

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Joint Petition for Waiver of the Definition of)
"Study Area" of the Appendix-Glossary of Part 36)
of the Commission's Rules filed by)
Mutual Telephone Company of Sioux Center, Iowa)
d/b/a Premier Communications)
Winnebago Cooperative Telecom Association)

ORDER

Adopted: September 21, 2016

Released: September 21, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a joint petition from Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (Mutual) and Winnebago Cooperative Telecom Association (Winnebago) (together, Petitioners) for waiver of the Commission's study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. We find that the Petitioners have demonstrated good cause for waiver of the study area boundary freeze and clarify the obligations that will apply to the two resulting study areas.

II. BACKGROUND

2. Study Areas. A study area is the geographic territory of an incumbent local exchange carrier's (LEC's) telephone operations. Effective November 15, 1984, the Commission froze all study area boundaries. The Commission took this action to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support. Therefore, a carrier must apply to the Commission for a waiver of the study area

1 47 CFR pt. 36, Appx. ("Study Area. Study area boundaries shall be frozen as they are on November 15, 1984."); Mutual Telephone Company of Sioux Center, Iowa, d/b/a Premier Communications and Winnebago Cooperative Telecom Association Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, CC Docket No. 96-45 (filed May 3, 2016) (Petition). Mutual's study area code is 351252 and Winnebago's Iowa study area code is 351337.

2 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 CFR pt. 36, Appx.

boundary freeze if it wishes to transfer or acquire additional exchanges.³ In 2011, the Commission adopted a streamlined process for processing study area waiver petitions under which the waiver is deemed granted on the 60th day after the reply comment due date unless the Bureau provides notice that the petition requires further analysis and review.⁴

3. *Petition for Waiver.* On June 30, 2016, the Bureau approved a transfer of control application submitted by Consolidated Communications, Inc. (Consolidated), Consolidated Communications of Iowa Company (formerly known as Heartland Telecommunications Company of Iowa) (Heartland), Crystal Communications, Inc. (Crystal), and the Petitioners.⁵ At issue was the transfer of control of Heartland, a rate-of-return affiliate of Consolidated that operates approximately 6,250 access lines in exchanges located in Iowa, Minnesota, and South Dakota.⁶ Relevant here, Mutual acquired Heartland from Consolidated through a Stock Purchase Agreement.⁷ Winnebago then purchased two of Heartland's exchanges—Bancroft and Lakota, Iowa—through an Asset Purchase Agreement with Mutual retaining ownership of the remaining 12 exchanges of the Heartland study area.⁸ Mutual and Winnebago submitted the instant Petition to waive the study area boundary freeze to redefine Heartland's study area to exclude the Bancroft and Lakota exchanges,⁹ and also to create a new study area for Winnebago consisting of these two exchanges. The petitioners indicate that as a result of the study area modification, the new Winnebago study area consisting of the Bancroft and Lakota, Iowa exchanges will total approximately 435 access lines.¹⁰ The study area that will be controlled by Mutual and consist of the lines served by Heartland's remaining exchanges, will total approximately 5,815 access lines.¹¹

4. The Bureau sought comment on the Petition and determined that streamlined treatment was inappropriate given the requested waiver raises questions regarding the transfer of Connect America Phase II obligations and the requirements applicable to rate-of-return carriers.¹² Prior to the transaction,

³ 47 CFR § 1.3 (permitting the Commission to waive its rules “for good cause shown”).

⁴ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17763, para. 267 (2011) (*USF/ICC Transformation Order*) *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵ *Notice of Non-Streamlined Domestic Section 214 Application Granted*, WC Docket No. 16-150, Public Notice, 31 FCC Rcd 7242 (WCB 2016).

⁶ Petition at 2. Consolidated announced on September 1, 2016 that it had completed its sale of Heartland to Mutual and Winnebago. Press Release, Consolidated Communications, Consolidated Communications Completes Divestiture of its Iowa-Based Heartland Telecommunications Company (Sept 1, 2016), <https://www.consolidated.com/about-us/news/article-detail/id/520/consolidated-communications-completes-divestiture-of-its-iowa-based-heartland-telecommunications-company>.

