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DA 04-3041

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

DOCKET NO. 04-3041 COPY ORIGINAL

Federal Communications Commission  
Office of the Secretary

**SIoux VALLEY TELEPHONE COMPANY and  
HILLS TELEPHONE COMPANY, INC.**

File No

Petition for Waiver of the Definition of "Study Area" Contained  
in Part 36, Appendix-Glossary of the Commission's Rules

TO: Chief, Wireline Competition Bureau

**JOINT PETITION FOR STUDY AREA WAIVER**

Sioux Valley Telephone Company ("Sioux Valley") and Hills Telephone Company, Inc. ("Hills") (collectively, "Petitioners") hereby request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules. The purpose of this waiver is: (a) to permit the sale of the assets of the Valley Springs, East Valley Springs and North Larchwood telephone exchanges (approximately 557 access lines) by Sioux Valley to Hills; (b) to allow Sioux Valley to remove the Valley Springs, East Valley Springs and North Larchwood exchanges from its existing South Dakota study area; and (c) to enable Hills to include the Valley Springs, East Valley Springs and North Larchwood exchanges in a new South Dakota study area.

**BACKGROUND**

The Valley Springs exchange (approximately 508 access lines) and the North Larchwood exchange (approximately 2 access lines) are located in Minnehaha County in rural southeastern South Dakota. The East Valley Springs exchange (approximately 47 access lines) is located in Rock County in rural southwestern Minnesota, but is served by the switching facilities of the Valley Springs exchange and has long been included in Sioux Valley's South

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Dakota study area<sup>1</sup> (National Exchange Carrier Association (NECA) Study Area No. 391677). The exchanges are located right along the South Dakota-Minnesota border at Valley Springs, South Dakota and East Valley Springs, Minnesota, and extend approximately five miles south to the South Dakota-Minnesota-Iowa border.

Sioux Valley is a South Dakota corporation that is not under common ownership or control with Hills. Sioux Valley is a pre-February 8, 1996 incumbent local exchange carrier that presently serves eight local exchanges (approximately 5,912 access lines) in its existing South Dakota study area<sup>2</sup>. After completion of the proposed transaction, Sioux Valley will serve five exchanges (approximately 5,355 access lines) in its remaining South Dakota study area. Sioux Valley is a "rural telephone company" under the definition in Section 3(37) of the Communications Act and Sections 51.5 and 54.5 of the Commission's Rules, and has filed the required self-certification with the Commission. Sioux Valley is a rate-of-return carrier that operates on an average schedule basis, and that has never operated any of its exchanges on a price cap basis. Sioux Valley is an Issuing Carrier for NECA Tariff F.C.C. No. 5 with respect to both common line and traffic sensitive interstate access charges.

Hills is a Minnesota corporation that is not under common ownership or control with Sioux Valley. Hills is a pre-February 8, 1996 incumbent local exchange carrier that presently serves three exchanges<sup>3</sup> (approximately 631 access lines) in its existing Minnesota study area

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<sup>1</sup> To the best of the information and belief of Sioux Valley's current management and employees, the East Valley Springs exchange always has been in Sioux Valley's South Dakota study area.

<sup>2</sup> The five exchanges that will remain in Sioux Valley's South Dakota study area are the Dell Rapids, Humboldt-Montrose, Colton, Corsica and Plankinton, South Dakota exchanges.

<sup>3</sup> The three exchanges in Hills' existing Minnesota study area are the Hills, Steen and North Lester, Minnesota exchanges.

(NECA Study Area No. 361405) and seven local exchanges<sup>4</sup> (approximately 2,123 access lines) in its existing Iowa study area (NECA Study Area No. 351405). Hills does not currently have a South Dakota study area, but will establish one when it receives the requested waiver and obtains the Valley Springs, East Valley Springs and North Larchwood exchanges from Sioux Valley. Hills is a "rural telephone company" under the definition in Section 3(37) of the Communications Act and Sections 51.5 and 54.5 of the Commission's Rules, and has filed the required self-certification with the Commission. Hills is a rate-of-return carrier that operates on an average schedule basis, and that has never operated any of its exchanges on a price cap basis. Hills is an Issuing Carrier in NECA Tariff F.C.C. with respect to both common line and traffic sensitive interstate access charges for its Minnesota study area and common line interstate access charges for its Iowa study area, and has issued its own Hills Telephone Company (in Iowa) Tariff F.C.C. No. 1 with respect to traffic sensitive interstate access charges for its Iowa study area.

