

Founded in 1852
by Sidney Davy Miller

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FCC Mail Room

April 10, 2009

Via United States Mail

96-45

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: Huron Mountain Communications Co. Petition for Waivers of
Commission's Rules to Participate in NECA Pools and Tariffs and to
Obtain Accelerated Universal Service Fund Support**

Dear Ms. Dortch:

Enclosed for filing please find one (1) original and four (4) copies of Huron Mountain Communications Co. Petition for Waivers of Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated Universal Service Fund Support.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: Michael C. Rampe
Michael C. Rampe

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

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In the Matter of)
)
HURON MOUNTAIN)
COMMUNICATIONS CO.) CC Docket No. 96-45
)
Petition for Waivers of the Commission's)
Rules to Participate in NECA Pools and)
Tariffs and to Obtain Accelerated USF Support)
_____)

HURON MOUNTAIN COMMUNICATIONS CO.

**PETITION FOR WAIVERS OF THE COMMISSION'S
RULES TO PARTICIPATE IN NECA POOLS AND TARIFFS
AND TO OBTAIN ACCELERATED UNIVERSAL SERVICE FUND SUPPORT**

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AND TO OBTAIN ACCELERATED UNIVERSAL SERVICE SUPPORT**

I. Introduction

Huron Mountain Communications Co. (HMCC), by its attorneys, pursuant to 47 CFR 1.3, requests waivers of the Commission's rules as set forth herein to allow HMCC to become a member of the National Exchange Carrier Association (NECA) and participate in NECA tariffs and pools, and to begin receiving high-cost Universal Service Fund (USF) support in a timely manner. Specifically, HMCC requests the following:

- (1) Waivers of the definition of "telephone company" in §§ 69.2(hh) and 69.601, and of the annual election filing deadline in § 69.3(e)(6) to allow HMCC to become a member of NECA and to immediately participate in NECA pools and tariffs;

- (2) A declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of Part 36 of the Commission's rules is not necessary;
- (3) Waivers of §§ 36.611 and 36.612 of the Commission's historical cost rules to allow HMCC to access USF high-cost loop support based on forecasted or estimated cost;
- (4) Waivers of the state USF certification deadlines set forth in section 54.314(d) of the Commission's rules;
- (5) Waivers of data filing deadlines set forth in §§ 54.301(b), and 54.903(a) of the Commission's rules.

The granting of the above waivers is essential to enable HMCC to economically serve the unserved area.

In the event any additional waivers are necessary to expedite HMCC's receipt of USF support and participation in NECA pools and tariffs, HMCC requests that such waivers be considered and granted on the Commission's own motion. If some of the waivers requested herein will require substantially more time for the Commission to review than others, HMCC requests that its waiver requests be severed, so that the Commission can rule on those issues requiring less time, while review of the other requests is pending.

II. Background

HMCC is a privately-held domestic company incorporated in the state of Michigan. The Michigan Public Service Commission (MPSC) granted HMCC a temporary license to provide local exchange service in the Huron exchange in its July 1, 2008 Order in Case No. U-15548. The MPSC subsequently granted HMCC a permanent license to provide local exchange service in the Huron exchange in its July 29, 2008 Order in Case No. U-15548 (Attachment A).

The Huron exchange is located in the Upper Peninsula of Michigan. The Huron exchange is bordered on the west by the L'Anse exchange served by Baraga Telephone Company,¹ on the south by the Michigamme, Champion, Ishpeming, and Negaunee exchanges served by AT&T Michigan, on the east by the Marquette and Big Bay exchanges served by AT&T Michigan, and on the north by Lake Superior. No other local exchange service provider is licensed by the MPSC to serve the Huron exchange. A map of the Huron exchange is appended as Attachment B. HMCC is not aware that the Huron exchange has ever been part of any study area. HMCC estimates that the Huron exchange contains approximately 25 full time and part time residences and structures.

On February 10, 2009, HMCC filed a request with the MPSC for designation as an eligible telecommunications carrier (ETC) pursuant to § 214(e)(2) of the Federal Communications Act of 1996 (the Act), 47 USC 151 *et seq.*, and § 54.201 of the

¹ Baraga Telephone Company is an affiliate of HMCC.

Commission's rules, 47 CFR 54.201. HMCC expects the MPSC to grant HMCC the ETC designation in the near future.

