

the bottleneck LEC facilities, the Bureau concluded that the LECs' market-based justification for the levels of overhead loadings was not a reasonable basis for the differences between the overhead loadings on the comparable services and virtual collocation services.¹³² The Bureau reasoned that the policy of facilitating efficient competitive entry into the interstate access service market would be frustrated by the LECs' practice of assigning high overheads to the facilities upon which interconnectors rely to provide competitive services, while assigning low overheads to the services against which interconnectors are trying to compete.¹³³

63. None of the LECs has refuted the Bureau's finding that differences in overhead loadings primarily reflect the LECs' strategic assignment of overhead loadings to prevent efficient entry by their competitors into the interstate access service market. Indeed, BellSouth is the only LEC that challenges this finding. BellSouth claims that, because it cannot offer geographically deaveraged rates, there is no variation across markets in the loading assigned to a specific comparable service. We disagree. BellSouth may file a zone density tariff to offer DS1 and DS3 services on a geographically deaveraged basis as long as it complies with this Commission's requirements.

64. We also find no merit to US West's and GTE's argument that the Bureau erred in comparing the overhead loadings assigned to comparable services that have been subjected to price cap regulation with the overhead loadings assigned to newly developed virtual collocation services. This argument ignores the crucial issue of whether the LECs have provided adequate justification for assigning different (*i.e.*, higher) overhead loadings to virtual collocation services that enable interconnectors to compete with their comparable DS1 and DS3 services. The mere fact that virtual collocation services are currently excluded from price cap regulation does not establish a sound basis for assigning different overhead loadings to virtual collocation services.¹³⁴

65. **Bureau's Application of Overhead Loading Standard.** In light of the potential for unreasonable discrimination against interconnectors due to the LECs' assignment of overhead loadings, the Bureau applied our standard for assessing overhead loadings assigned to virtual collocation rate elements in a manner that would facilitate efficient entry by interconnectors seeking to compete in the interstate access service market. Specifically,

¹³² *Id.* We note that our concern regarding the LECs' ability to establish overhead loadings for virtual collocation based on market conditions is due strictly to the unique circumstances of expanded interconnection: that the LECs control the bottleneck facilities that interconnectors need to enter the interstate access service market.

¹³³ *Id.* at para. 22. The Bureau noted that LECs are selling a productive input to firms against which they compete in downstream end user markets. *Id.*

¹³⁴ In the *Virtual Collocation Order*, we reaffirmed that expanded interconnection services covered by connection charges will be excluded from the LECs' price cap baskets indefinitely and are subject to non-streamlined Title II regulation. *Virtual Collocation Order*, 9 FCC Rcd at 5187.

the Bureau held that it is unreasonable, absent justification, for LECs to use high overheads to raise the prices of essential services needed as inputs by their competitors, while simultaneously using low overheads to reduce the prices of services sold in competition with those rivals.¹³⁵

66. The Bureau partially suspended for a five-month period that part of the LECs' overhead loadings that exceeded, without adequate justification, the lowest overhead loadings assigned to the LECs' comparable DS1 and DS3 services.¹³⁶ The Bureau explained that its interim adjustments would extend to interconnectors the same treatment of overhead assignment that LECs give their most favored DS1 or DS3 customers.¹³⁷ The Bureau noted that an "average overhead loading" standard would not preclude LECs from engaging in anticompetitive behavior.¹³⁸

67. Ameritech and SWB contend that all that is necessary to prevent unreasonable discrimination against interconnectors is to ensure that the total dollar amount of overheads included in the virtual collocation service does not exceed the dollar amount of overhead contribution from the services provided by the LEC with which the interconnector would compete.¹³⁹ These LECs assert that under the Bureau's overhead loading standard, a LEC is not permitted to recover overhead contributions from customers that may migrate to competitors' services, *i.e.*, the "opportunity costs," and that therefore, the Bureau's maximum permissible overhead loading percentages are too low.¹⁴⁰ We conclude that this contention lacks merit.

68. SWB's and Ameritech's argument appears to amount to a request that we permit LECs to assess a "contribution charge," or a rate compensating LECs for lost revenues due to migration of special access customers to competitors' services. In the *Special Access Expanded Interconnection Order*, we specifically rejected inclusion of a charge that would allow the LECs to recover a contribution amount equivalent to special

¹³⁵ *Virtual Collocation Tariff Suspension Order* at para. 22.

¹³⁶ *Id.* at paras. 24-25.

¹³⁷ *Id.* at para. 27.

¹³⁸ *Id.* at para. 23. The Bureau explained that if LECs used an average overhead loading for services provided to interconnectors and below-average loadings for LEC services with which interconnectors compete, the effect would be to hamper the ability of interconnectors to compete effectively. *Id.*

¹³⁹ SWB Rebuttal at 14; Ameritech Rebuttal at 7.

¹⁴⁰ SWB Rebuttal at 14 n.22.

access revenues minus the incremental cost of providing the special access services.¹⁴¹ We reasoned that such an approach would force interconnectors to bear a significant portion of LEC overheads and would tend to result in an unduly high contribution element, thus unreasonably discouraging the use of expanded interconnection.¹⁴²

69. In the *Virtual Collocation Order*, we declined to modify for our new virtual collocation regime our rule regarding contribution charges for virtual collocation services.¹⁴³ We stated that if any LEC proposed a contribution charge for virtual collocation services, we would consider such proposal on its merits. We noted that, in theory, a contribution charge may be reasonable if targeted to recover specifically identified regulatory support mechanisms or non-cost based allocations embedded in LEC rates subject to competition.¹⁴⁴ To the extent that Ameritech and SWB are proposing a contribution charge for virtual collocation services, we conclude that these LECs have failed to demonstrate the existence of any such support flows.¹⁴⁵

70. We also disagree with SWB's assertion that a LEC has no economic incentive to engage in anticompetitive behavior. According to SWB, lowering the prices of services with which the interconnector competes would reduce the LEC's contribution and profits.¹⁴⁶ Although this behavior could initially result in reduced LEC profits on DS1 and DS3 services, we are concerned that the long-term effect of such behavior would be to increase LEC profits by reducing competition. While predation may be infrequent, under certain market conditions it may be a profitable strategy.¹⁴⁷

¹⁴¹ *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7436. We also rejected a proposal to set prices for expanded interconnection services to recover the LECs' opportunity costs associated with providing expanded interconnection (*i.e.*, a charge that ensures that the LEC do not lose revenues as a result of offering this service.) *Id.* at 7430.

