

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

In the Matter of)
)
Petitions for Waiver of)
Part 69 of the Commission's)
Rules to Establish Switched)
Access Rate Elements for)
SONET-based Service)
)

MEMORANDUM OPINION AND ORDER

Adopted: November 27, 1996; Released: December 2, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On March 29, 1995, Bell Atlantic petitioned the Commission to waive Sections 69.110, 69.111, and 69.112 of the Commission's rules, 47 C.F.R. §§ 69.110, 69.111, 69.112, to permit it to establish new rate elements to recover the costs of new switched transport services that use Synchronous Optical Network (SONET) technology. Subsequently, six other local exchange carriers (LECs) also petitioned for waiver of Part 69 in order to offer SONET-based switched transport services. SONET uses a fiber ring network configuration to provide redundant, reliable, high-speed transmission services. The petitioners generally seek waivers to establish the same rate structure for their SONET-based switched transport tariffs as they have already established for their special access SONET services. Several of the LECs also seek waivers of certain Commission rules in order to offer volume and term discounts for their SONET-based switched transport services without satisfying the preconditions established in the Commission's Expanded Interconnection rulemaking. In addition, two LECs request a continuing waiver of our Part 69 rules to permit them to revise their rate structures for SONET-based transport services in the future without filing new waiver requests. The petitions of Bell Atlantic, GTE, and SNET are

unopposed. The parties commenting on the petitions of Ameritech, BellSouth, Pacific Bell, and US West are listed in Appendix A of this Order.¹

2. For the reasons stated below, we find that all seven petitioners have shown good cause, within the meaning of Section 1.3 of the Commission's rules, for waivers to establish new Part 69 rate elements to recover the costs of their SONET-based switched transport services. Accordingly, we grant those waivers. We also find that the LECs seeking waiver of other Commission rules or requirements have not demonstrated good cause for those requests. Consequently, we deny those waiver requests.

II. PLEADINGS

A. Pacific Bell

3. *Petition.* Pacific Bell proposes to add seven new elements to its tariff for its SONET switched transport services.² Pacific Bell also plans to offer term discounts.³ Pacific Bell asserts that SONET would increase network capacity and improve network survivability and reliability.⁴ Pacific Bell also claims that SONET transport services offer several features that its customers have requested, such as remote supervision and performance monitoring with data communication channels.⁵

4. *Comments.* In supporting Pacific Bell's waiver request, BellSouth observes that its customers have also requested rate structures and pricing plans for SONET-based switched access transport offerings similar to those available for special access services.⁶ Time Warner, however, argues that Pacific Bell's petition is "patently deficient," because it does not explain why Pacific Bell could not use the existing Part 69 transport rate structure to provide SONET-based switched transport services.⁷ Time Warner also claims that Pacific

¹ The abbreviations by which we refer to the parties in this Order are also specified in Appendix A.

² Those rate elements are Central Office Ports, Primary Node Links, Central Office Nodes, Local Loop Access Links, Multiplexing, Dedicated Ring Fees, and Mileage. Pacific Bell Petition at 2.

³ Pacific Bell Petition at 2-3.

⁴ *Id.* at 1-2.

⁵ *Id.* at 3-4.

⁶ BellSouth Comments at 1-3.

⁷ Time Warner Comments at 2.

Bell's planned term and volume discounts are contrary to Commission policy and the public interest.⁸

5. *Replies.* Pacific Bell responds that a waiver is in the public interest because it furthers goals the Commission established in the expanded interconnection proceeding.⁹ Pacific Bell also claims that it has met the Commission's minimum threshold to qualify for volume and term discounts.¹⁰ LDDS urges the Commission to grant Pacific Bell's petition because SONET-based switched transport services offer many significant benefits to access customers, such as the ability to aggregate their customers' switched access transport traffic to reduce the cost of access per unit of traffic.¹¹ LDDS also asserts that, since Pacific Bell's proposed discounts are cost-based, there is no issue of potential discrimination or cross-subsidization.¹²

B. BellSouth

6. *Petition.* BellSouth argues that the existing Part 69 transport rules do not reflect the manner in which SONET costs are incurred to provide SONET-based switched transport services.¹³ BellSouth plans to establish rate elements for SONET-based switched transport that parallel its SONET-based special access rate elements.¹⁴ BellSouth also requests a "standing waiver," which would enable it modify its SONET switched transport rate structure to reflect corresponding changes in its SONET special access rate structure without obtaining an additional waiver of the Part 69 rules.¹⁵

⁸ *Id.* at 3.

