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JUN 14 2004
Federal Communications Commission
Office of Secretary

96-45

June 14, 2004

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules of Partner Communications Cooperative and Iowa Telecommunications Services, Inc. and Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules

Dear Ms. Dortch:

Attached please find an original and four copies of the Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules and Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules being filed by Partner Communications Cooperative and Iowa Telecommunications Services, Inc..

The requisite filing fee and FCC Form 159 Remittance Advice is being submitted by courier to Mellon Bank, Pittsburgh, Pennsylvania on this date.

Please acknowledge receipt on the "stamp and return" duplicate document attached for this purpose. All correspondence and inquiries concerning this filing should be addressed to the undersigned.

Respectfully submitted,

David Cosson
Counsel for Partner Communications Cooperative

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JUN 1 4 2004
Federal Communications Commission
Office of Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Partner Communications Cooperative	)	
	)	
and	)	
	)	
Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom	)	
	)	
Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules	)	CC Docket No. 96-45
	)	
Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules	)	
	)	

To: The Commission

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,[1] Partner Communications Cooperative ("Partner") and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom ("Iowa Telecom") (together, "Petitioners"), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules. Additionally, Partner seeks a waiver of the definition of "average schedule company" included in Section 69.605(c) of the

[1] 47 C.F.R. § 1.3.

Commission's Rules and of Section 69.3(e)(11) of the Commission's Rules concerning participation in the National Exchange Carrier Association ("NECA") carrier common line tariff.[2]

Petitioners request these waivers to enable Partner to complete its proposed purchase from Iowa Telecom of the latter's Baxter, Melbourne, Rhodes and State Center telephone exchanges in Iowa ("the four exchanges"). Petitioners also request that the four exchanges be

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[2] Because Partner is an average schedule company that wishes to retain its average schedule status, Partner submits that it is not required to seek waiver pursuant to Section 61.41(c)(3) of the Commission's Rules. *See, e.g., Norway Rural Telephone Company and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, 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 Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 17 FCC Rcd 20127 (Tel. Acc. Pol. Div. 2002) ("*Norway Order*"); *All West Communications, Inc., et al., Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules; Petition for Waiver of Sections 61.41(c), 61.41(d) and 69.3(e)(11)*, Order, 16 FCC Rcd 4697 (Acc. Pol. Div. 2001) ("*All West Order*").

Only in the event the Commission denies Partner's petition for waiver of Section 69.605(c) of the Commission's Rules, Partner seeks waiver of the price cap "all or nothing" rule in Section 61.41(c)(2), to permit Partner to operate under rate-of-return regulation after purchasing four small exchanges from a price cap carrier. In the event such waiver request is required to be contemplated, Partner submits that the "gaming" issue of concern to the Commission is not present here. Partner is a very small carrier —significantly smaller in fact than any carrier subject to mandatory price caps— that is not seeking to shift costs between price cap and non-price cap affiliates. Nor is Partner attempting to establish a rate base by switching back and forth between rate-of-return regulation and price cap regulation. Indeed, Partner would be prepared to have such grant of its price cap "all or nothing" waiver request, if required to be made, conditioned upon prior Commission approval should Partner subsequently take the unlikely course of seeking to elect price cap regulation. *See Nemont Telephone Cooperative, Inc. et al. Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(11) and 69.605(c) of the Commission's Rules*, Order, 18 FCC Rcd 838, ¶¶ 20-24 (Wir. Comp. Bur. 2003) ("*Nemont Order*").

removed from Iowa Telecom's study area in Iowa and added to Partner's incumbent study area.[3]

The Commission is requested to review and approve this Petition expeditiously. The facts and circumstances supporting grant are similar in material respects to those involved in waiver requests that have been approved recently.[4] Prompt Commission approval will enable Petitioners to focus time and resources on the exchanges to be served immediately following the purchase transaction, which Petitioners seek to close on or about August 31, 2004.

