



PUBLIC NOTICE

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DA 12-2074

Released: December 26, 2012

WIRELINE COMPETITION BUREAU GRANTS QWEST/ALL WEST JOINT PETITION FOR STUDY AREA WAIVERS

CC Docket No. 96-45

The Telecommunications Access Policy Division (Division) of the Wireline Competition Bureau grants the Joint Petition, as amended, of Qwest Corporation (Qwest) and All West Communications, Inc. (All West) for waivers of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules.¹

The Division has found that the petitioners satisfied the three-prong standard that was in effect at the time the joint petition and amendment were filed to determine whether a waiver of the study area boundary freeze is warranted.² Specifically, the petitioners demonstrated that: (1) the changes in study area boundaries do not adversely affect the universal service fund;³ (2) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfers

¹ See 47 C.F.R. Part 36 App; Qwest Corporation and All West Communications, Inc., Joint Petition for Study Area Waivers, CC Docket No. 96-45 (filed Nov. 13, 2007) (Joint Petition); Qwest Corporation and All West Communications, Inc., Amendment to Joint Petition for Study Area Waivers, CC Docket No. 96-45 (filed Dec. 18, 2008) (Joint Petition Amendment).

² The Division notes that the Commission subsequently changed the standard for evaluating study area waiver petitions. In doing so, however, the Commission specified that "[p]etitions for study area waiver filed prior to the adoption of this order [on October 27, 2011] will be evaluated based on the former three-prong standard." *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17762, para. 265 n.437 (2011); see also, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995) (*PTI/Eagle Order*) (setting forth the former three-prong standard).

³ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission historically analyzed whether a study area waiver would result in an annual aggregate shift in an amount equal to or greater than one percent of high-cost support in the most recent calendar year. *PTI/Eagle Order*, 10 FCC Rcd at 1774, paras. 14-17; see also *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, and Petition for Waiver of Section 61.41(c) of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

are in the public interest.⁴ The Division therefore finds that good cause exists to grant the Joint Petition, as amended.⁵ The Division also notes that the Joint Petition was unopposed.⁶

In addition, the Division takes this opportunity to remind carriers that they must apply to the Commission for a waiver of the study area boundary freeze if they wish to transfer or acquire additional exchanges or lines.⁷ State approval of transfers or acquisitions, by itself, is not sufficient to comply with the Commission's rules.

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or at www.bcpiweb.com.

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For further information, please contact Ian Forbes, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

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⁴ See Joint Petition at 9-10; Joint Petition Amendment at 4.

⁵ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁶ The Wireline Competition Bureau sought comment on the joint petition. See *Comment Sought on the Joint Petition of Qwest Corporation and All West Communications, Inc. to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*; *Comment Sought on the Joint Petition of Qwest Corporation and Iowa Telecommunications Services, Inc. to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*; *Comment Sought on the Joint Petition of Hershey Cooperative Telephone Company and Qwest Corporation to Waive the Study Area Boundary Freeze as Codified in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 195 (Wireline Comp. Bur. 2008).

⁷ See *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, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*); see also 47 C.F.R. Part 36 App.