⁹ Pacific Bell Reply at 1-2. See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 8 FCC Rcd 7374, 7383-84 (para. 13) (1993) (*Switched Transport Expanded Interconnection Order*).

¹⁰ Pacific Bell Reply at 2.

¹¹ LDDS Reply at 2-3.

¹² *Id.* at 2.

¹³ BellSouth Petition at 2-5.

¹⁴ Specifically, BellSouth explains that its basic SONET-based switched transport rate structure consists of rate elements for nodes, transport, and interfaces. BellSouth Petition at 6-7, citing BellSouth F.C.C. Tariff No. 1, Sections 7.1.2(D), 7.1.3(D), 7.2.11(A), 7.4.14(a), and 7.5.14(A). BellSouth contemplates two SONET-based switched transport services: "SMARTRing," which gives the customer some control over the physical routing of the ring, and "SMARTPath," in which BellSouth retains control over routing. BellSouth Petition at 9-10.

¹⁵ BellSouth Petition at 8.

7. BellSouth asserts that customers of switched transport services should be permitted term discounts, as are special access customers.¹⁶ BellSouth plans to offer discounts to customers who commit to a presubscribed minimum volume of SONET service for specified periods of time.¹⁷ BellSouth would permit a customer to meet the volume commitments in its term discount plans on the basis of the customer's aggregate demand for SONET-based switched transport service throughout BellSouth's service region.¹⁸ Finally, BellSouth seeks a waiver to offer term discounts on existing dedicated non-SONET-based transport services.¹⁹

8. *Comments.* Pacific Bell, Sprint, and LDDS support BellSouth's petition to create new SONET rate elements.²⁰ Other commenters claim that BellSouth has failed to show that it faces special or unique circumstances, and, consequently, it has not established good cause for waiver.²¹ Consistent with Time Warner's opposition to Pacific Bell's petition, MCI asserts that BellSouth has not shown that a waiver is warranted, because BellSouth has not explained why SONET is not simply a "general network upgrade," or why the existing rate structure cannot be used for SONET-based switched transport services.²²

9. MCI argues, in the alternative, that, if BellSouth's SONET-based transport services are not a general network upgrade, they would be classified as "new services" under the price cap rules. The price cap new services test requires BellSouth to develop new service rates that recover no more than BellSouth's direct costs and a reasonable portion of its overhead costs. As a result, MCI contends that BellSouth's SONET-based transport rates will recover all of BellSouth's SONET-based switched transport costs, and BellSouth should

¹⁶ BellSouth Petition at 5-6. Section 69.110(e) of the Commission's rules prohibits volume and term discounts for switched transport services, except in cases in which the LEC has met the threshold cross-connect requirements discussed further in this Order below. Originally, this prohibition was scheduled to expire on October 31, 1995, but the Commission later extended the effectiveness of this and other switched transport rate structure rules pending further Commission action. See *Transport Rate Structure and Pricing*, CC Docket No. 91-213, Fourth Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 12979, 12987 (para. 20) (1995) (*Fourth Transport Reconsideration Order*).

¹⁷ BellSouth Petition at 11-12.

¹⁸ *Id.* at 12-13.

¹⁹ *Id.* at 11-12.

²⁰ Pacific Bell Comments at 1-3; Sprint Comments at 1-3; LDDS Comments at 2.

²¹ Time Warner Comments at 2-3; MCI Comments at 2-3.

²² MCI Comments at 3.

not be permitted to apply any additional charges, particularly the transport interconnection charge (TIC), to SONET-based transport minutes of use.²³

10. CompTel and Time Warner note that the Commission requires LECs to meet a "minimum cross-connect" standard before permitting them to provide volume or term discounts, in order to protect competition. These parties argue that BellSouth has not justified a waiver of this requirement.²⁴ CompTel and LDDS maintain that BellSouth's discounts would be discriminatory.²⁵ Sprint supports BellSouth's volume and term discounts for SONET services, because it believes that those discounts would be cost-based and non-discriminatory.²⁶ Sprint opposes volume and term discounts for existing transport services, however.²⁷ MCI maintains that any term discounts we permit should carry "fresh look" requirements similar to those imposed in the expanded interconnection proceeding, so that SONET-based transport customers choosing a term plan of greater than three years duration would be permitted to switch to transport service offered by a CAP if expanded interconnection becomes available at a particular central office.²⁸

11. Sprint and Time Warner oppose BellSouth's "standing waiver" request as equivalent to amending Part 69 without complying with the Administrative Procedure Act.²⁹ CompTel claims that there is no assurance that any future rates would be cost-based.³⁰ LDDS argues that BellSouth's criticisms of Part 69 rate structure requirements and the need for waiver of Part 69 to establish new switched access rate elements are beyond the scope of this proceeding.³¹

²³ *Id.* at 3 n.6.