I. INTRODUCTION AND SUMMARY

Iowa Telecom is a price cap incumbent local exchange carrier ("LEC") that owns and operates approximately 260,000 access lines in 294 exchanges in the state of Iowa. Iowa Telecom owns and operates approximately 650 access lines in the Baxter exchange, 366 in the Melbourne exchange, 177 in the Rhodes exchange, and 837 in the State Center exchange—a total of only 2,030 lines that are the subject of this Petition. These exchanges are part of the study area referred to by the Universal Service Administrative Company ("USAC") as study area code 351167. After the transaction, Iowa Telecom will continue to provide local telephone service in Iowa and will retain its study area for its remaining exchanges.

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[3] As described below, Partner's incumbent LEC operations have a study area code, 351187, distinct from that of its CLEC operations.

[4] *See, e.g., Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) ("*Dickey Rural Order*"); *Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area"*

Partner owns and operates, as an average schedule incumbent LEC, approximately 1,488 access lines in two exchanges (Gilman and Kellogg) in the state. Partner also operates as a facilities-based competitive local exchange carrier ("CLEC") in the Baxter and Melbourne exchanges, in which it currently owns and operates a total of 314 CLEC access lines. Upon completion of the acquisition, Partner will discontinue CLEC operations in the exchanges and transfer the CLEC subscribers to the incumbent LEC operation.[5]

As will be discussed in more detail below, the factors that the Commission requires for a study area waiver are, or will be, all present in this case: (1) the transfer of the four exchanges from Iowa Telecom to Partner will not adversely impact the Universal Service Fund ("USF"), (2) the Iowa Utilities Board of Iowa ("IUB") does not object to this proposal, and (3) the public interest will be served by granting the waiver. At the same time, because Partner is a small average schedule carrier, the conditions for waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission's rules are present.

Related to this Petition, on this day, the Petitioners are also filing an Application pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"),[6] seeking the Commission's consent to transfer control of the four exchanges being acquired by Partner.[7] Petitioners submit as well that they will provide to customers and to the Commission the

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Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) ("*Baltic Order*").

[5] Because Partner's CLEC lines are not part of the transaction between Partner and Iowa Telecom, Petitioners submit that the instant Petition need not contemplate the ultimate disposition of such lines.

[6] 47 U.S.C. § 214(a).

requisite timely anti-slamming notices required by Section 64.1120(e) of the Commission's rules.

II. WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED.

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high-cost support,[8] the Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.[9]

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.[10] Such a result would not serve the Commission's policy objective of ensuring that carriers' actual costs are reflected in their accounting so that they can accurately

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[7] Copy of which is appended to this Petition as Exhibit 1.

[8] *See MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

[9] *See, e.g., Alltel Corporation 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*, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr. Bur. 1990).

[10] *Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) ("*Part 36 NPRM*").

set just, reasonable and non-discriminatory rates.[11] Inasmuch as Partner's proposed acquisition results from an arm's length negotiation process with Iowa Telecom, the standards for waiver of the freeze are met in this instance.

A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.[12] The proposed transaction will produce no such adverse impact, as Section 54.305 of the Commission's rules provides in pertinent part:

> A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.[13]

Notwithstanding Section 54.305(a) of the Commission's Rules, however, Partner may still be eligible to receive additional limited high cost support for the purchased access lines. First, Partner may be eligible for limited "safety valve" support for new investments in the purchased assets.[14] Second, Partner may be eligible for additional interstate common line support

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[11] Iowa Telecom will adjust, pursuant to 47 C.F.R. § 61.45, its price cap prices to reflect removal of the transferred access lines, as applicable.

[12] *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*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("*Eagle Order*"); *Norway Order*, ¶ 9.

[13] 47 C.F.R. §54.305(a).

[14] *See* 47 C.F.R. § 54.305(b)-(f).

("ICLS").[15]

Nevertheless, it is inconceivable that Partner's additional support could rise to $38 million—the figure that now approximates an aggregated one percent increase of annual high cost support.[16] First, safety valve support, to the extent Partner would be eligible, is capped by rule,[17] and would be available in any event only for the 2,030 lines included in this transaction. Second, Partner currently receives only an estimated $113,196 in annual ICLS support. By adding an additional 2,030 lines to its study area, at the same per line support level, Partner would receive only an additional estimated $157,066 in annual ICLS.[18] Accordingly, this transaction is a non-event for purposes of the USF.[19]

B. State Commission Approval.

Petitioners have filed a joint Application for Approval of Discontinuance of Service and Transfer of Certificate with the IUB, in which Partner and Iowa Telecom requested the IUB to

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[15] *See* 47 C.F.R. § 54.901.

