

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

In the Matter of
Qwest Corporation
Pine Telephone Systems, Inc.
Oregon Telephone Corporation
Qwest Corporation
Pine Telephone Systems, Inc.
Joint Petition for Waivers of the Definition of
"Study Area" Contained in Part 36, Appendix-
Glossary of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: April 28, 2009

Released: April 28, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a joint request filed by Qwest Corporation (Qwest), Pine Telephone Systems, Inc. (Pine), and Oregon Telephone Corporation (Oregon Telephone) for waivers of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules. The study area waiver will permit Qwest and Oregon Telephone to remove territories from their Oregon study areas and permit Pine and Oregon Telephone to add territories to their existing Oregon study areas. In addition, we grant a separate request filed jointly by Qwest and Pine for a waiver of the study area boundary freeze to permit Qwest to remove the Three Rivers territory from its Oregon study area and permit Pine to add that territory to its existing Oregon study area.

II. BACKGROUND

2. Study Area. A study area is a geographic segment of an incumbent local exchange carrier's (LEC) telephone operations. The Commission froze all study area boundaries effective November 15, 1984, to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost universal service support. A carrier must

1 See 47 C.F.R. Part 36 App.; Qwest Corporation, Pine Telephone Systems, Inc., and Oregon Telephone Corporation, Joint Petition for Waivers of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, CC Docket No. 96-45 (filed May 4, 2006) (Qwest-Pine-Oregon Petition).

2 See M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules, CC Docket No. 96-45, Order, 19 FCC Rcd 6761, 6765, para. 10 (2004) (Skyline Order).

3 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.

therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to acquire or transfer exchanges.⁴

3. *Universal Service Support.* 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.⁵ Section 54.305(b) is meant to discourage a carrier from acquiring an exchange merely to increase its share of high-cost universal service support.⁶

4. *Qwest-Pine-Oregon Telephone 2006 Petition for Waiver.* Qwest, Pine, and Oregon Telephone filed a joint petition for a waiver of the study area boundary freeze on May 4, 2006.⁷ On June 2, 2006, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.⁸ No party filed comments in response to the petition. The requested waiver seeks permission: to remove the Granite and Stices Gulch areas from Qwest's Oregon study area; to add the Granite and the northern portion of Stices Gulch to Pine's study area; to add the southern portion of Stices Gulch to Oregon Telephone's study area; and to remove an area adjacent to the northern portion of the Stices Gulch area from Oregon Telephone's study area and add it to Pine's study area.⁹ The service areas at issue had been previously transferred to the respective study areas of Qwest, Pine, and Oregon Telephone pursuant to approvals granted by the Oregon Public Utility Commission (Oregon Commission).¹⁰ None

⁴ *Part 67 Order*, 50 Fed. Reg. at 939, para. 1.

⁵ 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) (safety valve support allows rural carriers to receive additional high-cost support to reflect significant investments in the infrastructure of the acquired exchanges). 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.

⁶ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (subsequent history omitted).

⁷ Qwest operates, as an incumbent LEC, approximately 1,015,000 access lines in one study area in the state of Oregon; Pine operates, as an incumbent LEC, approximately 1,000 access lines in one study area in Oregon; and Oregon Telephone operates, as an incumbent LEC, approximately 1,700 access lines in one study area in Oregon. *See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2009*, Table HC05 (Jan. 30, 2009).

⁸ *See Qwest Corporation, Pine Telephone Systems, Inc., and Oregon Telephone Corporation Seek Waiver of the Study Area Boundary Freeze as Codified in Part 36*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 6294 (Wireline Comp. Bur. 2006).

⁹ Specifically, study area waivers are requested for: 1) the removal from Qwest's Sumpter, Oregon exchange of the territory in and around the town of Granite in Grant County, and the addition of such territory to Pine's existing state of Oregon study area; 2) the removal from Qwest's Baker, Oregon exchange of the territory in the Stices Gulch area of Baker County (both the northern and southern portions of Stices Gulch), and the addition of such territory to Pine's existing Oregon study area; 3) the removal from Pine's territory of the southern portion of Stices Gulch, and the addition of such territory to Oregon Telephone's Hereford-Unity exchange in Oregon Telephone's existing state of Oregon study area; and 4) the removal from Oregon Telephone's territory of the territory adjacent to the northern portion of Stices Gulch, and the addition of such territory to Pine's Granite exchange in Pine's existing Oregon study area. *See Qwest-Pine-Oregon Petition* at 1-2.

¹⁰ The Stices Gulch area in item 2 above was initially transferred from Qwest to Pine in 2000. Pine and Oregon Telephone traded the southern portion of Stices Gulch and the territory adjacent to the northern portion of Stices Gulch, listed in items 3 and 4 above in 2004. *See supra* note 9. These transfers are illustrated in an attachment to this order. *See Qwest-Pine-Oregon Petition* at 1-2, 11-12; Exhibits. A, B, C, D, and E (attaching *Application of U S* (continued....)

of the incumbent LECs were providing service to any customers in the affected areas at the time of the transfers. The parties did not believe that study area waivers were required for the transfers and additions of these areas, but, after the Commission's study area clarification in the 2004 *Skyline Order*, the parties sought study area waivers.¹¹

5. *Qwest-Pine 2008 Petition for Waiver*. On February 19, 2008, Qwest and Pine filed a joint petition for a waiver of the study area boundary freeze. The Bureau released a public notice on April 3, 2008, seeking comment on the petition.¹² No party filed comments in response to the petition. The requested waiver would permit Qwest to remove the Three Rivers area located in central Oregon from its Oregon study area and permit Pine to add that area to its existing Oregon study area.¹³ The petitioners state that the Three Rivers area lies in the western unserved area of Qwest's Culver exchange in Jefferson County, Oregon; Qwest does not have facilities and does not provide service in the Three Rivers area; and the Oregon Commission has approved the transfer.¹⁴ The petitioners indicate that there are approximately 130 homes and businesses in the Three Rivers area.¹⁵

6. *Skyline Order*. In the *Skyline Order*, the Commission clarified that M&L Enterprises, Inc., d/b/a Skyline Telephone Company (Skyline), Qwest, and Verizon Northwest, Inc. (Verizon) should have sought waivers of the study area boundary freeze when Qwest's and Verizon's study area boundaries were modified to create a new study area for Skyline.¹⁶ Skyline was seeking waiver of certain other Commission rules to allow it to begin receiving high-cost universal service support, but asserted that it was not required to seek a study area waiver because the area carved out of Qwest's and Verizon's territories was previously unserved.¹⁷ Skyline relied on a 1996 Common Carrier Bureau order that stated

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West Communications, Inc., for an Order Unallocating Rights to Exclusively Served Territory and to Abandon Territory, UA 72, Oregon Public Utility Commission, Order No. 99-463 (Aug. 2, 1999); *Application of Pine Telephone System, Inc., for Allocation of Exclusively Served Territory*, UA 73, Oregon Public Utility Commission, Order No. 99-464 (Aug. 2, 1999); *Application of U S West Communications, Inc., for an Order Unallocating Rights to Exclusively Served Territory and to Abandon Territory*, UA 86, Oregon Public Utility Commission, Order No. 00-416 (July 31, 2000); *Application of Pine Telephone System, Inc., for Allocation of Exclusively Served Territory*, UA 87, Oregon Public Utility Commission, Order No. 00-420 (Aug. 1, 2000); *Pine Telephone System, Inc. and Oregon Telephone Corporation, Transfer of Telephone Service from Oregon Telephone Corp. to Pine Telephone System, Inc.*, UA 103, Oregon Public Utility Commission, Order No. 04-204 (Apr. 6, 2004)).

¹¹ See Qwest-Pine-Oregon Petition at 3-7. The parties relied on the 1996 Bureau-level *Study Area Waiver Exceptions Order*, which stated that carriers were not required to seek a study area waiver if a company was "combining previously unserved territory with one of its existing study areas in the same state." *Request for Clarification filed by the National Exchange Carrier Association, Inc., and Petitions for Waiver 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*, AAD 95-173, 96-29, 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160, para. 9 (Com. Car. Bur. 1996) (*Study Area Waiver Exceptions Order*).

¹² See *Comment Sought on the Joint Petition of Qwest Corporation and Pine Telephone Systems, Inc., to Waive the Study Area Boundary Freeze as Codified in Part 36*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 5558 (Wireline Comp. Bur. 2008).

¹³ See Qwest-Pine Petition at 1-2.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 2.

¹⁶ See *Skyline Order*, 19 FCC Rcd at 6764, para. 8.