III. Good Cause Exists for the Requested Waivers

The Commission may waive its rules for good cause.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 waiver should serve the policy goals and principles which underlie the waived rules.⁴ In addition, the Commission "may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis."⁵ Each of the waivers requested herein satisfies these standards.

A. Waiver of "Telephone Company" Definition

As discussed in the Commission's *2004 Skyline Order*,⁶ to become a member of NECA and participate in NECA pools and tariffs, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules. Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent local exchange carrier (ILEC). Parts 54 and 69 of the Commission's rules define "incumbent LEC" as

² 47 CFR 1.3.

³ *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission Rules*, 20 FCC Rcd 13,566 (rel'd August 11, 2005) (*Allband Order*), ¶ 5.

⁴ *City of Angels Broadcasting, Inc v FCC*, 745 F2d 656, 662-63 (DC Cir, 1984).

⁵ *WAIT Radio v. FCC*, 418 F2d 1153, 1159 (DC Cir 1969), *cert. den*, 409 US 1027 (1972) (*WAIT Radio*).

⁶ *M&L Enterprise, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Section 36.611, 63.612, and 69.2(hh) of the Commission's Rules*, 19 FCC Rcd 6761 (rel'd April 12, 2004) (*2004 Skyline Order*), ¶ 24.

that term is defined in section 251(h)(1) of the Act.⁷ In addition, § 36.611 of the Commission's rules applies only to ILECs.⁸ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act (or a successor or assign of such a carrier).⁹ HMCC is a recently-established carrier that is not a successor or assign of an ILEC, and thus does not meet the definition of "incumbent local exchange carrier," nor the definition of a "telephone company" in § 69.2(hh) of the Commission's rules.

However, similar to Skyline Telephone in the *2004 Skyline Order*, Adak Telephone in the *Adak Order*,¹⁰ and Allband in the *Allband Order*, HMCC's circumstances warrant a waiver of the definition of "telephone company" in § 69.2(hh). The purpose of the ILEC restriction in Parts 36, 54 and 69 is to distinguish competitive LECs from incumbent LECs for purpose of calculating universal service support and access charges.¹¹ In the *Wilderness Valley Telephone Order*,¹² the Commission's Wireline Bureau granted waivers of §§ 69.2(hh) and 69.601 to permit a small new local exchange carrier serving a previously unserved area to become a member of NECA and participate in NECA tariffs and pools. The Bureau noted that when the Commission

⁷ 47 CFR 51.5, 54.5, 69.2(hh).

⁸ 47 CFR 36.611.

⁹ 47 CFR 251(h)(1).

¹⁰ *In the Matter of Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility; Petition for Waiver of §§ 36.611, 36.612, 54.314(d), 54.903(a)(3), 69(hh) and 69.3(e)(6) of the Commission's Rules*, 20 FCC Rcd 20543 (rel'd December 30, 2005) (*Adak Order*).

¹¹ *Allband Order*, ¶ 7, fn 21.

¹² *In the Matter of Wilderness Valley Telephone Company, Inc., Petition for Waiver of §§ 69.605(c) and 69.3(e)(11) of the Commission's Rules*, 13 FCC Rcd 6573 (rel'd March 31, 1998).

revised § 69.2 to require that telephone companies be ILECs to participate in NECA tariffs and pools, the Commission did not specifically provide for companies that do not meet the statutory definition of “incumbent local exchange carrier,” that come into existence after the enactment of the 1996 Act, and that serve previously unserved areas. It therefore waived the LEC requirement of Part 69 for Wilderness Valley Telephone Company (a small new LEC serving approximately 40 subscribers in a previously unserved area), so that it could become a member of NECA and participate in NECA tariffs and pools.

Participation in NECA will allow HMCC to avoid the costs of filing and maintaining its own company-specific interstate tariff. HMCC is a small newly established company, and would incur disproportionately excessive costs to prepare company-specific tariffs in order to serve small number of customers. Granting the requested waiver is in the public interest, and would allow HMCC and its customers the benefit of cost saving and lower rates available through NECA participation.

