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READ INSTRUCTIONS CAREFULLY
 BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
 REMITTANCE ADVICE

Approved by OMB
 3060-0589
 Page No. 1 of 2

(1) LOCK BOX # 358140	SPECIAL USE ONLY
	FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Direct Communications Rockland, Inc.	(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$720.00
(4) STREET ADDRESS LINE NO. 1 150 South Main Street	
(5) STREET ADDRESS LINE NO. 2 Box 269	
(6) CITY Rockland	(7) STATE ID
	(8) ZIP CODE 83271
(9) DAYTIME TELEPHONE NUMBER (include area code) (208) 548-2345	(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN) 0004321790	(12) FCC USE ONLY
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IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
 COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME Direct Communications Rockland, Inc.	
(14) STREET ADDRESS LINE NO. 1 150 South Main Street	
(15) STREET ADDRESS LINE NO. 2 Box 269	
(16) CITY Rockland	(17) STATE ID
	(18) ZIP CODE 83271
(19) DAYTIME TELEPHONE NUMBER (include area code) (208) 548-2345	(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN) 0004321790	(22) FCC USE ONLY
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COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CQK	(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) \$720.00	(27A) TOTAL FEE \$720.00	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D - CERTIFICATION

CERTIFICATION STATEMENT
 I, David R. Irvine, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE *David R. Irvine* DATE 10/27/04

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____
 ACCOUNT NUMBER _____ EXPIRATION DATE _____
 I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described.
 SIGNATURE _____ DATE _____

049
 No. of Copies rec'd
 10/27/04

FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE (CONTINUATION SHEET) Page No. <u>2</u> of <u>2</u>		SPECIAL USE
		FCC USE ONLY
USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT SECTION BB - ADDITIONAL APPLICANT INFORMATION		
(13) APPLICANT NAME Direct Communications Cedar Valley, LLC		
(14) STREET ADDRESS LINE NO. 1 350 South 400 East		
(15) STREET ADDRESS LINE NO. 2 Ste. 201		
(16) CITY Salt Lake City		(17) STATE UT
		(18) ZIP CODE 84111
(19) DAYTIME TELEPHONE NUMBER (include area code) (801) 363-4011		(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) REQUIRED		
(21) APPLICANT (FRN) 0011862927		(22) FCC USE ONLY
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	FCC USE ONLY
(28A) FCC CODE 1		(29A) FCC CODE 2
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1		(29B) FCC CODE 2
(23C) CALL SIGN/OTHER ID	(24C) PAYMENT TYPE CODE	(25C) QUANTITY
(26C) FEE DUE FOR (PTC)	(27C) TOTAL FEE	FCC USE ONLY
(28C) FCC CODE 1		(29C) FCC CODE 2
(23D) CALL SIGN/OTHER ID	(24D) PAYMENT TYPE CODE	(25D) QUANTITY
(26D) FEE DUE FOR (PTC)	(27D) TOTAL FEE	FCC USE ONLY
(28D) FCC CODE 1		(29D) FCC CODE 2
(23E) CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY
(26E) FEE DUE FOR (PTC)	(27E) TOTAL FEE	FCC USE ONLY
(28E) FCC CODE 1		(29E) FCC CODE 2
(23F) CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY
(26F) FEE DUE FOR (PTC)	(27F) TOTAL FEE	FCC USE ONLY
(28F) FCC CODE 1		(29F) FCC CODE 2



DIRECT COMMUNICATIONS ROCKLAND, INC.
GENERAL FUND

P.O. BOX 269 • (208) 548-2345
 ROCKLAND, IDAHO 83271

ZIONS BANK
 PARIS OFFICE
 90 NORTH MAIN STREET
 PARIS, IDAHO 83261
 92-112 / 1241 424

CHECK NUMBER

3195

CHECK NO.	DATE	AMOUNT
00453 03195	10/19/04	*****720.00

PAY TO THE ORDER OF SEVEN HUNDRED TWENTY DOLLARS AND 00 CENTS

TO THE ORDER OF

FEDERAL COMMUNICATION COMMISSION
 Washington DC

Leonard M. [Signature]

⑈003195⑈ ⑆124101128⑆ 424 00048 7⑈

DIRECT COMMUNICATIONS ROCKLAND, INC. • GENERAL FUND • Rockland, Idaho 83271 PLEASE DETACH AND RETAIN BOTTOM STUB

DATE	INVOICE NO.	AMOUNT	DATE	INVOICE NO.	AMOUNT
10/19/04	USF PETITION	720.00	10/19/04	03195	720.00

3195

3195

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED & INSPECTED
NOV 2 - 2004
FCC - MAILROOM