²⁴ CompTel Comments at 1-3; Time Warner Comments at 4-5, *citing* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*); *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd 7374; Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) (*Special Access Expanded Interconnection Order*).

²⁵ CompTel Comments at 5; LDDS Comments at 2-3.

²⁶ Sprint Comments at 3-4.

²⁷ *Id.* at 5-6.

²⁸ MCI Comments at 3-4. The Commission permits customers of LEC long-term access arrangements to end those arrangements at a particular central office when expanded interconnection becomes available at that central office, without paying a substantial termination fee. *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7463-65 (paras. 201-02).

²⁹ Sprint Comments at 4; Time Warner Comments at 3-4.

³⁰ CompTel Comments at 3-5.

³¹ LDDS Comments at 3.

12. *Reply*. BellSouth replies that its proposed rate structure would recover the costs of providing SONET-based switched transport services in a manner that is more consistent with the way those costs are incurred than the transport rate structure mandated by Part 69, and that it is not required to provide cost information showing that its rate levels are cost-based until it files its tariff.³² BellSouth also argues that a different rate structure is warranted because SONET-based service is a faster and more reliable service than existing switched transport services.³³ BellSouth further asserts that, under the Commission's rules, the TIC is assessed on all switched transport minutes, and that MCI has not provided adequate reason to apply the TIC differently to SONET-based transport minutes.³⁴ BellSouth explains that SONET technology was not contemplated at the time the Commission adopted the transport rate structure rules, and that the development of this new technology is an "exceptional circumstance" that warrants a waiver.³⁵

13. BellSouth denies that its proposed discounts amount to volume discounts. Rather, BellSouth claims that its proposed rate structure establishes different rates for transport services that provide different transmission capacities.³⁶ BellSouth further denies that the volume commitments in its term discount plan constitute a volume discount for an existing transport service because SONET will provide more capacity than any existing transport service.³⁷ BellSouth asserts that parties opposing its term discounts have not provided any public interest basis for denying its request to offer term discounts for SONET-based switched transport services.³⁸ BellSouth argues that the "fresh look" requirement in expanded interconnection was intended to give access customers an opportunity to purchase competitive access provider (CAP) services that they did not know would be available at the time they made term commitments. BellSouth further argues that, because access customers are aware of CAP services, there is no reason to impose a fresh look requirement now.³⁹

14. BellSouth further argues that its standing waiver is warranted because it would enable it to respond quickly to customer demands for new SONET-based switched transport

³² BellSouth Reply at 2-4.

³³ *Id.* at 5.

³⁴ *Id.* at 4 n.6.

³⁵ *Id.* at 10-11.

³⁶ *Id.* at 6-8.

³⁷ *Id.* at 8-9.

³⁸ *Id.* at 8-10.

³⁹ *Id.* at 10.

offerings without the administrative burdens of seeking another waiver.⁴⁰ BellSouth also contends that the tariff review process ensures that any rate structure established under its standing waiver is cost-based and non-discriminatory.⁴¹

C. US West

15. *Petition.* US West proposes seven new rate elements for its SONET-based switched transport service.⁴² US West also notes that it currently offers SONET-based services to its special access customers and that "it is extremely important to maintain pricing parity" between its special and switched transport services.⁴³ US West notes that the Commission has recognized the interchangeable nature of special access and switched transport services by placing them in the same price cap basket.⁴⁴

16. *Comments.* MFS asserts that US West's petition is confusing and vague, because US West does not state explicitly that it proposes to apply its SONET special access rate structure to its SONET-based switched transport service.⁴⁵ MFS also claims that US West has not shown good cause that would justify grant of its requested waiver, and, in particular, has not demonstrated that the competition US West faces warrants waiver.⁴⁶ Consistent with its opposition to the BellSouth waiver request, MCI contends that US West should not be allowed to assess its TIC on SONET-based switched transport minutes of use because, pursuant to the price cap new services test, US West's charges for SONET-based switched transport services will recover all of the direct costs of such services plus a reasonable share of US West's overhead costs.⁴⁷ Pacific Bell and GTE support US West's waiver petition.⁴⁸

⁴⁰ *Id.* at 12-13.

⁴¹ *Id.* at 11-12.

⁴² US West proposed rate elements are as follows: Central Office Node, Remote Office Node, and Remote Node; Access Ports; Interoffice Transport; and Interoffice Connecting Facilities, Central Office Connecting Channels, and Port-to-Port Connecting Arrangements. US West Petition at 3-4.

⁴³ *Id.* at 2-3.

⁴⁴ *Id.* at 2.

⁴⁵ MFS Comments at 3-6.

⁴⁶ *Id.* at 2.

⁴⁷ MCI Comments at 2-3.

⁴⁸ Pacific Bell Comments at 1-2; GTE Comments at 2-4.

17. *Reply*. According to US West, MCI bases its TIC argument on unfounded assumptions about US West's rates, and that pricing issues should be considered in conjunction with the review of US West's future SONET-based transport tariff filing rather than this waiver petition.⁴⁹ US West also explains that it does plan to use its special access rate structure for SONET transport service, and attributes MFS's confusion to differences in terminology: US West refers to special access service as "private line transport" in its tariff.⁵⁰

D. Ameritech

18. *Petition*. Ameritech plans to establish a SONET-based transport rate structure that mirrors its special access rate structure for SONET-based services.⁵¹ Ameritech asserts that a waiver is necessary to enable it to compete with CAPs offering SONET services.⁵²

19. *Comments*. According to Time Warner, Ameritech has not shown that it faces unique circumstances that warrant deviation from the general rule.⁵³ Time Warner is also concerned that granting all the Part 69 waivers pending before the Commission might "eviscerate" the general rule, unless the waivers are individually tailored to unique situations.⁵⁴ Time Warner contends that Ameritech has not shown that the competition it faces is sufficient to warrant a waiver.⁵⁵ Consistent with its opposition to other waiver requests, MCI argues that, since Ameritech's SONET-based switched transport rates will be cost-based, Ameritech should not be permitted to apply the TIC to SONET-based switched transport minutes of use.⁵⁶

20. Bell Atlantic states generally that Part 69 gives the LECs' competitors a marketplace advantage, because only their competitors can offer services based on new

⁴⁹ US West Reply at 6-7.

⁵⁰ *Id.* at 7-10.

⁵¹ Ameritech Petition at 5. Ameritech proposes adding charges for Network Access Connection, Off-Network Access Connection, Serving Area Transport, Channelized SAT, Payload Multiplexing Function, Port, and Add/Drop Function. *Id.* at 2-5.

⁵² *Id.* at 6-7.

⁵³ Time Warner Comments at 3-4.

⁵⁴ *Id.* at 5-6.

⁵⁵ *Id.* at 6-7.

⁵⁶ MCI Comments at 2-3.

technologies without first obtaining a waiver of Part 69.⁵⁷ Bell Atlantic also contends that Section 7(b) of the Communications Act requires the Commission to act on petitions for waiver of Part 69 within one year.⁵⁸

21. *Reply*. Ameritech asserts that the applicable waiver standard does not require a showing that the waiver is necessary for Ameritech to remain competitive, but rather that a waiver would be in the public interest in this case. Ameritech argues that its waiver request is in the public interest because the waiver would enable Ameritech to provide a new and beneficial service to switched transport customers.⁵⁹ Ameritech further replies that imposition of the TIC is not dependent on whether the associated switched transport rates are compensatory. Ameritech argues that the charge was designed to recover what Ameritech describes as "inefficiency costs" associated with the "equal charge rule" governing switched transport rates prior to adoption of the current transport rules.⁶⁰ Ameritech contends that there is no basis for not imposing the TIC on all switched transport minutes of use, as required by the Commission's rules.⁶¹

E. Bell Atlantic, GTE, and SNET

22. Bell Atlantic, GTE, and SNET also seek waivers of Part 69 to create new rate elements for SONET transport service.⁶² GTE explains that LECs incur SONET-based transport costs differently than they do non-SONET-based transport costs. Specifically, rather than constructing transport channels between pairs of specific points, SONET-equipped networks are configured with fiber rings that automatically reroute traffic to a second

⁵⁷ Bell Atlantic Comments at 1-2.

⁵⁸ *Id.* at 2, *citing* 47 U.S.C. § 157(b).

⁵⁹ Ameritech Reply at 2-4.

⁶⁰ *Id.* at 2, *citing* Transport Rate Structure and Pricing, Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 6 FCC Rcd 5341, 5344-45 (1991).

⁶¹ Ameritech Reply at 2, *citing* Section 69.124 of the Commission's rules, 47 C.F.R. § 69.124.

⁶² Bell Atlantic's proposed new services are IntelliLight Custom SONET Rings (ICSR), Intellilight Dual Wire Center (IDWC), and SONET Access Loop Termination (SALT). ICSR offers a customized, dedicated SONET ring for high capacity synchronous transport lines. IDWC is another SONET service offering similar protection from loss of service due to system failures on lower capacity facilities, through a series of dual SONET rings in a shared network. SALT offers protection for the local loop portion of a customer's network. Bell Atlantic Petition at 2-5. GTE proposes offering two SONET transport services: Bulk SONET and MetroLAN SONET. Bulk SONET provides transport between any points on a GTE fiber ring. MetroLAN SONET permits customers to purchase end-to-end transport from a POP to an end user, or to purchase any unbundled portion of that service. GTE Petition at 4-8. SNET's proposed rate structure consists of SONET local channels, Central Office Nodes, Central Office Ports, Premises Nodes, Premises Ports, and Channel Mileage. SNET Petition at 4-5.

"protect path" if the working path fails.⁶³ All three of these petitioners plan to offer SONET-based transport services with different transmission capacities, ranging up to 2.4 gigabits per second (Gbps) for Bell Atlantic and GTE⁶⁴ and up to 622.08 Megabits per second (Mbps) for SNET.⁶⁵ These carriers also assert that SONET is attractive to their customers because it significantly increases their network capacity, and improves their networks' survivability and reliability.⁶⁶ GTE and SNET also claim that waiver of Part 69 is necessary to enable them to meet competition from CAPs providing SONET services.⁶⁷ Bell Atlantic asserts that the Commission envisioned that carriers would offer SONET services when it mandated expanded interconnection.⁶⁸

23. Bell Atlantic and GTE plan to offer term discounts, and GTE plans to offer volume discounts as well.⁶⁹ Similar to BellSouth's "standing waiver" request, GTE seeks a waiver to permit it to change its rate structure for SONET-based switched transport services in the future without obtaining a waiver of the Commission's Part 69 rules.⁷⁰ As mentioned above, no one commented on these three petitions.

III. DISCUSSION

A. Establishment of New Rate Elements

24. The Commission's rules may be waived for good cause shown.⁷¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall

⁶³ GTE Petition at 2-3.

⁶⁴ Bell Atlantic Petition at 2; GTE Petition at 4-8.

⁶⁵ SNET Petition at 3-5.

⁶⁶ Bell Atlantic Petition at 6; GTE Petition at 9; SNET Petition at 1.

⁶⁷ GTE Petition at 9-10; SNET Petition at 2.

⁶⁸ Bell Atlantic Petition at 6, citing *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7383-84 (para. 13).

⁶⁹ Bell Atlantic Petition at 2, 4 n.6; GTE Petition at 8-9.

⁷⁰ GTE Petition at 10.

⁷¹ 47 C.F.R. § 1.3.

⁷² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

policy on an individual basis.⁷³ Waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than strict adherence to the general rule.⁷⁴

25. The Commission has determined that rates should be designed so that costs are recovered from cost-causative customers.⁷⁵ The Bureau has previously granted waivers of Part 69 to enable carriers "to establish new rate elements that are tailored precisely to fit their respective services rather than attempting to force their services into existing rate elements."⁷⁶ Furthermore, the Bureau has stated that, "the creation of new rate elements would advance the goals of the Commission's access charge regime by enabling the carriers to better match relevant costs and rate elements, thus allowing [LECs] to better recover the costs of services from those customers who use them."⁷⁷ GTE has shown that the existing transport rate structure rules do not reflect the manner in which SONET costs are incurred.⁷⁸ Several other petitioners have explained SONET in detail, and based on those descriptions, we find that the existing transport rules would not reflect the way SONET-based switched transport costs are incurred. Precluding LECs from recovering costs in a manner that reflects the way those costs are incurred might result in one group of transport customers paying costs incurred to serve other transport customers. We find that these showings demonstrate the special circumstances necessary to justify grant of a waiver. Therefore, we find that there is good cause to grant the pending waiver petitions to create new SONET transport rate elements. As a result of this conclusion, we need not reach the issue of whether other arguments presented by other petitioners constitute "good cause" for the waivers they seek in the petitions before us.⁷⁹

26. Some commenters contend that parties seeking waiver must show that they face "unique" circumstances, and that the waiver petitions before us are by definition unwarranted because more than one party has filed a petition. We believe that the commenters read the court's instructions in *WAIT Radio* and *Northeast Cellular* too broadly. In both cases, the

⁷³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁷⁴ *Northeast Cellular*, 897 F.2d at 1166.

⁷⁵ Investigation of Interstate Access Tariff Non-Recurring Charges, CC Docket No. 85-166, Phase I, Part 3, 2 FCC Rcd 3498, 3501-02 (paras. 32-33) (1987).

⁷⁶ Bell Atlantic Telephone Companies and Southwestern Bell Telephone Company, Petitions for Waiver of Section 69.4(b) of the Commission's Rules, 9 FCC Rcd 7868, 7870 (para. 16) (Com. Car. Bur. 1994) (*Call Completion Services Waiver Order*).

⁷⁷ *Call Completion Services Waiver Order*, 9 FCC Rcd at 7870 (para. 16).

⁷⁸ GTE Petition at 2-3.

⁷⁹ See Bell Atlantic Petition at 6; Pacific Bell Reply at 1-2.

court emphasized the need to establish a clear standard for determining whether to grant a waiver, so that other parties seeking similar waivers in the future can understand what they will be required to show.⁸⁰ Thus, denying a petition for waiver where the petitioner has shown good cause, on the ground that some other party could make a similar showing, would appear inconsistent with *WAIT Radio* and *Northeast Cellular*. As noted above, parties seeking a waiver must show "particular facts," or that they face "special circumstances" that would make strict compliance with the rule inconsistent with the public interest. This language refers to circumstances that were not present or considered when the rule was adopted.⁸¹ There is no requirement that the petitioner must distinguish its circumstances from those faced by other, similarly situated customers. We do not interpret the requirement that a petitioner must show "unique circumstances" to mean circumstances that are "unique" to only one petitioner.

27. No commenter has raised substantive objections to any petitioner's rate structure proposal. MFS claims that US West did not adequately describe its proposed rate structure for its SONET-based transport services. In its reply, US West explained that its "private line" tariff is equivalent to the "special access" section of other carriers' tariffs, and that it plans to establish a rate structure for SONET transport service equivalent to its special access SONET rate structure. We conclude that US West has adequately responded to the issue raised by MFS, and thus there is no basis to deny this part of US West's petition.

B. Threshold for Offering Volume and Term Discounts

28. We conclude that none of the petitioners requesting waiver of thresholds established in the *Expanded Interconnection* proceeding that a LEC must meet prior to offering term and volume discounts for switched transport services has adequately justified its request. The Commission has determined that incumbent LECs should not be permitted to offer volume and term discounts for switched transport service until either it provides 100 DS1-equivalent cross-connects in "zone 1" offices in a study area, or it provides an average of 25 DS1-equivalent cross-connects per "zone 1" office in a study area.⁸² The

⁸⁰ "The [waiver] process viewed as a whole leads to a general rule, and limited waivers or exceptions granted pursuant to an appropriate general standard." *WAIT Radio*, 418 F.2d at 1159. "The agency must explain why deviation [from the general rule] better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation." *Northeast Cellular*, 897 F.2d at 1166.

⁸¹ See *Industrial Broadcasting Co. v. FCC*, 437 F.2d 681, 683 (D.C. Cir. 1969), citing *WAIT Radio*.

⁸² When the Commission adopted expanded interconnection requirements, it also permitted the LECs subject to those requirements to deaverage their access rates partially. To implement this additional pricing flexibility, the Commission permitted each LEC, subject to Commission approval, zones within each study area, and required each central office to be assigned to one of those zones. See *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7454-56 (paras. 179-80); *BellSouth Telecommunications, Inc., et al.*, 8 FCC Rcd 4443 (Com. Car. Bur. 1993).

Commission established these thresholds because it concluded that incumbent LECs should not be permitted additional pricing flexibility to offer volume and term discounts until potential new entrants have in fact been given a "viable competitive opportunity."⁸³ None of the petitioners has attempted to explain why the introduction of SONET-based transport service, by itself, would justify de-linking pricing flexibility and the existence of a viable competitive opportunity, or would justify lowering the thresholds. In fact, the petitioners have not demonstrated that the presence or absence of SONET technology is in any way relevant to the issue of thresholds for volume and term discounts for switched transport services.

29. We recognize that BellSouth's proposal to offer term discounts to customers based on their aggregate demand for SONET-based switched transport service throughout BellSouth's region⁸⁴ would make discounts available to access customers with traffic volumes that would not qualify for volume discounts that are based on demand within smaller geographic areas, such as a study area. Nevertheless, we find that this does not justify waiving the link established by the Commission in the *Expanded Interconnection* proceeding between pricing flexibility for LECs in a particular study area and competitive opportunities for alternative providers in that study area. Accordingly, we deny BellSouth's petition for a waiver to permit it to offer term discounts without satisfying the cross-connect thresholds.

30. We also disagree with BellSouth that our rules permit incumbent LECs to offer SONET-based switched access transport service, or any other switched transport service providing capacity greater than DS3, at rates per unit of capacity that amount to volume discounts as compared to rates for DS3 switched access transport services, without meeting the criteria for volume and term discounts discussed above. To the contrary, the Commission repeatedly and explicitly rejected this approach in rulemaking proceedings. In the *First Transport Order*, the Commission prohibited LECs from offering "transport rates based on volume discounts for multiple DS3s or any other service with higher volume than DS3."⁸⁵ Later, in the *Switched Transport Expanded Interconnection Order*, the Commission permitted LECs to offer volume and term discounts, "including pricing that reflects speeds greater than DS3," once they met the criteria described above.⁸⁶ Some commenters in that proceeding recommended permitting LECs to offer transport services with transmission rates that exceed the DS3 transmission rate, including SONET-based

⁸³ *Virtual Collocation Order*, 9 FCC Rcd at 5204 (para. 182). See also *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7434-35 (para. 118).

⁸⁴ BellSouth Petition at 12-13.

⁸⁵ *Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 91-213, 7 FCC Rcd 7006, 7035 (para. 54) (1992) (*First Transport Order*).

⁸⁶ *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7433 (para. 115).

services, at prices that reflect the economies of providing such services.⁸⁷ The Commission, however, declined to adopt such an approach.⁸⁸ Moreover, the Commission retained the threshold cross-connect requirements in the *Virtual Collocation Order*.⁸⁹ Thus, the Commission's rules governing volume and term discounts mandate that an incumbent LEC must meet the threshold cross-connect requirement before it can offer SONET-based transport service at a price per unit of capacity that is less than the price per equivalent unit of capacity of DS3 services. In sum, for the reasons discussed above, the Commission has determined that incumbent LECs should not be permitted to develop SONET transport rates that are lower per-unit than DS3 transport rates before a "viable competitive opportunity" has developed. While any petitioner satisfying the applicable standards in a particular state may offer transport prices based on SONET offerings in that state, including the rate elements for which we grant waivers in this Order, we find that none of the petitioners in this proceeding has shown that there is good cause for a waiver of the Commission's requirements with regard to the expanded interconnection cross-connect precondition on offering SONET-based transport rates.

31. We also deny BellSouth's request for waiver of the thresholds to establish volume and term discounts for its existing dedicated transport services. The reasons we denied requests for waivers of the threshold for discounts for SONET transport service are equally applicable to BellSouth's request.

32. Finally, we note that we here conclude only that petitioners have not justified waiver of the Commission's current standards for permitting volume and term discounts for switched access services. We anticipate that the Commission will be revisiting that issue, among others, in its upcoming comprehensive review of interstate access charges.

C. Standing Waiver

33. BellSouth and GTE petition for a "standing waiver" of Part 69, to permit them to revise their SONET-based switched transport rate structure at any time without seeking another waiver. We recently denied a similar request by Ameritech.⁹⁰ In particular, we found that Ameritech failed to show that complying with the rule would result in inequity or hardship. We also rejected Ameritech's argument that conservation in administrative

⁸⁷ See *id.* at 7433 n.256.

⁸⁸ See *id.* at 7433-36 (paras. 115-20).

⁸⁹ See *Virtual Collocation Order*, 9 FCC Rcd at 5202 (paras. 174-76).

⁹⁰ Ameritech Operating Companies, 10 FCC Rcd 4459 (Com. Car. Bur. 1995).

resources would warrant such a waiver.⁹¹ Neither BellSouth nor GTE have provided any reason to reach a different result here.⁹²

34. Several LECs, either in their petitions or in comments supporting each others' petitions, generally criticize Part 69, claiming that these rules inhibit incumbent LECs from offering switched access services based on new technologies. On the contrary, nothing in Part 69 limits the LECs to any particular technology in their access service offerings. Rather, Part 69 governs the rate structures LECs may use to charge for those offerings. Thus, even if the petitioners had been unable to show good cause for the waivers they have requested in this proceeding, they still would have been able to use SONET to provide switched transport services, but not to charge for such service pursuant to a rate structure other than that prescribed in Part 69. Similarly, Bell Atlantic is mistaken in asserting that Section 7(b) of the Act, 47 U.S.C. § 157(b), governs Part 69 waiver proceedings.⁹³ We do not "approve" or "disapprove" technologies in Part 69 waiver proceedings. Rather, we determine whether a waiver of the Part 69 rate structure rules is warranted because, for example, the petitioner's proposed rate structure would recover the costs of a service in a more economically efficient manner.

