

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

In the Matter of)
Sioux Valley Telephone Company and)
Hills Telephone Company, Inc.) CC Docket No. 96-45
Petition for Waiver of the Definition of "Study)
Area" Contained in Part 36, Appendix Glossary of)
the Commission's Rules)
Petition for Waiver of Section 69.605(c) of the)
Commission's Rules)

ORDER

Adopted: April 18, 2005

Released: April 19, 2005

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a joint request from Sioux Valley Telephone Company (Sioux Valley) and Hills Telephone Company, Inc (Hills) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Federal Communications Commission's (Commission) rules.1 This waiver will permit Sioux Valley to remove three exchanges comprising approximately 557 access lines from its South Dakota study area. This waiver also will permit Hills to create a new South Dakota study area for the acquired exchanges.2 We also grant Hills a waiver of section 69.605(c) of the Commission's rules to operate its new study area in South Dakota as an interstate average schedule company.3

1 See 47 C.F.R. Part 36, App. See also Sioux Valley Telephone Company and Hills Telephone Company, 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 April 6, 2004) (Petition). Sioux Valley owns and operates, as an interstate access average schedule incumbent local exchange carrier (LEC), approximately 5,912 access lines in the state of South Dakota. Hills currently does not have operations in the state of South Dakota, but is an interstate access average schedule incumbent LEC that owns and operates approximately 631 access lines in a Minnesota and approximately 2,123 access lines in Iowa. See Petition at 2-3.

2 Hills is acquiring the Valley Springs, East Valley Springs, and North Larchwood exchanges from Sioux Valley. The East Valley Springs exchange consists of approximately 47 access lines located in southwestern Minnesota, but is served by the switching facilities of the Valley Springs exchange and has been included in Sioux Valley's South Dakota study area. See Petition at 1-2.

3 See infra para. 14. See also 47 C.F.R. § 69.605(c).

II. STUDY AREA WAIVER

A. BACKGROUND

2. *Study Area.* 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, an incumbent LEC operating in more than one state typically has one study area for each state. The Commission froze all study area boundaries effective November 15, 1984.⁴ The Commission took this action to prevent the establishment of high-cost exchanges within existing service territories as separate study areas merely to maximize high-cost support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.⁵

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.⁶ Section 54.305(b) applies to high-cost loop support and local switching support.⁷ Section 54.305(b) is meant to discourage a carrier from transferring an exchange merely to increase its share of high-cost universal service support.⁸ For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's high-cost support mechanism for non-rural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the non-rural mechanism, regardless of the support the acquiring carrier may receive for any of its other exchanges.⁹

⁴ 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*), adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 C.F.R. Part 36, App.

⁵ *Part 67 Order* at para. 1.

⁶ 47 C.F.R. § 54.305(b). 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). Moreover, a carrier acquiring exchanges 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 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19667-69, paras. 155-57 (2001), recon. pending.*

⁷ Prior to July 1, 2004, this rule also applied to long term support, which is described in section 54.303 of the Commission's rules. See 47 C.F.R. § 54.303. Since July 1, 2004, long term support has been discontinued for all carriers and, instead, has been merged into ICLS. See *id.*; see also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket 00-256, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4146-53, paras. 54-67 (2004) (*MAG Order/NPRM*).

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*Universal Service 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).

⁹ Rural carriers receive high-cost loop support based on the extent to which their reported average cost per loop exceeds 115 percent of the nationwide average cost per loop. See 47 C.F.R. §§ 36.601-36.631. The mechanism for

(continued...)

4. *The Petition for Waiver.* Sioux Valley and Hills filed a joint petition for a waiver of the study area boundary freeze on April 6, 2004. On September 23, 2004, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition for waivers.¹⁰ A study area waiver would permit Sioux Valley to alter the boundaries of its South Dakota study area by removing the three exchanges that it is transferring to Hills. The study area waiver would also permit Hills to establish a new South Dakota study area for the acquired exchanges. Additionally, the Petition indicates that pursuant to section 54.315(d) of the Commission's rules, Sioux Valley has elected to follow Path 3 and has adopted, filed and implemented a two-zone disaggregation plan for the calculation and targeting of high-cost loop support within its existing South Dakota study area.¹¹ As a result, the Petition states that the three exchanges subject to this proceeding, pursuant to the disaggregation plan, will receive \$70.20 per-line annually in high-cost loop support during the second quarter of 2004. The petitioners argue, therefore, that under the Commission's current rules, Hills will be limited to \$70.20 per-line annually for the acquired lines in its new South Dakota study area pursuant to section 54.305 and, as a result, there would be no adverse impact on the universal service fund from the instant transaction.¹²

5. *Standards for Waiver.* Generally, the Commission's rules may be waived for good cause shown.¹³ As noted by the D.C. Circuit, however, agency rules are presumed valid.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ 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. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) no state

(...continued from previous page)

non-rural carriers calculates support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309.

