

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

In the Matter of)	
)	
Access Charge Reform)	
)	CC Docket No. 96-262
PrairieWave Telecommunications, Inc.)	
Petition for Waiver of Sections 61.26(b) and (c))	
or in the Alternative Section 61.26(a)(6))	
of the Commission's Rules)	
)	
SouthEast Telephone, Inc.)	
Petition for Waiver of Section 61.26(a)(6))	
of the Commission's Rules)	
)	
Cox Communications, Inc.)	
Petition for Clarification or Reconsideration)	

ORDER

Adopted: February 12, 2008

Released: February 14, 2008

By the Commission:

I. INTRODUCTION

1. In this order, we deny petitions filed by PrairieWave Telecommunications, Inc.¹ (PrairieWave) and SouthEast Telephone, Inc.² (SouthEast) seeking waivers of the Commission's rule that limits the interstate access charges they may impose on interexchange carriers.³ Both petitions involve the competitive local exchange carrier (LEC) access rate benchmark and the "rural exemption" to that benchmark adopted and affirmed in previous orders in this proceeding.⁴ We also grant a petition for clarification filed by Cox Communications, Inc. (Cox) regarding the charges a competitive LEC may impose when it has more than one switch in a particular geographic area.⁵

¹ See *Access Charge Reform*, CC Docket No. 96-262, PrairieWave Telephone, Inc. Petition for Waiver (filed Nov. 12, 2004) (PrairieWave Petition).

² See *Access Charge Reform*, CC Docket No. 96-262, SouthEast Telephone, Inc. Petition for Waiver (filed March 30, 2004) (SouthEast Petition).

³ See 47 C.F.R. § 61.26.

⁴ See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd at 9923, 9953, para. 73 (2001) (*CLEC Access Reform Order*); Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd at 9108, 9126, para. 37 (2004) (*CLEC Access Reconsideration Order*).

⁵ See *Access Charge Reform*, CC Docket No. 96-262, Petition of Cox Communications, Inc. For Clarification or Reconsideration (filed June 17, 2004) (Cox Petition).

II. BACKGROUND

2. In April 2001, the Commission adopted new rules governing the interstate switched access charges of competitive LECs.⁶ In the *CLEC Access Reform Order*, the Commission concluded that the market structure for access services prevented competition from effectively disciplining prices charged to interexchange carriers (IXCs).⁷ To address this market failure, the Commission revised its tariff rules to prohibit competitive LECs from tariffing interstate access charges higher than the rate charged for such services by the competing incumbent LEC.⁸

3. The Commission recognized that limiting a competitive LEC's access rate to that of its incumbent LEC competitor might prove harsh for competitive LECs operating in rural areas served by non-rural incumbent LECs.⁹ Incumbent LECs may use their lower-cost urban and suburban operations to subsidize their higher cost rural operations.¹⁰ Limiting rural competitive LECs' access rates to the geographically averaged rates charged by non-rural incumbent LECs could unfairly disadvantage competitive LECs that operate only in high-cost rural areas.¹¹ To avoid this result, the Commission created the rural exemption to the benchmark scheme, which permits a rural competitive LEC competing against a non-rural incumbent LEC to tariff access rates equivalent to those of carriers participating in the National Exchange Carriers Association (NECA) pools.¹²

4. The Commission intended the rural exemption to be a narrow exemption from the general benchmark rules, applying only to competitive LECs exclusively serving high-cost, rural areas.¹³ Thus, the exemption is available only to a "rural competitive LEC," which the Commission defined as a competitive LEC that does *not* serve any end users located within: (1) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (2) an urbanized area, as defined by the Census Bureau.¹⁴ If a competitive LEC originates traffic from or terminates traffic to end users located within either of these two types of areas, the carrier is ineligible for the rural exemption to the benchmark rule.¹⁵ In so limiting the rural exemption, the Commission explained that the availability of the exemption should be based on the competitive LEC's entire service area, rather than on a subscriber-by-subscriber basis, and eligibility should be determined on the basis of objectively available information "that will not require extensive calculation or analysis by either carriers or this Commission."¹⁶ The Commission emphasized that administrative simplicity was an important consideration in adopting the eligibility criteria.¹⁷

⁶ See *CLEC Access Reform Order*, 16 FCC Rcd at 9923.

⁷ See *id.* at 9936, para. 32.

