

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

In the Matter of

Rochester Telephone Corporation

Petition for Waiver of Section
69.4(b) and Subparts B, D, and E
of Part 69 of the Commission's Rules

ORDER

Adopted: September 10, 1990 Released: September 14, 1990

By the Chief, Common Carrier Bureau:

1. On May 18, 1990, Rochester Telephone Company (Rochester) filed a petition seeking a waiver of Section 69.4(b) of the Commission's Rules, 47 C.F.R. § 69.4(b), and Subparts B, D, and E of Part 69 of the Commission's Rules, 47 C.F.R. Part 69, Subparts B, D, and E, to permit Rochester to offer interstate switched 56 kbps digital service (Switched 56 Service) on an optional basis from designated end offices in its service territory. Rochester anticipates that the principal users of this service will be customers who require digital end-to-end connectivity for 56 kbps data transmission but do not need the full-time availability provided by digital Special Access Service. According to Rochester, it developed this service in response to informal expressions of interest from interexchange carriers serving the Rochester, New York metropolitan area. Rochester Petition at 1. The Bureau released a Public Notice on June 26, 1990, seeking comments on the petition;¹ no comments were filed.

2. Rochester states that the waiver is necessary because the current Part 69 Rules do not authorize the establishment of a rate element for the recovery of costs associated with the provision of this optional interstate service. According to Rochester, the Bureau has granted similar waiver requests by local exchange carriers (LECs) who wished to provide this service. Petition at 2, *citing* GTE Service Corporation, 4 FCC Rcd 1780 (Com. Car. Bur. 1989) (*GTE*); New York Telephone Co., (Com.Car. Bur.1987) (*New York Telephone*).

3. Rochester states that Switched 56 Service would permit a connection capable of transmitting 56 kbps over the public switched network on a digital basis between an interexchange carrier's switch and a suitably equipped end user's premises by means of end office switches equipped to transmit data in digital format at 56 kbps. Rochester further states that Switched 56 Service data would be transported from the end user's end office to Rochester's access tandem by means of T-1 carrier circuits. *Id.* at 2-3. According to Rochester, Switched 56 Service would be provided from a limited number of end offices in the Rochester area as an optional service offering for subscribers to Feature Group D (FGD) Switched Access Service. Rochester states that it intends to equip less than 15 end offices over a five year period with the capability of providing Switched 56 Service. *Id.* at 3.

4. Rochester also states that it intends to recover its interstate revenue requirement associated with the provision of Switched 56 Service through a separate rate element. According to Rochester, the establishment of a separate rate element for Switched 56 Service is consistent with the Commission's basic policy of recovering the costs of an individual service from the customer who caused those costs to be incurred. In addition, Rochester maintains that this is consistent with prior Commission Orders authorizing other carriers to recover the costs of this service through a separate rate element. *Id.* at 4-5.

5. According to Rochester, the reason for the waiver request is that Part 69 does not provide for the inclusion of such a rate element. Rochester asserts that it intends to establish a usage sensitive rate to recover the costs of end office and access tandem enhancements as well as inter-office trunking necessary to offer this service. This rate would apply per minute of FGD usage, in addition to the rates applicable to the provision of FGD Switched Access Service. *Id.*

6. In addition, Rochester states that it intends to develop the initial charges for this service on the basis of a five-year forecast of demand and revenue requirement. According to Rochester, if recurring charges for the first year of service were developed solely on the basis of the expected demand and revenue requirements for that period, those charges would be higher than the charges developed on the basis of forecasted demand and revenue requirements over a longer period. Therefore, Rochester asserts that the initial recurring charges calculated on the basis of a five-year forecast would be less subject to adjustments and thereby promote rate stability during the initial period that the service is offered. *Id.* at 5.

7. Finally, Rochester asserts that the requested waiver is clearly in the public interest because establishment of Switched 56 Service will encourage greater use of the public switched network, respond to customer expression of interest, and expand the choice of services available to end users in the Rochester, New York metropolitan area. *Id.*

8. The Bureau has determined that grant of the requested waiver is in the public interest. Rochester has satisfactorily justified its request for a separate rate element for Switched 56 Service by showing that grant of the waiver will, consistent with Commission policy, assure that the costs associated with this service are borne by the cost-causer. Rochester's petition raises issues similar to those raised by waiver requests made by GTE, New York Telephone, and Mountain States Telephone and Telegraph Company, which petitions the Bureau granted. *See, GTE and New York Telephone, supra. See also, Mountain States Telephone and Telegraph Company, Mimeo No. 0334, released Oct. 24, 1986.* For these reasons, the Bureau believes that good cause exists to waive applicable sections of Part 69 of the Rules to allow Rochester to offer Switched 56 Service. We further believe that strict compliance with the Commission's Rules in this instance would be inconsistent with the public interest.²

9. IT IS THEREFORE ORDERED that the petition for waiver filed by Rochester Telephone Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

¹ Rochester Telephone Corporation Files Petition for Waiver of Part 69 To Permit Offer of Interstate Switched 56 kbps Service, DA 90-841, released June 26, 1990.

² Rules may be waived if there is "good cause" to do so. See Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).