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SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Memorandum Opinion and Order on Reconsideration in CC Docket No. 91–213, adopted December 15, 1994, and released December 22, 1994. The complete text of this Third Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

Synopsis of Memorandum Opinion and Order

A. The Interim Rate Structure

- The interim rate structure is a significant improvement over the "equal charge" rate structure. We believe that the interim rate structure is consistent with all three of our goals in this proceeding: (1) Encouraging efficient use of transport facilities by allowing pricing that reflects the way costs are incurred; (2) facilitating full and fair interexchange competition; and (3) avoiding interference with the development of interstate access competition. Having weighed the costs associated with an interim approachnamely, the effect on tandem competition and the delay in implementing a full cost-based rate structure—against the benefits associated with its balancing of our three public interest goals, we conclude that our cautious approach of adopting an interim rate structure and seeking comment on a long-term rate structure was a reasonable step towards a more cost-based transport rate structure.
- 2. We decline to hold open this proceeding, as suggested in the record. We conclude that we have had sufficient time to evaluate the interim restructure. We conclude, however, that continued monitoring of the effects of the interim transport rate structure would be in the public interest, and we delegate authority to the Chief, Common Carrier Bureau, to continue and refine the Bureau's transport monitoring program. With our affirmation of the interim transport rate structure, we retain our conclusions that: (1) non-Tier 1 local exchange carriers (LECs) are exempt from implementing the interim transport rate structure; (2) if such LECs provide entrance facilities, they must provide them on a flat-rated basis; and (3) such LECs must offer flat-rated

direct-trunked transport upon receipt of a bona fide request.

B. Initial Benchmark Level and Permanent Rate Relationships

3. We affirm the benchmark used in setting the initial transport rates and our use of price cap rules to govern subsequent changes in the price cap LECs' transport rates.

- 4. Adjusting the Benchmark or Applying It to Subsequent Rate Changes. We decline to revise the benchmark used to establish initial transport rates or establish rigid rate relationships based on such a benchmark. We conclude that the small and medium interexchange carriers' (IXCs') suggested level of the benchmark lacks adequate cost justification. We continue to believe that special access rates provide a rational framework for establishing the initial transport rates.
- 5. Further, fixed rate relationships are not consistent with LEC price cap regulation. We believe that requiring permanent rate relationships between DS3, DS1, and tandem-switched transport rates would interfere with the efficient functioning of the market, and could retard long-distance price reductions, depress telecommunications usage, and inhibit economic growth. We reject the related recommendation to require the LECs to reset their tandemswitched transport rates annually based on DS3 and DS1 direct-trunked transport rates, weighted based on updated fiber/copper ratios. We continue to believe that price cap rules, rather than required annual adjustments guided by cost factors, are the most appropriate means, in an increasingly competitive access market, to govern ongoing changes in rates for LEC services, including tandem-switched transport.
- 6. We also decline to require the LECs to place uniform overhead loadings on their transport rates as a means of constraining changes to the price relationships between DS3 and DS1 rates. We conclude that even if it were demonstrated that different transport services are "like services," differences between the levels of overhead loadings recovered in those rates would not necessarily constitute unreasonable discrimination. (We note that allegations that specific rates of individual carriers are discriminatory are not before us in this proceeding.)
- 7. While we continue to believe that a certain level of pricing flexibility is needed to enable the LECs to meet increasing competition in the local access market, we also recognize that without sufficient regulatory constraints the LECs could price their transport

services anti-competitively. We have addressed this concern through special safeguards in the price cap system: placing DS3 flat-rated transport, DS1 flat-rated transport, and tandemswitched transport in separate service categories and subcategories, and retaining the +2% upper pricing band for tandem-switched transport services. We continue to believe that this approach best balances our concerns about potential anti-competitive LEC pricing and the LECs' need for some pricing flexibility in the face of increased competition, and thus, best promotes our public interest goals. We note, however, that this decision does not limit our discretion in addressing the separate record developed in our pending LEC Price Cap Review proceeding (Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, 59 FR 12888 (March 18, 1994)).

8. Applying the Benchmark Separately to Different Transport Segments. The method we used to create the benchmark was based on a typical configuration of LEC transport offerings, using rates from analogous special access offerings—one IXCs would likely use to purchase transport services, and competitive access providers would likely use to offer services that could be substituted for both entrance facilities and interoffice facilities. We decline to require the LECs to satisfy separate benchmark requirements for entrance facilities and for direct-trunked transport.

9. Methodology for LECs with Rate Ratios Below the Benchmark. We decline to revise the method by which those LECs with September 1992 special access rates below the 9.6 to 1 benchmark established initial transport rates.

C. Price Cap Service Categories and Price Bands

1. Tandem Switching

10. We decline to place tandem switching and local switching into the same price cap basket, whether that basket is the traffic sensitive basket or a new "switching" basket. We note also that this decision does not limit our discretion in addressing the separate record developed in the *LEC Price Cap Review* proceeding. We see no reason to treat tandem switching differently from tandem-switched transport transmission elements, and we retain the tandem switch element in the tandem-switched transport service category.

11. We also reject SW Bell's proposal to place the interconnection charge into a separate "public policy" basket. Until