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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition of Partner Communications Cooperative for Forbearance from Section 54.305(b) and (d) of the Commission's Universal Service High-Cost Support Rules	))))	WC Docket No. 05-337

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2011 **Released: February 25, 2011**

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a petition filed by Partner Communications Cooperative (Partner) requesting that the Commission forbear from enforcing section 54.305(b) and (d) of the Commission's rules. Forbearance would result in Partner receiving additional high-cost universal service support.[1] Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.[2] We deny the petition because Partner has failed to demonstrate that forbearance from these rules in this instance satisfies the three-part statutory test for forbearance.[3] Specifically, we conclude that continued application of section 54.305 in this instance is necessary to protect consumers and forbearance would not be in the public interest because the additional support would flow to a carrier that already provides voice and broadband to an area served by several alternative voice and broadband providers, some of which do not receive any universal service support.[4]

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[1] *See* Petition of Partner Communications Cooperative for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket No. 05-337 (filed Dec. 2, 2009) (Petition); 47 C.F.R. § 54.305(b) and (d).

[2] 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support and local switching support. A carrier's acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism. *See* 47 C.F.R. § 54.305(d)-(f). A carrier acquiring exchanges also may be eligible to receive interstate common line support (ICLS), which is not subject to the limitations set forth in section 54.305(b). *See* 47 C.F.R. § 54.902.

[3] *See* 47 U.S.C. § 160(a).

[4] This Commission recently proposed to eliminate the applicability of section 54.305 of the Commission's rules in those instances when the study area waiver was adopted more than five or more years ago and when a certain minimum percentage of the acquired lines, e.g., 30%, are unserved by 768 kbps broadband. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Linkup*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 at paras. 226-27 (rel. Feb. 9, 2011). The area is not unserved (i.e. it has providers that are offering service at 768 kbps or better. *See* National Broadband Map (rel. Feb. 17, 2011), http://www.broadbandmap.gov.

II. BACKGROUND

2. Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost loop support (HCLS) and local switching support (LSS) for which the acquired exchanges were eligible prior to their transfer.[5] Section 54.305(b) is intended to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.[6] In previous years, the Common Carrier Bureau approved several changes to study area boundaries relying on purported minimal increases in universal service support, and later the acquiring carriers subsequently received significant increases in universal service support.[7]

3. Incumbent local exchange carriers (LECs) acquiring exchanges may, however, receive additional high-cost support pursuant to the Commission's "safety valve" mechanism, which allows an acquiring carrier to receive support for new investments in the acquired lines.[8] Section 54.305(d) of the Commission's rules states that transferred exchanges in study areas that are subject to section 54.305(b) may be eligible for additional support, known as safety valve support, based on up to fifty percent of the

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[5] 47 C.F.R. § 54.305(b). Carriers' acquired exchanges may receive additional support pursuant to the Commission's "safety valve" mechanism, which allows an acquiring carrier to receive support for new investments in acquired lines. 47 C.F.R. § 54.305(d). Moreover, carriers acquiring exchanges may be eligible to receive Interstate Common Line Support (ICLS), which is not subject to the limitations set forth in section 54.305(b). *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166*, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, Report and Order, and Report and Order, 16 FCC Rcd 19613, 19667-69, paras. 155-57 (2001), *recon. pending*.

[6] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43, para. 308 (1997) (subsequent history omitted). For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's high-cost support mechanism for non-rural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any of its other exchanges. Rural carriers receive high-cost loop support based on the extent to which their reported average cost per loop exceeds 115 percent of the nationwide average cost per loop. *See* 47 C.F.R. §§ 36.601-.631. The mechanism for non-rural carriers calculates support to carriers based on the forward-looking economic cost of operating a given exchange. *See* 47 C.F.R. § 54.309.