¹⁴² *Id.* at 7436; see also *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7421 (defining an "interconnection charge" to be paid by all parties interconnecting with the LEC switched access network, that serves the function of a contribution charge for expanded interconnection for switched transport).

¹⁴³ *Virtual Collocation Order*, 9 FCC Rcd at 5190.

¹⁴⁴ *Id.*

¹⁴⁵ *See id.*

¹⁴⁶ SWB Rebuttal at 15 & n.23.

¹⁴⁷ Paul Joskow & Alvin Klevorick, *A Framework for Analyzing Predatory Pricing Policy*, 89 Yale L.J. 213 (1979); Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust*, in 1 Richard Schmalensee & Robert Willig, *Handbook of Industrial Organization*, 537, 550-62, 590 (1989) (game theory "has been effective in debunking the comfortable proposition that predatory

71. Moreover, anticompetitive pricing can occur without an incumbent necessarily lowering prices with which its rival competes. A monopoly provider of an essential service to a rival can subject its rival to a "price squeeze." Since the interconnector is both customer and competitor of the LEC, an interconnector's price for the service it provides to its retail customers depends on the price at which the LEC sells bottleneck facilities that are the critical productive inputs for the interconnector. Because the interconnector would flow through any increased overhead loading levels to its retail customers, the interconnector's retail prices would rise. On the other hand, the LEC's retail prices would remain constant because the LEC does not use expanded interconnection services for provision of special and switched access services. The practice of assigning high overheads to the LEC facilities upon which interconnectors rely to provide competitive services, while assigning low overheads to services against which interconnectors are seeking to compete, is the anticompetitive behavior that we sought to minimize in the *Virtual Collocation Order*. Raising rivals' costs can be a profitable and inexpensive strategy for vertically integrated firms that control essential facilities needed by its rivals.¹⁴⁸

72. Further, we reject BellSouth's argument that the cross-connect element, which BellSouth identifies as the only service it provides to interconnectors, is too small a cost component to have a significant impact on an interconnector's total service provisioning costs.¹⁴⁹ An interconnector ordering virtual collocation service must purchase numerous rate elements as part of an operational virtual collocation service offering, and must pay a cross-connect rate, as well as rates associated with other elements such as cable support and installation. We find that the sum total of these rates can have a significant impact on an interconnector's total service provisioning costs. Even if, as BellSouth argues, the cross-connect element is the only service it provides to interconnectors, BellSouth could load excessive overhead costs onto this critical input, thus increasing an interconnector's total service provisioning costs.

73. **Comparable Overhead Loading Standard.** We also reject arguments that the Bureau improperly chose the lowest loading assigned to the LECs' comparable DS1 and DS3 services as the basis for its overhead adjustments, rather than an average of the loadings assigned to all of the LECs' comparable services. This argument ignores the fact that interconnectors' offerings do not compete against a theoretical "bundle" of LEC DS1 and DS3

conduct is more costly to the predator than to the prey and, hence, is irrational and not likely to occur").

¹⁴⁸ Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust*, in 1 Richard Schmalensee & Robert Willig, *Handbook of Industrial Organization*, 537, 565-70 (1989); T.G. Krattenmaker and Steven Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 Yale L.J. 209 (1986); Steven Salop and D.T. Scheffman, *Raising Rivals' Costs*, 73 American Econ. Rev. 267 (1983).

¹⁴⁹ BellSouth Rebuttal at 4.

services with an averaged overhead loading. The LEC service priced with the lowest overhead loading is likely to be the service against which an interconnector's offerings directly compete.¹⁵⁰ The use of averaged loadings for virtual collocation services would leave interconnectors facing excessive costs in those markets where competition is most likely, particularly since we have granted LECs considerable pricing flexibility as a result of providing expanded interconnection services.¹⁵¹

74. We, therefore, find that the LECs have not refuted the Bureau's determination that its approach was necessary to facilitate efficient entry by interconnectors seeking to compete in the interstate access service market. In order to advance our pro-competitive goals, this Order prescribes maximum permissible overhead loading levels for Bell Atlantic, BellSouth, GTE, SWB, United, and US West, based on the lowest loadings assigned to these LECs' comparable DS1 and DS3 services. As for Ameritech and CBT, we emphasize that our lowest overhead loading standard will be applied in assessing the reasonableness of future virtual collocation tariffs.

75. We recognize that competition can provide a more effective constraint on unreasonable pricing than even the most effective regulation. Competition and efficient pricing resulting from market conditions should result in optimal quantities of telecommunications services provided to customers. Indeed, in other circumstances, we have concluded that overhead loadings may reasonably vary among regulated LEC service offerings in order to enable pricing under regulation to emulate pricing in a competitive market as closely as possible.¹⁵² However, we must balance LEC flexibility in assigning overheads with our goal of facilitating efficient entry into interstate access service markets by efficient providers. We recognize that competition depends on the ability of competitors to purchase LEC facilities at rates that reflect economic costs, and not rates that are calculated to deter entry by efficient providers. Thus, the potential for LECs to engage in anticompetitive behavior by the assignment of overheads requires that, in view of the unique circumstances of expanded interconnection, we restrict the ability of the LECs to assign overheads based on market conditions.