In the Matter of)
)
Direct Communications Rockland, Inc.,) AAD 04- ____
and Direct Communications Cedar Valley, LLC)
)
Petition for Waiver of Sections 69.2(hh) and) CC Docket No. 96-45
69.605(c) of the Commission's Rules, Approval)
of Related Actions, and an Expedited Decision)

To: Chief, Wireline Competition Bureau

Petition for Waiver of Sections 69.2(hh) and 69.605(c)
of the Commission's Rules; Request for Average Schedule Treatment;
and Request for Expedited Decision

ORIGINAL

David R. Irvine
Attorney for Petitioners
350 South 400 East, Suite 201
Salt Lake City, UT 84111
(801) 363-4011

October 27, 2004

Petition for Waiver of Sections 69.2(hh) and 69.605(c) of the Commission's Rules, Approval of Immediate Federal USF Support As an Average Schedule Company Under Section 69.605(c), and an Expedited Decision

Petitioners have executed a contract to purchase the Eagle Mountain City municipal telephone system, which sale has been approved by the Utah Public Service Commission ("UPSC"). Petitioners request that the Commission approve two actions sought by Direct Communications Rockland, Inc. ("DCRI") and Direct Communications Cedar Valley, LLC ("DCCV"). Exhibit 1, which is attached hereto and incorporated herein by reference, is a copy of a Joint Petition by Qwest Corporation ("Qwest") and DCCV to waive the study area boundary freeze and modify Qwest's Study Area boundary by excluding from that Study Area the territory certificated to DCCV, and designating DCCV's certificated territory as a separate Study Area for purposes of Part 36 of the Commission's rules. That application has been filed contemporaneously with this Petition.

Second, pursuant to section 1.3 of the Commission's Rules, DCRI and DCCV ask that section 69.2(hh) of the Commission's Rules be waived in order to allow DCCV to become a member of NECA and receive immediate federal Universal Service Fund ("USF") support. Petitioners further request that the Commission allow DCCV to receive such federal USF support as an average schedule company pursuant to 47 C.F.R. 69.605(c), and Petitioners request a waiver of section 69.605(c), if necessary, to permit such treatment. Petitioners also request an expedited decision in order to preserve the viability of economical telephone service at Eagle Mountain, Utah.

I. Background

This Petition has been filed to facilitate a sale of the only municipal telephone system in Utah to a private local exchange carrier, DCCV, which is well-qualified to

operate the system and provide high-quality, state-of-the-art telephone service, but the private buyer cannot maintain the system's operation without state and federal USF support.

A. Municipal Telephone Service in Eagle Mountain, Utah

Eagle Mountain City ("EMC") was incorporated as a town in 1996, and it created its municipal telephone system by ordinance in 1997. The fifth-class city is the only significant residential area in Utah County west of Cedar Mountain, and that part of Utah County has historically been rural and agricultural. Prior to the town's incorporation, the entire area was primarily desert rangeland and farms, and there were no telephone facilities whatsoever in the center area of the town; Qwest served a small number of customers scattered along State Highway 73, which runs approximately 5 miles north of the town's center. There are no services of any nature within the City, other than municipal services, and there is very little commercial activity. This isolated community, which has now grown to 6,093 persons depends on other cities in Utah County for nearly all life supporting services; the nearest community where some of these services are available is 8 miles to the East.

EMC is an area where young families can find affordable entry-level homes. Approximately 40% of the population is under age 12; the average age of the population is 21 years. The municipal telephone system serves approximately 2,223 telephone subscribers. Landline telephone service is critical for the community's access to emergency health care and public safety services; the nearest medical clinical facilities are in Lehi, Utah (about 15 miles east of Eagle Mountain) and the nearest fully-equipped hospital facilities are at least 30 miles to the northeast or southeast. Life-threatening emergencies require evacuation by air ambulance.