[7] For example, in 1990 the Bureau approved a study area waiver in order to permit Delta Telephone Company (Delta) to change its study area boundaries in conjunction with its acquisition of Sherwood Telephone Company (Sherwood). Delta stated in its petition for waiver that it did not currently receive universal service support while Sherwood only received $468 for 1989, and Delta stated that the acquisition would not skew high cost support in Delta's favor. The Bureau concluded that the merging of the two carriers could not have a substantial impact on the high cost support program. After completion of the merger, Delta's support grew from $83,000 in 1991 to $397,000 in 1993. *See Delta Telephone Company, Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules*, AAD 90-20, Memorandum Opinion and Order, 5 FCC Rcd 7100 (Com. Car. Bur. 1990). In another example, in the US West and Gila River Telecommunications, Inc. (Gila River) study area waiver proceeding, Gila River's high-cost support escalated from $169,000 to $492,000 from 1992 to 1993. *See US West Communications and Gila River Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary, of the Commission's Rules*, AAD 91-2, Memorandum Opinion and Order, 7 FCC Rcd 2161 (Com. Car. Bur. 1992).

[8] *See* 47 C.F.R. § 54.305(d).

difference between the carrier's index year high-cost loop support and subsequent year high-cost loop support for the acquired exchanges.[9]

4. Although the Commission has not previously addressed a petition for forbearance from section 54.305, the Commission has addressed, on several occasions, requests for waiver of section 54.305.[10]

5. On April 27, 2006, the Wireline Competition Bureau (Bureau) granted a joint request from Partner and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules.[11] This waiver permitted Iowa Telecom to remove four exchanges from its Iowa Telecom-North study area. This waiver also permitted Partner to add those exchanges to its existing Iowa study area.[12] Because Iowa Telecom at the time of the transfer of exchanges did not receive any HCLS or LSS, the exchanges acquired by Partner are not eligible to receive HCLS or LSS pursuant to section 54.305(b) of the

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[9] *Id.*

[10] *See Mescalero Apache Telecom, Inc., Request for Waiver of Section 54.305 of the Commission's Rules,* Order, CC Docket No. 96-45, 16 FCC Rcd 1312 (2001) (*Mescalero*); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Sacred Wind Communications, Inc., Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, Order, CC Docket No. 96-45, 21 FCC 9227 (2006) (*Sacred Wind*); *Iowa Telecommunications Services, Inc. and Wellman Cooperative Telephone Association, 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 69.605(c) and 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 25 FCC Rcd 7252 (2010) (*Wellman*). In *Mescalero*, the Commission concluded that Mescalero, a newly-formed, tribally-owned carrier, warranted a deviation from the general rule because, among other things, Mescalaro intended to bring additional service to a reservation where 52 percent of the residents on the reservation lacked telephone service. Similarly, in *Sacred Wind*, the Wireline Competition Bureau concluded that a waiver of section 54.305 was warranted because Sacred Wind intends to serve some areas that have no telephone service at all and that more than 50 percent of the population in the proposed service area has income levels at or below the poverty level. In *Wellman* only a single line was being transferred. The Commission has denied petitions for waiver of section 54.305 in *United Telephone Company of Kansas United Telephone Company of Eastern Kansas and Twin Valley Telephone, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 21 FCC Rcd 10111 (2006) and *Valor Telecommunications of Texas, L.P. Request for Waiver of Section 54.305 of the Commission's Rules*, Order, CC Docket No. 96-45, 20 FCC Rcd 782 (2005) (*Valor*). The Commission has emphasized on two occasions that carriers seeking a waiver of section 54.305 must bear a heavy burden and that routine waivers of the rule will not be granted. *See Valor* 20 FCC Rcd at 786, para. 12; *Mescalero*, 16 FCC Rcd at 1320, para. 13.

[11] *See Partner Communications Cooperative 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*, CC Docket No. 96-45, Order, 21 FCC Rcd 4404 (2006) (*Study Area Waiver Order*); 47 C.F.R. Part 36 App. *See also* 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, Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules, CC Docket No. 96-45 (filed June 14, 2004).

[12] Partner acquired the Baxter, Melbourne, Rhodes, and State Center exchanges from Iowa Telecom. *See Study Area Waiver Order* at 21 FCC Rcd 4404, note 2.

