

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

In the Matter of )
Jordan-Soldier Valley Telephone Company )
And )
Alpine Communications, L.C. )
Joint Petition for Waiver of the )
Definition of "Study Area" Contained )
in the Part 36 Appendix-Glossary )
of the Commission's Rules and the Definition of )
"Average Schedule Company" in Section )
69.605(c) of the Commission's Rules )

CC Docket No. 96-45

ORDER

Adopted: November 2, 2000

Released: November 3, 2000

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Jordan-Soldier Valley Telephone Company (Jordan-Soldier) and Alpine Communications, L.C. (Alpine), for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules. This waiver will permit Alpine to remove from its Iowa study area the Moorhead, Iowa exchange comprising approximately 300 access lines. This waiver also will permit Jordan-Soldier to include the Moorhead exchange in its Iowa study area. We also grant Jordan-Soldier's request for waiver of the definition of "average schedule company" included in section 69.605(c) of the Commission's rules.

II. STUDY AREA WAIVER

A. Background

2. Study Area Boundaries. A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. The Commission froze all study area boundaries effective November 15, 1984, and an incumbent LEC must apply to the Commission for a waiver of the study area

1 Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., Joint Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules, and of Section 69.605(c)'s Definition of "Average Schedule Company" (filed Jun. 15, 2000) (Petition).

2 47 C.F.R. § 36 app. (defining "study area"). 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, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); see also (continued....)

boundary freeze if it wishes to sell or purchase additional exchanges.

3. Transfer of Universal Service Support. Section 54.305 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.<sup>3</sup> For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,<sup>4</sup> the loops of the acquired exchange shall receive the same per-line support as calculated under the new non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges.<sup>5</sup> Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support, especially during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.<sup>6</sup> High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,<sup>7</sup> interim hold-harmless support for non-rural carriers,<sup>8</sup> rural

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*Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

<sup>3</sup> 47 C.F.R. § 54.305.

<sup>4</sup> On November 2, 1999, the Commission released two orders finalizing implementation plans for high-cost reform for non-rural carriers. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (rel. Nov. 2, 1999); *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order (rel. Nov. 2, 1999). The new mechanism, which went into effect on January 1, 2000, does not apply to rural carriers. The new mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309. The Commission's forward-looking methodology for calculating high-cost support for non-rural carriers targets support to states where the statewide average forward-looking cost per line exceeds 135 percent of the national average forward-looking cost. See *id.* The total amount of support directed to non-rural carriers in a high-cost state equals 76 percent of the amount the statewide average forward-looking cost per line exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the state. Carriers serving wire centers with an average forward-looking cost per line above the national cost benchmark shall be eligible to receive support. The amount of support provided to a non-rural carrier serving a particular wire center depends on the extent to which per-line forward-looking economic costs in that wire center exceed the national cost benchmark.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*); as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999).

<sup>6</sup> *Id.*

<sup>7</sup> See 47 C.F.R. § 54.309.

<sup>8</sup> In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. See 47 C.F.R. § 54.311

carrier high-cost loop support,<sup>9</sup> local switching support,<sup>10</sup> and Long Term Support (LTS).<sup>11</sup> To the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

4. *The Petition for Waiver.* On April 7, 2000, Alpine, an incumbent LEC currently serving 6,619 access lines in Iowa, entered into an agreement with Jordan-Soldier, an incumbent LEC that currently serves 340 access lines in Iowa, to sell to Jordan-Soldier the Moorhead, Iowa exchange, which serves approximately 300 access lines.<sup>12</sup>

5. On June 15, 2000, Alpine and Jordan-Soldier filed a joint petition for waiver of the definition of “study area” contained in the Part 36 Appendix-Glossary of the Commission’s rules. The requested waiver would permit Alpine to remove the Moorhead exchange from its Iowa study area, and permit Jordan-Soldier to include the acquired exchange in its existing Iowa study area. On September 8, 2000, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the petition.<sup>13</sup> The United States Telecom Association (USTA) filed comments in support of the petition.

## B. Discussion

6. We find that good cause exists to waive the definition of study area contained in Part 36 Appendix-Glossary of the Commission’s rules to permit Alpine to remove the Moorhead exchange from its Iowa study area, and permit Jordan-Soldier to include the acquired exchange in its Iowa study area.