The center of the City, where its growth has been concentrated, is approximately 5 miles south of the nearest State road, Highway 73. The municipal system subscribers are all located in that center part of the City. Without the City's municipal system, there would be no landline service whatsoever available for those subscribers, for there was no telephone service of any kind in the area prior to the City's creation of the municipal system. Currently, and at the time of the initial development, the entire area within the City's incorporated limits is and was within the service territory certificated to Qwest and its corporate predecessor, US West.¹ However, neither company has ever had telephone facilities south of Highway 73. Qwest serves fewer than 100 subscribers located adjacent to Highway 73, some of whom live within the corporate limits of the City.

The EMC municipal telephone system was established to serve an area in which no other telephone carrier had facilities of any nature. It functions as the carrier of last resort for the customers it serves. The EMC municipal telephone system subscribers solely bear the full cost of the EMC system's operating expenses. The EMC system is prohibited by state law from participating in the Utah Universal Service Support Fund ("USSF") because it is a municipal system, and EMC has not attempted to qualify for federal USF support, even though it likely is eligible. Consequently, the basic rates paid by EMC subscribers are the highest in Utah at \$27.00 per month, which is \$4.05 higher than the state's maximum USSF-supported basic service rate.

¹ On September 16, 2004, Qwest filed a petition with the Utah Public Service Commission asking that its Lehi Exchange boundary be modified to exclude the City of Eagle Mountain from Qwest's certificated territory. This boundary modification was filed pursuant to a Stipulation between Qwest and Direct Communications and other parties interested in DCCV's UPSC petition for a certificate of public convenience and necessity. The conditional modification, to which the parties stipulated, was approved by the UPSC in its Order in Docket No. 04-049-136, dated October 8, 2004.

The EMC system provides most, but not all, central office services and features common to other local exchange carriers in Utah. The City's decision to sell the system was prompted, in part, by the realization that capitalization of its growth and maintenance requirements would require further borrowing at interest rates far less favorable than are available to private carriers.

In November 2002, the City conducted a referendum in which the City's residents were asked to vote on whether to sell the telephone system to DCRI. In that election, 94% of the voters approved the sale to DCRI in order to obtain the additional service features DCRI committed to provide. Following a two-year negotiation process, DCRI entered into a contract with EMC in December, 2003 to purchase the City's municipal telephone system.

B. Direct Communications Rockland, Inc., the Proposed Purchaser of the Eagle Mountain Municipal Telephone System

DCRI is an Idaho-certificated incumbent local exchange carrier ("ILEC") and eligible telecommunications carrier ("ETC") serving approximately 1,500 rural subscribers in Rockland, Arbon, and the southern half of Bear Lake County, Idaho. DCRI elected to provide service to EMC through a subsidiary, DCCV, organized and formed specifically for that purpose.

II. Basis for DCCV's Request for Expedited Decision

The purchase contract entered into between DCRI and EMC is contingent upon approval of USF support for DCCV by the UPSC and this Commission. DCRI's analysis of the EMC system shows that the high costs of serving this rural area make it uneconomical for a private carrier to provide service if the subscribers are the only source of system revenue. On August 9, 2004, the UPSC approved DCRI's and DCCV's

petition for a certificate of public convenience and necessity to operate the EMC telephone system. Specific findings by the UPSC are treated below, but the core finding of that Order is that although DCCV is a newly-organized company, it qualifies as an ETC pursuant to 47 U.S.C. § 214(e)(2), and should be regulated as though it were an ILEC even though, as a new company, it cannot meet the ILEC requirements of 47 CFR § 36.611, 36.612, and 69.2(hh) because it did not exist in 1996. The UPSC further found that DCCV meets the Utah USF requirements of UPSC Rule 746-360-6 for eligibility to participate in the Utah Universal Service Support Fund.

DCCV's loan guarantee application through the Rural Utilities Service ("RUS") is filed and pending. DCCV expects RUS approval to be issued by December 31, 2004; however, final approval of that financing is contingent upon the Commission's approval of federal USF support. The purchase contract between DCCV and EMC cannot be closed without the RUS financing.

The EMC city officers (the Mayor and City Council) who constitute the EMC telephone system's governing body have advised state regulators that the City's current operating deficit cannot be remedied without a telephone rate increase of approximately \$11 per subscriber per month. This increase in local rates is a short-term fix to the long-term problem. DCCV is extremely concerned that a rate increase of that magnitude will cause subscribers to discontinue service, thereby burdening the system with decreased revenues before DCCV can even begin operating the system.