⁸ See 47 C.F.R. § 61.26; see also *CLEC Access Reform Order*, 16 FCC Rcd at 9925, para. 3.

⁹ See *CLEC Access Reform Order*, 16 FCC Rcd at 9949-50, para. 64.

¹⁰ See *id.*

¹¹ See *id.*

¹² See 47 C.F.R. § 61.26(e).

¹³ See *CLEC Access Reform Order*, 16 FCC Rcd at 9951, para. 68.

¹⁴ See 47 C.F.R. § 61.26(a)(6). Section 61.26(e) provides that "a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching."

¹⁵ See *CLEC Access Reform Order*, 16 FCC Rcd at 9954, para. 76.

¹⁶ *Id.*

¹⁷ See *id.* at 9954, para. 75.

5. In the *CLEC Access Reconsideration Order*, the Commission rejected several petitions for reconsideration of the rules adopted in the *CLEC Access Reform Order*.¹⁸ The Commission explicitly considered and rejected the argument that a single end user in a non-rural area should not disqualify a competitive LEC from the rural exemption, stating that “[t]he exemption was designed as a narrow exception to the otherwise market-based rule that ties competitive LEC rates to those of their incumbent competitors in the access market.”¹⁹ The Commission also noted that, in adopting the rural exemption, it “emphasized the need for administrative simplicity.”²⁰ Additionally, it explained that the rural exemption is limited to competitive LECs serving exclusively rural areas, stating that “[i]f a competitive LEC chooses to serve more concentrated, non-rural areas, in order to offset the cost of serving high-cost, rural customers, it should not also receive the subsidy of charging NECA rates for access to its rural end users.”²¹ The Commission also rejected a request by TDS Metrocom to permit competitive LECs to tariff higher access rates if they can demonstrate that their costs exceed those of the incumbent LECs with which they compete,²² noting that this request “assume[d] incorrectly that the Commission adopted a cost-based approach to competitive LEC access charges in the *CLEC Access Reform Order*.”²³

6. The Commission also rejected a request by NewSouth Communications, Inc. (NewSouth) that a competitive LEC be permitted to charge for all of the competing incumbent LEC access elements, including tandem switching and end office switching, if a single switch serves a geographic area comparable to the area served by a competing LEC’s tandem switch.²⁴ The Commission agreed with NewSouth that clarification of the term “competing ILEC” rate as it applies to competitive LEC switching was necessary but disagreed with NewSouth’s proposed clarification. It found that the “competing ILEC” switching rate is the end office switching rate when a competitive LEC originates or terminates calls to end users and the tandem switching rate when a competitive LEC passes calls between two other carriers.²⁵

III. PRAIRIEWAVE PETITION FOR WAIVER

A. Background

7. PrairieWave is a facilities-based competitive LEC providing telecommunications service in rural areas of Iowa, Minnesota, and South Dakota.²⁶ PrairieWave also provides limited local exchange services to residents and businesses in Sioux Falls, South Dakota, and is a certified open video system (OVS) operator with an OVS license for Sioux Falls.²⁷ On November 12, 2004, PrairieWave filed a petition for waiver with the Commission.²⁸ PrairieWave’s primary request is for waiver of sections

¹⁸ See *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9124 -29, paras. 33-41.

¹⁹ See *id.* at 9126, para 37.

²⁰ *Id.*

²¹ *Id.*

²² See *Access Charge Reform*, CC Docket No. 96-262, TDS Metrocom, Inc. Petition for Waiver (filed June 20, 2001) at 17.

²³ See *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9136, para. 57.

²⁴ See *id.* at 9118, paras. 20-21.

²⁵ See *id.* at 9118, para. 21.

²⁶ See *PrairieWave Petition* at 1.

²⁷ See *id.* at 4; Letter from William P. Heaston, PrairieWave, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262 (filed January 24, 2005) (*PrairieWave Ex Parte Letter*) at 4.

²⁸ The Commission issued a public notice on November 24, 2004, establishing a pleading cycle for PrairieWave’s Petition. See *Petition of PrairieWave Telecommunications, Inc. For Waiver of CLEC Access Charge Rules*, CC (continued....)