⁷ Petition at 1, 3.

⁸ *Id.* at 1, 4. Heartland's customers currently receive long distance service from Crystal. As part of this transaction, Crystal's long distance customers living in the Bancroft and Lakota exchanges will be assigned to Winnebago, and Crystal's long distance customers living in the remaining Heartland exchanges will be assigned to Mutual. *Id.* at 6, n.13.

⁹ Heartland's study area code is 351096.

¹⁰ Petition at 7.

¹¹ *Id.*

¹² *Wireline Competition Bureau Seeks Comment on Joint Petition of Mutual Telephone Company of Sioux Center, Iowa d/b/a/ Premier Communications and Winnebago Cooperative Telecom Association to Waive the Definition of “Study Area” as Codified in Part 36 of the Commission’s Rules*, Public Notice, 31 FCC Rcd 5309 (WCB 2016). Two parties submitted comments in support of the Petition. See Comments of NTCA—The Rural Broadband Association, CC Docket No. 96-45 (filed June 22, 2016) (NTCA Comments); Comments of ITTA—The Voice of Mid-Size Communications Companies, CC Docket No. 96-45 (filed June 21, 2016) (ITTA Comments).

Heartland was a rate-of-return affiliate of Consolidated, a holding company with price cap regulated subsidiaries. The Commission previously had waived for Consolidated the “all or nothing rule” that was designed to ensure that all of a carrier’s study areas and affiliates are subject to a single form of pricing regulation, permitting Heartland to remain operating as a rate-of-return carrier.¹³ However, in the *USF/ICC Transformation Order*, the Commission held that rate-of-return affiliates of price cap carriers would be treated as price cap carriers for purposes of receiving Connect America Phase I and Phase II support.¹⁴

5. *Universal Service Support.* In August 2015, Consolidated was authorized to receive Connect America Phase II model-based support (Phase II support) in all the states it serves in exchange for offering voice and broadband services meeting the Commission’s requirements throughout the eligible high-cost areas in those states.¹⁵ The support was offered on a holding company basis per state, i.e. each price cap carrier holding company was offered a support amount for all of the eligible high-cost census blocks located in its affiliated study areas in each state. Accordingly, when Consolidated accepted approximately \$2.4 million in Phase II support to serve 3,019 locations in Iowa,¹⁶ it was accepting the support and committing to the Phase II obligations on behalf of Heartland, Consolidated’s only study area in Iowa. Mutual and Winnebago acknowledge that the Phase II support and Phase II obligations will continue to apply to these exchanges and have committed to meet those obligations and maintain their acquired Heartland exchanges separately from their existing rate-of-return study areas.¹⁷

6. Heartland also receives Connect America Fund Inter-carrier Compensation support (CAF ICC).¹⁸ In the *USF/ICC Transformation Order*, the Commission adopted a transition to reduce certain ICC rates on an annual basis and a recovery mechanism designed to partially offset revenues reduced as a result of the rate transition.¹⁹ Eligible recovery amounts are recovered first through an Access Recovery Charge (ARC)²⁰ assessed on end-users and, to the extent not recoverable through ARCs, through CAF ICC.²¹ Because Heartland remains a rate-of-return carrier for inter-carrier compensation purposes, it receives support pursuant to the CAF ICC rules adopted for rate-of-return carriers.²²

7. *Standards for Waiver.* Generally, the Commission’s rules may be waived for good cause shown.²³ The Commission may exercise its discretion to waive a rule where the particular facts make

¹³ 47 CFR § 61.41(c); *Consolidated Communications Holdings, Inc. Petition for Waiver of Section 61.41(c) of the Commission’s Rules*, Order, 30 FCC Rcd 10844 (WCB 2015).

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17713, 17725, paras. 129, 158 n.253.

¹⁵ *Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost \$950 Million in Phase II Connect America Support*, Public Notice, 30 FCC Rcd 8577 (WCB 2015) (*Consolidated Phase II Authorization Public Notice*).