Commission's rules.[13] According to Partner, the study area at issue is also served by several wireless providers, a cable provider, and a state-owned fiber network, as well as two satellite providers.[14]

III. PARTNER'S PETITION FOR FORBEARANCE

6. On December 2, 2009, Partner filed a petition asking the Commission to forbear from enforcing sections 54.305(b) and (d) of the Commission's rules to enable Partner to receive HCLS and LSS for the four exchanges that it acquired in 2006.[15] Partner claims that grant of its petition will allow it to upgrade its telephone network to provide broadband throughout its four acquired exchanges in addition to its two original exchanges.[16] Specifically, Partner states that it needs additional high-cost support to upgrade its local exchange services to provide better and more efficient service and to deploy fiber-to-the-home throughout the acquired exchanges.[17] Partner acknowledges that it would be eligible for safety valve support if its costs increase significantly as it upgrades and expands its network. Partner notes, however, that it would receive approximately fifty percent less high-cost support than it would receive if it were not subject to enforcement of section 54.305(b).[18] Partner also seeks forbearance from section 54.305(d) of the Commission's rules, to the extent necessary to specifically clarify that upon forbearance from enforcement of section 54.305(b), Partner would not receive safety valve support pursuant to section 54.305(d), but rather safety net support pursuant to section 36.605(a)-(c).[19] For purposes of this proceeding, we will refer to Partner's requests collectively as a request for forbearance from section 54.305 of the Commission's rules.

7. On January 12, 2010, the Commission released a Public Notice seeking comment on the Petition.[20] Two comments were filed in support of the Petition,[21] stating that enforcement of section

[13] Partner did not seek a waiver of section 54.305(b) at the time it requested a study area waiver. Partner is eligible to receive other forms of high-cost support, and is projected to receive approximately $880,000 in high-cost support for 2011 for its six exchanges. *See* Universal Service Administrative Company, Fund Size Projection for the First Quarter 2011, Appendix HC01 (Nov. 2, 2010).

[14] *See* Petition at 6; *infra* para. 19.

[15] *See* Petition at 1.

[16] *Id.* The Commission's "no barriers to advanced services" policy allows rate of return companies to include the cost of network upgrades, including upgrades that would allow companies to provide broadband over those facilities, within their regulated expense. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11322, para. 199 (2001).

[17] Petition at 3.

[18] *Id.* at 2. Partner further asserts that safety valve support only provides support for up to five years whereas high-cost loop and local switching support provide support until the plant investment is fully depreciated or retired. Partner is incorrect that safety valve only provides support for up to five years. There is no time limit on safety valve support if Partner's loop costs after the acquisition of exchanges continually exceed the index year loop costs. *See* 47 C.F.R. § 54.305(d).

[19] *See* Petition at 2; 47 C.F.R. §§ 54.305(d) and 36.605(a)-(c).

[20] *See Comment Sought on the Petition of Partner Communications Cooperative for Forbearance from Section 54.305(b) and (d) of the Commission's Universal Service High-Cost Support Rules*, WC Docket No. 05-337, Public Notice, 25 FCC Rcd 186 (Wireline Comp. Bur. 2010).

54.305 penalizes rural customers in the four exchanges merely because they were originally served by a company other than Partner.[22] The Florida Public Service Commission (Florida PSC) opposes the petition arguing that: (1) Partner should have taken into account the need for network improvements when it purchased the exchanges; (2) Partner should turn to the state commission for intrastate remedies before seeking federal universal service support; (3) Partner fails to account for the impact of forbearance on the affordability for rates for consumers elsewhere in the country; (4) it is not clear that additional support is needed given the presence of unsubsidized competitors in the area; and (5) the petition is premature in light of the Commission's comprehensive universal service reform efforts.[23]

IV. DISCUSSION

A. Forbearance Standard

8. Section 10(a) of the Act requires the Commission to forbear from applying any regulation or provision of the Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that the following three criteria are satisfied:

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;[24]

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.[25]

9. Section 10(b) of the Act specifies that, in making the public interest determination under the third prong of the three-part forbearance standard, "the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[26] Section 10(b) further specifies that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the

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[21] *See* Comments of Baxter Community School District , WC Docket No. 05-337 (filed Feb. 11, 2010) (Baxter School District); Comments of the State Center Development Association, WC Docket No. 05-337 (filed Feb. 11, 2010) (State Development Center).

[22] *See* Comments of Baxter School District at 2; Comments of State Development Center at 2.

[23] *See* Comments of Florida PSC at 6, WC Docket No. 05-337 (filed Feb. 10, 2010).

[24] A provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal. *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

[25] 47 U.S.C. § 160(a).

