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FEDERAL COMMUNICATIONS COMMISSION
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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)
"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")

CC Docket No. 96-45

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA)¹ hereby submits its comments in the above captioned proceeding² in support of the petitioners' requests for waiver of the definition of "study area" in Part 36 of the Commission's rules³ and the definition of "average schedule

¹ The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment to of advanced telecommunications capabilities to American and international markets.

² The Commission established the pleading cycle in this proceeding in its *Public Notice* in CC Docket No. 96-45 released on September 8, 2000 (*Notice*). The Joint Petition for Waiver of Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C. (*Petition*) was filed on June 15, 2000.

³ 47 C.F.R. Part 36.

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company" in Section 69.605(c) of the rules.⁴

I. BACKGROUND

Petitioners are small Iowa incumbent local exchange carriers (LECs). Jordan-Soldier Valley Telephone Company (Jordan) serves 341 subscriber loops in and near Soldier, Iowa from a single exchange.⁵ Alpine Communications, L.C. (Alpine) operates seven exchanges in Iowa serving 6,975 subscriber loops.⁶ Six of the exchanges are in the northeastern part of the state, while one, the Moorhead exchange, adjoins the exchange of Jordan in the west central part of the state.⁷

Both Jordan and Alpine are issuing carriers in the interstate access tariffs administered by the National Exchange Carrier Association (NECA) and participate in NECA's Common Line pool for those services.⁸ Alpine settles with NECA for its revenue requirements on a cost study basis, while Jordan does so on an average schedule basis.⁹ Alpine also participates in NECA's Traffic Sensitive services tariff and pool, while Jordan participates in the tariff administered by ICORE, Inc.¹⁰

⁴ 47 C.F.R. § 69.605(c).

⁵ Industry Analysis Division, Common Carrier Bureau, December, 1999 Monitoring Report, Table 3.19, at 3-129 (*FCC Monitoring Report*).

⁶ *Id.*

⁷ *Petition* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* The *Petition* also notes, at 2, that Jordan intends to return to the NECA Traffic Sensitive pool in the future.

Jordan has agreed to purchase the Moorhead exchange from Alpine and operate it as a part of its existing study area.¹¹ The additional customers will help Jordan increase its operating efficiencies by spreading the costs of new services over a larger number of customers. Alpine will also improve its efficiency by not having to serve customers which are significantly remote from its other exchanges in the northeastern part of the state. In order for the transaction to be completed, the companies seek waiver of the Commission's rules which froze study area boundaries in 1984.¹² Additionally, Jordan seeks a waiver of the Commission's average schedule company rules in order to operate the new exchange under NECA's average schedule settlements program.¹³

USTA believes that Petitioners have demonstrated good cause for grant of their requested waivers, and, as explained further below, urges the Commission to expeditiously grant their requests.

II. THE COMMISSION'S TESTS FOR GRANTING A STUDY AREA WAIVER HAVE BEEN MET

The Commission's rules state that "(s)tudy area boundaries shall be frozen as they are on November 15, 1984."¹⁴ However, the Commission has granted numerous waivers from this rule where it determined that "special circumstances warrant a deviation from the general rule, and

¹¹ *Id.* at 1.

¹² *Id.* at 3-5. *See* 47 C.F.R. Part 36, Appendix Glossary, Definition of "Study Area."

¹³ *Id.* at 5-7.

¹⁴ 47 C.F.R. Part 36, Appendix-Glossary.

such a deviation will serve the public interest."¹⁵ The Commission normally applies a three prong standard in these instances.

First, the requested study area boundary change must not have an adverse impact on the Universal Service Fund.¹⁶ Here, the Alpine study area in 1998 had an unseparated non-traffic sensitive revenue requirement of \$357.93 per subscriber loop, while the Jordan study area had a revenue requirement of \$352.78 per subscriber loop.¹⁷ The difference in these figures is plainly *de minimis*, and the change in study areas will therefore have no significant impact on the Universal Service Fund.