¹⁵⁰ See paras. 39-46, *supra*.

¹⁵¹ See note 96, *supra*.

¹⁵² Further, we have determined that such deviations from uniform overhead loadings may, in some cases, maximize the consumer welfare created by regulated carriers. See *Transport Rate Structure and Pricing, Third Memorandum Opinion and Order on Reconsideration*, CC Docket No. 91-213, 10 FCC Rcd 3030 (1994); *Virtual Collocation Order*, 9 FCC Rcd at 5199.

IV. OTHER ISSUES

A. Overhead Loadings Assigned to Nonrecurring Charges

1. Introduction

76. The *Phase I Designation Order* directed Bell Atlantic, SWB, US West, and any other LEC proposing to recover overhead loadings from nonrecurring charges associated with virtual collocation services, to explain why this practice is reasonable.¹⁵³ The Bureau also required LECs to explain whether overhead loadings are recovered through any nonrecurring charges associated with comparable DS1 and DS3 services.¹⁵⁴

2. Pleadings

77. **Direct Cases.** The LECs defend their assignment of overhead loadings to nonrecurring charges associated with virtual collocation services. For example, US West contends that unless it assigns overhead loadings to its virtual collocation nonrecurring charges, it is unable to recover overhead costs that are not attributable solely to providing virtual collocation services.¹⁵⁵ SWB asserts that its rate structure assures recovery of its overhead costs where capital costs are incurred.¹⁵⁶ According to BellSouth, there is no need to recover overhead loadings in its nonrecurring charges for comparable services because it recovers overhead loadings through numerous recurring rate elements.¹⁵⁷

78. Ameritech asserts that the assignment of overheads to nonrecurring charges associated with virtual collocation services is consistent with the methodology for cost-based rate development that was employed by Ameritech prior to price cap regulation.¹⁵⁸ Ameritech claims that it recovers overhead loadings on nonrecurring charges associated with its comparable DS1 and DS3 services.¹⁵⁹ Bell Atlantic contends that it assigns an overhead

¹⁵³ Nonrecurring charges generally recover one-time labor costs or one-time capital outlays.

¹⁵⁴ *Phase I Designation Order* at paras. 23-24.

¹⁵⁵ US West Direct Case at 12.

¹⁵⁶ SWB Direct Case, App. 12 at 1.

¹⁵⁷ BellSouth Direct Case, Exhibit 1 at 4.

¹⁵⁸ Ameritech Direct Case at 8.

¹⁵⁹ *Id.* at 9-10.

loading to the service activation nonrecurring charge that is imposed on both virtual collocation and channel termination customers.¹⁶⁰

79. **Oppositions.** Several commenters argue that the Commission should prohibit LECs from assigning overheads to their nonrecurring charges for virtual collocation service.¹⁶¹ MFS asserts that such action would protect interconnectors against excessive nonrecurring charges.¹⁶² MFS further contends that the Commission should require SWB to tariff provisions that would allow an interconnector that pays these loaded nonrecurring charges to realize the full value and benefit of designated equipment.¹⁶³ Time Warner avers that the overhead loadings imposed by Ameritech and BellSouth should be removed unless the LEC applies the equivalent loadings to nonrecurring charges for its comparable services.¹⁶⁴

80. **Rebuttals.** In response to MFS, US West maintains that it cannot recover nonrecurring costs through recurring rates for virtual collocation service, a month-to-month offering.¹⁶⁵ US West further argues that because it does not apply annual cost factors to its one-time equipment charges, no refund mechanism is necessary.¹⁶⁶ Ameritech denies using an annual cost factor to develop its allocation of overheads to nonrecurring charges.¹⁶⁷

3. Discussion

81. The Bureau's request for information regarding overhead loadings assigned to the LECs' nonrecurring charges for virtual collocation service was aimed primarily at ensuring that LECs extend the same treatment of overhead assignment to customers of their comparable DS1 and DS3 services with the lowest overhead loadings. We are convinced that

¹⁶⁰ Bell Atlantic Direct Case at 11.

¹⁶¹ See, e.g., Fibernet Opposition at 19-20; MFS Opposition at 22-25. MFS states that Ameritech, Bell Atlantic, BellSouth, SWB, and US West engage in this practice, while CBT does not recover overhead loadings from its virtual collocation nonrecurring charges. *Id.* at 22-23.

¹⁶² *Id.* at 24.

¹⁶³ *Id.* at 25.

¹⁶⁴ Time Warner Opposition at 28.

¹⁶⁵ US West Rebuttal at 13-14. Moreover, US West notes that because it will soon be adopting a \$1 sale and repurchase arrangement, there will be no need to spread the costs of equipment out over time. *Id.* at 14.

¹⁶⁶ *Id.* at 13.

¹⁶⁷ Ameritech Rebuttal at 5-6; see also SWB Direct Case at App. 3, pp. 1-2.

the Bureau's overhead adjustment successfully accomplishes that goal. Therefore, based on the current record, we conclude that LECs may recover overhead loadings on their virtual collocation nonrecurring charges as long as these loadings do not exceed the lowest overhead loadings assigned to their comparable DS1 and DS3 services. The Bureau will examine the level of direct costs recovered by the LECs' virtual collocation nonrecurring charges, as well as the propriety of recovering recurring costs through nonrecurring charges, in the Phase II designation order in this docket.

B. Bell Atlantic's Nonrecurring Installation Charges

1. Background

82. In the *Phase I Designation Order*, the Bureau examined the overhead loading assigned to Bell Atlantic's nonrecurring virtual collocation charges for installation of a DS3 cross-connect. As the Bureau explained, Bell Atlantic's virtual collocation tariff states that the nonrecurring charge for installation of a DS3 cross-connect is set forth in a section of Bell Atlantic's special access tariff that specifies an \$1,800 charge that applies to installation of all DS3 channel termination services. The Bureau observed that interconnectors are assessed additional nonrecurring charges totaling \$8,316 in conjunction with installation of virtual collocation service.¹⁶⁸

83. The Bureau noted that the *Virtual Collocation Tariff Suspension Order* adjusted Bell Atlantic's cross-connect installation nonrecurring charge based on the lowest overhead loading assigned to a comparable DS3 service. Bell Atlantic had submitted information regarding this 23 percent loading in its cost support submission, but had not specified whether the loading is included only in recurring charges or also in the \$1,800 nonrecurring installation charge. In a subsequent *ex parte* submission, Bell Atlantic asserted that the Bureau should not have adjusted its \$1,800 cross-connect nonrecurring charge with this 23 percent overhead loading because the loading does not apply to the \$1,800 nonrecurring installation charge imposed on all DS3 channel termination services.¹⁶⁹

84. The *Phase I Designation Order* required Bell Atlantic to explain why its virtual collocation tariff imposes an \$1,800 nonrecurring charge for complete installation of a comparable DS1 special access channel termination service, but requires interconnectors to pay additional nonrecurring charges in conjunction with the installation of virtual collocation services. Further, the Bureau asked Bell Atlantic to submit data showing the overhead loadings and direct cost studies for all of the nonrecurring charges associated with its comparable DS1 and DS3 services.¹⁷⁰

¹⁶⁸ *Phase I Designation Order* at para. 25.

¹⁶⁹ *Id.* at paras. 26-27.

¹⁷⁰ *Id.* at para. 28.

2. Pleadings

85. **Direct Case.** Bell Atlantic asserts that its installation nonrecurring charges for virtual collocation recover the unique costs associated with engineering and installation of the different types of interconnector-designated equipment.¹⁷¹ Bell Atlantic submits that it recovers these costs through rate elements unique to collocation; once these activities have been completed, it charges interconnectors the same \$1,800 service activation fee that it assesses customers of its comparable channel termination service.¹⁷²

86. Bell Atlantic maintains that the installation costs for its comparable DS1 and DS3 services are capitalized and recovered through the capital costs included in the recurring charges for those services. Bell Atlantic asserts that because there are no capital costs associated with the maintenance of the interconnector-designated equipment, the installation costs for this equipment had to be recovered through discrete rate elements.¹⁷³

87. **Opposition.** MFS disputes Bell Atlantic's claim that virtual collocation service necessitates nonrecurring charges for installation, design, and engineering of interconnector-designated equipment. MFS notes that in most cases, it designates the same equipment Bell Atlantic uses.¹⁷⁴

88. **Rebuttal.** Bell Atlantic reiterates its earlier arguments, and submits that its installation costs do not vary based on whether or not it uses the same type of equipment as the interconnector.¹⁷⁵

3. Discussion

89. In its direct case, Bell Atlantic seeks to demonstrate that its cross-referenced \$1,800 virtual collocation cross-connect nonrecurring installation charge recovers the same costs as the \$1,800 "service activation charge" imposed on customers of its DS3 channel termination services. To justify the virtual collocation nonrecurring charges assessed in addition to this \$1,800 installation charge, Bell Atlantic states that it recovers additional installation costs from customers of its comparable DS1 and DS3 services, but that it recovers such costs through recurring charges. Bell Atlantic's direct case cost submission, however, does not support its position.

¹⁷¹ Bell Atlantic Direct Case at 13-15.

¹⁷² *Id.* at 14.

¹⁷³ *Id.* at 14-15 n.15.

¹⁷⁴ MFS Opposition at 12-13.

¹⁷⁵ Bell Atlantic Rebuttal at 10.

90. As an initial matter, Bell Atlantic's direct case fails to verify that the cross-referenced \$1,800 installation charge for virtual collocation cross-connects recovers the same costs as the \$1,800 service activation charge imposed on customers of its comparable DS3 services. Bell Atlantic has also omitted crucial data regarding the installation costs recovered by recurring charges associated with its DS3 channel termination service. For example, Bell Atlantic has failed to populate the Installation Function chart contained in the Bureau's Tariff Review Plan for this comparable DS3 service. In the *Phase I Designation Order*, the Bureau required Bell Atlantic to delineate the installation costs recovered by the rates associated with Bell Atlantic's comparable services.¹⁷⁶

91. Nor has Bell Atlantic submitted on the record any additional data regarding the overhead loading assigned to the \$1,800 nonrecurring installation charge associated with its comparable DS3 channel termination service. Based on the current record, we conclude that the Bureau properly adjusted Bell Atlantic's virtual collocation cross-connect nonrecurring installation charge based on the lowest loading for Bell Atlantic's comparable DS3 service: the 23 percent overhead loading submitted in conjunction with the September 1, 1994 virtual collocation tariff filing. The Bureau will seek information as to the level of the direct costs recovered by Bell Atlantic's virtual collocation nonrecurring installation charge in the Phase II designation Order in this docket.

V. OVERHEAD LOADING PRESCRIPTION

A. SWB, CBT, and Ameritech

1. Background

92. In the *Phase I Designation Order*, the Bureau required LECs to provide certain direct cost data that they had failed to submit in response to the *TRP Order*.¹⁷⁷ The Bureau observed that the LECs neither submitted disaggregated investment amounts by service component nor the annual cost factors applied to each unit investment component of their comparable DS1 and DS3 services.¹⁷⁸ The Bureau also directed LECs, *inter alia*, to explain

¹⁷⁶ *Phase I Designation Order* at para. 17(d).