[26] 47 U.S.C. § 160(b).

basis for a Commission finding that forbearance is in the public interest."[27] The Commission is obligated to forbear under section 10(a) only if all three elements of the forbearance criteria are satisfied.[28]

B. Partner's Request for Forbearance

10. We conclude that Partner has not established that its petition for forbearance meets all of the statutory criteria necessary for forbearance under section 10(a) of the Act.[29] Partner bears the burden of proof of providing convincing analysis and evidence to demonstrate that all three prongs of the statutory test are met.[30] We conclude that Partner has failed to demonstrate that continued enforcement is not necessary to protect consumers or that forbearance is consistent with the public interest. We therefore deny the petition.

11. *Just and Reasonable*. Under the first prong of the test, Partner must demonstrate that the section 54.305 limitation on HCLS and LSS is not necessary to ensure that Partner's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory.[31] Partner states it is subject to competition from numerous wireless, cable and satellite providers and that it is subject to considerable regulatory and competitive restraints regarding its rates. For these reasons, we agree and find that enforcement of section 54.305 is not necessary to ensure that Partner's rates remain just, reasonable, and non-discriminatory.[32]

12. *Consumer Protection*. Under the second prong, Partner must demonstrate that continued enforcement of section 54.305 is not necessary to protect consumers. We conclude that Partner has failed to do so. Specifically, we find it is necessary to protect consumers of other carriers that would receive less support if we grant this petition and Partner unnecessarily receives additional support for an area where consumers already have access to voice and broadband service.[33] Similarly, we also find it is necessary to protect consumers that pay to support universal service from undue growth in the Fund.[34]

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[27] *Id.*

[28] *See Cellular Telecommunications & Internet Ass'n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

[29] *See* 47 U.S.C. § 160(a).

[30] *See Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543, 9554, para. 20 (2009) (*Forbearance Procedural Order*).

[31] *See TracFone Forbearance Order*, 20 FCC Rcd at 15100, para. 12; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 20; *i-wireless Forbearance Order*, 25 FCC Rcd at 8787, para. 9; *Global Forbearance Order*, 25 FCC Rcd at 10514, para. 9.

[32] *See* Petition at 5-6.

[33] *See infra* paras. 15 and 19.

[34] *See* Florida PSC Comments at 6 ("While increased subsidies may be in the public interest of all consumers in those exchanges, we believe that the FCC should also consider the public interest of consumers that have to pay into the program.").

13. First, providing Partner the relief it requests would result in less HCLS for other carriers. To curb increases in HCLS, the Commission adopted an indexed-cap;[35] therefore, an increase in HCLS for any fund recipient reduces the amount of support that other carriers receive from the fund. The decreased support available to other carriers may negatively affect their subscribers and the services they receive.[36] Providing additional support to Partner's consumers – who already have access to voice and broadband services[37] – means that less support would be available to other carriers' consumers that may not have any access to broadband.

14. Moreover, Partner's petition would also impact consumers because LSS is uncapped and granting this request would increase LSS and the demand on the fund. We find this is an insufficient reason to further burden consumers that pay into the universal service fund. As the Florida PSC points out, at the time of its filing, the universal service fund assessment factor had increased to 14.1 percent and the overall size of the universal service fund has grown significantly.[38] Although Partner contends the additional support that would result from granting its petition will be negligible compared to the overall size of the high-cost program, we must be mindful that granting a series of these types of requests could have a material affect on the size of the fund.[39] High-cost support is paid to approximately 1,020 incumbent LECs. As a result, support payments to each individual incumbent LEC are small relative to the whole.[40] This by itself does not mean we should grant a waiver or forbearance request because it is negligible relative to the size of the fund, as Partner would have us do. Many small individual increases could amount to a significant increase overall, driving up rates throughout the country.[41] Moreover, the rule is intended to discourage carriers from acquiring exchanges merely to increase their share of high-cost support. Granting a series of forbearance requests could undermine the intent of the rule.