¹⁰ See *Wireline Competition Bureau Seeks Comment on the Petition of Sioux Valley Telephone Company and Hills Telephone Company, Inc. to Waive the Study Area Boundary Freeze, as Codified in Part 36 of the Commission's Rules and Section 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 04-3041 (rel. Sep. 23, 2004). No comments were filed in this proceeding. We note that the Bureau has granted transfer of control of the exchanges. See *Notice of Streamlined Domestic 214 Applications Granted*, Public Notice, DA 04-3021, (rel. Sep. 20, 2004).

¹¹ Section 54.315 of the Commission's rules requires all rural incumbent LECs to select a disaggregation plan or "path" for the distribution of universal service support. Disaggregation targets universal support to geographic areas within an incumbent LEC's study area. An incumbent LEC has three disaggregation path options. See 47 C.F.R. § 54.315.

¹² See Petition at 5-6; see also 47 C.F.R. §§ 54.305, 54.315(d). We note that the Universal Service Administrative Company (USAC) projects that during the first quarter of 2005, the exchanges subject to this transaction will receive \$109.32 (annualized) per-line high-cost loop support and will receive \$64.44 (annualized) per-line local switching support. See *Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2005, Appendix HC04 1Q2004 – Disaggregated Per Line Support by Zone, Second Quarter 2005* (rel. November 2, 2004).

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972).

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

commission having regulatory authority over the transferred exchanges opposes the transfer; and (3) the transfer must be in the public interest.¹⁷

B. DISCUSSION

6. We 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 Sioux Valley to alter the boundaries of its existing South Dakota study area by removing the three exchanges that it is transferring to Hills. We also find that good cause exists to permit Hills to establish a new South Dakota study area for the acquired exchanges. For the reasons discussed below, we conclude that the petitioners have satisfied the three-prong standard that the Commission applies to determine whether a waiver is warranted.

7. First, we conclude that the universal service fund will not be adversely affected. In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission has considered in the past whether a study area waiver will result in an annual aggregate shift in an amount equal to or greater than one percent of the total high-cost loop support fund for the year 2004.¹⁸ The Commission recognized that, because of the indexed cap, an increase in the draw of any fund recipient necessarily reduces the amounts that other LECs receive from the fund.¹⁹ After adoption of section 54.305 of the Commission's rules, however, the one-percent guideline, was not, in practice, a necessary limitation because section 54.305 provides that a carrier purchasing exchanges from an unaffiliated carrier is permitted to receive only the same level of per-line high-cost support that the selling company was receiving for the exchanges prior to the transfer.²⁰ Accordingly, by definition, section 54.305 ensures that there will be no adverse impact on the universal service fund with respect to high-cost loop support and local switching support.

8. With regard to the 557 lines that Sioux Valley is transferring to Hills, high-cost loop support and local switching support are limited by section 54.305(b) of the Commission's rules.²¹ Accordingly, Hills is limited to the same per-line levels of support that Sioux Valley was receiving prior to the transfer. Although Hills may be eligible for safety valve support for the acquired lines, we have no reason to believe that this amount would have a significant adverse impact on the fund. In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only approximately 557 access lines. Moreover, an individual rural carrier's safety valve support is capped at fifty percent of any positive difference between the amount of high-cost loop support that the rural carrier would qualify for in the index year for the acquired access lines and the support amounts that the carrier would qualify for in subsequent years.²² The total amount of safety valve support available to rural carriers is also capped at five percent of annual high-cost loop support available to rural carriers in any

¹⁷ 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 para. 5 (1995) (*PTI/Eagle Order*).

¹⁸ See *PTI/Eagle Order*, 10 FCC Rcd at 1774, paras. 14-17; see *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).

¹⁹ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, paras. 13-15.

²⁰ See 47 C.F.R. § 54.305(b).

²¹ See *id.*

²² See 47 C.F.R. § 54.305(d). See *supra* n.11. The term "rural carrier" refers to an incumbent LEC that meets the definition of "rural telephone company" in section 3(37) of the Communications Act of 1934, as amended (Act). 47 U.S.C. § 153(37). Both carriers in this proceeding are classified as rural telephone companies within the definition of "rural telephone company" in the Act.

particular year, thereby providing an additional limitation on the amount of safety valve support available to carriers.²³ As stated above, ICLS support is not subject to the limitations of section 54.305(b) of the Commission's rules.²⁴ Thus, it is appropriate to consider whether and the extent to which ICLS support will increase if we grant the study area waiver. The petitioners estimate that as a result of this transaction ICLS support will increase by \$24,936 annually.²⁵ We conclude that this increase is small relative to the overall size of the fund and to the amount of support Sioux Valley received prior to this transaction. Thus, we find that granting the waiver will not have an adverse effect on the universal service fund.

9. Second, the state commission with regulatory authority over the transferred exchanges does not oppose the transfer. On July 8, 2004, the South Dakota Public Utilities Commission issued an order approving the sale of the three exchanges to Hills.²⁶

10. Third, the public interest is served by a waiver of the study area freeze rule to permit Sioux Valley to remove from its South Dakota study area the Valley Springs, East Valley Springs, and North Larchwood exchanges and to permit Hills to place the acquired exchanges in a newly formed South Dakota study area. The petitioners state that: the three subject exchanges are not contiguous with any of the other exchanges in Sioux Valley's South Dakota study area; Sioux Valley desires to consolidate its eastern operations through its switching facilities in Dell Rapids, South Dakota; Sioux Valley cannot serve the three subject exchanges as efficiently and economically from its Dell Rapids switching facilities; Sioux Valley will be able to achieve economies in its maintenance, customer service, billing, and administrative expenses; and Hills currently serves Minnesota and Iowa exchanges near the South Dakota-Minnesota-Iowa border.²⁷ Based on these representations, we conclude that Hills can efficiently serve the three exchanges and that the petitioners have demonstrated that the grant of this waiver request will serve the public interest.

III. AVERAGE SCHEDULE WAIVER

A. Background

11. An incumbent LEC that participates in the National Exchange Carrier Association (NECA) pools collects access charges from interexchange carriers at the rates contained in the tariffs filed

²³ See 47 C.F.R. § 54.305(e).

²⁴ See *supra* note 6.

²⁵ The petitioners estimate that Sioux Valley's current eight exchanges receive an estimated \$2,760,048 annually in ICLS prior to this transaction. After the transaction is complete, the petitioners estimate that Sioux Valley's remaining five exchanges will receive an estimated \$2,520,348 and Hills' three exchanges will receive an estimated \$264,636 in ICLS. Thus, the total annual increase in ICLS support is \$24,936 ($2,760,048 - (2,520,348 + 264,636)$). See Letter from Gerard J. Duffy, Blooston, Mordkofsky, Dickens, Duffy, and Prendergast (counsel for Sioux Valley and Hills), to Marlene H. Dortch, Secretary, Federal Communications Commission, filed March 9, 2005.

²⁶ See *In the Matter of the Joint Application of Sioux Valley Telephone Company and Hills Telephone Company, Inc. Regarding the Sale by Sioux Valley Telephone Company of its Valley Springs, East Valley Springs and North Larchwood Exchanges to Hills Telephone Company, Inc.*, South Dakota Public Utilities Commission, Order Approving Sale of Telephone Exchanges, TC04-040 (July 8, 2004). The petitioners state they have attempted to obtain a letter or statement from the Minnesota Public Utilities Commission (MPUC) indicating that the MPUC has no objection to the Commission's grant of the proposed study area waiver. The petitioners claim, however, that the staff of the MPUC has indicated that there is no need for a MPUC letter and that the MPUC would not be inclined to furnish a letter for a study area boundary change that does not affect a Minnesota study area. See Petition at 6. See also *supra* n.2. We note that the MPUC approved Sioux Valley's sale of the East Valley Springs exchange to Hills. See Letter from Burl W. Haar, Executive Secretary, Minnesota Public Utilities Commission, to Brian J. Donahoe, Cutler & Donahoe, LLP, MPUC Docket No. P533/562/PA-04-447 (May 26, 2004).

²⁷ See Petition at 7.

by NECA.²⁸ Each pool participant receives settlements from the relevant pool to recover the costs of providing service plus a pro-rata share of the pool's earnings.²⁹ A NECA pool participant's interstate access charge settlements are determined either on the basis of cost studies or average schedule formulas. A cost company is an incumbent LEC that receives compensation for interstate telecommunications services based on its actual interstate investments and expenses, calculated using detailed cost studies. An average schedule company is an incumbent LEC that receives compensation for use of its interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies.³⁰ Average schedule companies thus are able to avoid the administrative and financial burdens 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."³¹ The definition of "average schedule company" includes existing average schedule incumbent LECs, but does not allow for the creation of new average schedule companies or the conversion of cost-based carriers to average schedule status without a waiver of the Commission's rules.³² The definition was designed to limit the use of average schedule formulas to companies that operated as average schedule companies prior to adoption of the rule or that are able to demonstrate compelling circumstances sufficient to warrant a special exception.³³ Our actions on waivers of the definition of "average schedule company," therefore, are guided by the principle that incumbent LECs should receive interstate access settlements based on their actual costs whenever possible without undue hardship.

