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Attached Comments were filed by the National Telecommunications Cooperative Association.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Domestic Section 214 Application Filed for the Acquisition) WC Docket No. 06-80
of Assets of United Telephone Company of Kansas and)
United Telephone Company of Eastern Kansas by)
Rural Telephone Service Company, Inc.)
)
Rural Telephone Service Company, Inc., Nex-Tech, Inc.,) CC Docket No. 96-45
United Telephone Company of Kansas, and United)
Telephone Company of Eastern Kansas Seek Waiver of)
the Study Area Boundary Freeze as Codified in Part 36,)
Appendix-Glossary of the Commission's Rules)
and Rural Telephone Service Company, Inc. Seeks Waiver)
of Part 69.3(e)(11) of the Commission's Rules)

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the Federal Communication Commission's (Commission's or FCC's) Public Notice released on April 27, 2006, inviting comments on the above-captioned waiver petitions.² On April 7, 2006, Rural Telephone Service Company, Inc. (RuralTel), Nex-Tech, Inc.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, video, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² In the Matter of Domestic Section 214 Application filed for the Acquisition of Assets of United Telephone Company of Kansas and United Telephone Company of Eastern Kansas by Rural Telephone Service Company, Inc. WC Docket No. 06-80; Rural Telephone Service Company, Inc., Nex-Tech, Inc., United Telephone Company of Kansas and United Telephone Company of Eastern Kansas Seek Waiver of the Study Area Boundary Freeze as Codified in Part 36, Appendix-Glossary of the Commission's Rules, and Rural Telephone Service Company, Inc. Seeks Waiver of Part 69.3(e)(11) of the Commission's Rules, CC Docket 96-45, DA 06-941, Public Notice, (rel. April 27, 2006).

(Nex-Tech), and United Telephone Company of Kansas and United Telephone Company of Eastern Kansas (United) filed a joint petition for a study area waiver of the Commission's frozen study area boundaries in connection with RuralTel's acquisition of twelve exchanges from United. Specifically, the joint petitioners seek a waiver of their existing study area boundaries to remove those exchanges from United's current Kansas study area, and include those exchanges within RuralTel's study area boundaries. In addition, RuralTel's wholly-owned subsidiary, Nex-Tech, operates as a competitive local exchange carrier (CLEC) in United's Osborne exchange which is being sold to RuralTel. Upon the completion of the acquisition, Nex-Tech intends to discontinue its CLEC operations in Osborne exchange and transfer its CLEC subscribers to RuralTel's incumbent local exchange carrier (ILEC) operations. RuralTel therefore also seeks a study area waiver to remove Nex-Tech's lines in the Osborne exchange from Nex-Tech's study area and incorporate them into RuralTel's ILEC study area.³

NTCA fully supports the study area waiver petition submitted by the Kansas carriers. The Commission's study area freeze should be waived in this instance. Part 36 of the Commission's Rules freezes the definition of a "study area" to the boundaries which were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that LECs would set up high cost exchanges within their service territories as separate study areas to maximize high cost support.⁴ Recognizing that a boundary freeze may not be appropriate in all circumstances, the Commission established a three-prong test for deciding whether a study area

³ *Joint Petition of Rural Telephone Service Company, Inc., Nex-Tech, Inc., United Telephone Company of Kansas, and United Telephone Company of Eastern Kansas for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix B Glossary of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11)*, WC Docket 06-80, CC Docket No. 96-45, DA 06-941, p. 2. (filed April 7, 2006) (Petition).

⁴ *In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 (Dec. 12, 1984).

waiver should be granted. The Commission may approve waiver requests if: (1) it determines that the change will not adversely affect the Universal Service Fund (USF) support program; (2) that the state commission having regulatory authority does not object to the change; and (3) that the public interest supports granting the waiver.⁵

As stated by the petitioners, the sale of this exchange will not adversely impact the USF support program.⁶ When evaluating whether a study boundary change will have an adverse impact on the universal service fund, the FCC analyzes whether the study area waiver will result in an annual aggregate shift in high-cost loop support in an amount equal to or greater than one percent of the total high-cost loop fund.⁷ As demonstrated in Attachment B of the Petition, the propose study area boundary change will not significantly increase the high-cost fund nor come close to the one percent threshold.

In addition, on March 3, 2006, RuralTel and United filed an application with the Kansas Corporation Commission (KCC) requesting the approval of the sale of the United exchanges to RuralTel. NTCA anticipates that the KCC will approve the sale of these exchanges and will have no objection to the FCC granting a study area waiver consistent with the transfer of the United exchanges to RuralTel.⁸

Furthermore, the public interest will be served by the granting of the study area waiver request given that the transfer of exchanges will allow for needed upgrades in the exchanges.

⁵ *In the Matter of US WEST Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36. Memorandum Opinion and Order*, 10 FCC Rcd 1771, 1772 (1995).

⁶ Petition at 6-7.

⁷ *Nemont Telephone Cooperative, Inc., et al., Joint Petition for Waiver of Study Area Freeze Codified in 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 (2003 (Nemont Telephone).*

⁸ Petition at 8.

RuralTel plans to make several improvements to the facilities serving these exchanges, including installation of fiber throughout the exchanges, which will enhance the redundancy and reliability of the network, as well as extend high-speed digital transmission capabilities to areas not currently served by United or Nex-Tech networks.⁹ Granting the waiver petition will, therefore, ensure the availability of advanced communications services to consumers living in the newly acquired exchanges at affordable and competitive rates.¹⁰

Lastly, NTCA supports RuralTel's request for waiver of Section 69.3(e)(11) of the Commission's rules so that RuralTel may bring the acquired lines and CLEC lines into the National Exchange Carrier Association (NECA) common line tariff upon the completion of the transaction. The Commission has determined that a waiver of Section 69.3(e)(11) of the Commission's rules is in the public interest when a rural telephone company, such as RuralTel, can devote additional resources to providing improved communications services to the affected rural areas, which in the absence of a waiver those resources would otherwise be spent preparing a tariff filing which would be effective only until the next NECA access tariff filing period.¹¹ Considering the relatively small number of access lines involved in this proceeding and the administrative burden Section 69(e)(1) would place on RuralTel to develop and file its own interstate tariff, it would be in the public interest to grant RuralTel's request for waiver of Section 69.3(e)(11) of the Commission's rules.

For these reasons, NTCA fully supports the petitions and respectfully submits that the public interest would be served best by the Commission's expeditious approval of the requested

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In Re Blue Valley Telecommunications, Inc.*, 20 FCC Red 19166 ¶ 12 (2005).

waivers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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May 11, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-80, CC Docket No. 96-45, DA 06-941 was served on this 11th day of May 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

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