¹⁶ *Id.* at 8581.

¹⁷ Petition at 5, 8 (citing section 54.902(b)); Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 3 (filed Aug. 5, 2016) (Mutual/Winnebago Aug. 5, 2016 *Ex Parte* Letter).

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-96, paras. 917-23.

¹⁹ *See id.* at 17934, para. 801 Fig. 9 (outlining the rate transition); *see also id.* at 17957-61, paras. 850-53 (summarizing the Commission’s approach to the recovery mechanism).

²⁰ Incumbent LECs are authorized to charge ARCs, subject to annual caps and to an overall rate ceiling. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36, 17957, para. 849; *see also* 47 CFR §§ 51.915(e), 51.917(e).

²¹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17981, para. 896.

²² 47 CFR §§ 51.917, 54.304.

²³ 47 CFR § 1.3.

strict compliance inconsistent with the public interest.²⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁵ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁶

8. In the *USF/ICC Transformation Order*, the Commission revised its approach for evaluating petitions for study area waivers, concluding that it would apply two standards: the state commission having regulatory authority over the transferred exchanges does not object to the transfer, and the transfer is in the public interest.²⁷ The Commission decided that its evaluation of the public interest benefits of a proposed study area waiver will include: 1) the number of lines at issue; 2) the projected universal service fund cost per line; and 3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, i.e., reduction in cost per line due to the increased number of lines.²⁸

III. DISCUSSION

9. We find that the Petitioners have demonstrated good cause to waive the study area boundary freeze to permit Mutual to alter the boundaries of the existing Heartland study area by removing the Bancroft and Lakota, Iowa exchanges that it will transfer to Winnebago. We also find that the Petitioners have demonstrated good cause to permit Winnebago to establish a new Iowa study area for the Bancroft and Lakota exchanges. For the reasons discussed below, we conclude that the Petitioners have satisfied the two standards that the Commission applies to determine whether a waiver of the study area boundary freeze is warranted.

A. State Commission Authority

10. The Petitioners have demonstrated that the state commission with regulatory authority over the transferred exchanges does not object to the requested study area waiver. On July 1, 2016, the Petitioners submitted into the record a letter from the Iowa Utilities Board (IUB) stating that the IUB is the only state commission with regulatory authority over the Heartland exchanges that will be affected by the requested study area waiver,²⁹ and that "there appears to be no objection or opposition to the requested study area waiver."³⁰

B. Public Interest

11. We conclude that on balance the requested study area boundary freeze waiver will serve the public interest based on the guidelines the Commission indicated it would use to evaluate such requests.

1. Number of Lines at Issue

12. First, we note that the requested study area boundary freeze waiver will result in a relatively small number of lines, approximately seven percent of the total number of lines served by

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁶ *Northeast Cellular*, 897 F.2d at 1166.

²⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17762, para. 265.

²⁸ *Id.*

²⁹ Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at Attach. (filed July 1, 2016) (Mutual/Winnebago July 1, 2016 *Ex Parte* Letter). Although Heartland has exchanges that serve Minnesota and South Dakota, those exchanges are all included in the same Iowa study area.

³⁰ *Id.*

Heartland, being removed from Heartland's existing study area to create a new separate study area for Winnebago. As noted above, the petitioners indicate that as a result of the study area modification, the new Winnebago study area consisting of the Bancroft and Lakota, Iowa exchanges will total approximately 435 access lines.³¹ The study area that will be controlled by Mutual and consist of the lines served by Heartland's remaining exchanges, will total approximately 5,815 access lines.³²

2. Projected Universal Service Fund Cost Per Line

13. We conclude that the requested study area waiver will not result in an increase in Phase II or CAF ICC support. The same set Phase II support amounts and the CAF ICC support that Heartland received prior to study area waiver will be apportioned between the redefined Heartland study area and the new Winnebago study area.³³ However, even if the Petitioners follow the Commission's cost allocation rules, there is a possibility that costs will shift from the Heartland study areas to the Petitioners' existing rate-of-return study areas, which would not affect the support received in the Heartland study areas, but could increase high-cost support for the Petitioners' existing rate-of-return study areas. While there is a theoretical possibility that under our existing cost allocation rules, some costs could shift from the Heartland study area to the Petitioners' existing rate-of-return study areas, Petitioners may also be able to take advantage of operational efficiencies based on the relative proximity between the acquired study areas and the Petitioners' existing rate-of-return study areas that would decrease high-cost support for those rate-of-return study areas.