7. Generally, the Commission’s rules may be waived for good cause shown.<sup>14</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>15</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>16</sup> In addition, the Commission may take into account considerations of hardship,

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<sup>9</sup> Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost by fifteen percent. *See* 47 C.F.R. §§ 36.601-36.631.

<sup>10</sup> Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

<sup>11</sup> Carriers that participate in the NECA common line pool are eligible to receive LTS. *See* 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. *See First Report and Order*, 12 FCC Rcd at 9163-9165.

<sup>12</sup> Petition at 1-2. *See also* NECA Universal Service Fund 1999 Submission of 1998 Study Results, filed October 1, 1999.

<sup>13</sup> *Alpine Communications, L.C. and Jordan-Soldier Valley Telephone Company Seek a Waiver of the Definition of “Study Area” in Part 36 of the Commission’s Rules and a Waiver of Section 69.605(c) of the Commission’s Rules*, Public Notice, DA 00-2052 (rel. Sep. 8, 2000).

<sup>14</sup> 47 C.F.R. § 1.3.

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>16</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

equity, or more effective implementation of overall policy on an individual basis.<sup>17</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: first, the change in study area boundaries must not adversely affect the universal service fund; second, no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and third, the transfer must be in the public interest.<sup>18</sup> For the reasons discussed below, we conclude that petitioners have satisfied these criteria and demonstrated that good cause exists for waiver of the Commission's study area freeze rule.

8. First, we conclude that Alpine and Jordan-Soldier have demonstrated that the proposed change in the study area boundaries will not adversely affect any of the universal service mechanisms. Because, under the Commission's rules, carriers purchasing exchanges can only receive the same level of per-line support that the selling company was receiving for those exchanges prior to the sale, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction.<sup>19</sup> As such, Jordan-Soldier will receive the same per-line levels of support, including high-cost loop support, local switching support, and LTS, for which the Moorhead, Iowa exchange was eligible prior to its transfer.<sup>20</sup> Jordan-Soldier's existing Iowa access lines will continue to receive support based on the average schedule formulas.<sup>21</sup> Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms.

9. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Iowa Utilities Board has indicated that it does not object to the grant of the study area waiver.<sup>22</sup>

10. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit Alpine to remove the Moorhead exchange from its Iowa study area and Jordan-Soldier to include the acquired exchange in its Iowa study area. In its petition, Jordan-Soldier states that the transfer of the Moorhead exchange will increase the operating efficiency of both Jordan-Soldier and Alpine, which will enable Jordan-Soldier to introduce new services for its rural Iowa customers.<sup>23</sup> In its order approving the transaction and granting Jordan-Soldier a certificate to operate the Moorhead, Iowa exchange, the Iowa Utilities Board found that Jordan-Soldier had a demonstrated history of providing local exchange

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<sup>17</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> *See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., 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 1871, 1872 (1995).

<sup>19</sup> *See* 47 C.F.R. § 54.305.

<sup>20</sup> *See id.*

<sup>21</sup> *See infra* discussion at paras. 11-14.

<sup>22</sup> *See* Ex Parte filing of Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., CC Docket No. 96-45 (filed Sep. 5, 2000) (Ex Parte Filing).

<sup>23</sup> Petition at 4-5.

telecommunications service in compliance with the Board's rules and will provide comparable service in the Moorhead exchange.<sup>24</sup> Based on these representations, we conclude that Jordan-Soldier has demonstrated that grant of this waiver request serves the public interest.

### III. AVERAGE SCHEDULE WAIVER

#### A. Background

11. Incumbent LECs that participate in National Exchange Carrier Association (NECA) pools collect access charges from interexchange carriers at the rates contained in the tariffs filed by NECA. Each pool participant receives revenues from the pools to recover the cost of providing service plus a pro rata share of the pool's earnings.<sup>25</sup> NECA pool participants' costs are determined either on the basis of cost studies or average schedule formulas. Average schedule companies are those incumbent LECs that receive compensation for use of their interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost study company that is representative of average schedule companies.<sup>26</sup> Average schedule status has certain advantages for small incumbent LECs. For example, average schedule companies are able to avoid the administrative burden of performing interstate cost studies.