[16] USAC's most recent projections show annual high cost support exceeding $3.8 billion. *See* USAC, HC01 - High Cost Support Projected by State by Study Area - 3Q2004.xls, online at http://www.universalservice.org/ ("USAC HC01").

[17] *See* 47 C.F.R. § 54.305(b)-(f).

[18] Initially, ICLS for the acquired lines would be available based on the existing per line ICLS of the acquiring company. These amounts would be subject to true up once cost and revenue data are available. Actual amounts received would be dispersed on a monthly basis and are dependent on the timing of the grant of the waiver request, closing of the acquisition, and submission of updated line counts by the acquiring company.

[19] Partner recognizes that as a result of the transaction, access lines in the pre-acquisition study area will be eligible for different amounts of high-cost support than the access lines being acquired from Iowa Telecom. Partner will adopt a methodology for excluding the costs associated with the acquired access lines from the costs associated with the pre-acquisition study area.

state in its final order that it does not object to the grant of this study area waiver.[20] Partner and Iowa Telecom will supplement this Joint Petition for Expedited Waiver when the IUB issues its order.

C. Granting The Waiver Is In The Public Interest.

The transfer of the four exchanges from Iowa Telecom to Partner will promote the public interest because it will provide affected customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. Since 1958 Partner has offered its customers access to local management, local service personnel, and local service centers. Furthermore, every customer will become an owner of the Cooperative, and will be able to exercise his or her vote in the operation of the Cooperative, including election of members of the Board of Directors.

Partner has committed to provide the acquired customers with price reductions as well as a full suite of services, including Caller ID, voice-mail, and high-speed services such as DSL and cable modem service. Further, Partner will offer acquired customers a bundle of video, broadband, local, and long distance service for the first time. Accordingly, the public interest would be better served if these operationally distinct exchanges were separated from the exchanges to be retained by Iowa Telecom and placed in Partner's study area.

[20] Attached as Exhibit 2.

III. WAIVER OF THE COMMISSION'S AVERAGE SCHEDULE RULES IS PROPER.

Partner wishes to retain its average schedule status. Thus, Partner requests a waiver of Section 69.605(c), if necessary, so that it may retain average schedule status when the Baxter, Melbourne, Rhodes and State Center exchanges are added to its existing average schedule study area.

Section 69.605(c) defines an "average schedule company" as a telephone company that was participating in average settlements on December 1, 1982.[21] This definition has been interpreted to preclude the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without a waiver from the Commission.[22]

The Section 69.605(c) definition refers expressly only to new or converted average schedule companies, and makes no explicit attempt to address the status of existing average schedule companies as they grow or contract via the addition or subtraction of subscribers or exchanges. In some instances, the Commission has not even required waivers of the Section 69.605(c) definition when existing average schedule companies, wishing to retain their average schedule status, acquired price cap or cost exchanges.[23]

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[21] *See* 47 C.F.R. §69.605(c).

[22] See *Wilderness Valley Telephone Company, Petition for Waiver of Section 69.605(c) and 69.3(e)(11) of the Commission's Rules*, Order, 13 FCC Rcd 4511 (Acc. Aud. Div. 1998).

[23] *See, e.g., Petitions for Waivers filed by Farmers Mutual Telephone Company, et al., Concerning Sections 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 Rules*, AAD 96-6, Memorandum Opinion & Order, 11 FCC Rcd 9380 (Acc. Aud. Div. 1996) ("*Farmers Order*"); *GTE Midwest Incorporated and Winnebago Cooperative Telephone Association, Joint Petition for Waiver of the Definition of Study Area Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 9 FCC Rcd 7789 (Acc. Aud. Div. 1994).