13. On September 21, 2004, Sioux Valley and Hills supplemented their Petition to request a waiver of section 69.605(c) of the Commission's rules, if such a waiver is necessary in order for Hills to operate its newly formed study area as an average schedule company.³⁴ The petitioners argue that the section 69.605(c) definition and waiver requirements focus upon new average schedule companies and do not apply to existing average schedule companies that grow via the addition of subscribers, exchanges, and/or study areas.³⁵ The petitioners also cite decisions issued by the Common Carrier Bureau's Accounting and Audits Division (Division) to support their assertion that a waiver is not necessary.³⁶ The

²⁸ See 47 C.F.R. § 69.601.

²⁹ See 47 C.F.R. §§ 69.601-69.612.

³⁰ See 47 C.F.R. § 69.606(a). Average schedule companies may also receive universal service support pursuant to average schedule formulas. See, e.g., *National Exchange Carrier Association, Inc. Proposed 2004 Modification of Average Schedule Formulas*, CC Docket 96-45, Order, 18 FCC Rcd 26619 (WCB 2003).

³¹ 47 C.F.R. § 69.605(c).

³² An incumbent LEC may convert from an average schedule company to a cost company, but an incumbent LEC must obtain a waiver of the definition of "average schedule company" in section 69.605(c) to change from a cost company to an average schedule company. See 47 C.F.R. § 69.605(c).

³³ See *Petition for Waiver Filed by Heartland Telecommunications Company of Iowa and Hickory Tech Corporation*, AAD File No. 96-94, Memorandum Opinion and Order, 14 FCC Rcd 13661, 13662, para. 3 (1999) (*Heartland*).

³⁴ See *Sioux Valley Telephone Company and Hills Telephone Company, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules*, Supplement to Joint Petition for Study Area Waiver, CC Docket No. 96-45 (filed Sept. 21, 2004) (Supplement). See also § 69.605(c).

³⁵ See Supplement at 2.

³⁶ The Common Carrier Bureau has since been renamed the Wireline Competition Bureau. Study area waivers and related waivers are now the responsibility of the Wireline Competition Bureau's Telecommunications Access Policy Division.

petitioners reference *Winnebago*, where the Division permitted Winnebago, an Iowa average schedule company serving 5,700 access lines, to acquire 600 access lines from GTE Midwest and consolidate those lines into Winnebago's existing Iowa study area without a waiver of section 69.605(c).³⁷ The petitioners also cite *Farmers*, where the Division permitted Farmers, an Idaho average schedule company serving approximately 2,500 access lines, to acquire 176 access lines from US West without a waiver of section 69.605(c).³⁸ The petitioners point out that, in both the *Winnebago* and *Farmers* proceedings, the Division clearly indicated that the acquiring companies could continue to operate as average schedule companies after the acquisitions closed. The petitioners argue that in the present case, Hills is already an average schedule company under the definition of 69.605(c), similar to *Winnebago* and *Farmers*, and is not seeking to establish a new average schedule company or to convert cost or price cap exchanges to average schedule status. Rather, they claim that Hills is acquiring three exchanges that presently are being operated on an average schedule basis by Sioux Valley. The petitioners do recognize the difference in the instant proceeding from *Winnebago* and *Farmers* in that Hills is not adding the three exchanges to its existing Minnesota or Iowa study areas, but instead is seeking to establish a new average schedule study area in South Dakota. The petitioners, however, contend that this difference does not appear to distinguish substantively the present case from *Winnebago* and *Farmers*.³⁹

B. DISCUSSION

14. We are persuaded that good cause exists to allow Hills' new South Dakota study area to receive interstate access settlements pursuant to the average schedule formulas. We disagree, however, that the Division's *Winnebago* and *Farmers* decisions control and that Hills does not need a waiver of section 69.605(c) in order for its new study area to operate pursuant to interstate average schedule based settlements. As noted above, the petitioners in the *Winnebago* and *Farmer* cases were adding lines to existing study areas and not establishing new study areas as in the instant proceeding. The *Winnebago* and *Farmer* cases are also distinguishable because, in those cases, the companies were acquiring exchanges from GTE Midwest, Incorporated (GTE) and US West Communications, Inc (U S West), respectively, and that both GTE and US West were price cap regulated companies at the time the exchanges were transferred. Section 61.41(c)(3) of the Commission rules states that, ".....when a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that qualifies as an 'average schedule' company, the latter company may retain its 'average schedule status.....'"⁴⁰ Although, section 61.41(c)(3) was not specifically referenced in either the *Winnebago* or *Farmers* cases, it supports the determination that a waiver of section 69.605(c) was unnecessary in those cases.