61.26(b) and (c) of the Commission's rules.²⁹ PrairieWave asserts that this waiver, if granted, would allow it to file tariffed access rates consistent with its costs.³⁰ Alternatively, PrairieWave seeks waiver of section 61.26(a)(6) of the Commission's rules.³¹ If granted, this waiver would allow PrairieWave to operate under the rural exemption while serving customers in Sioux Falls, South Dakota, a non-rural area.³²

8. In support of its primary waiver request, PrairieWave filed a monograph and a forward-looking cost study with its petition.³³ PrairieWave's monograph broadly explains that the Commission should set rural competitive LEC (RLEC) access rates according to cost studies, such as the one PrairieWave submitted, rather than to incumbent LEC access rate benchmarks.³⁴ PrairieWave argues that "using incumbent access rates as benchmark rates for RLECs is an unreasonable and analytically flawed comparison" because "the RBOC incumbents ... enjoy an unfair advantage due to their size and their ability to spread their network costs over a larger subscriber base in denser, less costly markets."³⁵ PrairieWave states that, because of the economic differences between rural competitive LECs and the incumbent LECs with which they compete, the Commission should consider company-specific forward-looking economic access costs in setting rural competitive LEC rates.³⁶ PrairieWave asserts that preparing cost studies would not be burdensome for rural competitive LECs,³⁷ and that administrative costs associated with a cost-based model for determining rural competitive LEC access rates "are simply not that material."³⁸

9. In the alternative, PrairieWave seeks waiver of section 61.26(a)(6) of the Commission's rules,³⁹ so that it may operate under the rural exemption while serving customers in Sioux Falls. To support its alternate request, PrairieWave states that it serves predominately rural customers in rural areas of Iowa, Minnesota, and South Dakota,⁴⁰ and that local exchange service in Sioux Falls was not part of its original business plan. Rather, PrairieWave explains that it came to provide LEC service in Sioux Falls as a result of a series of mergers and acquisitions, culminating with PrairieWave's acquisition of some local exchange facilities and customers from McLeodUSA in 2002.⁴¹

10. PrairieWave asserts that granting either one of its waiver requests will promote the public

(...continued from previous page)

Docket No. 96-262, Public Notice, 19 FCC Rcd 22,793 (WCB/PPD 2004). A complete list of comments and reply comments is contained in the Appendix.

²⁹ 47 C.F.R. §§ 61.26(b) and (c).

³⁰ See PrairieWave Petition at 9.

³¹ 47 C.F.R. § 61.26(a)(6).

³² See *CLEC Access Reform Order*, 16 FCC Rcd at 9953, para. 73.

³³ PrairieWave Petition at Ex. D (monograph) and Ex. F (cost study).

³⁴ See PrairieWave Petition at Ex. D.

³⁵ See *id.* Ex. D at 11.

³⁶ See *id.* Ex. D at 12.

³⁷ See *id.* Ex. D at 24.

³⁸ See *id.* Ex. D at 30.

³⁹ See *id.* at 2.

⁴⁰ See *id.* at 9.

⁴¹ See PrairieWave Petition at 9.

interest by enabling PrairieWave to continue as a viable, facilities-based competitor to Qwest and Frontier in rural exchanges where it provides service.⁴² Qwest, Frontier, and Sprint oppose granting either of PrairieWave's waiver requests. They contend that PrairieWave has not presented any special circumstances that warrant granting a waiver.⁴³ MCI opposes granting a waiver that would allow PrairieWave to base its access rates on its cost study and notes that the Commission has already expressly declined to adopt a cost-based approach to setting competitive LEC access charges.⁴⁴

11. On reply, PrairieWave responds that no commenter addressed its argument that the Commission's "bright-line" rural exemption analysis should not determine the outcome of PrairieWave's waiver request.⁴⁵ PrairieWave contends that the failure of all commenters to address in detail all the arguments presented in its monograph renders the commenters' arguments ineffective.⁴⁶ It also contends that its cost study is "left standing as unrefuted proof that a waiver should be granted" because the arguments presented by the commenters in response to its cost study lack substance.⁴⁷

B. Discussion

12. The Commission may waive its rules when good cause is demonstrated.⁴⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴⁹ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵⁰ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.⁵¹ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁵²

13. We find that PrairieWave has not presented special circumstances that warrant granting either waiver request. With respect to its primary waiver request, PrairieWave asserts that it is unique because it has filed a forward-looking cost study, thus providing the Commission a unique opportunity to allow appropriate and reasonable cost recovery through cost-based rates.⁵³ The fact that PrairieWave is the only competitive LEC to file a cost study after the *CLEC Access Reform Order* was adopted does not constitute "good cause" warranting deviation from the generally applicable rule. The Commission has specifically disclaimed reliance on cost to set competitive LEC access rates.⁵⁴ If the mere filing of a

⁴² See *id.*

⁴³ See Qwest Waiver Comments at 2; Frontier Reply at 2; Sprint Comments at 4

⁴⁴ See MCI Comments at 2 (MCI's comments were made before its merger with Verizon).