In other instances, the Commission has granted waivers of the Section 69.605(c) definition when small average schedule companies wishing to retain their average schedule status acquired additional access lines from a price cap or cost exchange. For example, the Commission granted such a waiver to Red River Telecom, Inc. when it acquired 1,028 lines from Citizens Telecommunications Company of North Dakota.[24] The Commission granted two average schedule companies, Manti and Skyline, Section 69.605(c) waivers when they acquired 1,887 and 1,407 access lines, respectively, from Qwest, a price cap carrier.[25] Clarksville, an average schedule company and subsidiary of Butler-Bremer Mutual Telephone Company, similarly was granted a Section 69.605(c) waiver when it acquired 931 access lines from U S WEST, a price cap carrier.[26] As indicated, Partner is acquiring only 2,030 access lines from Iowa Telecom.

Grant of this waiver is consistent with that precedent and the Commission's goals in permitting settlements on the basis of average schedules. The special circumstances that the Wireline Competition (f/k/a Common Carrier) Bureau ("Bureau") has found to justify waivers of

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[24] *Dickey Order*, n. 79.

[25] *All West Order.*

[26] *See Petitions for Waiver Filed by Alpine Communications et al. 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 & Order, 12 FCC Rcd 2367, ¶ 15 (Acc. Aud. Div. 1997) ("*Alpine Order*"); *see also, Petition for Waivers filed by East Plains Telecom, Inc. et al., 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 & Order, 12 FCC Rcd 24422 (Acc. Aud. Div. 1997) ("*East Plains Order*"); *Baltic Order* (Commission granted waiver to an average schedule affiliate of Baltic Telecom Cooperative, Inc, also an average schedule company serving 1,400 lines when the affiliate acquired 792 lines from U S WEST).

Section 69.605(c) fall into three broad categories,[27] including a category "to ensure a smooth settlement process [where] average schedule companies ... have acquired another company, and [have been allowed to merge] the combined companies ... into one average schedule study area."[28] Because jurisdictional separations and USF calculations are performed at the study area level, the Bureau recognized that the application of Section 69.605(c) in these instances would have the unintended effect of requiring the pre-existing company to convert from average schedule status to cost-based settlements in order for the company to be able to acquire one or more small exchanges. The Bureau determined that such an effect would be unduly burdensome.

The proposed transaction satisfies the same circumstances as those found to justify prior "smooth settlement process" category Section 69.605(c) waivers. Partner, an existing and established average schedule company with only 1,488 incumbent LEC access lines, is acquiring four small rural exchanges (approximately 2,030 access lines combined) that it desires to consolidate into its existing Iowa incumbent LEC study area as well as into its existing corporate structure. As noted in this Petition, the proposed transaction will create significant public interest benefits such as the expansion of services in the four exchanges.

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[27] *See, BPS Telephone Co., Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 13820, 13824, ¶ 10 (Acc. Aud. Div. 1997); *Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.*, Order, 15 FCC Rcd 21917, ¶ 13 (Acc. Pol. Div. 2000).

[28] *Petition for Waiver Filed by Heartland Telecommunications Company of Iowa and Hickory Tech Corp.*, Memorandum Opinion & Order, 14 FCC Rcd 13661, 13663, ¶ 4 (1999) ("*Heartland Order*"). *See also, Baltic Order; Petitions for Waiver Filed by Accent Communications, et al.*, Memorandum Opinion and Order, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996); BEK Communications I, Inc. et al., AAD No. 95-72, Memorandum Opinion & Order, 11 FCC Rcd 10855 (Acc. Aud. Div. 1996).

If Section 69.605(c) were applied to the proposed transaction, it could have the unintended effect of requiring Partner to convert its existing exchanges from average schedule status to cost-based settlements. Such a conversion would be unduly burdensome to Partner, for it would have to spend on cost studies time and effort that it heretofore has used to ensure and improve the quality of service furnished to its subscribers. Partner tentatively estimates that it would cost approximately $25,000 in annual recurring cost and $20,000 in non-recurring cost to perform the required cost studies.[29] The high cost of completing a cost study relative to the small size of Partner further demonstrates that waiver is warranted.

The Commission has declined to permit a waiver when a disproportionate number of the requesting carrier's lines were previously operated on a cost basis or were subject to price caps, or when a waiver would add too greatly to the number of lines that settle on an average schedule basis.[30] For example, the Commission has found it unacceptable that only 2.5% of the total lines to be operated after a transaction were initially average schedule lines. In that order, the Commission negatively cited imbalances of 9.6%[31] and 57%.[32] Here, Partner's current access lines constitute more than 47% of post transaction lines (when aggregated with the four exchanges' 3,832 total lines—or 1,802 of 3,832). In *NebCom*, the Commission was concerned

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[29] Such cost estimates are preliminary, and have been provided to Partner by Kiesling Associates. To the extent that Partner could recover such costs from NECA pools, they would be borne by the industry.