15. Hills claims that because it already operates two average schedule study areas in other states, it does not need a waiver because it is already an average schedule company operating pursuant to 69.605(c) of the Commission's rules.⁴¹ We disagree. We find that the establishment of a new study area is, in effect, the establishment of a new entity or company for regulatory purposes such as interstate access settlements and universal service support. Hills' new study area will be required to meet its

³⁷ See Supplement at 2-3 (citing *GTE Midwest Incorporated and Winnebago Cooperative Telephone Association, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Winnebago Cooperative Telephone Association, Petition for Waiver of Section 61.41(c) of the Commission's Rule*, 9 FCC Rcd 7789 (1994) (*Winnebago*)).

³⁸ See Supplement at 3 (citing *Petitions for Waivers filed by Farmers Mutual Telephone Company, Project Mutual Telephone Cooperative Association, Inc., and US West Communications, Inc.*, 11 FCC Rcd 9380 (1996) (*Farmers*)).

³⁹ See Supplement at 3.

⁴⁰ 47 C.F.R § 61.41(c)(3).

⁴¹ See Supplement at 2.

regulatory obligations separate and distinct from its operations in Minnesota and Iowa. We find that Hills' operation of average schedule study areas in other states is irrelevant with respect to section 69.605(c). The Commission was concerned when it adopted section 69.605(c) that carriers would attempt to game the interstate access charge regime if it allowed freedom of conversion to average schedule status and therefore, it froze average schedule companies effective December 1, 1982.⁴² Consistent with this rationale, we find that a waiver of section 69.605(c) is necessary in order for Hills to establish a new average schedule study area in South Dakota.

16. The Commission has permitted smaller carriers to elect to receive interstate compensation from average schedules as a way to avoid imposing the burdens and costs associated with performing cost separations studies needed to determine access charges. The high cost of completing cost studies relative to the small size of Hills establishes the special circumstances that warrant granting its request for a waiver of section 69.605(c). We have previously granted waivers of this section to similarly sized carriers, concluding that these carriers did not have sufficient resources or expertise to justify conversion of their average schedule status to cost-based settlements.⁴³ We also note that Sioux Valley is an average schedule company; therefore, the transfer of the 557 lines from an existing average schedule company to another average schedule company does not increase the number of lines subject to average schedule status. Accordingly, we find that Hills' requested waiver of section 69.605(c) of the Commission rules is in the public interest and should be granted.

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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Sioux Valley Telephone Company and Hills Telephone Company, Inc. on April 6, 2004, IS GRANTED, as described herein.

18. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the petition for waiver of section 69.605(c) of the

⁴² We note that in the past several carriers have requested, and we have ruled on, waivers of section 69.605(c) when an acquiring carrier was an established average schedule company. See e.g., *NebCom, Heartland, and Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) (*Dickey Rural*).

⁴³ See, e.g., *Newcastle Telephone Co. Petition for Waiver of Section 69.605(c)*, AAD No. 90-18, Memorandum Opinion and Order, 7 FCC Rcd 2081 (1992) (waiver granted to small company with 1,550 access lines, two exchanges); *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 (1993) (waiver granted to National Utilities, which had 2,350 access lines, and Bettles, which had 50 access lines); *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 (1987) (waiver granted to small company serving fewer than 400 lines in a 700 square mile area and lacking operational expertise); *Dickey Rural Telephone Cooperative, Dickey Rural Access, Inc., Polar Telecommunications, Inc., Red River Rural Telephone Association, Red River Telecom, Inc. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) (*Dickey Rural*) (waiver granted to Polar and Red River which added 635 and 1,028 access lines to their existing 1,614 and 1,745 access lines, respectively).

Commission's rules, 47 C.F.R. § 69.605(c), filed by Sioux Valley Telephone Company and Hills Telephone Company, Inc. on September 21, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Lisa S. Gelb
Deputy Chief, Wireline Competition Bureau