Second, the state regulatory commission having jurisdiction over the area to be transferred does not oppose the change.¹⁸ The Commission acknowledges in its *Notice* that the Iowa Department of Commerce Utilities Board has no objection to transfer of the Moorhead exchange to Jordan.¹⁹

Third, the transfer must serve the public interest. Petitioners demonstrate that both companies will be able to operate more efficiently after transfer of the exchange. Alpine will

¹⁵ Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation Joint Petition for Waiver of Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; and Sully Buttes Telephone Cooperative, Inc. Petition for Waiver of Sections 61.41(c) and (d) and 69.3(3)(11) of the Commission's Rules, *Order*, CC Docket No. 96-45, released August 18, 2000, ¶ 8 (*Sully Buttes Order*).

¹⁶ *Id.*

¹⁷ *FCC Monitoring Report* at 3-129.

¹⁸ *Sully Buttes Order* at ¶ 8.

¹⁹ Petitioners note that they had contacted the Iowa Utilities Board regarding the transfer (*Petition* at 4), and submitted the Board's order to the Commission, as the Commission recognizes in its *Notice*.

gain from not having to operate an exchange which is geographically remote from the remainder of its operating area. Jordan will gain economies of scale from having a larger number of customers in an adjacent exchange to help offset costs of new and improved services.²⁰ This recognition by the parties to the transaction, coupled with the absence of objection of the regulatory commission most directly in authority of the operations of both companies, clearly demonstrates that the public interest will be served by allowing the transfer to proceed.

III. JORDAN'S AVERAGE SCHEDULE WAIVER IS REASONABLE

As with study area boundaries which were frozen as they existed in 1984, the Commission's rules define an average schedule company as one participating in the average schedule settlement process on December 1, 1982.²¹ Jordan was and is one of these companies, but Alpine settles with NECA for its interstate revenue requirements on the basis of its own cost data for all its exchanges including the Moorhead exchange.²² Thus, a waiver of Section 69.605(c) is needed to include the new exchange in Jordan's study area.

Petitioners justify their request by noting that Jordan meets the requirements for granting such a waiver in two ways: (1) Jordan, with the Moorhead exchange, will only serve 700 access lines in two rural communities, which is well below the 5,000 access line level which the Commission has used for such a waiver in the past,²³ and (2) Jordan will remain a very small

²⁰ *Petition* at 4-5.

²¹ 47 C.F.R. §69.605(c).

²² *Petition* at 6.

²³ *Id.*, citing NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules, *Memorandum Opinion and Order*, 2 FCC Rcd 6631 (1987).

LEC even with the new exchange added to its access line base, and will continue to lack the resources to perform cost studies.²⁴ USTA agrees. The Commission's rule freezing average schedule status as of 1992 is intended to prevent companies from "gaming" the system by settling on a cost basis during times of high investment in facilities or incurring inordinate levels of costs and then going under average schedules when their costs are likely to be less than allowed by the average schedule formulae. Here, Jordan has been an average schedule company since the program started, and seeks to continue with the addition of the small Moorhead exchange in the same manner. There is no opportunity or likelihood of "gaming" in this situation. The Commission should grant the requested waiver of Section 69.605(c).

IV. EXPEDITED ACTION ON THE REQUESTED WAIVER IS NECESSARY

Jordan and Alpine filed their request for waiver of the Commission's rules on June 15, 2000. The Commission's *Notice* sets a pleading cycle under which comments are due by September 25, 2000, and replies by October 5, 2000. Under this pleading schedule, it is not certain that the Commission will issue an order before December 1, 2000. This would be nearly six months after the parties sought their waiver. If indeed the waiver is found to be in the public interest, as USTA believes it is, then swift action by the Commission can only further serve the public interest. USTA urges the Commission to recognize the importance of acting quickly to help bring the benefits set forth in the *Petition* to the customers of the Jordan and Alpine companies.

²⁴ *Id.*

V. CONCLUSION

For the foregoing reasons, USTA urges the Commission to expeditiously approve the waiver of its rules as requested by Jordan and Alpine in their *Petition*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on September 25 2000, Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the the attached service list



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