⁴⁵ See PrairieWave Reply at 6.

⁴⁶ See *id.* at 7.

⁴⁷ See *id.* at 8.

⁴⁸ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁴⁹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵⁰ See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁵¹ See *WAIT Radio*, 418 F.2d at 1157.

⁵² See *id.* at 1159.

⁵³ See PrairieWave Petition at 8.

⁵⁴ See *CLEC Access Reform Order*, 16 FCC Rcd at 9941, para. 45; *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9136, para. 57; see also MCI Comments at 2. We have not analyzed PrairieWave's cost study, and we do not address whether or not it accurately portrays PrairieWave's costs.

document outlining a competitive LEC's preferred method of determining access charges constituted "good cause" to justify a waiver, every competitive LEC would file such a document and the resulting waivers would swallow the applicable rules.

14. Furthermore, granting PrairieWave's primary waiver request would not be in the public interest because doing so would undermine the "bright-line" presumption of reasonableness adopted in the *CLEC Access Charge Reform Order*.⁵⁵ Currently, competitive LEC access charges at or below the benchmark level set in the *CLEC Access Reform Order* are presumed reasonable. If PrairieWave's waiver request were granted, competitive LEC access charge determinations would depend on administratively difficult cost study analysis rather than on straightforward comparison to a benchmark.⁵⁶ Moreover, requiring competitive LECs to prepare cost studies would subject them to legacy regulation, thereby undermining another policy objective of the *CLEC Access Reform Order* benchmark.⁵⁷ Accordingly, we find that PrairieWave has failed to establish good cause for its primary waiver request or show that it would serve the public interest, and we therefore deny it.⁵⁸

15. We also deny PrairieWave's alternative waiver request. In support of this waiver request, PrairieWave alleges the "special circumstance" that the provision of local exchange service in Sioux Falls, a non-rural area for purposes of the rural exemption, was never part of its original business plan, and that its Sioux Falls customers "came to PrairieWave" as a result of merger and sale activities involving its predecessors.⁵⁹ This circumstance is not unique to PrairieWave. Mergers and sales are common in the telecommunications industry, and carriers frequently acquire operations or customers that were not part of their original business plans. The rural exemption was in effect when the sale from McLeod to PrairieWave took place; therefore, PrairieWave was on notice that the acquisition of Sioux Falls customers would render it ineligible to operate under the rural exemption.

16. We also find that granting PrairieWave's alternate waiver request would not serve the public interest. The requested waiver would undermine the policy objective underlying the rural exemption by enabling PrairieWave to subsidize its rural operations with non-rural operations in exactly the manner the rural exemption was designed to prohibit.⁶⁰ Moreover, granting PrairieWave's alternate waiver request would greatly increase the number of lines eligible to be served under the rural exemption, thereby undermining the objective of a narrow rural exemption applicable to a "small number of carriers serving a tiny portion of the nation's access lines."⁶¹ For these reasons, we deny PrairieWave's alternate waiver request.

⁵⁵ See *CLEC Access Reform Order*, 16 FCC Rcd at 9939, para. 41.

⁵⁶ See *id.* at 9938, para. 40.

⁵⁷ See *id.* at 9939, para. 41.

⁵⁸ As an additional matter, PrairieWave states that recovery of access charges beyond the benchmark is impossible in at least part of its Minnesota service territory because of the low prices charged by Frontier, the competing incumbent LEC. See PrairieWave *Ex Parte* Letter at 3. This claim is beyond the scope of this proceeding. The proper place to pursue a claim related to the price of local exchange service is before the appropriate state commission.

⁵⁹ See PrairieWave Petition at 9.

⁶⁰ See *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9126, para. 37.

⁶¹ See *CLEC Access Reform Order*, 16 FCC Rcd at 9951, para. 68.