#### **COMPLIANCE WITH "ONE PERCENT" CONDITION**

Petitioners certify that the aggregation of all local telephone exchange transfers and study area waivers involving them and their subsidiaries and affiliates during 2004 will not cause a shift in Universal Service Fund (USF) cost recovery in an amount equal to or greater than one percent of the total USF assistance for 2004. Therefore, to the extent that the "one percent" limitation adopted by the Commission in US West Communications, Inc. and Eagle Telecommunications, Inc., 10 FCC Rcd 1771 (1995), remains relevant and applicable, the

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<sup>4</sup> The seven exchanges in Hills existing Iowa study area are the Alvord, Larchwood, Lester, Inwood, South Steen, South Hills and South Valley Springs, Iowa exchanges.

subject transaction complies with it.

### STUDY AREA WAIVER

The Commission froze study area boundaries as of November 15, 1984 to prevent telephone holding companies from setting up high cost exchanges within their existing service territories as separate companies in order to maximize high cost support. MTS/WATS Market Structure, 57 R.R.2d 511 (1984). The Commission expressly stated at the time that study areas were not frozen to "discourage the acquisition of high cost exchanges or the expansion of service to cover high cost areas." Amendment of Part 67, 49 Fed. Reg. 48325, 48337 (Dec. 12, 1984). Consequently, allowing Hills to acquire the Valley Springs, East Valley Springs and North Larchwood exchanges from Sioux Valley will not conflict with the Commission's rationale for freezing study area boundaries.

In reviewing study area waiver petitions, the Commission employs the following 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 may oppose the transfer; and (3) the transfer must be in the public interest. See, e.g., US West Communications, Inc. and South Central Utah Telephone Association, Inc., 9 FCC Rcd 198 (1993); US West Communications, Inc. and Triangle Telephone Cooperative Association, Inc. et al., 9 FCC Rcd 202 (1993); US West Communications, Inc. and Nemont Telephone Cooperative, Inc., 9 FCC Rcd 721 (1994); GTE Southwest Incorporated and Pioneer Telephone Cooperative, Inc., 9 FCC Rcd 7785 (1994); US West Communications, Inc. and Eagle Telecommunications, Inc., *supra*; CenturyTel of Northwest Arkansas, LLC et

al. and GTE Arkansas Incorporated et. al., 15 FCC Rcd 25437 (2000); Citizens Telecommunications Company of North Dakota and US West Communications, Inc., 15 FCC Rcd 12916 (2000); Rye Telephone Company, Inc. and US West Communications, Inc., 15 FCC Rcd 18738 (2000); Spectra Communications Group, LLC and GTE Midwest Incorporated, 15 FCC Rcd 13214 (2000); CenturyTel of Central Wisconsin, LLC and GTE North Incorporated, 15 FCC Rcd 15043 (2000); Telephone USA of Wisconsin, LLC and GTE North Incorporated, 15 FCC Rcd 15032 (2000); Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation, 15 FCC Rcd 18810 (2000); and Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, 15 FCC Rcd 15816 (2000).

**Universal Service Fund.** Section 54.305(a) of the Commission's Rules provides that a rural carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost USF support for which the acquired exchanges were eligible prior to the transfer. The rural carrier will receive this per-line support for the acquired exchanges regardless of the types and amounts of support that it may receive for its preexisting exchanges.