15. Partner also argues that its consumers should not be penalized by denying the additional high-cost support.[42] However, Partner provides no persuasive evidence of how its consumers are currently penalized by the application of section 54.305. To the contrary, evidence indicates that consumers in Partner's territory already have access to some of the most advanced services. Partner currently offers high-speed Internet in all four of the acquired exchanges in addition to its two original exchanges.[43] Specifically, Partner offers "next generation broadband" at speeds of up to 3 Mbps for $39.95 and up to 5 Mbps for $49.95.[44] Moreover, as discussed below, consumers in Partner's territory have several other choices for voice and broadband service from competing providers.

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[35] *See* 47 C.F.R. §§ 36.603-604.

[36] *See* 47 C.F.R § 36.622(c).

[37] *See infra* paras. 21-22.

[38] *See* Florida PSC Comments at 5.

[39] *See* Reply Comments of Partner at 3. Currently there are 43 incumbent LECs subject to the requirements of section 54.305 of the Commission's rules. *See* Universal Service Fund, 2010 Submission of 2009 Data Collection Study Results by the National Exchange Carrier Association, Inc., Appendix F (Sep. 30, 2010) (NECA 2010 USF Filing).

[40] *See* NECA 2010 USF Filing.

[42] *See* Petition at 7.

[43] *See* Partner Communications Cooperative at http://www.pcctel.net/index.php?option=com_content&task=view&id=14&Itemid=15 (last visited Feb. 22, 2011).

[44] *Id.*

16. Partner further argues that its local exchange upgrades and fiber build-out plan are contingent upon its receipt of high-cost loop and local switching support in the four acquired exchanges.[45] We note, however, that while the petition has been pending for just over a year, Partner announced that it will install a fiber-to-the-home network over five years in all of its exchanges.[46] Partner also states it has been granted a Rural Utilities Service broadband loan in the four acquired exchanges.[47] Therefore, we are not persuaded by Partner's argument that its local exchange upgrades and fiber build-out plan are contingent upon grant of its petition. Further, Partner was aware or should have been aware of the condition of the plant it was acquiring from Iowa Telecom. Partner had the opportunity to evaluate, before purchasing these exchanges from Iowa Telecom, the state of the network, the costs it would need to incur for any upgrades, and the amount of transferred support that it would receive and the potential for safety valve support for costs incurred in the acquired exchanges.[48] We agree with the Florida PSC that "Partner should have taken into consideration the amount of federal universal service support that would be available to it and the condition of the network it was purchasing before completing the acquisition of the four exchanges."[49]

17. *Public Interest.* We also conclude that forbearing from enforcing section 54.305 of the Commission's rules would not be consistent with the public interest because it would provide additional universal service support – which is a limited public resource – to a provider that already offers voice and broadband in an area served by a number of other voice and broadband providers, including providers that receive no universal service support.

18. Partner claims that forbearance from 54.305 will serve the public interest by enabling Partner to receive "full" high-cost universal service support (i.e., HCLS and LSS in addition to ICLS) to support network upgrades and ultimately fiber-to-the-home deployment in the four acquired exchanges.[50] As stated above, however, Partner already provides high-speed Internet access service throughout its exchanges.[51] Partner has provided no evidence that its subscribers have been shortchanged by the enforcement of section 54.305 of the Commission's rules and contends that the purchase of these

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[45] *Id.* at 7.

[46] Partner Communications Cooperative, Connections (June 2010), http://www.pcctel.net/images/stories/connections/partner_newsletter_6-10.pdf. ("The new fiber network will be capable of up to 100 Mbps per customer, and will allow for more high definition TV channels, and the continued expansion of Internet and entertainment services and applications.").

[47] *See* Petition at 3.

[48] We note that Partner has not invested enough in the four exchanges to qualify for safety valve support. *See supra* para. 2; 47 C.F.R. § 54.305(d).

[49] Florida PSC comments at 2.

[50] *See* Petition at 8.

