

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

In the Matter of)
Sully Telephone Association, Inc.)
and)
Reasnor Telephone Company, LLC)
Joint 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 Regarding the Definition of "Average)
Schedule Company")
CC Docket No. 96-45

ORDER

Adopted: November 29, 2005

Released: November 29, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a joint petition from Sully Telephone Association, Inc. (Sully) and Reasnor Telephone Company, LLC (Reasnor) (jointly, the Petitioners) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission rules. This waiver will permit Sully to remove one exchange comprising approximately 275 access lines from its Iowa study area. This waiver also will permit Reasnor to create a new Iowa study area for the acquired exchange. We also grant Reasnor a waiver of section 69.605(c) of the Commission's rules to operate its new study area in Iowa as an interstate average schedule company.

2. Reasnor is a newly-formed telephone company created for the purpose of purchasing the rural exchange of Reasnor from Sully. Sully currently owns and operates, as an interstate average schedule incumbent local exchange carrier (LEC), approximately 2,575 access lines in its Iowa study area.

1 See 47 C.F.R. Part 36, App.; Sully Telephone Association, Inc. and Reasnor Telephone Company, LLC, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules; Petition for Waiver of Section 69.605(c) of the Commission's Rules Regarding the Definition of "Average Schedule Company," CC Docket No. 96-45 (filed December 15, 2004) (Petition). See Petition at 1-2.

II. STUDY AREA WAIVER

A. Background

3. *Study Area.* A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. The Commission froze all study area boundaries effective November 15, 1984.² 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.³

4. *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.⁴ Section 54.305(b) applies to high-cost loop support and local switching support.⁵ Section 54.305(b) is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.⁶ 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 rural carrier purchasing the exchange may receive for any of its other exchanges.⁷

5. *The Petition for Waiver.* Sully and Reasnor filed a joint petition for a waiver of the study area boundary freeze on December 15, 2004. On December 20, 2004, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition for waiver.⁸ A study area waiver

² See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*) adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984). See also 47 C.F.R. Part 36, App.

³ *Part 67 Order* at para. 1.

⁴ 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). A carrier acquiring exchanges also may be eligible to receive Interstate Common Line Support (ICLS), which is not subject the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

⁵ Prior to July 1, 2004, this rule also applied to long term support (LTS), which is described in section 54.303 of the Commission's rules. Since July 1, 2004, LTS has been discontinued for all carriers and, instead, has been merged into ICLS. See 47 C.F.R. §§ 54.303, 54.901. By operation of section 54.901, the elimination of LTS is offset by an increase in ICLS.

⁶ 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).

⁷ 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 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. The mechanism for 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.

⁸ See *Sully Telephone Association, Inc., and Reasnor Telephone, LLC Seek Waiver of the Study Area Boundary Freeze as Codified in Part 36 and Waiver of 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Public

(continued....)

would permit Sully to remove the Reasnor exchange from its Iowa study area. The study area waiver also would permit Reasnor to create a new study area in the state of Iowa for the acquired exchange.⁹ The Petitioners claim that there will not be any adverse impact on the universal service fund because Reasnor will not receive any more universal service support for the Reasnor exchange than Sully received, and Petitioners will not receive any additional high-cost loop support for new investments after the transaction.¹⁰ The Petitioners also argue that granting this waiver is in the public interest.¹¹

6. *Standards for Waiver.* Generally, the Commission may waive its rules for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ 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 commission having regulatory authority over the transferred exchanges opposes the transfer; and (3) the transfer must be in the public interest.¹⁵

7. In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission has considered 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 most recent calendar year.¹⁶ 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.¹⁷ 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.¹⁸

(...continued from previous page)

Notice, DA 04-3977 (rel. December 20, 2004). No comments were filed in this proceeding. We note that the Bureau has granted transfer of control of the exchanges. See *Wireline Competition Bureau Grants Consent for Transfer of Control of Sully Telephone's Reasnor Exchange to Reasnor Telephone*, Public Notice, DA 05-1297, (May 5, 2005).

⁹ See Petition at 1-2.

¹⁰ See *id.* 4.

¹¹ See *id.* at 6-7.

¹² 47 C.F.R. § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *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.

¹⁵ 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 (1995) (*PTI/Eagle Order*).

¹⁶ 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).

¹⁷ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, paras. 13-15.

¹⁸ See 47 C.F.R. § 54.305(b).

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.

B. DISCUSSION

8. 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 Sully to alter the boundaries of its existing Iowa study area by removing the Reasnor exchange that it is transferring to Reasnor. We also find that good cause exists to permit Reasnor to establish a new Iowa study area for the acquired exchange. 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.

9. *Impact on the Universal Service Fund.* We conclude that the universal service fund will not be adversely affected. With regard to the 275 lines that Sully is transferring to Reasnor, section 54.305(b) of the Commission's rules limits the amount of high-cost loop support and local switching support that Reasnor may receive to the same per-line levels of support that Sully was receiving prior to the transfer.¹⁹ Although Reasnor may be eligible for safety valve support for the acquired lines,²⁰ we have no reason to believe that this amount would significantly increase the high-cost fund, and we estimate any such support would fall well short of the one percent threshold.²¹ 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 particular year, thereby providing an additional limitation on the amount of safety valve support available to carriers.²³ These caps should ensure that the universal service fund will not be adversely affected. Furthermore, the Petitioners estimate that as a result of this transaction ICLS support will decrease by \$9,084 annually.²⁴ Thus, we find that granting the waiver will not have an adverse effect on the universal service fund.