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. The Valley Springs, East Valley Springs and North Larchwood exchanges are all located in Sioux Valley's higher cost and more sparsely populated Zone 1, within which Sioux Valley will receive \$5.85 per month (or an annualized \$70.20 per year) of High Cost Loop support during the Second Quarter 2004. See Universal Service Administrative Company, Federal

Universal Service Support Mechanisms Fund Size Projections for the Second Quarter' 2004, Appendix HC04, Page 9 of 18 (January 30, 2004). Hence, under the Commission's current rules, Hills will be limited to \$5.85 per month (or \$70.20 per year) in High Cost Loop support for the access lines in its new South Dakota study area (i.e., in the Valley Springs, East Valley Springs and North Larchwood exchanges). Therefore Section 54.305(a) of the Rules ensures that there can be no adverse impact on the USF from the subject exchange transaction and the proposed study area boundary changes. See Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, supra.

**State Commission Approval.** Petitioners have received the attached letter from the Executive Director of the South Dakota Public Utilities Commission ("SDPUC"), which indicates that the SDPUC has no objection to the Commission's grant of the proposed study area waiver.

Petitioners 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. However, because the 47-access line East Valley Springs, Minnesota exchange has long been part of Sioux Valley's South Dakota study area and is proposed to remain in Hills new South Dakota study area, 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 proposed study area boundary change that does not affect a Minnesota study area.

**Public Interest Benefits.** Hills and Sioux Valley are both established local exchange

carriers with proven records of providing high-quality telecommunications facilities and services to their rural customers.

The Valley Springs, East Valley Springs and North Larchwood 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 South Dakota operations via a Class 4/5 switch located in Dell Rapids, South Dakota. It cannot serve Valley Springs, East Valley Springs and North Larchwood customers as efficiently and economically as it desires from its Dell Rapids facilities. Rather, the sale of its Valley Springs, East Valley Springs and North Larchwood exchanges will enable Sioux Valley to achieve economies in its maintenance, customer service, billing and administrative expenses.

At the same time, Hills desires to expand its operations into southeastern South Dakota. It currently serves Minnesota and Iowa exchanges near the South Dakota-Minnesota-Iowa border, and desires to expand into South Dakota as well.

Hence, by providing an operator more interested in serving the Valley Springs, East Valley Springs and North Larchwood exchanges, the proposed study area waiver will serve the public interest.

**June 21, 1995 Public Notice.** As detailed above, the operation of Section 54.305(a) of the Commission's Rules means that, by definition, there can be no adverse impact on the USF from the subject transactions and proposed study area boundary changes. Hence, it appears that the supplemental information requested by the Bureau in its Public Notice ("Common Carrier Bureau Establishes Expedited Processing Procedures For Petitioners

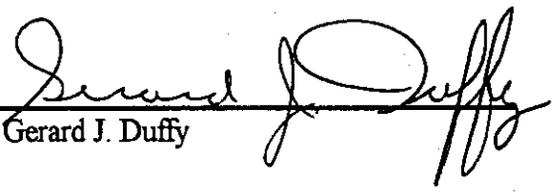
Seeking Part 36 Study Area Waivers"), 10 FCC Rcd 13228 (1995), is no longer necessary or relevant, because it deals with universal service support impact calculations that no longer need to be made. Petitioners note that several study area waiver petitions have been accepted, processed and granted without this supplemental information. See Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, supra; ATEAC, Inc., 16 FCC Rcd 849 (2001).

### **CONCLUSION**

Petitioners have met their burden of proving that the proposed study area boundary waiver: (a) will not adversely affect the Universal Service Fund; (b) is not opposed by the state commission that has regulatory authority over the subject South Dakota study areas; and (c) will be in the public interest. Therefore, the Bureau is respectfully requested to waive its frozen study area boundaries to allow the Valley Springs, East Valley Springs and North Larchwood exchanges to be deleted from Sioux Valley's existing South Dakota study area and added to a new Hills South Dakota study area.