III. Precedent and Good Cause Exist for the Requested Relief

Generally, Commission rules may be waived for good cause shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴

DCCV is a new company, and it therefore does not meet the requirement of section 69.2(hh) of the Commission's Rules that it be an ILEC as defined by section 251(h)(1) of the 1934 Act. DCCV's parent company is an ILEC and an ETC for purposes of regulation in the State of Idaho, but not within the State of Utah. Nevertheless, the UPSC found that DCCV would be operating within the State of Utah: (1) as a "rural telephone company" pursuant to 47 U.S.C. § 153(47);⁵ (2) as an ETC pursuant to 47 U.S.C. § 214(e)(2);⁶ (3) that the system DCCV will purchase has functioned as though it were an ILEC in an area not previously served by any other carrier;⁷ and (4) that DCCV should be regulated by the UPSC as an ILEC, inasmuch as its operations will be consistent in every practical and legal sense with the operations of the other Utah ILECs.⁸

The telephone service currently provided by the EMC municipal telephone system is the only telephone service which has ever been offered or provided in the area

² 47 C.F.R. § 1.3.

³ *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969, *cert. denied*, 409 U.S. 1027 (1972)) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

⁵ UPSC Order in Docket No. 04-2419-01 issued August 9, 2004, at Page 13, and attached hereto and incorporated herein by reference as Exhibit 2.

⁶ *Id.* at Pages 14, 20, 28.

⁷ *Id.* at Pages 12, 18, 28.

⁸ *Id.* at Page 29.

served by that system. Prior to installation of the EMC municipal system, no other carrier had facilities in that service area. The EMC system was financed exclusively by the City, and no other carrier has ever competed to provide telephone service there, even though the area was within Qwest's certificated area. Thus, DCCV is purchasing a municipal system where no service had existed prior to that offered by EMC.

In this respect, DCCV comes before the Commission in a position nearly identical to that of other new companies organized after 1996 and organized for the purpose of serving areas where no other carrier had previously provided service. Because the definition of an ILEC pursuant to 47 U.S.C. § 251(h)(1) precludes such classification for any carrier created after 1996, DCCV cannot meet that definitional test or the ILEC requirement for NECA membership and USF participation. However, in several recent decisions, the Commission has recognized the practical difficulties inherent in rigid application of the ILEC definition irrespective of circumstances.

The Commission granted an exception to Skyline Telephone and waived the restrictions of section 69.2(hh) of the Commission's Rules in an order released April 12, 2004.⁹ Skyline was a newly created company which proposed to serve a previously unserved rural, high-cost area. In its order approving Skyline's waiver of ILEC status as a condition of NECA membership and participation, the Commission wrote:

When the Commission revised its rules to require that telephone companies be incumbent LECs to participate in NECA tariffs and pools, . . . the Commission did not specifically provide for companies, such as Skyline Telephone, that come into existence after the enactment of the 1966 Act. The purpose of the incumbent LEC restrictions in Parts 36, 54, and 69 is to distinguish competitive LECs from incumbent LECs for purposes of calculating access charges and universal service support, not to impose interconnection requirements. Skyline Telephone is the sole provider of services in the area it

⁹ *Petition of M&L Enterprises, Inc., d/b/a Skyline Telephone Company for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules* (filed May 25, 2001), Order, CC Docket No. 96-45, 19 FCC Rcd 6761 (*Skyline*).

serves; thus, it is not a competitive LEC. As a rural telephone company, Skyline Telephone is exempt from the interconnection requirements in section 251(c) until the company receives a bona fide request for interconnection, services, or network elements, and the Washington Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act.¹⁰

Similar rulings in similar cases have been issued by the Commission in the *Sandwich Isles*, *South Park*, and *Border to Border* cases.¹¹ As with these companies, DCCV is newly formed (and therefore ineligible to be classified as an ILEC under the statutory definition). DCCV will provide service to a high-cost, rural area which, prior to 1996 was unserved by any existing carrier. Like these other companies, the service to be provided by DCCV cannot be sustained without federal and state USF support.

IV. The Waivers Sought by DCCV Are in the Public Interest

The comparative isolation of Eagle Mountain and the public safety aspects of reliable telephone service have been discussed above. The urgency of expeditiously completing the sale of the EMC municipal system to DCCV is reflected in the immediate pressure on the City raise its telephone rates in order to keep the system breaking even. DCCV has determined that operation of the system is not economically feasible without both state and federal USF support, and the purchase contract and RUS financing are all contingent upon approval of such support.¹²

¹⁰ *Id.* at ¶ 27.

