

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

In the Matter of

Sierra Telephone Company, Inc.
Cascade Utilities, Inc., and
The Volcano Telephone Company

Petitions for Waiver of Part 69

MEMORANDUM OPINION AND ORDER

Adopted: June 4, 1992;

Released: June 16, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Sierra Telephone Company, Inc. (Sierra), Cascade Utilities, Inc. (Cascade), and the Volcano Telephone Company (Volcano) have filed petitions for waivers of Part 69 of the Commission's Rules, 47 C.F.R. § 69.1 *et seq.*, to permit them to tariff operator services under the existing local switching access rate element and to assign all related costs to that element.¹ Four parties filed comments and seven parties filed reply comments.² For the reasons set out below, we deny these petitions.

2. Petitioners are local exchange carriers (LECs) providing operator services as well as access services primarily to AT&T in their respective areas of California and Oregon. With regard to "O+" and "O-" inter-LATA calls transferred to AT&T, petitioners have each, until recently, provided operator services to AT&T on those calls under separate contracts. However, each contract has now expired and, in the case of Cascade, AT&T has ceased providing compensation for these operator services.³

¹ Sierra Telephone Company, Inc., Petition for Waiver of Part 69 of the Commission's Rules, filed May 8, 1991; Cascade Utilities, Inc., Petition for Waiver of Part 69 of the Commission's Rules, filed April 19, 1991; Volcano Telephone Company, Petition for Waiver of Part 69 of the Commission's Rules, filed May 24, 1991. As the two subsequent petitions generally duplicate the Cascade petition, we cite to the Cascade petition when referring to their common elements.

² On July 12, 1991, the following parties filed comments: American Telephone and Telegraph Company (AT&T), Frederick & Warinner (F&W), Interstate Telephone Company (Interstate), and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO). On July 19, 1991, petitioners, AT&T, F&W, the United States Telephone Association (USTA), and Whidbey Telephone Company (Whidbey) filed reply comments. In addition, on June 26, 1991, The Concord Telephone Company filed remarks in support of the petitioners.

³ In November 1991, AT&T filed a petition to compel Cascade

II. PLEADINGS

A. Sierra, Cascade, and Volcano Petitions

3. Petitioners seek waivers of Section 69.4(b) of the Commission's Rules, 47 C.F.R. § 69.4(b), to enable them to bill all interexchange carriers (IXCs) with access to their service areas for the operator services that petitioners currently provide in those areas.⁴ *See, e.g.*, Cascade Petition at 1. Petitioners seek this billing mechanism, first, to preserve their local operator services since their expired AT&T operator service contracts may not be renewed. *Id.* at 5-9. Second, petitioners want compensation from these IXCs for the use that the IXC's customers make of the petitioners' operator services. *Id.* at 9-10. Specifically, petitioners seek compensation for such local operator services as emergency assistance, after hour repair crew dispatch, and alarm monitoring. *Id.* at 7-8; Volcano Petition at 8-10. Services used by IXC customers, for which petitioners also seek compensation, include long distance dialing instructions, area code information, and "800" and "900" assistance. *See, e.g.*, Cascade Petition at 6-9. Petitioners also seek to recover the costs of inward assistance including busy line - interruption service. *Id.* at 9. Petitioners contend such waivers would be consistent with recent Bureau Orders and with the Commission's initial assignment of operator services to the access category. *Id.* at 2-5. Should the Commission deny these petitions, petitioners contend their local rates may increase, essential emergency services may become unavailable, and some of petitioners' employees may lose their jobs. *Id.* at 6 n.10, 8-9.

B. Comments

4. AT&T maintains that the waivers are unnecessary, insofar as they concern operator transfer and line status services provided to IXCs because the Commission previously granted a blanket waiver for such services in the *Ameritech Order*.⁵ AT&T Comments at 1, 5-6. AT&T contends that petitioners' additional requests to recover through interstate access tariffs the costs of local services and certain unregulated services provided by their operators are unjustified and should be denied. *Id.* at 2, 6. AT&T maintains that the Commission has never authorized the recovery of local operator costs through interstate access charges. *Id.* at 3. It observes that the "Operator Assistance Element" initially included in the Part 69 rules was eliminated after divestiture when the personnel and

to cease providing operator services on "O+" interLATA traffic and, instead, to route such traffic directly to AT&T. *See* AT&T Petition for Declaratory Ruling, filed November 15, 1991.

⁴ Petitioners specifically ask the Bureau to waive Part 69.4(b), 47 C.F.R. § 69.4(b), as well as portions of subparts B, D, and E (including Sections 69.106, 69.306(b), and 69.404, 47 C.F.R. §§ 69.106, 69.306(b), and 69.404). *See, e.g.*, Cascade Petition at 1. *See also* Petitioners' Reply at 8.