14. *Phase II Support.* Consolidated was authorized to receive approximately \$2.4 million in annual Phase II support on behalf of Heartland, starting in 2015 and ending in 2020.³⁴ That funding will transfer to the acquiring Petitioners for the remainder of the support term. As a result of the requested study area waiver, the new Winnebago study area made up of the Bancroft and Lakota, Iowa exchanges will receive the total amount of Phase II support that the Connect America Cost Model (CAM) calculated for the eligible census blocks that are located in those exchanges—approximately \$209,176 in annual support. Likewise, the Mutual study area made up of Heartland's remaining exchanges will receive the total amount of Phase II support that the CAM calculated for the eligible census blocks located in those exchanges—approximately \$2,184,040 in annual support. A list of the Phase II eligible census blocks that are located in each resulting study area is available at https://transition.fcc.gov/web/CONS_Census_Blocks_for_WCTA_Premier.xlsx. Phase II support will be apportioned between the Petitioners' acquired study areas in this manner with the next Phase II disbursement after Winnebago has been assigned a study area code by the Universal Service Administrative Company for its acquired exchange.

15. We note that even though Consolidated accepted Phase II support on a state-wide basis, Heartland was Consolidated's only study area in Iowa so all of the locations that would have been served by Consolidated with Phase II support will be located in one of the Petitioners' acquired study areas. Moreover, because the two resulting study areas will be geographically isolated, there will be no split census blocks between the two petitioners, so we can cleanly apportion Heartland's Phase II support and the locations it is required to serve between the two Petitioners.

16. Given that Phase II recipients committed to serve a specific number of locations with the support they receive, an important consideration of whether the study area waiver will impact the support per line is the number of locations the recipient will serve with that support. Accordingly, in making this assessment, we have considered the effect of the study area waiver on the obligations that Consolidated

³¹ Petition at 7.

³² *Id.*

³³ See NTCA Comments at 3 (claiming that the Petitioners "confirm the waiver itself would not burden or shift [universal service] resources . . .").

³⁴ *Consolidated Phase II Authorization Public Notice*, 30 FCC Rcd at 8581.

committed to when accepting Phase II support on behalf of Heartland. In the future, we expect that parties in similar circumstances will identify, as the Petitioners here have done, how a proposed study area redefinition will facilitate the fulfillment of the relevant high-cost support obligations.

17. The Petitioners acknowledge that these exchanges will continue to receive Phase II support and that they will be subject to the Phase II obligations.³⁵ The Petitioners have also committed to maintain the acquired study areas as price cap carrier study areas separate from their other study areas, including by maintaining separate books for the acquired study areas.³⁶ These measures will ensure that the requested study area waiver would not result in fewer consumers receiving broadband than if the Heartland study area remained intact.

18. To provide clarity, we include a high-level summary of the Phase II obligations here, but also note that Mutual and Winnebago will be subject to all relevant ETC and Phase II requirements even if not described here. Specifically, as recipients of Phase II model-based support, Mutual and Winnebago must offer a specified number of locations voice and broadband services meeting the Commission's public interest obligations.³⁷ Mutual and Winnebago must serve the required number of locations by the end of the sixth year of the support term and also meet the evenly spaced interim build-out milestones that the Commission adopted for Phase II support.³⁸

