



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-316

Release Date: February 29, 2012

THE TELECOMMUNICATIONS ACCESS POLICY DIVISION OF THE WIRELINE COMPETITION BUREAU GRANTS THREE STUDY AREA WAIVER PETITIONS

CC Docket No. 96-45

The Telecommunications Access Policy Division (Division) of the Wireline Competition Bureau grants three petitions for waiver of the Commission's study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules¹ and, in one instance, section 69.3(e)(11) of the Commission's rules.² These petitions and related information are listed below:

Petitioner(s)	Rule(s) Waived	Date Petition Filed
Mid-Rivers Telephone Cooperative, Inc.	Part 36 App.; 69.3(e)(11)	3/14/08
Pine Drive Telephone Company and Qwest Corporation	Part 36 App.	6/29/10
Upper Peninsula Telephone Company and Michigan Central Broadband Company, LLC	Part 36 App.	12/29/10

The Division has found that each of the petitioners satisfied the three-prong standard that was in effect at the time these petitions were filed to determine whether a waiver of the study area boundary freeze is warranted.³ Specifically, each of the petitioners has demonstrated that: (1) the change in study

¹ See 47 C.F.R. Part 36 App ("Study Area. Study area boundaries shall be frozen as they are on November 15, 1984."); Mid-Rivers Telephone Cooperative, Inc., 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, CC Docket No. 96-45 (filed Mar. 14, 2008) (Mid-Rivers Petition); Pine Drive Telephone Company and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed June 29, 2010) (Pine Drive Petition); Upper Peninsula Telephone Company and Michigan Central Broadband Company, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed Dec. 29, 2010) (Upper Peninsula Petition).

² See 47 C.F.R. § 69.3(e)(11); Mid-Rivers Petition at 5-6. Requests for waiver of section 69.3(e)(11) often accompany requests for study area waiver because waiver of section 69.3(e)(11) permits carriers to include any acquired lines in the NECA pool.

³ The Division notes that the Commission recently 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

area boundaries will not adversely affect the universal service fund;⁴ (2) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfer is in the public interest.⁵ In addition, the Division has found good cause to grant Mid-Rivers Telephone Cooperative, Inc.'s request for a waiver of section 69.3(e)(11), which will permit Mid-Rivers to include the Terry, Montana access lines, revenues, and investment in the NECA common line tariff pool, because immediate participation in the NECA pool will allow Mid-Rivers to avoid the costs of filing and maintaining its own interstate tariff only for approximately 416 subscribers for a brief period.⁶ The Division therefore finds that good cause exists to grant these three petitions.⁷ The Division also notes that all of the petitions were unopposed.⁸

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, FCC 11-161, note 437 (rel. Nov. 18, 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). All of the petitions were filed well before October 27, 2011, so the new standard does not apply.

⁴ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission analyzes whether a study area waiver will 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).

⁵ *See* Mid-Rivers Petition at 2-6; Pine Drive Petition at 4-6; Upper Peninsula Petition at 4-8.

⁶ *See* 47 C.F.R. § 69.3(e)(11). NECA submitted a letter indicating that it has no objection to the inclusion of the lines in the NECA tariff. *See* Letter from Tracey E.J. Saltenberger, Deputy Counsel, NECA to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed July 7, 2008).

⁷ 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.

⁸ The Wireline Competition Bureau sought comment on each of these petitions. *See Comment Sought on the Petition of Mid-Rivers Telephone Cooperative, Inc. to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Section 69.3(e)(11) of the Commission’s Rules*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 5558 (Wireline Comp. Bur. 2008). Comments were filed by Qwest Corporation and the Montana Public Service Commission in support of the Mid-Rivers petition. *See* Comments of Qwest Corporation, CC Docket. No. 95-45 (filed May 5, 2008); Letter from Greg Jergeson, Chairman, Montana Public Service Commission to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed May 19, 2008). NTCA filed comments in support of the Pine Drive Petition. *See* Comments of the National Telecommunications Cooperative Association, CC Docket. No. 95-45 (filed Sept, 10, 2010). *See Comment Sought on the Joint Petition of Pine Drive Telephone Company and Qwest Corporation to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Section 69.3(e)(11) of the Commission’s Rules*, CC Docket No. 96-45, Public Notice, 25 FCC Rcd 10094 (Wireline Comp. Bur. 2010). *See Comment Sought on the Joint Petition of Upper Peninsula Telephone Company and Michigan Central Broadband Company, LLC to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Section 69.3(e)(11) of the*

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.⁹ 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 via e-mail www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

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

- FCC -

Commission's Rules, CC Docket No. 96-45, Public Notice, 26 FCC Rcd 218 (Wireline Comp. Bur. 2011). No comments were filed regarding the petition.

⁹ 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.