¹⁹ See *id.*

²⁰ Petitioners claim that neither Reasnor nor Sully would receive safety valve support for new investments, because they will operate as average schedule companies and their high-cost support is calculated pursuant to predetermined formulas. However, NECA proposed and the Commission approved a method for providing safety valve support to average schedule carriers. See *Federal-State Joint Board on Universal Service, National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas*, CC Docket No. 96-45, Order, 17 FCC Rcd 14236, 14242-43, para. 17. In addition, if Reasnor converted to a cost company, however, it may be eligible to receive safety valve support.

²¹ In reaching this conclusion, we note that the proposed study area waiver directly involves the transfer of only approximately 275 access lines. Moreover, safety valve support is capped at 50 percent of any positive difference between a rural carrier's calculated high-cost loop support for the transferred exchanges and the index year amount. See 47 C.F.R. § 54.305(d). Also, the total amount of safety valve support available to rural carriers is capped at five percent of annual high-cost loop support available to rural carriers in any particular year, thereby providing an additional limitation on the amount of safety valve support available to carriers. See 47 C.F.R. § 54.305(e).

²² See 47 C.F.R. § 54.305(d).

²³ See 47 C.F.R. § 54.305(e).

²⁴ The Petitioners estimate that Sully's two exchanges, prior to this transaction, receive an estimated \$148,453 annually in ICLS. After the transaction is complete, the Petitioners estimate that Sully's remaining exchange will receive an estimated \$119,578 and Reasnor's exchange will receive an estimated \$19,791 in ICLS. Thus, as a result of this transaction ICLS support will decrease by \$9,084 (\$148,453 - (\$119,578 + \$19,791)). See Letter from Tony Lee, Counsel for Sully and Reasnor, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed April 8, 2005).

10. *Position of State Commission.* The state commission with regulatory authority over the transferred exchanges does not oppose the transfer. On September 2, 2004, the Iowa Utilities Board issued an order approving the transfer of the Reasnor exchange from Sully to Reasnor and stating that it did not object to the Commission granting a study area waiver.²⁵

11. *Public Interest Analysis.* The public interest is served by a waiver of the study area freeze rule to permit Sully to remove from its Iowa study area the Reasnor exchange and to permit Reasnor to place the acquired exchange in a newly formed Iowa study area. The Petitioners state that Reasnor intends to: 1) improve the facilities serving the Reasnor exchange, including the replacement of switches that will include enhanced features and improve service reliability; 2) build a fiber ring to enhance redundancy and reliability; 3) extend high-speed digital transmission to areas currently not served by fiber; and, 4) provide service at affordable and competitive prices. The Petitioners also state that Sully's remaining subscribers will benefit from the proposed transaction because Sully intends to use the economic gains from the sale to upgrade its equipment to offer additional and enhanced services.²⁶ Based on these representations, we conclude that the transfer of the Reasnor exchange to Reasnor will serve the public interest.

III. AVERAGE SCHEDULE WAIVER

A. Background

12. 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 by NECA.²⁷ 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.²⁸ 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.²⁹ Average schedule companies thus are able to avoid the administrative and financial burdens of performing interstate cost studies.

13. 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."³⁰ The definition of "average schedule company" includes existing average schedule incumbent LECs, but does not allow for the creation of new average schedule

²⁵ See *In Re: Sully Telephone Association Inc., and Reasnor Telephone Company, LLC, Order Approving Joint Application for Discontinuance of Service, Amending Certificate, Granting Partial Transfer of Certificate, Approving Tariff, and Granting Waiver*, State of Iowa, Department of Commerce, Utilities Board, Docket Nos. SPU-04-21, TF-04-255, WRU-04-37-3775 (September 2, 2004).

²⁶ See Petition at 6.

²⁷ See 47 C.F.R. § 69.601.

²⁸ See 47 C.F.R. §§ 69.601-.612.

²⁹ 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).

³⁰ 47 C.F.R. § 69.605(c).

companies or the conversion of cost-based carriers to average schedule status without a waiver of the Commission's rules.³¹ 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.³² 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.

14. The Petition requests a waiver of section 69.605 of the Commission's rules in order for Reasnor to operate its newly formed study area as an average schedule company.³³ The Petition notes that the Commission has found it appropriate to waive the average schedule definition for carriers that have many times the number of lines that Reasnor will acquire as a result of this transaction.³⁴ The Petition argues that Reasnor should not be required to operate as a cost company because it lacks the resources, due to its small size, to perform such cost studies and that its resources are better utilized on customer service and network improvements, rather than on cost studies.³⁵

B. DISCUSSION

15. We are persuaded that good cause exists to allow Reasnor's new Iowa study area to receive interstate access settlements pursuant to the average schedule formulas. 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. 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.³⁶ We find that Reasnor is similarly situated and that the cost of completing cost studies is not warranted in this situation. We also note that Sully is an average schedule company; therefore, the transfer of the 275 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 Reasnor's requested waiver of section 69.605(c) of the Commission

³¹ 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).

³² 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).

³³ See Petition at 9. See also 47 C.F.R. § 69.605(c).

³⁴ See Petition at 10.

³⁵ See *id.* at 11.

³⁶ 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 (WCB 2002) (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).

rules is in the public interest and should be granted.

IV. ORDERING CLAUSES

16. 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 petition for waiver of the study area boundary freeze as codified in Part 36, Appendix-Glossary, of the Commission's rules, filed by Sully Telephone Association, Inc. and Reasnor Telephone Company, LLC on December 15, 2004, IS GRANTED, as described herein.

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 Sully Telephone Association, Inc. and Reasnor Telephone Company, LLC on December 15, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau