

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
All West Communications, Inc., Carbon/Emery ) CC Docket No. 96-45  
Telecom, Inc., Central Utah Telephone, Inc., ) DA 00-2349  
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; )  
)  
Petition for Waiver of Section 61.41(c) and (d), )  
69.3(e)(11) and 69.605(c) of the Commission’s Rules )

**COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (“NTCA”) submits the following comments in response to the Federal Communication Commission’s (“Commission’s”) Public Notice released on October 18, 2000, inviting comments on the above-captioned petition for waiver.<sup>1</sup> NTCA is a national association of more than 500 local exchange carriers including Central Utah Telephone, Inc. (“Central Utah”), Emery Telephone<sup>2</sup> and Uintah Basin

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<sup>1</sup> *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; Petition for Waiver of Section 61.41(c) and (d), 69.3(e)(11) and 69.605(c) of the Commission’s Rules*, CC Docket No. 96-45, DA 00-2349 (rel. October 18, 2000).

<sup>2</sup> Carbon/Emery Telcom, Inc. and Hanksville Telecom, Inc. are newly-formed, wholly-owned subsidiaries of Emery Telephone.

Telecommunications Association (“UBTA”).<sup>3</sup> NTCA’s members provide telecommunications services to end users and interexchange carriers throughout rural America. They are also “rural telephone companies” as defined in the Telecommunications Act of 1996 (“the Act”).<sup>4</sup>

In accordance with Section 1.3 of the Commission’s Rules, All West Communications, Inc. (“All West”), Carbon/Emery Telcom, Inc. (“Carbon/Emery”), Central Utah, Hanksville Telcom, Inc. (“Hanksville”), Manti Telephone Company (“Manti”), Skyline Telecom (“Skyline”), UBET Telecom (“UBET”), (referred hereinafter as “Acquiring Companies”) and Qwest Corporation (“Qwest”) have filed a joint petition seeking waivers to permit the deletion of 12 Utah exchanges from Qwest’s Utah study area and the addition of the exchanges to the existing study areas for All West, Central Utah, Manti, and Skyline. Carbon/Emery, Hanksville and UBET are subsidiaries of existing local exchange companies (“LECs”) seeking Commission consent to operate their respective exchanges under their parent companies’ respective study areas. All West, Carbon/Emery, Central Utah, Hanksville and UBET also seek waivers of the Commission’s Rule 61.41 (c) and (d) to permit the carriers to operate under rate-of-return regulations after acquiring the exchanges from Qwest.

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<sup>3</sup> UBET Telecom, Inc. is a wholly-owned subsidiary of UBTA.

<sup>4</sup> 47 U.S.C. § 153(47).

NTCA fully supports the petition submitted by the seven Utah carriers. The Commission's study area freeze should be waived. Part 36 of the Commission's Rules freezes the definition of a "study area" to the boundaries which were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that LECs would set up high cost exchanges within their service territories as separate study areas to maximize high cost support.<sup>5</sup> Recognizing that a freeze may not be appropriate in all circumstances, the Commission established a three-prong test for deciding whether study area waivers should be granted. The Commission may approve waiver requests if (1) it determines that the change will not adversely affect the USF support program, (2) that the state commission having regulatory authority does not object to the change, and (3) that the public interest supports granting the waiver.<sup>6</sup>

As previously stated by the petitioners, the sale of these exchanges will have "no USF impact on these transactions."<sup>7</sup> The Acquiring Companies will receive the same amount of support as Qwest currently receives in exchange. Second, the Public Service Commission of Utah issued an order stating that it does not object to the granting of the study area waiver.<sup>8</sup> Third, the public interest will be served. Transferring the exchanges to the petitioners will provide

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<sup>5</sup> *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 (Dec. 12, 1984).

<sup>6</sup> *In the Matter of US WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Memorandum Opinion and Order*, 10 FCC Rcd 1771, 1772 (1995).

<sup>7</sup> Petition at 16.

<sup>8</sup> See Petition at 17; see also 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 September 6, 2000).

customers with more efficient services. Customers will be able to voice their concerns to local companies that are based in Utah. The Acquiring Companies have provided a description of proposed upgrades and operations that should satisfy the Commission's public interest concerns.

Qwest and the Acquiring Companies also request that the Commission waive its requirement that any non-average schedule company, when purchasing a price cap company or a portion of a price-cap company, be subject to price caps.<sup>9</sup> The Commission's rules also require that a company that has elected price caps must continue under price caps.<sup>10</sup> The Acquiring Companies request a waiver of these requirements so that it does not become subject to interstate price cap regulation.

The Commission initially declined to impose price cap regulation on all LECs, acknowledging that it was not appropriate for smaller LECs.<sup>11</sup> In the present case, some of the Acquiring Companies are NTCA members or affiliates of NTCA members and are small, rural carriers. The Commission has previously determined that companies, like the ones in the present

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<sup>9</sup> 47 C.F.R. § 61.41(c)(2) and (3).

<sup>10</sup> 47 C.F.R. § 61.41(d).

<sup>11</sup> *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786 (1990).

matter, are not appropriately regulated under price cap regulation.<sup>12</sup>

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<sup>12</sup> *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786, 6790-91 (1990).

The Commission's primary concern with price cap waivers is "gaming the system" by LECs.<sup>13</sup> Such a situation is not present here. As discussed in their petition, the Acquiring Companies will operate their individual exchanges separate and apart from Qwest, once the transaction is complete. Qwest will not obtain any ownership or management affiliation through the transaction. Since the exchanges will be operated by individual companies, Qwest will not obtain any economic benefit. A waiver makes sense in this instance.

Skyline and Manti request a waiver of Section 69.605(c) allowing the carriers to retain their average schedule status after acquiring the exchanges from Qwest. Carriers with average schedule status are small companies with limited financial resources that are compensated based on the average costs of a similarly sized carrier.<sup>14</sup> Skyline and Manti are both small carriers holding fewer than 100,000 access lines which is used by the Commission to define small rural telephone companies. As stated in their petition, granting average schedule status will not affect tariffed rates or interstate access rates.<sup>15</sup> In addition, Skyline and Manti are not "gaming the system" because the carriers are not converting existing properties but acquiring new properties.

Finally, the Acquiring Companies request waiver of Section 69.3(e)(11) if necessary, to allow the Acquiring Companies to utilize the National Exchange Carrier Association ("NECA") and its tariff pool administrator. As pointed out in the petition, a literal reading of 69.3(e)(11)

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<sup>13</sup> *Eagle Decision*, 10 FCC Rcd 1775.

<sup>14</sup> *In the Matter of MTS and WATS Market Structure: Average Schedule Companies, Report and Order*, 103 FCC 2d 1017, 1018-19 (1986).

<sup>15</sup> Petition at 12.

would require the Acquiring Companies to file interstate tariffs until July 1, 2001.<sup>16</sup> The Acquiring Companies should be granted a waiver so that it may receive the economic and administrative benefit of adding their acquired exchanges to their current study areas and including them in the NECA pools upon the closing date of this acquisition.

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<sup>16</sup> Petition at 13.

For all of the above mentioned reasons, NTCA supports the joint petition and respectfully submits that the public interest would be served best by the Commission's expeditious approval of the requested waiver.

Respectfully submitted,

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