IV. SOUTHEAST PETITION FOR WAIVER

A. Background

17. On March 30, 2004, SouthEast filed a petition for waiver of the definition of “rural competitive LEC” contained in section 61.26(a)(6) of the Commission’s rules.⁶² If granted, this waiver would permit SouthEast to remain eligible for the rural exemption as long as 95 percent of its customers are located in rural areas.⁶³ SouthEast is a rural competitive LEC providing local exchange service, long-distance service, and Internet services in portions of the Appalachian mountain region of southeastern Kentucky.⁶⁴ SouthEast states that it receives occasional requests from its customers to provide service to metropolitan areas and that it must either refuse these requests or sacrifice the additional access revenues available under the rural exemption.⁶⁵

18. SouthEast maintains that granting its petition is in the public interest because the waiver would strengthen its ability to provide competitive telecommunications services, including advanced services, in rural areas.⁶⁶ According to SouthEast, the primary reason for adopting the rural exemption was to avoid an access charge regime that would prevent competitive LECs from bringing the benefits of new technologies to rural areas.⁶⁷ SouthEast states that, under the circumstances, it would be contrary to the public interest to deny it the benefits of the rural exemption.⁶⁸ SouthEast further claims that the concerns expressed in the *CLEC Access Reform Order* about improper application of the rural exemption are not implicated because it is a truly rural carrier seeking to maintain its rural status while serving a *de minimis* number of non-rural customers.⁶⁹

19. Most commenters oppose SouthEast’s waiver request on the basis that SouthEast fails to demonstrate the special circumstances necessary to support a waiver of the Commission’s rules.⁷⁰ They contend that the circumstances SouthEast describes could be common to numerous other competitive LECs.⁷¹ Moreover, commenters contend that granting the waiver request is not in the public interest, because the alternative eligibility criteria proposed by SouthEast, i.e., that 95 percent or more of its customers be located in rural areas, could allow SouthEast to seek out a small number of customers in metropolitan areas that generate large volumes of traffic for which SouthEast could charge higher access

⁶² See *Petition of SouthEast Telephone, Inc. For Waiver of CLEC Access Charge Rules*, CC Docket No. 96-262, Public Notice, 19 FCC Rcd 6196 (WBC/PPD 2004).

⁶³ See SouthEast Petition at 5.

⁶⁴ See SouthEast Petition at 1.

⁶⁵ See *id.* at 5.

⁶⁶ See *id.*

⁶⁷ See *id.* at 6 (citing *CLEC Access Reform Order*, 16 FCC Rcd at 9950, para. 65).

⁶⁸ See *id.*

⁶⁹ See *id.* at 6-7.

⁷⁰ See Alltel Opposition at 1-2; AT&T Comments at 1, 3 (AT&T’s filings were made before its merger with SBC); BellSouth Opposition at 2 (BellSouth’s filings were made before its merger with AT&T); AT&T Reply at 4. Only one commenter, RICA, supports SouthEast’s request, but not via the waiver process. Rather, RICA asks the Commission to grant the relief sought via a petition for reconsideration of the rural exemption. RICA Comments at 1. RICA’s petition for reconsideration was denied in the *CLEC Access Reconsideration Order*. See *CLEC Access Reconsideration Order*, 19 FCC Rcd 9126, para. 37.

⁷¹ See Alltel Opposition at 2 (arguing that it is not uncommon for companies to make strategic business decisions based on competing financial interests); AT&T Comments at 3 (stating that SouthEast is scarcely the only rural competitive LEC whose subscribers have relatives that reside in urban areas).

rates under the rural exemption.⁷²

20. On reply, SouthEast argues that, although the Commission established a bright-line rule, a more nuanced analysis is appropriate in considering a waiver request premised on special circumstances.⁷³ SouthEast also states that it would agree to charge IXC's serving its customers in urban areas access rates that mirror the incumbent LEC access rates for those areas.⁷⁴

B. Discussion

21. We deny SouthEast's waiver request for the same reasons we deny PrairieWave's alternate waiver request. SouthEast asks for authority to operate under the rural exemption while serving some non-rural customers, but it does not present any special circumstances that warrant deviating from the established rule. The fact that it receives requests for incidental service in non-rural areas does not constitute a special circumstance, as evidenced by that fact that similar arguments were made by PrairieWave in its waiver petition, and by members of the Minnesota CLEC coalition (MCLEC) and the Rural Independent Competitive Alliance (RICA) in petitions for reconsideration of the *CLEC Access Reform Order*.⁷⁵ It is clear that numerous competitive LECs besides SouthEast desire to serve customers in non-rural areas and still operate under the rural exemption. As we explained with respect to PrairieWave, however, such an approach would undermine the policy underlying the rural exemption.⁷⁶ We find, therefore, that granting SouthEast's waiver request is not in the public interest, and we deny it.

