

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

In the Matter of)
)
Pacific Bell)
)
Petition for an Expedited Waiver of)
Part 69 of the Commission's Rules)
to Offer Switched Access Transport)
for SONET-based Service)

MEMORANDUM OPINION AND ORDER

Adopted: August 19, 1997 ; Released: August 19, 1997

By the Deputy Chief, Competitive Pricing Division, Common Carrier Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant a request by Pacific Bell for waiver of Parts 69.110, 69.111, and 69.112 of the Commission's rules¹ to permit it to establish new rate elements for provision of Synchronous Optical Network (SONET) Ring and Access Service.

II. PACIFIC BELL'S PETITION

2. On May 8, 1997, Pacific Bell filed a petition seeking a waiver to establish three new rate elements that will allow it to recover the costs associated with new switched transport services that use SONET Ring and Access Service. SONET uses a fiber ring network configuration to provide redundant, reliable, high-speed transmission services. Pacific Bell currently offers SONET pursuant to its Special Access services tariff. The three new rate elements that Pacific Bell seeks waiver for are the Customer Premises Node,² the Premises Access Port³ and Customer Provided Node.⁴ These would be in addition to the

¹ 47 C.F.R. §§ 69.110, 69.111, 69.112.

² The Customer Premises Node is located at the customer's location and connects the customer premises to the dedicated ring.

³ The Premises Access Port connects the Customer Premises Node to the dedicated ring at the customer's facilities or equipment via an electrical or optical interface.

seven SONET-based transport rate elements established pursuant to a waiver granted to Pacific Bell in 1996.⁵

3. Pacific Bell asserts that these three new rate elements mirror those that it currently provides under its Special Access services tariff.⁶ In addition, Pacific Bell contends that the current switched transport Carrier Common Line, Local Switching, Tandem Switched Transport and Interconnection Charge service elements are not affected by this waiver.⁷ Pacific Bell states that adding these three new service elements will create network efficiency, redundancy and route diversity for access providers, allowing them to respond to their customer needs, while allowing Pacific Bell to recover associated costs from the cost-causer.⁸ Thus, Pacific Bell argues that good cause exists to grant its petition.⁹

III. DISCUSSION

4. The Commission's rules may be waived for good cause shown.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² 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.¹³

⁴ The Customer Provided Node connects the customer's premises to the Dedicated Ring Facilities and to Pacific Bell's nodes on the ring.

⁵ *Petitions for Waiver of Part 69 of the Commission's Rules to Establish Switched Access Rate Elements for SONET-based Service*, 11 FCC Rcd 21010 (1996) (*SONET Waiver Order*). The Common Carrier Bureau determined that it was in the public interest to grant Pacific Bell's waiver request for the following seven rate elements: Central Office Ports, Primary Node Links, Central Office Nodes, Local Loop Access Links, Multiplexing, Dedicated Ring Fees and Mileage.

⁶ See Tariff F.C.C. No. 128, Section 7.2.11.

⁷ Pacific Bell Petition at 2-3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.3.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹³ *Northeast Cellular*, 897 F.2d at 1166.

5. The Common Carrier Bureau (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.¹⁴ In the *SONET Waiver Order*, the Bureau granted waivers to LECs to establish the same rate structure for their SONET-based switched transport tariffs as they had already established for their special access SONET services.¹⁵ The Bureau found that the LECs had demonstrated the special circumstances necessary to justify grant of the various waivers.¹⁶ The Bureau concluded that the existing transport rules would not reflect the way SONET-based switched transport costs were incurred.¹⁷ Thus, the Bureau found that good cause existed to grant the various waivers to create new SONET transport elements.¹⁸

6. Consistent with the Bureau's previous determination, we find that Pacific Bell has demonstrated the special circumstances necessary to justify the requested waiver. Thus, our existing transport rules do not adequately reflect the way SONET-based switched transport costs are incurred and the proposed new rate elements will better permit rates to reflect costs. Therefore, we find that good cause exists to grant Pacific Bell's waiver petition to create new SONET transport rate elements.

¹⁴ 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 (Com. Car. Bur. 1994) (*Call Completion Services Waiver Order*).

¹⁵ *SONET Waiver Order*, 11 FCC Rcd at 21010. In the Order, the Bureau granted waivers to Bell Atlantic Telephone Company, Pacific Bell, BellSouth Telecommunications, Inc., Southern New England Telephone Company, GTE Service Corporation, U S West Communications, Inc., and Ameritech Operating Companies.

¹⁶ *Id.* at 21020.

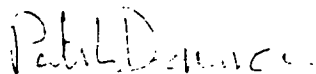
¹⁷ *Id.*

¹⁸ *Id.*

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Expedited Waiver of Parts 69.110, 69.111, and 69.112 of the Commission's rules filed by Pacific Bell IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



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