

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

2002 JUN -5 A 10: 46

In the Matter of)
)
Madison Telephone Company)
)
And)
)
Gallatin River Communications, LLC)
)
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

RECEIVED

ORDER

Adopted: May 31, 2001

Released: May 31, 2001

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Madison Telephone Company (Madison) and Gallatin River Communications, LLC (Gallatin River), for a waiver of the definition of "study area" contained in Part 36 Appendix-Glossary of the Commission's rules.¹ This waiver will permit Gallatin River to remove from its Illinois study area the Staunton and Livingston exchanges comprising approximately 4,300 access lines. This waiver will also permit Madison to include the Staunton and Livingston exchanges in its Illinois study area.

II. STUDY AREA WAIVER

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 Madison Telephone Company and Gallatin River Communications, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of Part-36 (filed Feb. 23, 2001) (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 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).

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

³ 47 C.F.R. § 54.305. The Commission recently modified section 54.305 to permit rural companies that acquire exchanges to receive additional high-cost loop support for subsequent investments made in the acquired exchanges. *Federal-Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001); *see also* 47 C.F.R. § 54.305 (b)-(f).

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 LEC's*, 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. 9-45, 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 (continued....)

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. *The Petition for Waiver.* Gallatin River, an incumbent LEC in Illinois, entered into an agreement with Madison, an incumbent LEC that currently serves 1,600 access lines in Illinois, to sell to Madison the Staunton and Livingston, Illinois exchanges that serve approximately 4,300 access lines.¹²

5. On February 23, 2001, Gallatin River and Madison 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 Gallatin River to remove the Staunton and Livingston exchanges from its Illinois study area, and permit Madison to include the acquired exchanges in its existing Illinois study area. On January 30, 2001 the Common Carrier Bureau (Bureau) released a public notice seeking comment on the petition.¹³ The National Telephone Cooperative Association (NTCA) filed comments in support of the petition.

B. Discussion

6. 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 Gallatin River to remove the Staunton and Livingston exchanges from its Illinois study area, and permit Madison to include the acquired exchanges in its Illinois study area.

7. Generally, the Commission’s rules may be waived for good cause shown.¹⁴ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent

(Continued from previous page) _____

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.

⁹ Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost by 15 percent. *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 (1997).

¹² *See* Petition at 2.4.

¹³ *Madison Telephone Company and Gallatin River Communications, LLC Joint Petition for Waiver of the Definition of “Study Area” in the Appendix-Glossary of Part 36*, Public Notice, DA 01-566 (rel. March 2, 2001).

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *W.A.I.T. Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. Denied*, 409 U.S. 1027 (1972).

with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷ 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.¹⁸ 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.

8. First, we conclude that Gallatin River and Madison have demonstrated that the proposed change in the study area boundaries will not adversely affect any of the universal service mechanisms. Because, under the Commission's rules, carriers purchasing 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.¹⁹ Gallatin receives no high-cost, local switching or LTS from the universal service mechanism.²⁰ As such, Madison will receive the same per-line levels of support, including high-cost loop support, local switching support, and LTS, for which the Staunton and Livingston exchanges were eligible prior to its transfer. Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms.

9. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Illinois Commerce Commission (ICC) has indicated that it does not object to the grant of the study area waiver.²¹

10. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit Gallatin River to remove the Staunton and Livingston exchanges from its study area and Madison to include the acquired exchanges in its Illinois study area. Except for the Staunton and Livingston exchanges located in south central Illinois, the local exchange operations of Gallatin River are in north central and northern Illinois.²² The Staunton and Livingston exchanges lie immediately to the east of and are contiguous to Madison's existing exchanges.²³ According to Petitioners, because of

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ *WAT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ 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*, 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1871, 1872 (1995).

¹⁹ See 47 C.F.R. § 54.305.

²⁰ See Petition at 5.

²¹ Ex Parte filing of Madison Telephone Company and Gallatin River Communications, LLC, CC Docket 96-45 (filed May 14, 2001)(*Ex Parte Filing*).

²² See *Ex Parte* at 3.

²³ *Id.* at 4.

the remote rural location of the Staunton and Livingston exchanges, it has been difficult for Gallatin River to obtain the management and operational efficiencies it desires.²⁴ Madison states that it presently provides high-quality service to its existing rural exchanges, Worden, Hamel and Prairietown. In the petition, Madison states that it intends to provide quality basic services to the exchange areas it has acquired expanding the availability of services.²⁵ Madison testified before the ICC that it intends to put into place a fiber facility between Madison's existing Worden exchange and the Staunton exchange.²⁶ According to Madison, the facility would allow for the provision of services such as Advance Class Service and Voice Mail Service, which are not presently available in the Staunton and Livingston exchanges.²⁷ Madison states that management and employees of Madison are familiar with the Staunton and Livingston communities, and the acquisition of these exchanges would allow Madison to leverage and take advantage of its local knowledge and presence.²⁸ Based on these representations, we conclude that Madison has demonstrated that grant of this waiver request serves the public interest.

III. ORDERING CLAUSES

11. 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 Madison Telephone Company and Gallatin River Communications, LLC on February 23, 2001, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION



Katherine L. Schroder
Chief, Accounting Policy Division

²⁴ *Id.* at 5.

²⁵ *See* Petition at 5-6.

²⁶ *See Ex Parte* at 4.

²⁷ *Id.*

²⁸ *Id.*