¹⁷⁷ For example, the Bureau observed that LECs neither submitted disaggregated investment amounts by service component nor the annual cost factors applied to each unit investment component of their comparable DS1 and DS3 services. *Phase I Designation Order* at para. 16. The Bureau also directed LECs, *inter alia*, to explain whether they applied annual cost factors in the same manner to the investment components of their comparable services and virtual collocation services. *Id.*

¹⁷⁸ *Id.* at para. 16.

whether they applied annual cost factors in the same manner to the investment components of their comparable services and virtual collocation services.¹⁷⁹

93. Although the LECs claim in their direct cases that their cost support data demonstrate that they applied annual cost factors to their investment components in the same manner that they applied annual cost factors to their comparable DS1 and DS3 services,¹⁸⁰ Ameritech, CBT, and SWB requested confidential treatment of their disaggregated direct cost information.¹⁸¹ Earlier in the expanded interconnection proceeding, Ameritech and CBT requested confidential treatment of the overhead loading and direct cost data associated with their comparable DS1 and DS3 services.¹⁸²

2. Pleadings

94. **Direct Cases.** Ameritech and CBT assert that the disaggregated investment information for each component of their DS1 and DS3 services constitutes trade secrets. SWB maintains that disclosure of its direct cost materials "could substantially harm the competitive position of SWB or its suppliers."¹⁸³

95. **Oppositions.** Commenters urge the Bureau to reject the LECs' requests for confidential treatment of direct case data.¹⁸⁴ MCI asserts that in light of the LECs' incentives to engage in price discrimination, it is essential that they provide complete cost support on the public record. Moreover, MCI avers that SWB, Ameritech, and CBT offer no justification as to why their cost support should be treated as confidential.¹⁸⁵ MCI argues

¹⁷⁹ *Id.* at para. 17(c).

¹⁸⁰ *See, e.g.*, Ameritech Direct Case at 3; CBT Direct Case, App. A at 1.

¹⁸¹ *See* Letter from Michael S. Pabian, Ameritech (March 21, 1995); Letter from Alfred J. Titus, Jr., CBT (March 21, 1995); Letter from Thomas A. Pajda, SWB (March 21, 1995). On April 14, 1995, MFS filed FOIA requests to obtain cost support data filed with the direct cases of SWB and CBT.

¹⁸² *See* Letter from Alfred J. Titus, Jr., CBT (May 20, 1994); Letter from Michael S. Pabian, Ameritech (November 23, 1994).

¹⁸³ *See* Letter from Thomas A. Pajda, SWB (March 21, 1995).

¹⁸⁴ ALTS Opposition at 8-10; Fibernet Opposition at 5 (with respect to SWB); MCI Opposition at 5-10; MFS Opposition at 2-5, 13; Teleport Opposition at 1-2; Time Warner Opposition at 5-6 .

¹⁸⁵ MCI Opposition at 5-10. MCI asserts, however, that the Bureau correctly ruled that the public interest would best be served, without harming SWB or its vendors, by releasing SWB's cost support for its virtual collocation rates under the restrictions of a protective order. *Id.* at 6 n.15 (citing *November 1, 1994 FOIA Ruling*).

that the public interest will best be served by allowing all interested parties to participate fully in the ongoing expanded interconnection proceedings.¹⁸⁶ ALTS recommends that the Bureau's overhead adjustments remain in effect pending the submission of direct case data and the Commission's ultimate disposition of the overhead loading issue.¹⁸⁷ MFS and Fibernet complain that they have not been permitted to review SWB's cost support for its initial virtual collocation tariff filing because of SWB's pending application for review of the Bureau's protective Order.¹⁸⁸

96. **Rebuttals.** SWB argues that commenters have not provided a sufficient reason to release SWB's cost and overhead data.¹⁸⁹ CBT replies that its detailed, disaggregated investment information for each component of its DS1/DS3 access services constitutes trade secrets, and is precisely the type of information that the Commission's confidentiality rules are designed to protect.¹⁹⁰ Moreover, CBT avers, the "public version" of its direct case contains sufficient information for parties to evaluate CBT's tariff. CBT also submits that it is willing to discuss disclosure of the data to interested parties pursuant to a nondisclosure agreement.¹⁹¹ Ameritech clarifies that it did not seek confidential treatment of all cost data associated with its interconnection services, only newly developed information concerning the forward-looking costs associated with its DS1 and DS3 access services. According to Ameritech, these data did not play a role in setting the current rates for these services. In addition, Ameritech maintains that it has justified its request for confidentiality.¹⁹²

3. Discussion

97. Based on our review of these LECs' direct cases and accompanying cost support data filed in response to the *Phase I Designation Order*, including the information for which confidentiality is sought, and for the reasons discussed above, we affirm the Bureau's finding that SWB has failed to meet its burden of proof under Section 204(a) of the Act of demonstrating that its overhead loading levels are just and reasonable. Thus, we conclude that SWB has not shown that its virtual collocation rates are just and reasonable and in

¹⁸⁶ MCI Opposition at 7; *see also* ALTS Opposition at 9.

¹⁸⁷ ALTS Opposition at 10.

¹⁸⁸ MFS Opposition at 2-3; Fibernet Opposition at 4. Fibernet maintains that it will supplement its response when it is allowed access to SWB's data. Fibernet Opposition at 5.

¹⁸⁹ SWB Rebuttal at 1-4.

¹⁹⁰ CBT Rebuttal at 1-2.

¹⁹¹ *Id.* at 2.

¹⁹² Ameritech Rebuttal at 6-8. Ameritech does not object to disclosure to interested parties subject to a protective agreement that is enforced by the Commission. *Id.* at 8 n.25.

compliance with the Act. Therefore, pending resolution of SWB's request for confidential treatment, we will prescribe on an interim basis the maximum permissible overhead loading levels for SWB pending further investigation. We also affirm, on an interim basis, the Bureau's conclusion that Ameritech's and CBT's overhead loadings appear to comport with this Commission's overhead loading standard. We make this latter conclusion on an interim basis because, depending on what is contained in additional materials that may be in the record after we resolve the confidentiality issue, our conclusion could be different.

98. We note that we are proceeding with an interim prescription for SWB despite the fact that the public record may be supplemented when the confidentiality issue is resolved because we believe that the public interest requires that we take immediate steps to ensure that rate levels based on reasonable overhead loadings are in place. Otherwise, the Commission's virtual collocation policy, designed to open the interstate access service market to greater competition, could be thwarted by the delay in resolving the LECs' requests for confidential treatment of their cost support data. For this reason, we believe that ensuring rate stability pending a final prescription of overhead loading levels is important to achieving the Commission's public interest goals in the virtual collocation proceeding.

99. Our interim prescription is subject to adjustment in either direction at the conclusion of our investigation. We hereby establish a two-way adjustment mechanism that will protect both SWB and its interconnector customers until we finally prescribe just and reasonable overhead loading levels for SWB. Accordingly, we will provide an opportunity for carrier recoupment if, at the conclusion of our investigation, we determine that the interim rates are below a just and reasonable level. Conversely, our arrangement will provide an opportunity for interconnectors to receive refunds if we later conclude that interim rates are above the just and reasonable level. We find support for our action in the *Lincoln Telephone* decision,¹⁹³ which provided the basis for our interim overhead loading prescription in the physical collocation tariff proceeding.¹⁹⁴

100. In light of the current record, we believe that a prescription of the maximum level of overhead loadings that is based on the interim overhead adjustment set forth in the *Virtual Collocation Tariff Suspension Order* will prevent unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, without hampering SWB's ability to compete effectively. Accordingly, pursuant to our authority under Section

¹⁹³ *Lincoln Telephone and Telegraph's Duty to Furnish Interconnection Facilities to MCI Telecommunications Corporation*, Declaratory Order, 72 FCC 2d 724 (1979), *aff'd*, 652 F.2d 136 (D.C. Cir. 1981) (*Lincoln Telephone*).

¹⁹⁴ *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access*, CC Docket No. 93-162, Phase I, First Report and Order, 8 FCC Rcd 8344 (1993).

4(i) of the Communications Act, 47 U.S.C. § 154(i),¹⁹⁵ and ancillary to our authority under Sections 201 and 205 of the Communications Act, 47 U.S.C. §§ 201 and 205, to require interconnection at just and reasonable rates, and to prescribe lawful rates, we prescribe on an interim basis the maximum permissible overhead loadings for SWB. Appendix C to this Order sets forth Rate Adjustment Factors (RAFs) that SWB must apply to its virtual collocation rates filed between September 1, 1994 and December 9, 1994. In addition, SWB must apply the relevant RAFs in Appendix C to its virtual collocation rates filed between December 9, 1994 and the release date of this Order. These RAFs, when multiplied by the relevant rates, will result in rates that reflect the maximum permissible overhead loading levels for the interim period, pending our further investigation.

B. Bell Atlantic, BellSouth, GTE, United, and US West

101. Based on our review of the LECs' direct cases and accompanying cost support data filed in response to the *Phase I Designation Order*, we affirm the Bureau's finding that Bell Atlantic, BellSouth, GTE, United (except as discussed below), and US West have failed to meet their burden of proof under Section 204(a) of demonstrating that their overhead loading amounts are just and reasonable. Thus, we conclude that these LECs have not shown that their virtual collocation rates are just and reasonable in compliance with the Act, and therefore find these rates to be unlawful. With respect to United, however, we note that the Bureau's *Virtual Collocation Tariff Suspension Order* did not adjust the overhead loading levels for two study areas within the United companies, Central of North Carolina and Central of Virginia.¹⁹⁶ Based on the record before us, we now affirm that the overhead loading levels for these two United study areas comport with this Commission's overhead loading standard and we, therefore, conclude that these overhead loadings are not unlawful.¹⁹⁷

102. We conclude that a final prescription of the maximum level of overhead loadings that is based on the interim overhead adjustment set forth in the *Virtual Collocation Tariff Suspension Order* will adequately prevent unreasonable discrimination against interconnectors seeking to compete in the interstate access service market, without hampering the LECs' ability to compete effectively. Accordingly, pursuant to our authority under Sections 201 and 205 of the Act, 47 U.S.C. §§ 201 and 205, to require interconnection at just and reasonable rates and to prescribe lawful rates, we prescribe on a permanent basis the maximum permissible overhead loadings for virtual collocation services. Appendix C to this Order sets forth RAFs for these LECs that these LECs must apply to their virtual collocation

¹⁹⁵ Section 4(i) gives the Commission authority to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Section 4(i) of the Act, 47 U.S.C. § 154(i).

¹⁹⁶ See *Virtual Collocation Tariff Suspension Order*, Appendix C at 2.

¹⁹⁷ See para. 104, *infra*.

rates filed between September 1, 1994 and December 9, 1994. In addition, LECs must apply these RAFs to their virtual collocation rates filed between December 9, 1994 and the release date of this Order. These RAFs, when multiplied by the relevant rates, will result in rates that reflect the maximum permissible overhead loading levels.

VI. CONCLUSION

103. We have reviewed the LECs' direct cases, the oppositions, and the rebuttals. In light of the current record, we find that most LECs have not justified their proposed overhead loadings, and that these LECs' rates for virtual collocation service are therefore unlawful. With respect to SWB, we find that our interim prescription of the maximum overhead loading levels, subject to any necessary adjustment and to possible refunds or supplemental payments, is the most reasonable and practical method of promoting the public interest in ensuring that virtual collocation service is available at fair rates pending the conclusion of our investigation of its overhead loading levels. Our final prescription of the maximum overhead loading levels for Bell Atlantic, BellSouth, GTE, United, and US West will ensure that these LECs' overhead loadings are set at just and reasonable levels.