D. Transport Interconnection Charge

35. MCI argues that SONET transport services are new services under the price cap rules, and the new services test requires new service rates to be cost-based. MCI further argues that incumbent LECs should not be permitted to impose additional non-cost-based charges, such as the TIC, on SONET-based switched transport service minutes of use. We concur with the parties responding to this argument that MCI has not provided a persuasive case for prohibiting LECs from imposing a TIC on SONET-based switched transport services. The Commission's rules currently require LECs to impose the TIC on all transport service minutes, regardless of whether the rates for those transport services are adequate to

⁹¹ *Id.* at 4461 (para. 14).

⁹² In rejecting BellSouth's and GTE's standing waiver requests, we do not rely on CompTel's contention that there is no assurance that any future rates would be cost-based. BellSouth correctly observes that LECs seeking waiver of Part 69 are not required to provide cost information showing that their rate levels are cost-based until they files tariffs.


⁹³ Section 7(b) provides that "[t]he Commission shall determine whether any new technology or service proposed in as petition or application is in the public interest within one year after such petition or application is filed. If the Commission initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated."

recover the costs of those services.⁹⁴ There is no reason in the record before us to treat SONET transport services differently than other transport services with respect to the TIC.⁹⁵

IV. ORDERING CLAUSE

36. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the petitions for waiver filed by Bell Atlantic Telephone Companies, Pacific Bell, BellSouth Telecommunications, Inc., Southern New England Telephone Co., GTE Service Corporation, US West Communications, Inc., and Ameritech Operating Companies ARE GRANTED, to the extent indicated above, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau

⁹⁴ Section 69.124 of the Commission's rules, 47 C.F.R. § 69.124.

⁹⁵ Subsequent to the close of the pleading cycle in most of these waiver proceedings, the U.S. Court of Appeals for the District of Columbia Circuit, in *Competitive Telecommunications Association v. FCC (CompTel)*, vacated and remanded the Order in which the Commission adopted the transport interconnection charge on the ground, *inter alia*, that the Commission's rules required recovery of a portion of tandem-switched transport costs from direct-trunked transport customers. *CompTel*, 87 F.3d 522, 529-31 (D.C. Cir. 1996). The Commission has indicated its intention to initiate a rulemaking proceeding to undertake a comprehensive revision of its Part 69 access charge rules. Part of that proceeding likely will involve an examination of the changes to the current transport rate structure rules that are required to comply with court's mandate in *CompTel*. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325 (released Aug. 8, 1996), at para. 727.

APPENDIX A

1. Bell Atlantic Telephone Companies (Bell Atlantic)
Petition filed March 29, 1995.
Unopposed.
2. Pacific Bell
Petition filed June 19, 1995.
Comments filed July 21, 1995, by BellSouth; and Time Warner Communications, Inc. (Time Warner).
Replies filed July 28, 1995, by Pacific Bell; and WorldCom, Inc., d/b/a/ LDDS WorldCom (LDDS).
3. BellSouth Telecommunications, Inc. (BellSouth)
Petition filed June 30, 1995.
Comments filed August 10, 1995, by Pacific Bell; Time Warner; the Competitive Telecommunications Association (CompTel); MCI Telecommunications Corp. (MCI); LDDS; and Sprint Communications Co. L.P. (Sprint).
Reply filed August 25, 1995, by BellSouth.
4. Southern New England Telephone Co. (SNET)
Petition filed October 6, 1995.
Unopposed.
5. GTE Service Corporation, on behalf of the GTE Telephone Operating Companies and the GTE System Telephone Companies (GTE)
Petition filed January 29, 1996.
Unopposed.
6. US West Communications, Inc. (US West)
Petition filed April 15, 1996.
Comments filed June 5, 1996, by GTE; Pacific Bell; MCI; and MFS Communications Company, Inc. (MFS).
Reply filed June 19, 1996, by US West.
7. Ameritech Operating Companies
Petition filed June 18, 1996.
Comments filed July 30, 1996, by Bell Atlantic; MCI; and Time Warner.
Reply filed August 13, 1996, by Ameritech.