Respectfully submitted,  
**SIOUX VALLEY TELEPHONE COMPANY**  
and  
**HILLS TELEPHONE COMPANY, INC.**

Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW (Suite 300)  
Washington, DC 20037  
Telephone: (202) 659-0830  
Facsimile: (202) 828-5568

By   
Gerard J. Duffy

Their Attorney

Dated: April 5, 2004



Bob Sahr, Chair  
Gary Hanson, Vice-Chair  
Jim Burg, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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December 12, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

RE: Request for Approval of Change in Study Area Boundaries - Hills Telephone Company, Inc. and Sioux Valley Telephone Company

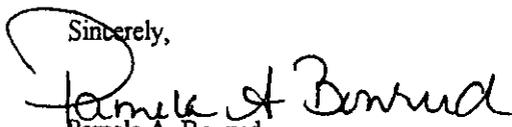
Dear Ms. Dortch:

The Staff of the South Dakota Public Utilities Commission has been informed that Sioux Valley Telephone Company (Sioux Valley) is proposing to sell the Valley Springs, East Valley Springs and North Larchwood local telephone to Hills Telephone Company, Inc. (Hills). This transaction, if approved and consummated, will result in the removal of these three exchanges from Sioux Valley's existing South Dakota study area, and the placement of the exchanges in a new South Dakota study area for Hills.

The South Dakota Public Utilities Commission (Commission) has jurisdiction over the proposed transaction and over Sioux Valley and Hills. SDCL 49-31-59 requires that the sale of any local exchange in South Dakota be approved by the Commission in a docketed proceeding. Although the Commission has not yet formally approved the transaction as of this date, I can inform the Federal Communications Commission that Commission Staff has no objection to the transaction and will recommend approval of the transaction before the Commission. Based upon previous Commission's approvals of similar sales of local exchanges, it is the belief of Commission Staff that the Commission will approve the sale once the procedural steps for approval have been completed and would thereupon have no objection to, and would support, the associated modification of study area boundaries to conform to the service areas as described above.

If the FCC has any questions regarding this matter, please feel free to contact me at (605) 773-3201.

Sincerely,

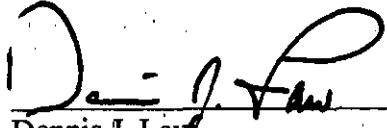
  
Pamela A. Bonrud  
Executive Director

cc Ryan Taylor, Esq.  
Darla Rogers, Esq.

**DECLARATION**

I, Dennis J. Law, hereby declare the following, upon penalty of perjury:

1. I am the General Manager of Sioux Valley Telephone Company.
2. I have read the "Joint Petition For Study Area Waiver" being filed with the FCC by Sioux Valley Telephone Company and Hills Telephone Company, Inc.
3. The statements in the Joint Petition are true and correct, to the best of my knowledge, information, and belief.

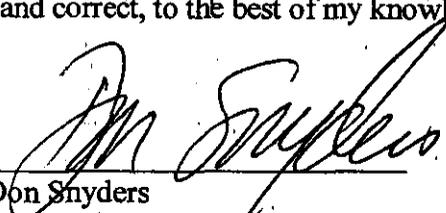
  
Dennis J. Law

Dated: MARCH 26, 2004

**DECLARATION**

I, Don Snyders, hereby declare the following, upon penalty of perjury:

1. I am the General Manager of Hills Telephone Company, Inc.
2. I have read the "Joint Petition For Study Area Waiver" being filed with the FCC by Sioux Valley Telephone Company and Hills Telephone Company, Inc.
3. The statements in the Joint Petition are true and correct, to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Don Snyders

Dated: \_\_\_\_\_

3/29/04

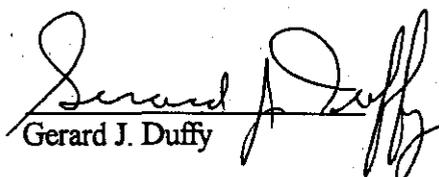
**CERTIFICATE OF SERVICE**

I hereby certify that I am a partner of the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that on this 5th day of April, 2004, I sent via hand delivery copies of the foregoing JOINT PETITION FOR STUDY AREA WAIVER to:

William Maher, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW (Room 5-C450)  
Washington, DC 20554

Eric Einhorn, Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554

  
Gerard J. Duffy