¹¹ *Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification*, Order, AAD 97-82, 13 FCC Rcd 2407 (Acct. Aud. Div. 1998) (*Sandwich Isles*), application for review pending, *Verizon Hawaii Inc. (formerly GTE Hawaiian Telephone Company) Application for Review of an Order Granting in Part a Petition for Waiver by Sandwich Isles Communications, Inc.*, filed Mar. 8, 1998, updated Sept. 4, 2001 (*Verizon Hawaii Application for Review*); *South Park Telephone Company, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Order, AAD 97-41, 13 FCC Rcd 198 (Acct. Aud. Div. 1997) (*South Park*); *Border to Border Communications, Inc. Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, AAD 96-61, 10 FCC Rcd 5055 (Com. Car. Bur. 1995) (*Border to Border*).

¹² Exhibit 2, Pages 7, 9, 25.

The UPSC found that the EMC municipal telephone system operates in a high-cost rural area, and that its rate structure, the highest in Utah, is a consequence of the municipality's statutory inability to participate in the Utah Universal Service Support Fund and the fact that EMC has not been a participant in federal USF support. These cost pressures will be remedied as a consequence of the sale of the system to DCCV, which the UPSC found is eligible for state USF participation and support.¹³ Without such state and federal support, which the UPSC found to be necessary as a means of assuring affordable service at Eagle Mountain, the subscribers will continue to bear the full and increasing costs of the operation of the system.

DCCV has requested that it be allowed to participate in federal USF as an average schedule company under section 69.605(c) of the Commission's Rules for two reasons: (1) DCCV hopes that such a classification will expedite a favorable decision and allow immediate USF participation upon approval; and (2) DCCV does not have adequate historical cost data at the present time which would allow immediate USF participation on any other basis. The system of accounting followed by EMC has been structured to comport with municipal accounting policies and practices rather than anything similar to the Uniform System of Accounts. Until DCCV becomes the system owner and operator, the collection of actual cost data cannot be reliably undertaken. At such time as historical data is available, DCCV wishes to reserve the right to apply for historical cost treatment.

The primary goal of the USF program is to promote the nationwide availability of reasonably-priced telephone service by providing "direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average

¹³ Exhibit 2 at Pages 7, 8, 16.

subscriber.”¹⁴ The 2,223 subscribers at Eagle Mountain reside in the highest cost area of Utah, and they face another substantial rate increase if the sale to DCCV is delayed. The UPSC has found the sale to DCCV to be in the public interest.¹⁵

V. Conclusion

DCCV submits that good cause exists for granting the requests set forth herein. DCCV is not a “competitive local exchange carrier.”¹⁶ It will be a facilities-based carrier, and it will operate in every respect as do the other Utah rural ILECs, all of which receive federal USF support. Denial of the request for waiver of section 69.2(hh) would be contrary to the basic principles which are at the core of the USF program, and waiver of the section will better serve the public interest. In the circumstances at Eagle Mountain, denial of the waiver requested will frustrate, rather than further, the USF objectives by denying cost support to a new company which will be providing needed service to an area where, prior to 1996 and EMC’s subsequent creation of the municipal system in 1997, no existing carrier ever had facilities.

Approval of immediate USF support, based on average schedule treatment, will allow the sale to DCCV to proceed without delay. Without such immediate USF support, neither DCCV, nor any other carrier – nor EMC – can economically sustain what is already the highest-cost basic service in the State.

¹⁴ *In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, Recommended Decision and Order, CC Docket No. 78-72, 80-286, released November 23, 1984, at ¶ 58.

¹⁵ Exhibit 2, Page 17, ¶ 1, 2.

¹⁶ Exhibit 2, Page 18, ¶ 7; Page 29, ¶ 8(h)(viii).

DATED this 27th day of October, 2004.

A handwritten signature in black ink, appearing to read "David R. Irvine", written over a horizontal line.

David R. Irvine
Attorney for Direct Communications,
Cedar Valley, LLC
350 South 400 East, Ste. 201
Salt Lake City, UT 84111
(801) 363-4011



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

In the Matter of)
)
Direct Communications Cedar Valley, LLC)
)
and)
)
Qwest Corporation)
)
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

To: Chief, Wireline Competition Bureau

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communication Commission's ("FCC" or "Commission") Rules,¹ Direct Communications Cedar Valley, LLC ("DCCV") and Qwest Corporation ("Qwest") (together, "Petitioners"), by and through their counsel, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules.