¹⁷ See *id.* at 6765-66, para. 10.

that carriers are not required to seek study area waivers if: (1) a separately incorporated company is establishing a study area for a previously unserved area; (2) a company is combining previously unserved territory with one of its existing study areas in the same state; and (3) a holding company is consolidating existing study areas in the same state.¹⁸ The Commission concluded that “treating an area as unserved when it was previously within an existing study area would be inconsistent with the purpose of the study area freeze.”¹⁹ Although the Commission determined that the study area boundary change required a waiver, it granted the waiver on its own motion after applying the three-prong standard described below.²⁰

7. *Standard for Waiver.* In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission applies a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) the state commission having regulatory authority over the transferred exchanges does not object to the transfer; and (3) the transfer must be in the public interest.²¹ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, we analyze whether a study area waiver will result in an annual aggregate shift in an amount equal to or greater than one percent of total high-cost support projected to be disbursed in the most recent calendar year.²²

III. DISCUSSION

8. For the reasons discussed below, we conclude that good cause exists to grant these study area waiver petitions.²³ Qwest, Pine and Oregon Telephone in their 2006 joint petition and Qwest and Pine in their separate 2008 joint petition have satisfied the three-prong standard that the Commission applies to determine whether a study area waiver is warranted. We therefore find that good cause exists to waive the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules to permit Qwest, Pine and Oregon Telephone to transfer the territories described in their petition, and to permit Qwest and Pine to transfer the territory described in their separate petition.²⁴

¹⁸ *Study Area Waiver Exceptions Order*, 11 FCC Rcd at 8160, para. 9.

¹⁹ *Skyline Order*, 19 FCC Rcd at 6766, para. 11. The Commission explained that the term “unserved” had never been defined for purposes of the study area waiver requirements. *See id.*

²⁰ *See id.* at 6767-68, paras. 14-18; *infra* para 7. The Commission also determined that the rule limiting high-cost loop support and local switching support for acquired exchanges did not apply because the modifications to the Qwest and Verizon study areas did not involve transfers of facilities or customers to Skyline. *See Skyline Order*, 19 FCC Rcd at 6767-68, para. 16; 47 C.F.R. § 54.305(b).

²¹ *See, 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, at para. 5 (1995) (*PTI/Eagle Order*).

²² *See id.* 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).

²³ Generally, the Commission may waive its rules for good cause shown. *See* 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. *See 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. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. 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.

²⁴ *See* Qwest-Pine-Oregon Petition at 1-2; Qwest-Pine Petition at Exhibit. 1.

A. Qwest-Pine-Oregon Telephone Study Area Waiver

9. When Qwest, Pine, and Oregon Telephone in 2000 and 2004 transferred areas in northeastern Oregon, with the approval of the Oregon Commission, they relied on existing Commission precedent to conclude that no study area waivers were necessary, because the areas were unserved at the time of the transfers.²⁵ The Bureau's 1996 *Study Area Waiver Exceptions Order* provided that carriers were not required to seek a study area waiver if a company was "combining previously unserved territory with one of its existing study areas in the same state."²⁶ In its 2004 *Skyline Order* the Commission clarified that "treating an area as unserved when it was previously within an existing study area would be inconsistent with the purpose of the study area freeze."²⁷ Given this clarification of the definition of "unserved" for the purposes of the study area freeze, the parties subsequently filed a request for a study area waiver.²⁸

10. *Impact on the Universal Service Fund.* Qwest, Pine, and Oregon Telephone argue that grant of their waiver request will not have a significant impact on the universal service fund.²⁹ Typically, section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support for exchanges acquired by rural carriers to the same per-line support levels for which the exchanges were eligible prior to their transfer.³⁰ Consistent with the Commission's finding in the *Skyline Order*, however, section 54.305(b) of the Commission's rules does not apply in this instance because the modifications to the Qwest, Pine and Oregon Telephone study areas in Oregon do not involve transfers of Qwest facilities or customers to Pine or Oregon Telephone.³¹ The petitioners estimate that the increase in high-cost universal service support received by Pine and Oregon Telephone will be a small fraction of one percent of projected universal service high-cost support, only approximately \$200,900 annually.³² Specifically, the petitioners estimate that, in the aggregate, the incremental increase in high-cost loop support received by Pine and Oregon Telephone as a result of this transaction will be approximately \$124,000 annually. They base this estimate on actual and projected increases in universal service support as a result of the loops Pine and Oregon Telephone have placed in service subsequent to the prior transfer of the territories and the projected additional loops to be served.³³ In addition, the petitioners estimate that the total annual increase in ICLS resulting from this transaction is \$76,900.³⁴ While there is a potential increase of approximately \$200,900 in high-cost universal service support as a result of these transfers, we find that the benefits of the transfers outweigh the minimal impact on the universal service fund. This estimated

²⁵ See Oregon-Pine-Oregon Petition at 5.

