas that "result from the purchase or sale of exchanges in arms-length transactions" "do not conflict" with the concerns prompting the study area freeze.[29] The Commission has also established a three-prong test for deciding whether study area waivers should be granted. The Commission should approve such waiver requests if it determines:

> [F]irst, that the change will not affect adversely the USF support program;
>
> [S]econd, that the state commission having regulatory authority does not object to the change; and
>
> [F]inally, that the public interest supports grant of the waiver.[30]

As demonstrated herein, the overall concern prompting the "freeze" in study areas is not an issue in this transaction, and the Commission's three-prong test will be satisfied. Accordingly, Qwest and the Acquiring Companies respectfully request that the Commission

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[27] Eagle Decision, 10 FCC Rcd. at 1773 ¶ 10, citing In the Matter of 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 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985).

[28] In the Matter of 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 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65 (Dec. 12, 1984).

[29] In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd. 4570, 4571 ¶ 9 (1990) (emphasis added).

grant the study area waiver permitting: (1) Qwest to remove the twelve exchanges from its Utah study area; and (2) the affiliation of the exchanges with the Acquiring Companies' existing Utah study areas.

A. The USF Impact Arising From This Transaction

Since carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the sale, there can, by definition, be no USF impact in these transactions. Absent changes in the regulation of the USF, it is anticipated that the Acquiring Companies will receive the same amount of support as Qwest currently receives for these Utah exchanges, so this transaction is a non-event for purposes of the USF.[31]

With regard to the Interstate Access Universal Service Support identified in the CALLS Order,[32] unbundled network element ("UNE") zones were approved for Qwest in the Utah study area on June 2, 1999. Preliminary estimates of Qwest's annual support from the fund based on UNE rates is $2,604,278. The lines that are being sold in Utah by Qwest are being acquired by non-price cap LECs that are not eligible to participate in the Interstate Access Universal Support Mechanism. Qwest plans to receive monthly disbursements of these funds beginning in September 2000, retroactive to July 1, 2000.

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[30] See Eagle Decision, 10 FCC Rcd. at 1772 ¶ 5 (footnotes omitted).

[31] In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8942-943 ¶ 308 (1997); aff'd, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999); pets. for reh'g. and reh'g. en banc denied, Sep. 28, 1999, mandate issued Nov. 2, 1999.

[32] See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Sixth Report And Order In CC Docket Nos. 96-262 And 94-1, Report And Order In CC Docket No. 99-249, Eleventh Report And Order In CC Docket No. 96-45, FCC 00-193, rel. May 31, 2000, appeal pending sub nom. Texas Office of Public Utility Counsel v. FCC, No. 00-60434, et al. (5th Cir.).

B. The Utah State Commission Does Not Object To The Proposed Changes In Study Area Boundaries

On September 6, 2000, the Utah PSC issued an Order approving the proposed sale of the subject exchanges by Qwest to the Acquiring Companies. In the Order, the Utah PSC states that "[t]he [Utah PSC] hereby states it has no objection to the [Commission] granting study area waivers, nor does it object to any reconfiguration of study area boundaries for the affected exchanges."[33]

C. The Public Interest Will Be Served By Grant Of The "Study Area" Waivers Requested Herein

In general, customers that appeared at public hearings held by the Utah PSC overwhelmingly supported the proposed sales of the exchanges. Those appearing on behalf of the public represented a broad cross-section of residential and business users of telecommunications services in the subject exchanges, including, without limitation, elected public officials, directors of various agencies charged with economic development, medium and small business users, members of the education community, etc. According to Utah PSC findings, "[t]he [Acquiring Companies] have the business, technical, management, and operating experience to serve smaller, more rural communities such as the Exchanges. . . . The transaction should provide benefits to all customers that will be realized from the greater opportunities for service and operating efficiencies."[34]

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[33] See Before the Public Service Commission of Utah, In the Matter of the Joint Application of U.S. West Communications, Inc., All West Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Hanksville Telcom, Inc., Manti Telephone Company, Skyline Telecom, and UBET Telecom, Inc. for Approval of Purchase and Sale of the Various Exchanges and Associated Matters, Docket No. 99-049-65, Report and Order, issued Sep. 6, 2000 at 2 ("Utah Order"), attached hereto as Attachment I.

[34] Id. at 8-9.