12. Section 69.605(c) of the Commission's rules provides, in pertinent part, that "a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company."<sup>27</sup> The definition of average schedule company includes existing average schedule incumbent LECs, but does not allow the creation of new average schedule companies or the conversion of cost-based carriers to average schedule status. The limited definition of average schedule company reflects the Commission's finding that cost studies produce the most accurate financial information, and consequently, the most accurate interstate telephone rates.<sup>28</sup> Thus, incumbent LECs may convert from an average schedule company to a cost company, but not from a cost company to an average schedule company without first obtaining a waiver of section 69.605(c).<sup>29</sup>

13. The special circumstances that the Bureau has found to justify waivers of section

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<sup>24</sup> See *Ex Parte Filing* at 2.

<sup>25</sup> See 47 C.F.R. §§ 69.601-69.612.

<sup>26</sup> See 47 C.F.R. § 69.606(a).

<sup>27</sup> 47 C.F.R. § 69.605(c).

<sup>28</sup> See *MTS and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, Memorandum Opinion and Order, 3 FCC Rcd 6642 (1986) (*MTS and WATS Order*). The Bureau also has observed that cost company conversion to average schedule status may result in higher than reasonable interstate revenue requirements. See *NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules*, CC Docket No. 78-72, Memorandum Opinion and Order, 2 FCC Rcd 3960 (Com. Car. Bur. 1987) (*5,000 Line Waiver Order*).

<sup>29</sup> See 47 C.F.R. § 69.605(c).

69.605(c) fall into three broad categories.<sup>30</sup> First, the Bureau has granted limited opportunities for carriers serving 5,000 or fewer access lines to convert from cost-based to average schedule settlements when faced with “industry-wide changed circumstances.”<sup>31</sup> Second, the Bureau has granted waivers to certain small carriers that lacked the resources to operate on a cost-study basis.<sup>32</sup> Third, to ensure a smooth settlement process, the Bureau has granted section 69.605(c) waivers to average schedule companies that have acquired another company, and allowed the combined companies to merge into one average schedule study area.<sup>33</sup>

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<sup>30</sup> See *BPS Telephone Co. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, AAD No. 95-67, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 13820, 13824 (Acc. Aud. Div. 1997) (*BPS Order*).

<sup>31</sup> In the *5,000 Line Waiver Order*, the Commission granted carriers with 5,000 or fewer access lines an opportunity to elect to be compensated under the interstate average schedules. The opportunity to make such an election expired on August 1, 1987, and the election was effective January 1, 1988. *5,000 Line Waiver Order* at 3960. The Commission noted the following changed circumstances: (1) the increased frequency of average schedule updates; and (2) the elimination of certain intrastate settlement cost study requirements. *Id.*

<sup>32</sup> *BPS Order*, 12 FCC Rcd at 13824. See, e.g., *Dumont Telephone Company, Inc. and Universal Communications, Inc., Request for Extraordinary Relief*, AAD 96-94, Memorandum Opinion and Order, 13 FCC Rcd 17821 (Acc. Saf. Div. 1998) (waiver granted to Dumont Telephone Company, Inc. and Universal Communications, Inc., which had approximately 1,544 access lines); *Wilderness Valley Telephone Company, Inc., Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission's Rules*, AAD 96-99, Order, 13 FCC Rcd 4511 (Acc. Aud. Div. 1998) (waiver granted to Wilderness Valley Telephone Company, Inc., which had approximately 75 access lines); *Petitions for Waiver Filed by Accent Communications, et al.*, AAD No. 95-124, Memorandum Opinion and Order, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996) (waiver granted to Moberge Telecommunications Company, which had approximately 2,400 access lines); *National Utilities, Inc. and Bettles Telephone Co., Inc. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Report and Order, 8 FCC Rcd 8723 (Comm. Car. Bur. 1993) (waiver granted for National Utilities, which had 2,350 access lines, and Bettles, which had 50 access lines); *Newcastle Telephone Co. Petition for Waiver of Section 69.605(c)*, AAD No. 90-18, Memorandum Opinion and Order, 7 FCC Rcd 2081 (Com. Car. Bur. 1992) (waiver granted for small company with 1550 access lines, two exchanges); *Papago Tribal Utility Authority Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order, 2 FCC Rcd 6631 (Com. Car. Bur. 1987) (waiver granted to small company serving fewer than 400 lines in a 700 square mile area and lacking operational expertise).

