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

MAIL ROOM

In the Matter of	)	
	)	2000 DEC 28 A 11: 58
Citizens Telecommunications Company of Colorado, Inc.	)	CC Docket No. 96-45
	)	
and	)	VED
	)	
Qwest Corporation	)	
	)	
Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules	)	

ORDER

Adopted: December 26, 2000 **Released:** December 27, 2000

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Citizens Telecommunications Company of Colorado, Inc. (Citizens) and Qwest Corporation (Qwest) for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.[1] This waiver will permit Qwest to remove from its Colorado study area 17 telephone exchanges comprising approximately 47,000 access lines, including 18 access lines that are served by the Julesburg, Colorado exchange and are physically located in Nebraska. This waiver also will permit Citizens to establish a new study area in Colorado for the 17 exchanges it intends to acquire from Qwest.

II. DISCUSSION

A. Background

2. *Study Area Boundaries*. A study area is a geographic segment 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. The Commission froze all study area boundaries effective November 15, 1984,[2] and an incumbent LEC must apply to the Commission for a waiver of the study

[1] Citizens Telecommunications Company of Colorado, Inc. and Qwest Corporation, Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix – Glossary of the Commission's Rules (filed Aug. 7, 2000) (Petition).

[2] 47 C.F.R. § 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 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); *see also Amendment of Part 36* (continued....)

area boundary freeze if it wishes to sell or purchase additional exchanges.

3. *Transfer of Universal Service Support*. Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.[3] For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,[4] the loops of the acquired exchange shall receive the same per-line support as calculated under the new non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges.[5] Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.[6] High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,[7] interim hold-harmless support for non-rural carriers,[8]

(Continued from previous page)
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).

[3] 47 C.F.R. § 54.305.

[4] On November 2, 1999, the Commission released two orders finalizing implementation plans for high-cost reform for non-rural carriers. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (rel. Nov. 2, 1999); *Federal-State Joint Board on Universal Service*; *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order (rel. Nov. 2, 1999). The new mechanism, which went into effect on January 1, 2000, does not apply to rural carriers. The new mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost of operating a given exchange. *See* 47 C.F.R. § 54.309. The Commission's forward-looking methodology for calculating high-cost support for non-rural carriers targets support to states where the statewide average forward-looking cost per line exceeds 135 percent of the national average forward-looking cost. *See id.* The total amount of support directed to non-rural carriers in a high-cost state equals 76 percent of the amount the statewide average forward-looking cost per line exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the state. Carriers serving wire centers with an average forward-looking cost per line above the national cost benchmark shall be eligible to receive support. The amount of support provided to a non-rural carrier serving a particular wire center depends on the extent to which per-line forward-looking economic costs in that wire center exceed the national cost benchmark.

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*); as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

[6] *Id.*

[7] *See* 47 C.F.R. § 54.309.

[8] In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. *See* 47 C.F.R. § 54.311

rural carrier high-cost loop support,[9] local switching support,[10] and Long Term Support (LTS).[11] To the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

4. As described in the Commission's recent order adopting an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service (CALLS), beginning July 1, 2000, if a price cap LEC acquires exchanges from another price cap LEC, the acquiring carrier will become eligible to receive interstate access universal service support for the acquired exchanges.[12] In accordance with section 54.801 of the Commission's rules, the acquiring price cap LEC will receive interstate access universal service support at the same level as the selling price cap LEC formerly received, and both carriers will adjust their line counts accordingly beginning with the next quarterly report to the fund Administrator.[13] Carriers also are required to report their adjusted average common line, marketing, and transport interconnection charge (CMT) revenue per line per month[14] for the affected study areas in accordance with the Commission's rules.[15] Per-line amounts of interstate access universal service support for the acquired exchanges may change as a result of the revised CMT revenue filings. Because the interstate access universal service support mechanism is capped at $650 million, individual transactions will not increase its overall size.[16]

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[9] 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.

[10] Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

[11] Carriers that participate in the NECA common line pool are eligible to receive LTS. *See* 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. *See First Report and Order,* 12 FCC Rcd at 9163-9165.

[12] *See Access Charge Reform*, Sixth Report and Order in CC Docket No. 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 00-103, at para. 225 (rel. May 31, 2000) (*Interstate Access Universal Service Order*). We note that if a non-price cap LEC acquires exchanges from a price-cap LEC, per-line interstate access universal service support will not transfer. Section 54.801 of the Commission's rules states that, if "all or a portion of a study area served by a price cap LEC is sold to an entity other than a price cap LEC, . . . then the support that would otherwise be provided under this subpart, had such study area or portion thereof not been sold, will not be distributed or collected." 47 C.F.R. § 54.801(b).

[13] *See* 47 C.F.R. § 54.801(d).

[14] Price Cap CMT Revenue is defined as the maximum total revenue a filing entity would be permitted to receive from End User Common Line charges under section 69.152, Presubscribed Interexchange Carrier charges under section 69.153, Carrier Common Line charges under section 69.154, and Marketing under section 69.156, using Base Period lines. *See* 47 C.F.R. § 69.3(cc). Price Cap CMT Revenue does not include LEC universal service contributions as of July 1, 2000, and Local Switching Pooled Revenue outlined in section 69.3(bb).

[15] *See* 47 C.F.R. § 54.802.

[16] *See* 47 C.F.R. § 54.801(a); *see also Interstate Access Universal Service Order* at para. 201.

5. *The Petition for Waiver*. Qwest, an incumbent LEC currently serving 2,755,000 access lines in Colorado, entered into an agreement with Citizens, a LEC that currently does not provide service in Colorado, to sell 17 exchanges located in Qwest's Colorado study area.[17] The proposed transaction also includes the sale of 18 access lines that are served by the Julesburg, Colorado exchange and are physically located in Nebraska.

6. On August 7, 2000, Citizens and Qwest filed a joint petition for waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. The requested waiver would permit Qwest to remove the 17 exchanges from its Colorado study area, and permit Citizens to create a new Colorado study area for the acquired exchanges. On August 15, 2000, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the petition.[18] No comments were received.

B. Discussion

7. We find that good cause exists to waive the definition of study area contained in Part 36 Appendix-Glossary of the Commission's rules to permit Qwest to remove the 17 exchanges from its Colorado study area, and permit Citizens to create a Colorado study area for the acquired exchanges.

8. Generally, the Commission's rules may be waived for good cause shown.[19] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[20] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[21] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[22] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: first, the change in study area boundaries must not adversely affect the universal service fund; second, no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and third, the transfer must be in the public interest.[23] For the reasons discussed below, we conclude that petitioners have satisfied these criteria and demonstrated that good cause exists for waiver of the Commission's study area freeze rule.

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[17] Petition at 1-2. *See also* NECA Universal Service Fund 1999 Submission of 1998 Study Results, filed October 1, 1999.

[18] *Citizens Telecommunications Company of Colorado, Inc. and Qwest Corporation Seek a Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules*, Public Notice, DA 00-1864 (rel. Aug. 15, 2000).

[19] 47 C.F.R. § 1.3.

[20] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[21] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[22] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[23] *See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., 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, 1772 (1995).

9. First, we conclude that Qwest and Citizens have demonstrated that the proposed changes in the study area boundaries will not adversely affect any of the universal service mechanisms. Because, under the Commission's rules, carriers purchasing high-cost exchanges can only receive the same level of per-line support that the selling company was receiving for those exchanges prior to the sale, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction.[24] As such, Citizens will receive the same per-line levels of interim hold-harmless support for which the 17 Qwest exchanges were eligible prior to their transfer.[25] In addition, even though the exchanges may become eligible to receive increased interstate access universal service support as a result of the proposed transaction,[26] the overall size of the interstate access universal service mechanism will not exceed $650 million.[27] Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms.

10. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Colorado Public Utilities Commission and the Nebraska Public Service Commission have indicated that they do not object to the grant of the study area waiver.[28]

11. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit Qwest to remove 17 exchanges from its Colorado study area and Citizens to create a Colorado study area for the transferred exchanges. In its petition, Citizens states its intent to invest approximately $24 million in the 17 exchanges it is purchasing during the first three years of ownership, using some of the capital investment to upgrade the network to provide enhanced services.[29] According to Citizens, it also will provide broadband/digital subscriber line services when there is sufficient demand to make it possible to provide these services at an affordable rate.[30] Based on these representations and the statements of the affected state commissions, we conclude that Citizens has demonstrated that grant of this waiver request serves the public interest.

12. In accordance with section 61.45 of the Commission's rules, we also require Qwest to adjust its price cap indices to reflect the removal of the transferred access lines from its Colorado study

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[24] *See* 47 C.F.R. § 54.305.

[25] *See* Petition at Attachment B-2. We note that the Federal-State Joint Board on Universal Service (Joint Board) recently recommended that interim hold-harmless support for exchanges transferred to non-rural carriers be phased down over the same time period as the seller's support would have been phased down. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-1, at paras. 19-22 (rel. Jun. 30, 2000). The Joint Board also recommended that interim hold-harmless support for exchanges transferred to rural carriers should not be phased down following the transfer until the Commission reexamines the operation of section 54.305 of the Commission's rules and/or reforms the high-cost mechanism for rural carriers. *Id.* at para. 21.

[26] *See* 47 C.F.R. §§ 54.801(d), 54.802(b); *see also supra* discussion at para. 4.

[27] *See* 47 C.F.R. § 54.801(a).

[28] *See* Petition at 5, Attachment D.

[29] Petition at 6.

[30] *Id.* at 6.

area.[31] Section 61.45 of the Commission's rules grants the Commission discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.[32] We require Qwest to make such an adjustment.[33]

III. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of Part 36, Appendix-Glossary, of the Commission's rules, filed by Citizens Telecommunications Company of Colorado, Inc. and Qwest Corporation on August 7, 2000, IS GRANTED, as described herein.

14. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, 1.3, and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 61.43, that Qwest Corporation SHALL ADJUST its price cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Chief, Accounting Policy Division

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[31] *See* 47 C.F.R. § 61.45(d). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. *See also Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961 (1995).

[32] *See* 47 C.F.R. § 61.45(d).

[33] The Bureau has required carriers to make adjustments to their price cap indices in past study area waivers involving the sale of exchanges operated by carriers subject to price cap regulation. *See, e.g., Northland Telephone Company d/b/a PTI Communications, Inc. and U S West Communications, Inc., Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(6) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13329, 13336 (Acc. Aud. Div. 1997); *GTE North, Inc., and PTI Communications of Michigan, Inc., Petition for Waiver of Sections 61.41(c) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13882, 13888 (Acc. Aud. Div. 1997); *Golden Belt Telephone Association, Inc., and United Telephone Company of Kansas, Petition for Waiver of Sections 61.41(c)(2) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 16335, 16341 (Acc. Aud. Div. 1997); *Rural Telephone Service Company, Inc., and United Telephone Company of Kansas, Petition for Waiver of Sections 61.41(c)(2) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 16343, 16350 (Acc. Aud. Div. 1997).