²⁶ *Study Area Waiver Exceptions Order*, 11 FCC Rcd at 8160, para. 9.

²⁷ *Skyline Order*, 19 FCC Rcd at 6766, para. 11. The Commission explained that the term "unserved" had never been defined for purposes of the study area waiver requirements. See *id.*

²⁸ See Qwest-Pine-Oregon Petition at 7-8.

²⁹ See *id.* at 10.

³⁰ 47 C.F.R. § 54.305(b).

³¹ See *Skyline Order*, 19 FCC Rcd at 6767, para. 16. Because the per-line support limitation in section 54.305(b) does not apply to these transfers, Pine and Oregon Telephone will be eligible, as rural carriers, to receive high-cost universal service support based on their embedded costs. See generally 47 C.F.R. Part 36, Subpart F.

³² See Qwest-Pine-Oregon Petition at 11.

³³ *Id.*

³⁴ See Letter from Gerald J. Duffy, Counsel for Pine and Oregon Telephone, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Sept. 5, 2006).

increase in high-cost support is not more than one percent of projected high-cost support for 2009.³⁵

11. *Position of State Commission.* The Oregon Commission previously has issued orders approving the transfers at issue and provided a letter indicating its support of the requested study area waivers.³⁶ Thus, we find that the state commission with regulatory authority over the transferred territories does not oppose the transfers.

12. *Public Interest Analysis.* We find that the public interest is served by the grant of this study area waiver request. The parties state that, due to the transfers, Pine was able to construct telecommunications facilities and offer services to consumers for the first time in mountainous and forested areas in northeastern Oregon; rural telephone companies like Pine have the interest and flexibility to invest in the expansion of their networks to serve previously unserved areas; and the 2004 trade of the unserved areas between Pine and Oregon Telephone made it more efficient and less expensive for the parties to serve the affected areas because they are contiguous with the rest of their respective study areas.³⁷ Based on these representations, we conclude that the transfers of the territories as described in the petition serve the public interest by providing consumers access to telecommunications services in areas where such services were previously unavailable.

B. Qwest-Pine Study Area Waiver

13. Qwest seeks to transfer an unserved portion of its Oregon study area to Pine, and in light of the 2004 *Skyline Order*, Qwest and Pine request a study area waiver.³⁸

14. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected by granting this study area waiver. Typically, section 54.305(b) of the Commission's rules limits high-cost loop support and local switching support for acquired exchanges to the same per-line support levels for which the exchanges were eligible prior to their transfer.³⁹ Consistent with the Commission's finding in the *Skyline Order*, however, section 54.305(b) of the Commission's rules does not apply in this instance because the modifications to the Qwest and Pine study areas in Oregon do not involve transfers of Qwest facilities or customers to Pine.⁴⁰ Based upon Pine's per-line support amount, Qwest and Pine estimate that, if Pine serves all 132 homes and businesses in the Three Rivers area, Pine will receive high-cost universal service support of approximately \$278,000 annually.⁴¹ While there is a potential increase of approximately \$278,000 in universal service support as a result of this transaction, we find that the benefits of the transfers outweigh the minimal impact on the universal service fund. This estimated increase in high-cost support is not more than one percent of high-cost

³⁵ See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2009, Table HC02 (Jan. 30, 2009) (projecting total annual high-cost support of \$4,354,827,817).

³⁶ See *supra* note 10; Qwest-Pine-Oregon Petition at Exhibit J (attaching letter from the Oregon Public Utility Commission to the Federal Communications Commission (dated Apr. 3, 2006)).

³⁷ See Qwest-Pine-Oregon Petition at 12-13.

³⁸ *Skyline Order*, 19 FCC Rcd at 6766, para. 11.

³⁹ 47 C.F.R. § 54.305(b).

⁴⁰ See *Skyline Order*, 19 FCC Rcd at 6767, para. 16. Because the per-line support limitation in section 54.305(b) does not apply to these transfers, Pine will be eligible, as a rural carrier, to receive high-cost universal service support based on its embedded costs. See generally 47 C.F.R. Part 36, Subpart F.