VII. ORDERING CLAUSES

104. Accordingly, **IT IS ORDERED**, pursuant to Sections 204(a) and 201(b) of the Communications Act, 47 U.S.C. §§ 204(a) and 201(b), that the rates for virtual collocation service subject to this investigation filed by Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, Southwestern Bell Telephone Company, United and Central Telephone Companies (except for Central of North Carolina and Central of Virginia), and US West Communications, Inc., are unjust and unreasonable, and therefore unlawful.

105. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i), 201, and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 201, and 205, that during the interim period from May 15, 1995 to the conclusion of the investigation, the rates for virtual collocation service filed by Southwestern Bell Telephone Company shall be determined by applying the relevant Rate Adjustment Factors (RAFs) set forth in Appendix C to this Order to their virtual collocation rates filed between September 1, 1994 and December 9, 1994. Southwestern Bell Telephone Company also must apply these RAFs to its virtual collocation rates filed between December 9, 1994 and the release date of this Order.

106. **IT IS FURTHER ORDERED**, pursuant to Sections 201 and 205 of the Communications Act, 47 U.S.C. §§ 201 and 205, that the rates for virtual collocation service filed by Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. shall be determined by applying the RAFs set forth in Appendix C to this Order to their virtual collocation rates filed between September 1, 1994 and December 9, 1994. These local exchange carriers also must apply

these RAFs to their virtual collocation rates filed between December 9, 1994 and the release date of this Order.

107. **IT IS FURTHER ORDERED** that the local exchange carriers listed in Appendix A must file tariff pages, within five business days from the release date of this Order, to become effective on one day's notice, which reflect the revised rates consistent with this Order. Such revised tariff pages should clearly reflect that the revised rates for virtual collocation service are effective May 15, 1995. For this purpose, Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58 and 61.59, **ARE WAIVED**. Local exchange carriers shall cite the "DA" number of this Order as the authority for this filing.

108. **IT IS FURTHER ORDERED** that the investigation of the overhead loadings assigned to the virtual collocation rates filed by the Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. is hereby terminated.

109. **IT IS FURTHER ORDERED** that for Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of all other issues designated in the investigation of the virtual collocation tariffs. Thus, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), these local exchange carriers **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

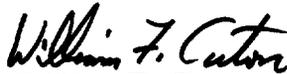
110. **IT IS FURTHER ORDERED** that the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of all issues regarding the virtual collocation tariffs filed by Ameritech Operating Companies and Cincinnati Bell Telephone Companies. Thus, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), Ameritech Operating Companies and Cincinnati Bell Telephone Companies **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid. If, at the conclusion of the investigation of these local exchange carriers' virtual collocation rates, the Commission determines that the rates in effect between September 4, 1994 and December 14, 1994; December 15, 1994 and May 15, 1995; and May 15, 1995 through the conclusion of our investigation, are above just and reasonable levels, we may require these local exchange carriers to pay refunds to interconnectors for services rendered during these periods.

111. **IT IS FURTHER ORDERED** that the accounting order set forth in the Bureau's December 9, 1994 *Virtual Collocation Tariff Suspension Order* shall remain in effect pending resolution of the investigation of all issues regarding the virtual collocation tariffs filed by Southwestern Bell Telephone Company. Thus, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i) and 204(a), Southwestern Bell Telephone Company **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid. If, at the conclusion of the investigation of Southwestern Bell Telephone Company's rates, the Commission determines that the interim rates pursuant to this Order and/or the rates in effect during the suspension period are above just and reasonable levels, we may require Southwestern Bell Telephone Company to pay refunds to interconnectors for services rendered during the following three periods: (1) September 4, 1994 through December 14, 1994; (2) December 15, 1994 through May 15, 1995; and (3) May 15, 1995 through the conclusion of our investigation. If we determine that SWB's interim rates pursuant to this Order are below just and reasonable levels, we may require interconnectors to pay additional charges to Southwestern Bell Telephone Company for services rendered during the periods described above.

112. **IT IS FURTHER ORDERED** that the Bell Atlantic Telephone Companies, BellSouth Telephone Company, GTE System Telephone Companies, GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc., shall refund any monies collected above their rates as adjusted pursuant to this Order for virtual collocation service from their customers during the period between September 4, 1994 and December 15, 1994.

113. **IT IS FURTHER ORDERED** that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

LECs Filing Direct Cases

Ameritech Operating Companies (Ameritech)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telecommunications, Inc. (BellSouth)
Cincinnati Bell Telephone Companies (CBT)
GTE System Telephone Companies (GSTC)*
GTE Telephone Operating Companies (GTOC)*
Southwestern Bell Telephone Company (SWB)
United and Central Telephone Companies (United)
US West Communications, Inc. (US West)

*In most instances, GTOC and GSTC are referred to collectively as GTE.

APPENDIX B

Parties Filing Oppositions to the LECs' Direct Cases

Association for Local Telecommunications Services (ALTS)
(Ameritech, Bell Atlantic, BellSouth, SWB, US West)

Electric Lightwave, Inc. (ELI)
(US West)

Kansas City Fibernet, L.P. (Fibernet)
(SWB)

MCI Communications Corporation (MCI)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

McLeod Telemanagement, Inc. (McLeod)
(US West)

MFS Communications Company, Inc. (MFS)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

Teleport Communications Group, Inc. (Teleport)
(Ameritech, Bell Atlantic, BellSouth, GTE, SWB, US West)

Time Warner Communications Holdings, Inc. (Time Warner)
(Ameritech, Bell Atlantic, BellSouth, CBT, GTE, SWB, United, US West)