⁵ Ameritech Operating Companies, Petition for Waiver of Section 69.4(b), Memorandum Opinion and Order, 6 FCC Rcd 1541 (Com.Car.Bur. 1991) (*Ameritech Order*). "Operator transfer service" is provided when a LEC operator receives a "O-" call and transfers that call directly to the IXC requested by the caller. "Line status services" include "busy line - verification" (confirming a line is "busy" and not out of order) and "busy line - interruption" (emergency interruption of a "busy" line).

facilities used to provide call completion and assistance services were assigned to AT&T, and the Commission concluded that there was no need to include operator assistance services among such functions. *Id.* at 4. Since 1987, AT&T observes, the Commission has issued a series of Part 69 waivers only for specific access services providing direct assistance by LEC operators to IXCs. *Id.* at 4-5.

5. AT&T contends that under these Part 69 waivers, the Bureau has only permitted LECs to tariff two operator services in the access category -- operator transfer and line status services -- because, like the earlier "Operator Assistance Element," each of these services involves the provision of direct assistance in connecting callers to subscribing IXCs. Accordingly, to the extent petitioners seek compensation for these two services, AT&T contends their petitions are unnecessary. *Id.* at 1, 5-6. AT&T also argues that the Commission should reject petitioners' claims of hardship on local ratepayers just as the Commission did in response to a similar waiver request from the Benton Ridge Telephone Company.⁶

6. F&W contends that it is not feasible for a smaller LEC to establish a separate rate element for operator services such as the transfer of a "0-" call to an IXC. F&W Reply at 7. *Accord* USTA Reply at 2. F&W and Whitbey support billing these services on the basis of each IXC's total access minutes because IXC customer use of these operator services is likely proportional to each IXC's total minutes. *See* F&W Reply at 6 and Whitbey Reply at 5-7. *But see* AT&T Comments at 5-6, n. *** (contending that the per call rate structure contemplated by the *Ameritech Order* assures that IXCs are appropriately charged only for the operator access services that they actually use).

7. While their waiver petitions emphasize the need to preserve local operator services, petitioners' joint reply comments deny that they seek to recover the costs of any local operator services through interstate access tariffs, but only to collect reasonable access charges that will allow petitioners to recover those costs which are properly allocable to the interstate jurisdiction. Petitioners' Reply at 2. *Accord* Whitbey Reply at 9-10 and F&W Reply at 2. Petitioners also claim that the waivers granted in the *Ameritech Order* and in other Commission Orders are not sufficient to recover those costs because petitioners provide many incidental interexchange operator services not covered by those waivers and because they also provide services in many cases where a specific IXC beneficiary cannot be identified. Petitioners' Reply at 5-6. *Accord* F&W Reply at 4-5. *But see* AT&T Reply at 3 (contending that waiver granted in the *Ameritech Order* was explicitly conditioned on the establishment of a separate elements for these services). Petitioners also claim that the *Benton Ridge Order* is not applicable to their waiver requests because, unlike Benton Ridge, they are not seeking to recover all costs in question from the interstate jurisdiction. Petitioners' Reply at 5.

III. DISCUSSION

8. In March 1991 the Bureau released the *Ameritech Order* in which we granted a blanket waiver allowing LECs to recover the costs of two limited groups of operator services -- operator transfer and line status services -- under the access category rather than the interexchange category.⁷ We conditioned that blanket waiver on the satisfaction of two conditions: first, that LECs must create separate Part 69 operator service access elements for these services and, second, that all costs associated with provision of these services must be allocated to those operator service elements. Thus, to the extent that they provide either of these two services, petitioners can use the blanket waiver granted in the *Ameritech Order* to recover those costs on a per call basis from any IXC that directly benefits from these services. Essentially, petitioners ask the Bureau to expand the blanket waiver granted in the *Ameritech Order* to accommodate their asserted need for a different mechanism to recover the costs of various other operator services that they provide. We find no reason to do so on the record before us.

9. First, the costs of petitioners' local operator services, no matter how valuable those services may be to local subscribers, cannot be recovered through petitioners' interstate access rates. Second, the costs of petitioners' incidental interexchange operator services do not involve direct assistance to a particular IXC and, therefore, are not attributable to a particular IXC. As such, these costs are properly attributed to petitioners' overhead and recovered through the separations process from both the intrastate and the interstate jurisdictions.

IV. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED that the petitions for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69.1 *et seq.*, filed by Sierra Telephone Company, Inc., Cascade Utilities, Inc., and the Volcano Telephone Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Cheryl A. Tritt
Chief, Common Carrier Bureau

⁶ *See* Benton Ridge Telephone Company Petition for Waiver, Memorandum Opinion and Order, 6 FCC Rcd 1615 (1991) (*Benton Ridge Order*) (granting a one-year delay in equal access requirements and denying a permanent waiver).

⁷ *See Ameritech Order*, 6 FCC Rcd at 1541.