Petitioners request these waivers to enable DCCV to complete its proposed purchase of the municipal telephone system owned and operated by Eagle Mountain City ("EMC") within the State of Utah. The area served by EMC's municipal telephone system is currently within Qwest's Utah study area,

¹ 47 C.F.R. § 1.3.

and Petitioners request that the territory included within EMC's municipal telephone system be removed from Qwest's study area in Utah and recognized as a separate study area for DCCV. Exhibit 1, attached hereto, identifies the area to be served by DCCV.

Petitioners request that this Petition be reviewed and approved expeditiously. The facts and circumstances supporting approval are similar in material respects to those involved in waiver requests that have been approved recently.² Prompt approval will enable DCCV to focus time and resources on the system it will purchase immediately following the transaction closing, which it seeks to accomplish before the end of calendar year 2004. Approval is also necessary in order for DCCV to receive federal Universal Service Fund ("USF") support at the time it begins to operate the system.

INTRODUCTION

Qwest is the largest incumbent local exchange carrier in Utah ("ILEC"). It is a price cap carrier, and, as of June 30, 2004, it owns and operates 1,026,961 access lines in 54 exchanges throughout Utah, including internal and official lines. Although Qwest has never had telephone facilities in the area served by the EMC municipal system, the area has been within Qwest's Utah study area.

² 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(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 2433 (Acc. Aud. Div. 1997) ("Baltic Order").*

That study area is referred to by the Universal Service Administrative Company (“USAC”) as study area code 505107. After the purchase transaction is completed by DCCV, Qwest will continue to provide local telephone service within the other Utah areas it serves and will retain its study area for those exchanges.

DCCV is a newly-formed Utah company whose corporate parent, Direct Communications Rockland, Inc. (“DCRI”) is a certificated incumbent ILEC in the State of Idaho. DCCV was formed solely to operate the system to be purchased from EMC and that system’s 2,223 subscribers; it serves no customers at the present time. DCRI, the parent corporation, serves approximately 1,500 rural subscribers in Rockland, Arbon, and the southern half of Bear Lake County in Idaho. DCRI is an eligible telecommunications carrier under the federal Act, and it receives federal USF support as a “cost company” carrier in Idaho, not a “price cap company.” DCRI is not a competitive local exchange carrier (“CLEC”), nor does it control any companies operating as CLECs.

As will be discussed below in more detail, the factors that the Commission requires for a study area waiver are, or will be, all present in this case: (1) the public interest will be served by approving the waiver; (2) the Utah Public Service Commission (“UPSC”) supports and recommends this proposal; and (3) the purchase of the EMC municipal system by DCCV will not adversely impact the USF.

Related to this Petition, on this day, Petitioner DCCV is also filing an application requesting a waiver of Sections 36.611, 36.612, 69.2(hh), and waiver of the filing deadlines set forth in Sections 54.314(d) and 54.307(c) in order to permit immediate access to USF support. In that application, DCCV has also requested average schedule treatment under Section 69.605(c).

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,³ 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.⁴

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.⁵ Such a result would not serve the Commission's policy objective of

³ 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).

⁴ 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. Car. Bur. 1990).

ensuring that carriers' actual costs are reflected in their accounting so that they can accurately set just, reasonable, and non-discriminatory rates. Moreover, with respect to the purchase transaction which is the subject of this Petition, Qwest has never had facilities in the area served by the EMC municipal system, nor does Qwest draw USF support for that area or the remaining Qwest exchanges in its study area. Qwest is not the seller of the system which DCCV will purchase, or a party to the transaction, and the waiver sought herein will conform the Commission's policy objectives to the operational facts on the ground.

A. Granting the Waiver Is in the Public Interest.

The EMC municipal telephone system was created in 1997 to serve an area in which no other carrier had facilities. From its inception, it has been problematic for EMC, its subscribers, and Utah regulators.⁶ As a municipal utility, Utah law barred it from receiving state USF support, and all of the expenses of constructing and operating the system have been borne by the subscribers. They pay the highest basic local rates in Utah, at \$27.00 per month, which is \$4.05 higher than the State's USF ceiling rate of \$13.50 per residential access line (when the extended area service [EAS] and carrier access line charge [CALC] are added to the "affordable rate" target used by the UPSC).⁷

⁵ *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*").

⁶ *Id.* at Page 5.

⁷ *Id.* at Page 6, 7.