Appendix C
Rate Adjustment Factors

List of Companies and Study Areas

#	Company	Study Area	Rate Adjustment Factor
1	Ameritech	Illinois	no
2		Indiana	no
3		Michigan	no
4		Ohio	no
5		Wisconsin	no
6	Bell Atlantic	Composite	yes
7	Bell South	Composite	yes
8	Cincinnati Bell	Composite	no
9	GTE System Telephone Companies	Arkansas	yes
10		California	yes
11		Illinois	yes
12		Missouri	yes
13		Texas	yes
14		Virginia	yes
15		Washington	yes
16	GTE Telephone Operating Companies	California	yes
17		Florida	yes
18		Hawaii	yes
19		Idaho	yes
20		Illinois	yes
21		Indiana	yes
22		Kentucky	yes
23		Michigan	yes
24		Missouri	yes
25		North Carolina	yes
26		Ohio	yes
27		Oklahoma	yes
28		Oregon	yes
29		Pennsylvania	yes
30		South Carolina	yes
31		Texas	yes
32		Washington	yes
33		Wisconsin	yes
34	Southwestern Bell	Composite	yes
35	Sprint / United	Florida	yes
36		Indiana	yes
37		Missouri	yes
38		North Carolina	yes
39		Ohio	yes
40		Pennsylvania	yes
41		Tennessee & Virginia	yes
42	Sprint / Central	Florida	yes
43		Illinois	yes
44		Nevada	yes
45		North Carolina	no
46		Virginia	no
47	U S West	Composite	yes

Bell Atlantic EIS Overhead Analysis

Virtual EIS Rate Elements		Proposed Rate	Direct Cost	Overhead Factor	Allowed Overhead Factor	Overhead Rate Adj. Factor
		(a)	(b)	(c) = (a/b)	(d)	(e) = (d/c)
1	DS1 X-Connect	\$2.52	\$1.53	1.65	1.35	0.82
2	DS3 X-Connect	\$38.45	\$23.30	1.65	1.23	0.75
3	DS1 Connection Service	\$61.86	\$37.49	1.65	1.35	0.82
4	DS3 Connection Service	\$237.86	\$144.16	1.65	1.23	0.75
5	Cable Support Fee	\$240.92	\$146.01	1.65	1.23	0.75
6	DS1 X-Connect, install-first NRC	\$720.00	\$705.26	1.02	1.02	1.00
7	DS1 X-Connect, install-add'l NRC	\$400.00	\$283.81	1.41	1.35	0.96
8	DS1 X-Connect, rearrange-first NRC	\$425.00	\$410.90	1.03	1.03	1.00
9	DS1 X-Connect, rearrange-first NRC	\$200.00	\$132.34	1.51	1.35	0.89
10	DS3 X-Connect NRC	\$1,800.00	\$705.26	2.55	1.23	0.48
11	Design and Planning Fee NRC	\$2,227.58	\$2,227.58	1.00	1.00	1.00
12	Equipment Installation NRC	\$5,592.20	\$5,592.20	1.00	1.00	1.00
13	Training Fee - Lodging & Meals NRC	\$107.37	\$107.37	1.00	1.00	1.00
14	Cable Installation Fee NRC	\$497.26	\$497.26	1.00	1.00	1.00

BellSouth EIS Overhead Analysis

Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X-Connect	\$7.50	\$5.76	1.30	1.30	1.00
2	DS3 X-Connect	\$62.50	\$48.17	1.30	1.17	0.90
3	Cable Support Structure (per cable)	\$15.00	\$11.41	1.31	1.17	0.89
4	Floor Space (per sq. ft.)	\$5.00	\$2.74	1.82	1.17	0.64
5	Floor Space (per ampere)	\$4.00	\$2.98	1.34	1.17	0.87
6	DS1 X-Connect - (1st) NRC	\$155.00	\$127.13	1.22	1.22	1.00
7	DS3 X-Connect - (1st) NRC	\$155.00	\$129.62	1.20	1.17	0.98
8	DS1 X-Connect - (add'l) NRC	\$14.00	\$10.78	1.30	1.30	1.00
9	DS3 X-Connect - (add'l) NRC	\$13.00	\$10.15	1.28	1.17	0.91
10	Application Fee NRC	\$3,130.00	\$2,446.61	1.28	1.17	0.91
11	Cable Installation (per cable) NRC	\$2,750.00	\$2,536.04	1.08	1.08	1.00

GSTC Arkansas EIS Overhead Analysis

Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)	Allowed Overhead Factor (d)	Overhead Rate Adj. Factor (e) = (d/c)
1	DS1 X-Connect	\$2.90	\$1.84	1.57	1.24	0.79
2	DS3 X-Connect	\$27.55	\$17.48	1.58	1.13	0.72
3	Power Equipment	\$194.46	\$183.63	1.06	1.13	1.00
4	Maintenance Fee	\$170.52	\$157.57	1.08	1.13	1.00
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.13. The Rate Adjustment Factor so developed must be applied on a per wire center basis.

GSTC California EIS Overhead Analysis

Virtual EIS Rate Elements		Proposed Rate	Direct Cost	Overhead Factor	Allowed Overhead Factor	Overhead Rate Adj. Factor
		(a)	(b)	(c) = (a/b)	(d)	(e) = (d/c)
1	DS1 X-Connect	\$4.32	\$2.64	1.63	1.63	1.00
2	DS3 X-Connect	\$35.23	\$21.51	1.64	1.02	0.62
3	Power Equipment	\$246.31	\$228.35	1.08	1.02	0.95
4	Maintenance Fee	\$293.94	\$278.91	1.05	1.02	0.97
5	Cable Space *					

* Company is required to apply a Rate Adjustment Factor for each proposed wire center. The Rate Adjustment Factor must be based on the proposed rate, direct cost, proposed overhead factor, and an allowed overhead factor of 1.02. The Rate Adjustment Factor so developed must be applied on a per wire center basis.