<sup>33</sup> *BPS Order*, 12 FCC Rcd at 13825. See, e.g., *Petition for Waivers Filed by Baltic Telecom Cooperative, Inc. et al.*, AAD No. 96-95, Memorandum Opinion and Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997); *Petitions for Waiver Filed by Accent Communications, et al.*, AAD No. 95-124, Memorandum Opinion and Order, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996). In these situations, we have attached three conditions to minimize the impact of the conversion and reduce the incentive to manipulate Commission rules. Waiver recipients must: (1) report to NECA on a combined basis for interstate average schedule and universal service purposes, and receive distributions on that basis as a consolidated company; (2) convert to cost-based settlement status if an average schedule affiliate in that study area converts to cost-based settlements, or elects section 61.39 treatment; and (3) maintain common control over average schedule affiliates, so that average schedule status terminates when any of the affiliates are sold, transferred, or otherwise assigned. See *BPS Order*, 12 FCC Rcd at 13825. We have always intended for these conditions to ensure that the waivers will not result in unintended effects on the petitioners' interstate revenue requirements or result in an administrative burden on the Commission or NECA. *Id.*

14. Jordan-Soldier has requested a waiver of section 69.605(c) of the Commission's rules in order to continue operating as an average schedule company following the proposed transaction.<sup>34</sup> Currently, Jordan-Soldier is an average schedule company under 69.605(c), while Alpine settles with the NECA pools on a cost study basis.<sup>35</sup> Because Jordan-Soldier intends to acquire the Moorhead, Iowa exchange from a cost company, section 69.605(c) the Commission's rules would require Jordan-Soldier to also become a cost company.<sup>36</sup> Jordan-Soldier argues that it should not be required to operate as a cost company because it lacks the resources to perform cost studies.<sup>37</sup> Jordan also argues that its limited resources should be devoted to the provision of services to customers and network improvements, rather than administrative tasks, such as cost studies.<sup>38</sup> USTA supports Jordan-Soldier's waiver request.<sup>39</sup>

## B. Discussion

15. We are persuaded that good cause exists for us to grant Jordan-Soldier's request for waiver of section 69.605(c). The Commission has explained that the definition of "average schedule company" in section 69.605 was premised upon a policy determination that carriers with the financial resources and expertise to conduct cost studies without undue hardship should be required to measure the actual costs they incur in providing interstate service.<sup>40</sup> Based on the facts presented, we believe that Jordan-Soldier, with approximately 640 access lines, would experience undue hardship if it were required to conduct cost studies for its existing and acquired exchanges.<sup>41</sup> The high cost of completing cost studies relative to the small size of Jordan-Soldier establishes the special circumstances that warrant granting Jordan-Soldier's request for a waiver of section 69.605(c) of the Commission's rules. We note that we have previously granted waivers of section 69.605(c) to similarly-sized carriers.<sup>42</sup> We, therefore, find that Jordan-Soldier's request waiver of section 69.605(c) of the Commission rules should be granted.

## IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, 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 petition for waiver of Part 36, Appendix-Glossary, of the Commission's rules, filed by Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C. on June 15, 2000, IS GRANTED, as described herein.

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<sup>34</sup> See Petition at 5-7.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> See 47 C.F.R. § 69.605(c).

<sup>37</sup> See Petition at 6-7.

<sup>38</sup> *Id.*

<sup>39</sup> See USTA Comments at 5-6.

<sup>40</sup> See *MTS and WATS Order*, 3 FCC Rcd at 6642.

<sup>41</sup> See Petition at 6-7.

<sup>42</sup> See *supra* note 32.

17. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, 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 petition for waiver of section 69.605(c) of the Commission's rules, 47 C.F.R. § 69.605(c), filed by Jordan-Soldier Valley Telephone Company, IS GRANTED, as described herein.

## FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder  
Chief, Accounting Policy Division