V. COX PETITION FOR CLARIFICATION

A. Background

22. On June 17, 2004, Cox Communications Inc. filed a petition pursuant to section 1.429(d) of the Commission's rules requesting clarification or, in the alternative, reconsideration of our conclusion in the *CLEC Access Reconsideration Order* that the competing incumbent LEC switching rate is the end office rate when a competitive LEC originates or terminates calls to end users and the tandem switching rate when a competitive LEC passes calls between two other carriers.⁷⁷ Cox explains that the *CLEC Access Reconsideration Order* "clearly spells out the permissible CLEC access charges when a competitive LEC serves its customers through a single switch,"⁷⁸ but that it "does not provide guidance to CLECs that operate multiple switches in a single service area."⁷⁹ Cox seeks clarification that competitive LECs with multiple switches in a serving area may levy both tandem and end office switching charges

⁷² See Alltel Comments at 3; AT&T Comments at 4; AT&T Reply at 2-3; BellSouth Opposition at 2.

⁷³ See SouthEast Reply at 2.

⁷⁴ See *id.* at 5.

⁷⁵ See MCLEC Petition for Reconsideration, CC Docket No. 96-262, at 2 (filed June 20, 2001) (MCLEC Petition); RICA Petition for Reconsideration, CC Docket No. 96-262, at 10-11 (filed June 20, 2001) (RICA Petition). The Commission denied these requests, finding that the relief requested would broaden an exemption that was designed to be narrow, and would undermine the intended administrative simplicity of the rural exemption. See *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9126, para. 37.

⁷⁶ See *supra* para. 16.

⁷⁷ See Cox Petition. The Commission issued a public notice on August 3, 2004 establishing a pleading cycle for the Cox Petition. See Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding, Public Notice, 69 Fed. Reg. 48234 (August 3, 2004).

⁷⁸ See Cox Petition at 2.

⁷⁹ See *id.* at 3.

when their switches actually perform both functions.⁸⁰ Cox states that such a clarification will provide certainty and avoid potential disputes arising out of the language of the *CLEC Access Reconsideration Order*.⁸¹

23. AT&T, opposing Cox's requested clarification, claims that the issue Cox presents is based on "purely hypothetical network arrangements."⁸² AT&T asserts that the clarification Cox seeks, if granted, would create incentives for competitive LECs to route calls through several switches before delivering them to end users in order to charge for both tandem and end office switching. According to AT&T, it also could lead to IXC's being billed by multiple competitive LECs and incumbent LECs, each claiming to have provided tandem switching to complete a call.⁸³

24. Qwest states that it is not opposed to a competitive LEC charging for tandem and end office switching if that competitive LEC provides both functions.⁸⁴ Qwest requests, however, that, if the Commission grants Cox's request, it also require competitive LECs to register tandem switches in the local exchange routing guide (LERG) and to use routing tables in the LERG to designate the specific end offices their tandem switches serve.⁸⁵ Additionally, Qwest argues that it would be inappropriate for an IXC to have to compensate a competitive LEC for any tandem switching functions performed by a switch to which the IXC is interconnected via a direct end office trunking arrangement.⁸⁶ Finally, Qwest requests that the Commission clarify that, for the purpose of this rule, "market" means the incumbent LEC's local calling area, or, alternatively, a local access and transport area (LATA).⁸⁷

25. In its reply comments, Cox asserts that its concern is not hypothetical because it operates multiple switches in the Hampton Roads LATA.⁸⁸ It also asserts that AT&T's fears that competitive LECs will route calls to maximize tandem switching revenue is "absurd" because competitive LECs cannot force IXC's to interconnect at switches other than end office switches.⁸⁹ Cox states that it has no objection to listing its tandem switches in the LERG,⁹⁰ and that the terms "market" and "service area" are generally understood in the industry to refer to LATAs.⁹¹

B. Discussion

26. We grant Cox's petition for clarification to the extent discussed below. We agree with Cox that the *CLEC Access Charge Reconsideration Order* does not prevent competitive LECs from charging for both tandem and end office switching when these functions are provided by separate switches. In that order, the Commission reaffirmed its long-standing policy that incumbent LECs can charge only for

⁸⁰ See *id.*

⁸¹ See *id.* at 4.