In addition to a waiver of the definition of “telephone company” in § 69.2(hh), HMCC also requests a waiver of § 69.3(e)(6) of the Commission’s rules to allow HMCC to enter NECA’s Tariff No. 5 outside the annual election period. This waiver will help expedite HMCC’s participation in NECA. This Commission granted a similar request in the *Adak Order*.¹³

For all of the foregoing reasons, HMCC requests that the Commission waive the definition of “telephone company” in § 69.2(hh) of the Commission’s rules; waive the

¹³ *Adak Order*, ¶¶ 14-16.

incumbent LEC requirements of §§ 36.6111, 54.301, and 54.303 of the Commission's rules; and waive § 69.3(e)(6) of the Commission's rules to allow HMCC to promptly participate in NECA pools and tariffs and receive universal service support.

B. Study Area Waiver

HMCC believes that it is not required to seek a waiver of the definition of "Study Area" in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area serving a heretofore unserved area. A carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges. In the *2004 Skyline Order*, the Commission clarified that "a study area waiver request must be filed with the Commission where a company is seeking to create a new study area from within one or more existing study areas."¹⁴ Study area waiver is not required "under three conditions: (a) a separately incorporated company is establishing a study area for a previously unserved area; (b) a company is combining previously unserved territory with one of its existing areas in the same state; and (c) a holding company is consolidating study area in the same state."¹⁵

HMCC's proposed study area has never been part of any existing study area. Moreover, the area has never been served by any licensed local exchange carrier or designated ETC. HMCC is a separately incorporated company establishing a study area for a previously unserved area. The Commission has already concluded that a waiver is

¹⁴ *2004 Skyline Order*, ¶ 13 (2004).

¹⁵ *Request for Clarification Filed by National Exchange Carrier Association, Inc., and Petitions for Waivers filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's Rules*, 11 FCC Rcd 8156, 8160 (rel'd July 16, 1996).

not necessary if the proposed study area is not within any existing study area.¹⁶ HMCC respectfully requests that the Commission issue a declaratory ruling that HMCC does not need a study area waiver for the Huron exchange that HMCC is proposing to serve.

C. Waiver of §§ 36.611 and 36.612

HMCC will be a "rural telephone company"¹⁷ under the FTS in the unserved area, and will therefore be eligible to receive USF support. Under the Commission's rules, calculation of high-cost loop support is based on historical cost information. However, as a new company proposing to serve an unserved area, HMCC does not currently have any historical cost information. Thus, strict application of §§ 36.611 and 36.612 of the Commission's rules would preclude HMCC from receiving timely high-cost loop support related to HMCC's new telephone system and administration and operations.¹⁸

The primary goal of the USF program is to promote the nationwide availability of reasonably priced telephone services by providing "direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average subscriber." In this instance, adherence to the rules will frustrate, rather than further, this goal by denying timely cost recovery from the USF to a new LEC that will incur significant costs to provide adequate and reliable telecommunications service to rural customers. To remedy this situation, HMCC seeks a directive to USAC to calculate and remit USF support to HMCC (upon HMCC obtaining HMCC designation as an ETC) with

¹⁶ See, e.g. *Allband Order*, ¶ 10; *Adak Order*, ¶ 6.

¹⁷ 47 USC 153(7)

¹⁸ The data submission and filing requirements of Part 36 of the Commission's rules operate to postpone the eligibility of a newly established local exchange carrier for receipt of USF support until its third year of operation. See, e.g. *2004 Skyline Order*, ¶ 19.

such calculation to be based temporarily on current and projected, rather than historical, costs. HMCC seeks this treatment until such time as HMCC's costs become historical costs upon which USF recovery can be calculated under the normal procedures set forth in §§ 36.611 and 36.612 of the Commission's rules.

The Commission has articulated the fundamental goal of the USF program:

The Commission established the USF program to promote the nationwide availability of telephone service at reasonable rates. Toward this end, USF support permits high-cost LECs to reduce local rates by recovering additional expenses from the interstate services they provide.¹⁹

To better serve this public policy goal and to more economically serve its subscribers, HMCC seeks a waiver of the historical cost requirements of sections 36.611 and 36.612 of the Commission's rules. Granting this waiver will permit HMCC to receive USF payments promptly for its initial operations based on current and projected, rather than historical, costs and ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost areas in maintaining affordable local service rates. Granting this waiver will also serve the public interest by allowing HMCC to provide reliable and economical service to an area that has previously not been included in any USF study area or served by an ETC.

