

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

In the Matter of)
)
 Amana Colonies Telephone Company d/b/a)
 HickoryTech and Heartland Telecommunications)
 Company)
)
 And)
)
 South Slope Cooperative Telephone Company) CC Docket No. 96-45
)
)
 Joint Petition for Waiver of the Definition of)
 "Study Area" contained in the Part 36 Appendix-)
 Glossary of the Commission's Rules and Definition)
 of "Average Schedule Company" in Section)
 69.605(c) of the Commission's Rules.

ORDER

Adopted: June 5, 2001

Released: June 6, 2001

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Amana Colonies Telephone Company d/b/a HickoryTech and Heartland Telecommunications Company of Iowa (Amana Colonies)¹, and South Slope Cooperative Telephone Company (South Slope) for a waiver of the definition of "study area" contained in Part 36 Appendix-Glossary of the Commission's rules.² This waiver will permit Amana Colonies to remove from its Iowa study area the Amana, Iowa exchange comprising approximately 1,500 access lines. This waiver will also permit South Slope to include the Amana exchange in its Iowa study area. We also grant South Slope's request for waiver of the definition of "average schedule company" included in section 69.605(c) of the Commission's rules.

¹ Amana Colonies is a subsidiary of HickoryTech and is presently part of a consolidated study area that also contains 11 exchanges serving approximately 13,300 access lines operated by Heartland, another subsidiary of HickoryTech.

² Amana Colonies Telephone Company d/b/a HickoryTech and Heartland Telecommunications Company of Iowa and South Slope Cooperative Telephone Company, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, and Section 69.605(c)'s Definition of "Average Schedule Company" (filed Dec. 13, 2000) (Petition).

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, 1984,³ and an incumbent LEC must apply to the Commission for a waiver of the study area 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.⁴ 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,⁵ 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.⁶ Section 54.305 is meant to ensure that a selling carrier does not artificially inflate the price of an exchange in anticipation of the buyers receipt of universal service support as a result of the transfer.⁷ High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,⁸ interim hold-harmless support for non-rural carriers,⁹ rural carrier high-cost loop support,¹⁰ local

³ 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 *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).

⁴ 47 C.F.R. § 54.305.

⁵ 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 LEC's*, 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.

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 9-45, 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 (5th Cir. 1999).

⁷ *Id.*

⁸ See 47 C.F.R. § 54.309.

⁹ 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 (continued....)

switching support,¹¹ and Long Term Support (LTS).¹² 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 August 11, 2000, Amana Colonies entered into an agreement with South Slope to sell to South Slope the Amana exchange, which serves approximately 1,500 access lines. South Slope currently serves 11,330 access lines in Iowa.¹³ On December 13, 2000, South Slope and Amana Colonies 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 Amana Colonies to remove the Amana exchange from its Iowa study area and permit South Slope to include the acquired exchange in its existing Iowa study area. On January 30, 2001, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the petition.¹⁴ The National Telephone Cooperative Association (NTCA) filed reply comments in support of the petition.¹⁵

B. Discussion

5. 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 Amana Colonies to remove the Amana exchange from its Iowa study area and to permit South Slope to include the acquired exchange in its Iowa study area.

6. Generally, the Commission’s rules may be waived for good cause shown.¹⁶ As noted by (Continued from previous page) _____ mechanism. See 47 C.F.R. § 54.311. The Commission has adopted measures to phase down interim hold-harmless support through \$1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. The phase down will not apply to a rural carrier when it acquires telephone exchanges from a non-rural carrier until the Commission completes a review of section 54.304 of the Commission’s rules or until rural high-cost reform is complete. *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-428 (rel. Dec. 8, 2000).

¹⁰ Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost by 15 percent. See 47 C.F.R. §§ 36.601-36.631.

¹¹ 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.

¹² 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 (1997).

¹³ Petition at Appendix A.

¹⁴ *Amana Colonies Telephone Company D/B/A Hickory Tech and Heartland Telecommunications Company of Iowa and South Slope Cooperative Telephone Company Seek a Waiver of the Definition of “Study Area” in Part 36 of the Commission’s Rules and a Waiver of Section of 69.605(c) of the Commission’s Rules*, Public Notice, DA 01-232 (rel. Jan. 30, 2001).

¹⁵ NTCA reply comments at 2 n.3.

¹⁶ 47 C.F.R. § 1.3.

the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ 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. Third, the transfer must be in the public interest.²⁰ For the reasons discussed below, we conclude that petitioners have satisfied these criteria and have demonstrated that good cause exists for waiver of the Commission's study area freeze rule.

7. First, we conclude that Amana Colonies and South Slope have demonstrated that the proposed change in the study area boundaries will not adversely affect any of the universal service mechanisms. Under section 54.305 of 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. As a result, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction. South Slope will receive the same per-line levels of support, including high-cost loop support, local switching support, and LTS, for which the Amana, Iowa exchange was eligible prior to its transfer. Because the Amana exchange currently receives no high-cost support, South Slope will not receive high-cost loop support for the Amana exchange after the transfer. Therefore, we conclude that this transaction will not adversely affect the universal service mechanisms.

8. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Iowa State Utilities Board has indicated that it does not object to the grant of the study area waiver.²¹

9. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit Amana Colonies to remove the Amana exchange from its study area and to permit South Slope to include the acquired exchange in its Iowa study area. In its petition, South Slope states that the transfer of the Amana exchange will expand the local calling areas for customers in South Slope's existing exchanges and for the customers in the acquired Amana exchange.²² In its order approving the transaction and granting South Slope a certificate to operate the Amana exchange, the Iowa State Utilities Board found that South Slope has demonstrated a history of providing local exchange telecommunications service in compliance with the Board's rules and requirements and that it is ready, willing, and able to provide

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. Denied*, 409 U.S. 1027 (1972).

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²⁰ 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).

²¹ See Petition at Appendix A.

²² *Id.* at 5.

comparable service to the Amana exchange.²³ Based on these representations, we conclude that South Slope has demonstrated that grant of this waiver request serves the public interest.

III. AVERAGE SCHEDULE WAIVER

A. Background

10. Incumbent LECs that participate in 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 its cost of providing service plus a pro rata share of the pool's earnings.²⁴ NECA pool participants' costs are determined either on the basis of cost studies or average schedule formulas. Cost companies are LECs that receive compensation for interstate telecommunication services based on their actual interstate investment and expenses, calculated from detailed cost studies. 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.²⁵ Average schedule companies, which are generally small incumbent LECs, are able to avoid the administrative burden of performing interstate cost studies.

11. 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."²⁶ Average schedule companies include average schedule companies that existed on December 1, 1982, or that have received average schedule status as a result of waivers. In limiting average schedule status, the Commission found that cost studies produce the most accurate financial information and, consequently, the most accurate interstate telephone rates.²⁷ Thus, an incumbent LEC may convert from an average schedule company to a cost company, but a carrier must obtain a waiver of section 69.605(c) to change from a cost company to an average schedule company.²⁸

12. The special circumstances that the Bureau has found to justify waivers of section 69.605(c) fall into two categories.²⁹ First, the Bureau has granted waivers to certain small carriers that lacked the resources to operate on a cost-study basis.³⁰ Second, the Bureau has granted section 69.605(c)

²³ *Id.* at Appendix A.

²⁴ *See* 47 C.F.R. §§ 69.601-69.612.

²⁵ *See* 47 C.F.R. § 69.606(a).

²⁶ 47 C.F.R. § 69.605(c).

²⁷ *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*).

²⁸ *See* 47 C.F.R. § 69.605(c).

²⁹ *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*).

³⁰ *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 (continued....))

waivers to average schedule companies that have acquired a cost based company and allowed the combined companies to merge into one average schedule study area.³¹

13. South Slope requests 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.³² Currently, South Slope is an average schedule company under section 69.605(c), while Amana Colonies is a cost company.³³

Because South Slope intends to acquire the Amana exchange from a cost company, section 69.605(c) of the Commission's rules would require South Slope to convert to a cost company.³⁴ South Slope argues that it should not be required to operate as a cost company because such a conversion would be unduly burdensome to South Slope because South Slope would have to spend time, effort, and funds on cost studies that it has previously been able to use to improve the quality of service furnished to its customers.³⁵

South Slope also argues that an average schedule waiver will not result in unintended effects on interstate revenue requirements or in administrative burdens on the Commission or NECA.³⁶ NTCA supports South Slope's waiver request.³⁷

B. Discussion

14. We are persuaded that good cause exists for us to grant South Slope's request for waiver of section 69.605(c). The Commission has explained that the definition of "average schedule company" in section 69.605(c) was premised upon a policy determination that carriers with the financial resources and

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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 Mobridge Telecommunications Company, which had approximately 2,400 access lines).

³¹ *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).

³² Amana Colonies Telephone Company d/b/a HickoryTech and Heartland Telecommunications Company of Iowa and South Slope Cooperative Telephone Company, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules and Definition of "Average Schedule Company" in Section 69.605(c) of the Commission's Rules, Supplement to the Joint Petition for Expedited Study Area Waiver (filed January 19, 2001)(Supplement).

³³ See Petition at 2.

³⁴ See 47 C.F.R. § 69.605(c).

³⁵ See Supplement at 5-6.

³⁶ *Id.*

³⁷ See NTCA reply comments at 3. at 6.

expertise to conduct cost studies without undue hardship should be required to measure the actual costs they incur in providing interstate service.³⁸ In this instance, South Slope, an existing average schedule company, has demonstrated that special circumstances exist because, due to its size, it would suffer undue hardship if required to convert to cost company status. South Slope is acquiring a small, 1500-line rural exchange which will not significantly increase the size of its study area. The proposed transaction will expand the local calling area for South Slope's existing exchanges and the Amana exchange and eliminate toll calling for parents, students, and teachers within the Amana School District.³⁹ If denied this waiver, South Slope would have to spend time, effort, and funds on cost studies that it has heretofore been able to use to improve the quality of service to its customers. Based on these facts, we therefore conclude that the Petitioners have demonstrated that the public interest would be served by such a waiver. Accordingly, we grant South Slope's request for waiver of section 69.605(c) of the Commission's rules.

IV. ORDERING CLAUSES

15. 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 South Slope Cooperative Telephone Company, Amana Colonies Telephone Company, d/b/a HickoryTech and Heartland Telecommunications Company of Iowa on December 13, 2000, IS GRANTED, as described herein.

16. 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), filed by South Slope Cooperative Telephone on December 13, 2000, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Chief, Accounting Policy Division

³⁸ See *MTS and WATS Order*, 3 FCC Rcd at 6642.

³⁹ See Supplement at 5-6.