

DOCKET FILE COPY ORIGINAL

FILED/ACCEPTED

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

FEB 24 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Iowa Telecommunications Service, Inc.,) WC Docket No. 09-
Petition for Waiver of Section 61.41 of the)
Commission's Rules)

**AMENDED PETITION FOR WAIVER
OF IOWA TELECOMMUNICATIONS SERVICES, INC.**

Iowa Telecommunications Services, Inc. ("Iowa Telecom") hereby files this amended petition for waiver of Section 61.41(c)(2) of the Federal Communications Commission's ("Commission's" or "FCC's") rules, the price cap all-or-nothing rule.¹ Iowa Telecom is subject to price cap regulation. It acquired Lakedale Telephone Inc. ("Lakedale") on July 18, 2008, and expects to purchase substantially all of the assets of Sherburne County Rural Telephone Corp. ("SCRTC") within the next several months, and those assets will be transferred to Lakedale. Both of these companies are operated as rate-of-return companies and are members of the National Exchange Carrier Association ("NECA") pools. In accordance with past precedent, Iowa Telecom requests that it be granted a waiver of the price cap all-or-nothing rule in order to be able to maintain the Lakedale property as a rate-of-return company and NECA pool member.

I. BACKGROUND FACTS

On July 18, 2008, Iowa Telecom closed on a transaction which transferred control of Bishop Communications Corp. ("Bishop"), which owned Lakedale, to Iowa Telecom. Iowa Telecom continues to hold Bishop, and its wholly owned subsidiary Lakedale, as a wholly

¹ 47 C.F.R. § 61.41(c)(2).

owned subsidiary. Lakedale provides local telephone service and interstate access services for approximately 11,600 access lines in six exchanges in Minnesota. Lakedale offers services pursuant to the interstate access tariff of NECA and is regulated as a rate-of-return carrier. None of Lakedale's exchanges are adjacent to Iowa Telecom's exchanges, which are located in the State of Iowa.² Lakedale operates in its own study area in the State of Minnesota.

Iowa Telecom has filed applications for the acquisition of substantially all the assets of SCRTC, which services approximately 17,040 access lines in nine exchanges in Minnesota.³ Iowa Telecom plans to transfer SCRTC's assets, upon approval of federal and state regulators, to Lakedale. SCRTC has provided interstate access services pursuant to the interstate access tariff of NECA. After consummation, SCRTC assets would be operated pursuant to the federal access tariff of NECA, and associate pooling arrangements, as Lakedale currently does today. SCRTC assets would continue to be operated pursuant to its current study area, which is separate from the Lakedale study area.

II. ALL OR NOTHING RULE

Section 61.41 of the Commission's rules is designed to ensure that all of a carrier's study areas and affiliates are subject to a single form of pricing regulation—either price cap or rate-of-return. The rule is commonly referred to as the “all-or-nothing rule.” The rule requires, among other things, that a price cap carrier continue to be regulated as a price cap carrier after it acquires a rate-of-return company. It also provides that, if a price cap carrier acquires a rate-of-

² Iowa Telecom provides service to a handful of cross-border customers in Missouri from an Iowa exchange, which Missouri lines are subject to the jurisdiction of the Iowa Utilities Board. Iowa Telecom also owns the Montezuma Telephone Co., which is an average schedule company operating in the State of Iowa. As an average schedule company, Montezuma is not subject to the all-or-nothing rule. 47 C.F.R. § 61.41(c)(3).

³ Sherburne Tele Systems, Inc., Assignor, and Iowa Telecommunications Service, Inc., Assignee, Application for Assignment of Assets of Sherburne Tele Systems, Inc. to Various Subsidiaries of Iowa Telecommunications Services, Inc., WC Docket No. 09- 20 (Feb. 9, 2009).

return carrier, it must convert the rate-of-return carrier to price caps within a year of consummation.⁴ The all-or-nothing rule is intended (1) to prevent a carrier from attempting to shift costs from its price cap affiliates to its non-price cap affiliates and (2) to avoid gaming the system by switching back and forth between different types of regulations.⁵

The Commission has modified the all-or-nothing rule since it was first adopted. For instance, it has permitted a rate-of-return company that purchases exchanges subject to price cap regulation to convert the price cap exchanges to rate-of-return regulation.⁶ The Commission has also granted a number of waivers of the all-or-nothing rule in the context of mergers and acquisitions that allow a price cap carrier to continue to be subject to rate-of-return regulation with respect to the purchased, rate-of-return companies.⁷ The Commission is in the process of reviewing the all-or-nothing rule to determine whether it should continue to apply or be modified.⁸ In the interim, the Commission granted these companies a waiver of the all-or-nothing rule pending the outcome of that rulemaking.⁹

⁴ 47 C.F.R. § 61.41(c)(2).