In the *Adak Order*, the Commission agreed that waiver of §§ 36.611 and 36.612 was appropriate to allow newly-established carriers lacking historical cost data to

¹⁹ *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 94-61, 10 FCC Red. 5055, 5055 (Com. Car. Bur. 1995) ("*Border to Border*") (citation omitted)

receive support based on estimated costs that are subject to true-up.²⁰ Similarly, “delaying the timing of high-cost loop support could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.”²¹ Under strict application of the Commission’s historical cost rules, HMCC would have to wait at least two years for the high-cost loop support related to its projected equipment and operational costs. HMCC therefore seeks this waiver treatment until such time as its 2009 and 2010 costs become historical costs upon which USF recovery can be calculated under the normal procedures set forth in §§ 36.511 and 36.612 of the Commission’s rules.

D. Waiver of Sections 54.301(b), 54.314(d), and 54.903(a)

The Commission has waived §§ 54.301(b), 54.314(d) and 54.903(a) either on its own motion, or upon request, on several occasions.²² Pursuant to § 54.314 of the Commission’s rules, a state that desires a rural ILEC within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative Company (USAC). The certification must be filed by July 1 to receive the last quarter of the calendar year and by October 1 of the preceding calendar year to receive support beginning in the first quarter of the subsequent calendar year. Section 54.301(b) of the Commission’s rules provides that ILECs file certain data with USAC by

²⁰ *Adak Order*, ¶ 9.

²¹ *Adak Order*, ¶ 9.

²² See, e.g. *M&L Enterprise, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Section 54.301(b), 54.314(d), and 54.903(a) of the Commission’s Rules*, 20 FCC Rcd 653 (2005 *Skyline Order*); *Adak Order*, ¶¶ 11-13; *Allband Order*, ¶ 8.

October 1 of each year to receive local switching support (LSS) and interstate common line support (ICLS) for the following calendar year. Section 54.603(a)(3) of the Commission's rules provide that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.²³ In addition, § 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.²⁴

In the *2005 Skyline Order*, the Wireline Competition Bureau, on its own motion, waived state certification and data filing deadlines in §§ 54.301(b), 54.314(d), and 54.903(a) of the Commission's rules, to allow Skyline Telephone to receive high-cost universal service support beginning in 2004.²⁵ For the same reasons, and consistent with the Commission's orders in the *2005 Skyline Order*, the *Allband Order*, and the *Adak Order*, good cause exists to grant HMCC these additional waivers to allow HMCC to be eligible to receive high-cost support upon obtaining ETC designation from the MPSC. Waiver of these deadlines will allow HMCC to begin receiving high cost loop, local switching, and interstate common line support on the dates that it would otherwise be entitled to receive such support, absent the waived requirements.

For the reasons stated above, HMCC requests a waiver of the filing deadlines set forth in §§ 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the July 1, 2008 and October 1, 2008 state USF certification deadlines set forth in § 54.314(d),

²³ 47 CFR 54.903(a)(3).

²⁴ 47 CFR 54.903(a)(1).

²⁵ See *2005 Skyline Order*, 20 FCC Rcd at 655, ¶ 7.

as necessary to allow HMCC to receive LSS and ICLS upon obtaining ETC designation from the MPSC.

IV. Conclusion

Granting these waivers will ensure administration of USF in a manner consistent with the Commission's goal of assisting local exchange carriers in serving high-cost rural areas and maintaining affordable local service. In the event any additional waivers are necessary to expedite HMCC's receipt of USF support and participation in NECA pools and tariffs, HMCC requests that such waivers be considered and granted on the Commission's own motion. If some of the waivers requested herein will require substantially more time for review than others, HMCC requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

Huron Mountain Communications Co. therefore respectfully requests the following:

- (1) Waivers of the definition of "telephone company" in §§ 69.2(hh) and 69.601 and of the annual election filing deadline in § 69.3(e)(6) to allow HMCC to become a member of NECA and to immediately participate in NECA pools and tariffs;
- (2) A declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of Part 36 of the Commission's rules is not necessary;

- (3) Waivers of §§ 36.611 and 36.612 of the Commission's historical cost rules to allow HMCC to access USF high-cost loop support based on forecasted or estimated cost;
- (4) Waivers of the July 1, 2008, and October 1, 2008 state USF certification deadlines set forth in section 54.314(d) of the Commission's rules;
- (5) Waivers of data filing deadlines set forth in §§ 54.301(b), and 54.903(a) of the Commission's rules.

Respectfully submitted,

April 10, 2009



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