[51] *See supra* para. 15. We note that Partner's six exchanges, including the four exchanges acquired from Iowa Telecom, have received approximately $1.7 million or $500 per line in interstate common line support since the acquisition (May 2006 to November 2010). *See* Universal Service Administrative Company's disbursement tool at http://www.usac.org/hc/tools/disbursements. Interstate common line support is not subject to the limitations of section 54.305 of the Commission's rules. Also, as noted earlier, Partner's investment and expenditures in the four acquired exchanges were not significant enough to qualify for safety valve support. *See supra* notes 18, 48.

exchanges immediately benefited its consumers in all four exchanges with new and upgraded plant and the availability of additional telecommunications.[52]

19. Partner further claims that grant of its petition will promote more competition among voice and broadband providers, giving the public more voice and broadband choices and leading to lower prices.[53] According to Partner's own petition, however, there is ample competition in these exchanges. Partner states that "there is no shortage of voice and broadband providers currently, and the number of providers will continue to grow,"[54] including:

> 1) Verizon/Alltel, US Cellular, and i-Wireless, all of which provide mobile wireless voice service throughout all six of Partner's exchanges; AT&T and Sprint Nextel provide service on the interstate highways and major highways in Partner's exchanges;
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> 2) Mediacom, a cable provider, is pursuing interconnection in Partner's State Center, Melbourne, and Rhodes exchanges;
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> 3) the state-owned Iowa Communications Network (ICN) provides local exchange services and fiber into the Baxter community school and into West Marshall Community School in the State Center exchange;
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> 4) WildBlue Satellite and HughesNet Satellite provide high-speed Internet access;
>
> 5) Prairie i-net and Dynamic Broadband use 900 MHz spectrum for the provision of wireless broadband services;
>
> 6) ICN has applied for broadband funding in the federal government's broadband stimulus program for all six of Partner's exchanges;[55] and
>
> 7) both Eastlight LLC and MidAmerican Broadband have also applied for broadband stimulus funding along the Interstate 80 corridor.[56]

20. Thus, by Partner's own admission, competition appears to be thriving and robust in the areas served by its exchanges. We therefore agree with the Florida PSC that "...it is not clear why additional support is necessary if there are a sufficient number of unsubsidized competitors offering service, where the existence of such providers will force Partner to maintain reasonable rates."[57]

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[52] *See* Petition at 7.

[53] *Id.*

[54] *Id.* at 6.

[55] ICN received funding for a "comprehensive community infrastructure" project. *See* Broadband USA at http://www.ntia.doc.gov/broadbandgrants/applications/results.cfm?org=Iowa+Communications&keywords=&grantround=&id=&state=&status= (last visited Feb. 22, 2010).

[56] Eastlight LLC received funding for a "last mile non-remote area" project. *See* Broadband USA at http://www.ntia.doc.gov/broadbandgrants/applications/results.cfm?org=Eastlight&keywords=&grantround=&id=&state=&status= (last visited Feb. 22, 2010). *See* Petition at 6.

[57] Comments of Florida PSC at 6. We also note that Partner has been losing customers since acquiring the four exchanges from Iowa Telecom in 2006. At the end of 2006, there were 2,449 lines in the four exchanges, however, at the end of 2009 there were only 2,140 lines in the four exchanges or a loss of approximately thirteen percent. *See*

(continued....)

21. We further find that forbearance from section 54.305 of the Commission's rules will not enhance competition in the four exchanges acquired from Iowa Telecom. We find that providing an additional subsidy to Partner by forbearing from enforcing section 54.305 of the Commission's rules would be anti-competitive by giving a further financial advantage to Partner over its competitors. We therefore conclude that Partner's petition fails to demonstrate that forbearance from enforcing section 54.305 of the Commission's rules will promote or enhance competition among providers of telecommunications service in the four acquired exchanges or serve the public interest.

22. In conclusion, we deny Partner's petition seeking forbearance from enforcement of section 54.305(b) and (d). Partner has failed to carry its burden of proof of establishing all three prongs of the statutory test for forbearance are met. In particular, we find that continued enforcement of section 54.305 is necessary to protect consumers of other carriers that would receive less support if Partner unnecessarily receives additional support and to protect consumers from undue growth in the fund We also conclude that forbearing from enforcing section 54.305 is not in the public interest because it would provide additional universal service support to a provider that already offers high-quality voice and broadband in an area served by a number of other voice and broadband providers, including providers that receive no universal service support.

V. ORDERING CLAUSE

23. Accordingly, IT IS ORDERED that the Petition for Forbearance under 47 U.S.C. § 160 filed by Partner Communications Cooperative on December 2, 2009, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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NECA 2010 USF Filing. Some of these lines were undoubtedly lost to the various competitors operating in the areas of the four exchanges.