⁵ *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carrier*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19163, ¶ 261 (2001) (“*Second MAG Order and FNPRM*”).

⁶ *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carrier*, CC Docket No. 00-256, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) (“*Fourth MAG Order and Second Further Notice*”).

⁷ See, e.g., *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd 25544 (Wire. Comp. Bur. 2002) (Valor Purchase of Kerrville Telephone Co.); *ALLTEL Corporation Petition for Waiver of Section 61.41, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 27694 (2002) (GTE Purchase of Puerto Rico Telephone); *Puerto Rico Telephone Co. Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, CCB/CPD No. 99-36, 15 FCC Rcd 9680, ¶ 5 (2000) (same).

⁸ *Second MAG Order and FNPRM*, ¶¶ 260-71; *Fourth MAG Order and Second Further Notice*, ¶¶ 68-94.

⁹ *Fourth MAG Order and Second Further Notice*, ¶ 10 n.40.

III. A WAIVER IS JUSTIFIED TO TREAT IOWA TELECOM'S RATE-OF-RETURN-PROPERTY SIMILAR TO OTHER CARRIERS

Iowa Telecom requests that the Commission grant it a waiver of the all-or-nothing rule to allow it to continue providing interstate access services pursuant to rate-of-return regulation for its Lakedale operations, including for those assets of SCRTC that are to be transferred to Lakedale in the future. Grant of this waiver would be identical to the waivers granted to other companies who have purchased rate-of-return properties and been allowed to maintain the previous rate-of-return regulation for the purchased properties.¹⁰

Grant of a waiver would serve the public interest. Lakedale is a small rural telephone company that is not the type of company which the FCC has forced to become a price cap carrier in the past.¹¹ Iowa Telecom has been operating Lakedale for only a short time and does not have sufficient experience to determine whether price cap regulation would be appropriate for a company of its size and operating territory. It of course has no experience with the SCRTC assets which will be transferred to Lakedale in the future. Requiring Lakedale to convert to price caps would cause Iowa Telecom to suffer substantial financial and administrative burdens, particularly where the Commission may modify the rule in the future to make such conversion unnecessary.

In addition, there is no reasonable basis for concern that Iowa Telecom would be able to successfully engage in the kind of cost shifting that the all-or-nothing rules was created to prevent. The operations of Lakedale, even after SCRTC assets are added, will continue to be subject to the jurisdiction and review by both the this Commission and the Minnesota Public

¹⁰ See page 3, *supra*.

¹¹ The FCC only required the Bell Operating Companies and GTE to convert to price caps. *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 6 (1990). Every other carrier was permitted to voluntarily choose which form of regulation made most sense to it.

Utilities Commission. Because Lakedale operates in its own study area, and the SCRTC assets will operate in its own study area, they will both have separate books of account, which would reveal any unlawful cost-shifting. In addition, since both Iowa Telecom and Lakedale would continue to maintain the same type of regulation the exchanges were subject to prior to the merger or acquisition, there is no "gaming," or switching back and forth, from one type of regulation to another. Therefore, the harms that were intended to be addressed by the all-or-nothing rule are not present in the instant case.

Furthermore, the FCC continues to have pending the issue of whether to modify or eliminate the all-or-nothing rule.¹² Given that no decision has been rendered in that docket, it would be prudent to maintain the separate forms of regulation until the rulemaking issue is decided.

Waiver of the Commission's rules is permitted upon a showing of "good cause."¹³ Specifically, "[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest,"¹⁴ or, alternatively, where "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."¹⁵ In determining whether to grant a waiver, the Commission may take into account special considerations of equity or "more effective implementation of overall policy" on

¹² *Second MAG Order and FNPRM*, ¶¶ 260-71; *Fourth MAG Order and Second Further Notice*, ¶¶ 68-94.

¹³ See 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 4355, 4364 n.118 (1992) ("*Payphone Compensation*").

¹⁵ *Northeast Cellular Tel. Co.*, 897 F.2d at 1166.

an individual basis.¹⁶ As the Commission has done in previous cases similar to this one, good cause justifies grant of a waiver of the rule in these circumstances.¹⁷

IV. CONCLUSION

For the foregoing reasons, Iowa Telecom respectfully requests that the Commission grant a waiver of Section 61.41(c)(2) of the rules, to permit it to continue to operate Lakedale Telephone Co. as a rate-of-return company in its provision of interstate access services.

Respectfully submitted,

By: /s/ Gregory J. Vogt

D. Michael Anderson
Edward B. Krachmer
Iowa Telecommunications Services, Inc.
115 S. Second Avenue West
Newton, Iowa 50208
(641) 787-2357

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115

Of Counsel

Counsel for Iowa Telecommunications Services, Inc.

February 23, 2009

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁷ *See page 3, supra.*