19. Although the number of locations that a price cap carrier that accepted Phase II support is required to serve is determined at the state level,³⁹ the state-level totals are based on the number of locations the CAM determined were located in each eligible census block. Accordingly, we will apportion the 3,019 locations that Consolidated was required to serve in the Heartland exchanges based on the number of locations that are associated with the eligible census blocks that are located in each acquired study area. By the end of the six-year support term, Mutual will be required to offer service to 2,767 locations located in eligible census blocks in its modified Heartland study area and Winnebago will

³⁵ Petition at 5, 8. *See also* NTCA Comments at 3 (“[T]his structure is proposed precisely because it would allow the Petitioners to keep separate books of accounts, receive Connect America Fund (“CAF”) Phase II model-based support already earmarked for funded locations associated with their respective acquired exchanges (distinct from any [universal service] support for their respective operations in their existing study areas), and comply with the model-based public interest buildout obligations applicable to their respective locations in the new/modified study areas.”); ITTA Comments at 4 (noting that the Petitioners’ waiver request “does not undermine the purpose of the study area boundary freeze” due to their “commitment in the Petition to honor the committed buildout obligations for the established Phase II funding in their respective modified Heartland and new Winnebago study areas.”).

³⁶ Petition at 3, 5.

³⁷ 47 CFR § 54.309(a). Price cap carriers that accepted Phase II model-based support are required to offer to the required number of locations voice and broadband services at speeds of 10/1 Mbps, with latency suitable for real-time applications, including VoIP, and with a usage capacity and at rates that are reasonably comparable to comparable offerings in urban areas. *Id.* *See also Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 31 FCC Rcd 3393 (WCB 2016) (announcing the reasonable comparability voice and broadband rate benchmarks for 2016 and the minimum monthly usage allowance of 150 GBs for price cap carriers accepting Phase II support); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15649-61, paras. 15-44 (2014) (*December 2014 Connect America Order*) (adopting 10/1 Mbps as the minimum broadband speed); *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15062-76, paras. 6-38 (WCB 2013) (adopting a roundtrip provider network latency requirement of 100 ms or less, standards for the minimum usage allowance, and options for demonstrating compliance with the reasonably comparable rates requirement).

³⁸ 47 CFR § 54.310(c); *December 2014 Connect America Order*, 29 FCC Rcd at 15658, para. 36 (requiring recipients of Phase II model-based support to serve 40 percent of the required number of locations by the end of 2017, 60 percent by the end of 2018, 80 percent by the end of 2019, and 100 percent by the end of 2020).

³⁹ *December 2014 Connect America Order*, 29 FCC Rcd at 15689, para. 128.

be required to offer service to 252 locations located in eligible census blocks in the new study area made up of the two Heartland exchanges.

20. After the six-year support term, like all other recipients of Phase II model-based support, if Winnebago and Mutual wish to receive continued support for the study areas, they will need to participate in the Connect America Phase III auction (Phase III auction) and compete against other eligible bidders.⁴⁰ If Winnebago and Mutual do not win or do not choose to participate in the Phase III auction, they have the option of electing to receive one additional year of support as a gradual transition to the elimination of support.⁴¹

21. Like all other Phase II recipients, the Petitioners will be required to file on a recurring basis and by no later than March 1st following each support year, the number of locations and locational information where they are offering service meeting the requisite public interest obligations.⁴² Additionally, they will be required to demonstrate that they have met the required build-out milestones by submitting certifications by March 1 following each relevant support year that they were offering broadband meeting the requisite public interest obligations to the required percentage of their supported locations.⁴³ To the extent they do not meet their build-out milestones, the Petitioners will be subject to the additional reporting and potential support reductions pursuant to section 54.320 of the Commission's rules.⁴⁴

22. Like all ETCs, the Petitioners will also be required to submit annual reports pursuant to section 54.313 of the Commission's rules for the acquired study areas.⁴⁵ Given that these acquired study areas will be maintained separately from their existing rate-of-return study areas, Petitioners must file separate FCC Form 481s for the acquired study areas. Because these study areas are considered price cap areas for Phase II purposes, the Petitioners must file the same information for the study areas as other price cap carriers accepting Phase II support, including: 1) the number, names and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year, 2) the total amount of Phase II support, if any, the price cap carrier used for capital expenditures in the previous calendar year, and 3) a certification that they have made the required E-rate bids.⁴⁶ Additionally, like all ETCs, the Petitioners will be required to have IUB certify on their behalf by October 1st of each year that the high-cost support the Petitioners receive in the acquired study areas "was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴⁷

23. We also take this opportunity to clarify that the Petitioners will be subject to the forbearance that the Commission granted price cap carriers in the *December 2014 Connect America*

⁴⁰ *Id.* at 15656, para. 31; *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 178; Mutual/Winnebago Aug. 5, 2016 *Ex Parte* Letter at 3 (noting that the Petitioners "have no intentions at this time of making a request to be treated differently than price cap carriers when . . . Phase II funding ends").

⁴¹ *December 2014 Connect America Order*, 29 FCC Rcd at 15656, para. 32.

⁴² 47 CFR § 54.316(a), (c); *Connect America et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3167-68, paras. 218-19 (2016) (*2016 Rate-of-Return Reform Order*). The requirement to file locations by no later than March 1st is pending Paperwork Reduction Act approval from the Office of Management and Budget. Paperwork Reduction Act of 1995, Public Law 104-13; see 44 U.S.C. § 3507(a).

⁴³ 47 CFR § 54.316(b), (c); *Rate-of-Return Reform Order*, 31 FCC Rcd at 3167-68, paras. 218-19.

⁴⁴ 47 CFR § 54.320; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

⁴⁵ 47 CFR § 54.313.

⁴⁶ 47 CFR § 54.313(e).

⁴⁷ 47 CFR § 54.314.

Order in the study areas made up of Heartland's exchanges.⁴⁸ The Commission granted price cap carriers forbearance from the federal high-cost obligation to offer voice service throughout their service areas in three types of census blocks: 1) census blocks the CAM determined are low-cost, 2) census blocks that are served by unsubsidized competitors, and 3) census blocks where the price cap carrier is replaced by another ETC that is receiving federal high-cost support to deploy modern networks capable of offering voice and broadband services to fixed locations.⁴⁹ Because the Petitioners' acquired study areas will be considered price cap carrier study areas for high-cost purposes, they will not have the federal high-cost obligation to offer voice service in these three types of census blocks that are located in the Heartland exchanges.⁵⁰ Like all carriers, the Petitioners will not be able to discontinue voice service unless they have gone through the section 214(a) discontinuance process.⁵¹

24. *Cost Shifting.* Although the Petitioners have committed to maintain the Heartland study areas separately, we recognize that splitting up the Heartland study area could result in increased costs in the Petitioners' existing rate-of-return carrier study areas. Even if the Petitioners comply fully with the Commission's cost allocation rules,⁵² those rules permit the use of indirect and general cost allocators for allocating common costs between the petitioners' existing exchanges and the Heartland exchanges.⁵³ Thus, it is possible that costs could shift from the Heartland price cap carrier study areas to their existing rate-of-return study areas, resulting in an increased support amount for those rate-of-return study areas because they receive support based on their costs.

25. However, the Petitioners claim that the study area waiver could also result in the Petitioners more efficiently using their high-cost support given that the Bancroft and Lakota exchanges are "geographically isolated" from the other exchanges that are served by Heartland and adjacent to Winnebago's existing study area.⁵⁴ The Heartland exchanges that will be acquired by Mutual are also adjacent to study areas that are owned by Mutual or are adjacent to the other Heartland exchanges that will be acquired by Mutual.⁵⁵ The resulting operational efficiencies could potentially result in the reduction in costs in the Petitioners' existing rate-of return study areas, leading to a decreased high-cost support amount for those study areas. As explained below, despite the possibility of cost shifting, we find that the benefits of this transaction, including these potential efficiency benefits, outweigh the disadvantages.

⁴⁸ 47 CFR § 54.201(d)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

⁴⁹ *Id.* A list of census blocks where price cap carriers continue to have the federal high-cost obligation to offer voice service is available at: https://transition.fcc.gov/wcb/CAM43_PC_ETC_Oblig_v7_050416_FINALv1.xlsx.