⁸² See AT&T Reconsideration Comments at 1.

⁸³ See *id.* at 3.

⁸⁴ See Qwest Reconsideration Comments at 4.

⁸⁵ See *id.* at 4-6.

⁸⁶ See *id.* at 6.

⁸⁷ See *id.* at 7.

⁸⁸ See Cox Reply at 4.

⁸⁹ See *id.* at 3.

⁹⁰ See *id.* at 4 n.11.

⁹¹ See *id.* at 4 n.9.

services that they provide, and it extended this policy to competitive LECs.⁹² Applying this principle to a situation where a single switch is capable of providing tandem and end office functions, the Commission found that competitive LECs can charge the end office switching rate when they originate or terminate calls to end users, and the tandem switching rate when they pass calls between two other carriers.⁹³ When a competitive LEC performs both functions, however, using two separate switches, it may charge for both functions, as would an incumbent LEC.

27. Our decision here is premised on the assumption that a competitive LEC will permit an IXC to install direct trunking from the IXC's point of presence to the competitive LEC's end office, thereby bypassing any tandem function. So long as an IXC may elect to direct trunk to the competitive LEC end offices, and thereby avoid the tandem switching function and associated charges, there should be limited incentive for competitive LECs to route calls unnecessarily through multiple switches, as suggested by AT&T.⁹⁴

28. The situation raised by the Cox petition – two competitive LEC switches in a single market – appears to be relatively unusual at this point in time. Consequently, we do not see the need to adopt the requirements suggested by Qwest in the absence of any controversy on these issues. For example, Qwest asks that we require competitive LECs to register their tandem switches in the Local Exchange Routing Guide (LERG),⁹⁵ but the record suggests that competitive LECs operating tandem switches already have incentives to register their switches in the LERG.⁹⁶ Similarly, absent any evidence of problems, we decline Qwest's request that we impose a definition regarding "the relevant market."⁹⁷

VI. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 3, 4(i), 201-205, 251, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201-205, 251, and 303(r), and sections 1.3, 1.106, and 61.26 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.106, and 61.26, the petitions for waiver filed by SouthEast and PrairieWave ARE DENIED.

30. IT IS FURTHER ORDERED that the petition for clarification filed by Cox IS GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹² See *CLEC Access Charge Reconsideration Order*, 19 FCC Rcd at 9118, para. 21.

⁹³ See *id.*

⁹⁴ See Cox Reply at 2. Referencing the AT&T comments, Cox confirms that "IXCs always retain the right to provide direct trunking to competitive LEC end offices." *Id.*

⁹⁵ See Qwest Reconsideration Comments at 5-6.

⁹⁶ Cox states that it operates a tandem switch in the Hampton Roads LATA and that it has registered this switch in the LERG. See Cox Reply at 4.

⁹⁷ See Qwest Reconsideration Comments at 7.

APPENDIX**Comments and Replies****PRAIRIEWAVE PETITION****Comments and Oppositions:**

MCI, Inc. (MCI Comments)
Sprint Corporation (Sprint Opposition)
Qwest Communications International (Qwest Waiver Comments)

Reply Comments:

Frontier Communications of Minnesota, Inc. (Frontier Reply)

SOUTHEAST PETITION**Comments and Oppositions:**

AT&T Corp. (AT&T Comments)
Kentucky ALLTEL, Inc. (Alltel Opposition)
BellSouth Telecommunications, Inc. (BellSouth Opposition)
Rural Independent Competitive Alliance (RICA Comments)

Reply Comments:

AT&T Corp. (AT&T Reply)
SouthEast Telephone, Inc. (SouthEast Reply)

COX PETITION**Comments:**

AT&T Corp. (AT&T Reconsideration Comments)
Qwest Communications International (Qwest Reconsideration Comments)

Reply Comments:

Cox Communications, Inc. (Cox Reply)