[30] *See, e.g.*, *Nemont Order*, ¶ 31.

[31] *Nemont Order*, ¶ 32, *citing Heartland Order*, ¶¶ 7-8.

[32] *Nemont Order*, ¶ 32, *citing NebCom, Inc.*, Petition for Waiver of Sections 61.41(c)(2) and 69.605(c) of the Commission's Rules, Order, 13 FCC Rcd 4487, 4492, ¶ 14 (Acc. Aud. Div. 1998).

that the resulting study area, in which 43% of the total lines would have been converted from a cost study area, would be larger than 57% of all cost study areas. With 3,832 post transaction lines, Partner's study area would be larger than only 47% of all cost study areas.[33] Accordingly, the instant transaction presents no imbalance of the types with which the Commission has been concerned.

Furthermore, after the purchase Partner would remain one of the smaller average schedule carriers. According to USAC's second quarter 2004 data,[34] 495 average schedule study area codes pertain to 495 carriers, with a mean of 1,740 lines per study area. With only 1,488 incumbent LEC lines currently, even by adding the additional 2,030 lines contemplated in the instant transaction Partner will own and operate approximately a third fewer lines than most average-schedule companies.[35] These 3,518 lines represent an infinitesimal percent of the approximate 2.6 million lines owned and operated by average-schedule carriers in the country.[36]

Partner falls within the range of other average schedule companies that the Commission found did not have sufficient resources or expertise to justify conversion of their average schedule status. Further, there is no imbalance between the pre-transaction and post-transaction proportions

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[33] *See* USAC HC01; USAC, HC05 - High Cost Loop Support Projected by State by Study Area - 2Q2004.xls, http://www.universalservice.org/ ("USAC HC05").

[34] *See* USAC HC01 and USAC HC05.

[35] Even if Partner's CLEC lines are included, Partner's resulting 3,832-line study area would be smaller than 46% of all average schedule study areas.

[36] *See* USAC HC01; USAC HC05.

of average schedule lines. Finally, few lines would be converted to average schedule status. Accordingly, the Commission should grant a waiver of Section 69.605(c).[37]

Moreover, the proposed average schedule waiver will not result in unintended effects on interstate revenue requirements or in administrative burdens on the Commission or NECA. Rather, with respect to its incumbent operations, Partner can readily satisfy all three conditions that the Commission has established to avoid these impacts. First, Partner will be a single corporate entity operating six exchanges (rather than a parent and new average schedule subsidiary), and will report to NECA as a single entity for interstate average schedule and Universal Service Fund purposes and receive distributions on that basis. Second, because Partner will be a single entity, there will be no possibility that either a "parent" or a "subsidiary" entity will attempt at some future date to elect cost status or Section 61.39 treatment while the other entity does not. Third, Partner will be a single entity; absent the highly unlikely event of a comprehensive corporate reorganization; no "parent" or "subsidiary" will come under different control from the other at some future date.

IV. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.

Partner also requests a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation and long term support ("LTS") resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Partner from participating in the NECA common line tariff until the next annual access tariff filing effective

[37] *See, e.g., Norway Order.*

date following the consummation of the acquisition transaction. This would require Partner to file interstate tariffs, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.[38]

In light of the fact that Partner is a very small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Partner requests a waiver of Section 69.3(e)(11) to the extent necessary for it to add these exchanges to its current study area and include them in the NECA pools upon the closing date of this acquisition.

V. CONCLUSION

The immediate requests are directly analogous to comparable requests routinely granted by the Commission for similarly situated carriers. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby affording the affected customers the ability to benefit from the planned acquisition as soon as possible.

[38] *See, e.g., Saddleback Communications and Qwest Corporation,* Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2,700 access lines).

Respectfully submitted,

Partner Communications Cooperative

By: David Cosson

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June 10, 2004