⁵⁰ Petitioners remain subject to any state obligations and will be granted forbearance from the Lifeline obligation to offer voice service only in certain defined circumstances. *See Lifeline and Link Up Reform Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4079-93, paras. 326-60 (2016); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, 30 FCC Rcd 6157, 6211-36, paras. 101-157 (2015).

⁵¹ 47 U.S.C. § 214(a).

⁵² 47 CFR § 64.901; Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Aug. 16, 2016) (committing to follow the Commission's cost allocations procedures in Part 64 of the Commission's rules).

⁵³ 47 CFR § 64.901(b)(3). Common costs are those costs that cannot be directly assigned to either regulated or nonregulated activities. *Id.*

⁵⁴ Petition at 7-9.

⁵⁵ *Id.* at 9, Exh. A; ITTA Comments at 5 & n.16.

26. *CAF ICC Considerations.* As explained above, in the *USF/ICC Transformation Order*, the Commission adopted comprehensive ICC reform measures.⁵⁶ These reforms included a transition to reduce certain ICC rates on an annual basis and a recovery mechanism designed to partially offset revenues reduced as a result of the rate transition.⁵⁷ For rate-of-return LECs, the recovery mechanism begins with calculation of Base Period Revenue (BPR). BPR is the sum of certain ICC intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during fiscal year 2011, and the projected revenue requirement for interstate switched access services provided during the 2011-2012 tariff period.⁵⁸ BPR is then reduced by 5 percent initially and by an additional 5 percent in each year of the transition.⁵⁹ The amount a rate-of-return LEC is entitled to recover in each year of the transition is equal to the adjusted BPR for the year in question less, for each relevant year of the ICC transition, the sum of: (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.⁶⁰ This amount, known as Eligible Recovery, is recoverable through a newly instituted ARC assessed on end-users, and, to the extent not recoverable through ARCs, through CAF ICC support.⁶¹ Providers receiving CAF ICC support have to comply with certain broadband obligations, which differ if the carrier is a rate-of-return carrier or price cap carrier.⁶²

27. Heartland's BPR must be apportioned between the two resulting study areas in order for those study areas to determine future CAF ICC amounts. The Petitioners propose allocating the BPR amounts using "a simple average of the access line count for FY 2011"⁶³ and we find this methodology to be a reasonable approach. Accordingly, Heartland's BPR will be apportioned on a per-access-line basis using a simple average of the access line count for fiscal year 2011 (the access lines in service by exchange on October 1, 2010, plus the access lines in service by exchange on September 30, 2011, divided by 2). Once the BPR amounts are apportioned, the Petitioners can determine study area specific recovery amounts, including the amount of CAF ICC going forward.⁶⁴ Moreover, any CAF ICC true-up amounts that are applicable to Heartland prior to the grant of the study area waiver will also be apportioned using the per-access line methodology described above.⁶⁵ The BPR apportionment will be reflected in the revised tariff filings implementing these study area changes and the revised recovery amounts should be effective on the date the revised tariffs take effect.⁶⁶

28. The Petitioners will be subject to all of the same CAF ICC obligations that Heartland was subject to prior to the study area waiver as a rate-of-return carrier for intercarrier compensation purposes. The Petitioners have committed to use CAF ICC support associated with the Heartland exchanges for the "provision, maintenance, and upgrading of facilities and services of which the support is intended."⁶⁷ In

⁵⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17872-73, para. 648.

⁵⁷ See, e.g., *id.* at 17934, para. 801 Fig. 9 (outlining the rate transition); see also *id.* at 17957-61, paras. 850-53 (summarizing the recovery mechanism).

⁵⁸ See 47 CFR § 51.917(b)(7); the 2011-2012 tariff period was July 1, 2011, through June 30, 2012.

⁵⁹ See 47 CFR § 51.917(b)(3).