The purchase contract between EMC and DCCV is conditioned on DCCV receiving state and federal USF support.⁸ If DCCV cannot qualify for USF support, the current subscribers will have to bear the full costs of the growth, maintenance, and operation of the EMC system. A switch replacement three years ago allowed subscribers access to many, but not all, features and services considered standard options by other Utah ILECs. The sale of the system to DCCV will expand the state-of-the-art service options available to subscribers, and will put the system under the management and operation of a technologically experienced and financially stable private carrier. DCCV can obtain capital financing on more reasonable terms than can EMC in order to finance growth and improvements.⁹

The UPSC has found the transaction and DCCV's operation of the EMC system to be in the public interest.¹⁰ Regardless of who operates the system, it cannot economically be sustained, absent USF support, without raising rates for the subscribers. EMC has advised state regulators that if the sale transaction cannot be closed by December 31, 2004, the City will have to raise subscriber rates by approximately \$11.00 per month in order to meet current operating expenses.¹¹ As rates increase so dramatically, it is likely that some number of

8 *Id.* at ¶ 6, Page 22.

9 *Id.* at Page 7.

10 *Id.* at ¶¶ 1, 2, Page 15.

subscribers will find telephone service unaffordable and will discontinue service. Not only will such a result make DCCV's purchase more economically questionable, it will put the community at risk.

The area served by the EMC system is approximately 5 miles south of the nearest state highway. There are no services of any nature within the City, other than municipal services, and there is very little commercial activity. This isolated community of 6,093 persons is 8 miles from the nearest life supporting facilities. It is 30 miles from the nearest fully-equipped hospital, and life-threatening emergencies require evacuation by air ambulance. It is one of the few areas along Utah's Wasatch Front where young families can find affordable, entry-level homes. Approximately 40% of the population is under age 12; the average age of the population is 21 years. The area does not have reliable wireless telephone service, and reliable, available landline telephone service is critical to public health and safety. The sale to DCCV, therefore, is a matter of significant urgency to the City.

B. State Commission Approval of a Study Area Waiver.

On August 9, 2004, the Utah Public Service Commission issued its Order granting DCCV a certificate of public convenience and necessity, thereby certifying DCCV to provide telephone service to the area served by the EMC municipal system once the purchase transaction is closed. At Page 9 of that

11 The UPSC noted the City's rate increase problem at Page 7 of its Order in Docket No. 04-2419-01, issued August 9, 2004. Mayor Kevin Bailey reiterated the comments to members of the FCC staff on August 25, 2004.

Order, the UPSC stated, "The Commission has no objection to and supports the modification of Qwest's FCC study area that will be needed to consummate the sale and allow transfer of the service area."¹² In accordance with the Stipulation entered into between the parties in the docket before the UPSC, Qwest has filed its conditional petition with the UPSC to amend its certificate and exclude from its Lehi Exchange the area now served by the EMC municipal system. The UPSC certificated that excluded territory to DCCV.¹³ The Petitioners herein will supplement this Joint Petition for Expedited Waiver when the UPSC issues its order approving Qwest's certificate amendment petition.

C. 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 greater than one percent of the total high-cost support fund for the year.¹⁴ The proposed transaction between EMC and DCCV 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

¹² UPSC Docket No. 04-2419-01, Order, issued August 9, 2004.

¹³ *Id.*

¹⁴ See, e.g. *US 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.

per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹⁵

As a municipal system serving a high-cost rural area, EMC was eligible to receive federal (but not Utah) USF support; however the City, which has operated its system only since 1997, did not apply for NECA membership or federal USF support. DCCV is, therefore, the successor to EMC's position rather than Qwest's position with respect to federal USF support. It is inconceivable that DCCV's USF support could rise to \$38 million – the figure that now approximates an aggregated one percent increase of annual high cost support.¹⁶ The number of subscriber lines DCCV will serve as a consequence of the purchase transaction with EMC is approximately 2,233. The rates charged by EMC are \$27 per residential line per month, the highest basic local rates in Utah. If federal USF support were substituted for the entire monthly subscriber line revenue for the EMC system, an unthinkable circumstance, the annual total would be \$723,492 per year. Accordingly, this transaction is a non-event for purposes of the USF.

CONCLUSION

The study area waiver and modification sought herein is a necessary step in order to qualify DCCV, a new company purchasing a municipal system in an

¹⁵ 47 C.F.R. § 54.305(a).

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").