⁴¹ See Qwest-Pine Petition at 5.

support for 2009.⁴²

15. *Position of State Commission.* The Oregon Commission has approved the transfer at issue.⁴³ Thus, we find that the state commission with regulatory authority over the transferred territory does not oppose the transfer.

16. *Public Interest Analysis.* We are persuaded that the public interest is served by grant of the requested waiver. The parties state that Pine has built or is building facilities throughout the area and that the transfer of the Three Rivers area from Qwest to Pine will allow state-of-the-art basic and broadband services to be available to subscribers.⁴⁴ Based on the totality of these representations, we conclude that the transfer of this territory from Qwest to Pine, as described in the petition, will serve the public interest by providing access to telecommunications services to an area that was previously without such services.

IV. ORDERING CLAUSES

17. 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 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 Qwest Corporation, Pine Telephone Systems, Inc., and Oregon Telephone Corporation on May 4, 2006, IS GRANTED, as described herein.

18. IT IS FURTHER 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 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 Qwest Corporation and Pine Telephone Systems, Inc. on February 19, 2008, IS GRANTED, as described herein.

⁴² See Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2009, Table HC02 (Jan. 30, 2009) (projecting total annual high-cost support of \$4354,827,817).

⁴³ See Qwest-Pine Petition at Exhibit 2 (attaching *Qwest Corporation, Application to Abandon and Transfer Allocated Service Territory (UA 112)* and *Pine Telephone System, Inc., Application for an Order Allocating Territory (UA 113)*, Public Utility Commission of Oregon, Order No. 08-42 (Jan. 23, 2008)).

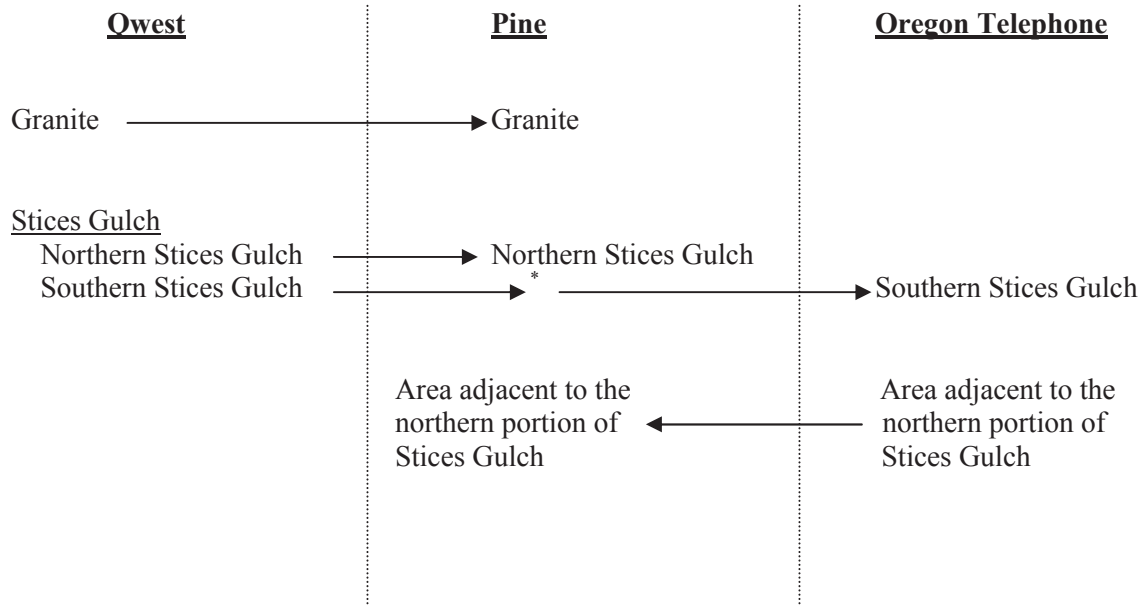
⁴⁴ See Oregon-Pine Petition at 4.

19. 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

Julie A. Veach
Acting Chief
Wireline Competition Bureau

ATTACHMENT
Illustration of Transferred Areas in Qwest-Pine-Oregon Telephone Petition



* Qwest transferred all of Stices Gulch to Pine in 2000. Pine, in 2004, traded the southern portion of Stices Gulch to Oregon Telephone for the area adjacent to the northern portion of Stices Gulch.