⁶⁰ 47 CFR § 51.917(d). The demand projections that are part of these projected revenue calculations are "trued-up" after two years. See 47 CFR § 51.917(d)(iii)(D).

⁶¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981, para. 896.

⁶² See *id.* at 17723, para. 150, 17740-41, paras. 206-08.

⁶³ Mutual/Winnebago Aug. 5, 2016 *Ex Parte* Letter at 3

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *infra* para. 32.

⁶⁷ *Id.* at 3 (citing 47 CFR § 54.314).

future years, the Petitioners will also be required to submit the information needed to calculate their CAF ICC on the date that they file their annual access tariff filing with the Commission.⁶⁸

3. Consolidation

29. The requested study area boundary waiver will not result in a consolidation of study areas. Instead, grant of the requested study area waiver will result in the creation of a new study area in Iowa. The Petitioners will also be maintaining their acquired study area separate from their existing study areas. However, as we discuss above, this transaction will shift ownership and operational control of two exchanges to an existing eligible telecommunications carrier, Winnebago, which has a closer geographic proximity to the two exchanges than does Mutual, and thus the transaction may produce similar benefits to those achieved by merging study areas, including potentially leading to cost efficiencies in the Petitioners' existing rate-of-return study areas.

4. Public Interest Finding

30. Based on our analysis of the factors described above and Petitioners' commitments to fulfill Heartland's Phase II and CAF ICC obligations as required by the Commission's rules, we conclude that on balance the study area waiver will serve the public interest. The study area waiver will affect a relatively small number of Heartland's existing lines and will not affect the Phase II or CAF-ICC support amounts for the Heartland exchanges. Although the study area waiver will result in the modification of one study area and the creation of a new study area that will remain separate from the Petitioners' existing study areas, the Parties suggest that the study area waiver may result in the more efficient use of high-cost support given that the two acquired study areas will be geographically adjacent to the Petitioners' existing study areas. Finally, because 1) Heartland was Consolidated's only study area in Iowa and control over the entire study area is being transferred to the acquiring carriers, 2) the two resulting study areas are geographically isolated so that Heartland's existing support and obligations can be cleanly apportioned between the two study areas, and 3) the Petitioners have committed to fulfilling Heartland's existing support obligations, we conclude that the study area waiver will not result in fewer consumers receiving voice and broadband services meeting the Commission's requirements.

31. We do have some concerns that there remains an opportunity for Petitioners to increase their costs per line to maximize high-cost support in their existing study areas even if the cost allocation rules are properly followed. Nevertheless, in this specific instance, we find that such concerns are outweighed by the public interest benefits we describe above. We note that for future study area waivers we intend to consider whether such cost-shifting concerns outweigh the relevant public interest benefits on a case-by-case basis.

C. Pricing Considerations

32. Given that the Petitioners are rate-of-return carriers acquiring exchanges for which a price cap carrier accepted Phase II support, we also take this opportunity to address tariff-related issues raised by the study area waiver. The Petitioners have indicated that following the close of the transaction, the Heartland exchanges will exit the Consolidated Communications Companies Tariff F.C.C. No. 6 and will join the JSI Tariff F.C.C. No. 1.⁶⁹ We direct the Petitioners to file revised tariffs, including cost support materials, Tariff Review Plan forms, and required certifications for the modified Heartland study area controlled by Mutual and the new study area controlled by Winnebago to reflect this change within 30 days of the release of this Order.⁷⁰ The carriers shall also file the required materials with USAC and the IUB.

⁶⁸ 47 CFR §§ 51.917; 54.304(d)(1).

⁶⁹ Petition at 8; Mutual/Winnebago Aug. 5, 2016 *Ex Parte* Letter at 2.

⁷⁰ Mutual/Winnebago Aug. 5, 2016 *Ex Parte* Letter at 2 (noting that JSI will be preparing revised tariff documents and Tariff Review Plans for each of the study areas).

IV. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and to the authority delegated in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 that the joint petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications and Winnebago Cooperative Telecom Association on May 3, 2016, IS GRANTED, as described herein.

34. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau