

F.C.C. 69-371

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of  
FREE OR REDUCED RATE INTERCONNECTION  
SERVICE FOR NONCOMMERCIAL EDUCATIONAL  
BROADCASTING } Docket No. 18316

REPORT AND ORDER

(Adopted April 9, 1969)

BY THE COMMISSION: COMMISSIONERS WADSWORTH AND JOHNSON  
ABSENT.

I. BACKGROUND

1. The Commission has under consideration its notice of proposed rulemaking, F.C.C. 68-909, issued on September 6, 1968 (33 F.R. 12853, Sept. 11, 1968), inviting comments on a proposed rule designed as a first step toward implementing the provisions of new section 396(h) of the Communications Act of 1934. The rule provided that such service may be rendered and required the reporting of various data pertinent thereto.

2. Timely comments were filed by 21 parties, including carriers, broadcasters, associations, States, the Ford Foundation, and the U.S. Department of Health, Education, and Welfare (HEW). The original deadline for reply comments of October 28, 1968, was extended to November 18, 1968, upon motion of the American Telephone & Telegraph Co. (A.T. & T.). Prior to that date, reply comments were received from A.T. & T., United States Independent Telephone Association (USITA), and the State Education Department of the University of the State of New York.

3. Subsequent to our adoption of the notice of proposed rulemaking in this proceeding, negotiations between A.T. & T. and the Corporation for Public Broadcasting (CPB) resulted in a special 6-month experimental tariff offering to CPB which became effective December 1, 1968. This tariff, now scheduled to expire May 31, 1969, provides for interconnection service to 57 points for 2 hours of prime time per night, 5 nights per week, at a charge generally of \$43 per point connected per occasion of use. While this provides service at substantially lower charges than would apply if commercial rates were charged, the tariff also provides that, because the service is provided through spare channels, the telephone company reserves the right to preempt any portion of the CPB service without prior notice whenever the spare channels are required for commercial customers. From the beginning of this service, there have been a number of short-notice preemptions of the CPB service in favor of commercial users.

## II COMMENTS RECEIVED

4. Generally, those commenting support the proposed rule as a first step toward meeting the established desires for greatly increased interconnection of educational broadcast stations at a price they can afford. The comments recite the benefits to the public of interconnected educational broadcasting and the alleged prohibitive cost thereof at commercial rates. The most common recommendation of these parties is that the frequency of reporting be increased to at least quarterly and that provisions be made for reporting pending requests for free or reduced rate interconnection service.

5. In its initial comments, A.T. & T. noted that it recognizes the public interest in the development of educational broadcasting and cites its tariff providing for a trial of interruptible interconnection service to the Corporation for Public Broadcasting at charges substantially lower than commercial charges. A.T. & T. has no objections to the proposed rule, but asks that, in cases where service is requested and furnished at less than cost to the carrier, the Commission require that such service be subject to its approval upon determination of public interest and that all such expenses be treated as operating expenses so that the users of communications services, rather than the stockholders, would bear the cost. In its reply comments, A.T. & T. states that it has no objection to the increase in frequency of the reports to a quarterly basis, but believes that the Commission could be sufficiently informed of pending requests by the expedient of requiring copies of applications by broadcasters and denials by carriers regarding free or reduced service to be filed with the Commission. In addition, A.T. & T. opposes the proposal of some of the parties that carriers report their intention to deny a proposal. A.T. & T. also points to the language of section 396 (h) as being permissive rather than mandatory.

6. USITA, the only other party to advance the point of view of the carriers, noted in its initial comments that while it has no objection to the proposed rule, it urges the Commission to consider what it believes to be serious problems presented to the independent telephone industry in that, unlike the situation generally with interexchange channels, idle facilities are not likely to be available for locally situated studio-transmitter or network access lines so that new construction would generally be required to provide initial service in the territory of independent, non-Bell companies. Where this construction is performed by such an independent telephone company, the company must go before a State regulatory commission to make up any loss. In its reply comments, USITA follows A.T. & T. in emphasizing that, contrary to the position taken by the Ford Foundation, HEW, and others, it does not read the language of section 396 (h) as a "mandate" to the Commission to insure that free or reduced rates are provided to educational broadcasting. Rather, USITA construes section 396 (h) as merely providing a defense to a complaint by a third party that free or reduced rates for service to educational broadcasting are unduly discriminatory. USITA has no problem with a requirement for more frequent reports, but suggests that a portion of the information might be supplied by filing copies of requests and denials for service with the Commission. In addition to the issue of the proposed rule, USITA emphasizes its belief that the Commission should act promptly to

resolve the questions of whether or not carriers can be required to provide free or reduced rate service and construction and how the costs of these are to be borne.

7. In the comments of HEW, it is suggested that the provision of free or reduced rates should not be limited to broadcasting facilities, but could include closed local distribution systems since § 396(h) states that free or reduced rate interconnection services may be provided " \* \* \* for noncommercial educational television or radio *services* \* \* \* ." (Emphasis supplied.) USITA's response objects to this interpretation on the ground that the interconnection services to be supplied are defined in the act (§ 397(8)) as providing for " \* \* \* the transmission and distribution of television or radio programs to noncommercial educational television or radio *broadcast* stations." (Emphasis supplied.) And therefore, section 396(h) cannot be read to comprehend interconnection services provided to nonbroadcasters or for nonbroadcast purposes.

### III CONCLUSIONS

8. Inasmuch as the proposed rule appears desirable for the efficient discharge of the Commission's duties at this stage of the implementation of section 396(h), we intend to adopt it, with certain of the suggested modifications. First, we agree with the majority of the comments received that reports should be made more frequently than every 6 months, at least initially, and we are, therefore, changing the reporting period to a quarterly basis. In regard to the issue of reporting pending requests and denials of requests for free or reduced rate service, it appears that this area can be adequately covered by including a requirement in the rule that the carrier's report shall identify all unfulfilled pending requests for service. In those cases where time is of the essence, or the prospective user believes needed service is being improperly delayed or denied, the Commission's established informal complaint procedures should provide adequate and timely relief.

9. We wish to make clear at this point that we construe an ultimate objective of the Public Broadcasting Act of 1967 to be the rendition of free or reduced rate interconnection service that is comparable in all material respects with service furnished commercial users at published tariff rates with the only difference in treatment being the free or reduced rate. Therefore, we consider the present experimental tariff offering by A.T. & T. to CPB only as an interim step toward meeting the ultimate objective because the terms and conditions of the offering, particularly the provision for preemption without prior notice, significantly distinguish the quality of this service from commercial service. We, therefore, expect that the carriers will proceed expeditiously to equip themselves with facilities necessary to fulfill the objectives of the act. Furthermore, it should be made clear that carriers are not precluded from providing special classes of interconnection services for educational broadcast stations at low rates under tariffs filed with us. However, the rule we are adopting is intended to apply only to those situations where the same services or facilities offered under tariffs filed with us are furnished, or are requested to be furnished, for the interconnection of educational broadcast stations either at no charge or at charges below those published in the tariffs.

10. In regard to the scope of section 396(h), we agree with USITA

that this section should not be construed as providing for free or reduced rates for interconnection among nonbroadcast stations. Section 397(8) states that, for the purpose of the act, "The term 'interconnection' means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to noncommercial educational television or radio *broadcast* stations," 47 U.S.C. 397(8). (Italic supplied.)

11. Finally, we understand the concern of the carriers as to how the costs of service rendered pursuant to section 396(h) are to be recovered by the carriers. We believe that it is desirable to state the Commission's policy in this area so far as it is possible at this time. Consistent with the policy of the Public Broadcasting Act, it is reasonable and appropriate that all costs, including the cost of new construction, shall be treated as related to common carrier interstate service and as such shall be included in the carriers total interstate rate base and operating expenses. It should also be made clear that, although the language of section 396(h) is permissive, the national policy expressed is that the public interest is served by the expansion of noncommercial educational broadcasting service to the public through free or reduced rate interconnection common carrier services for educational broadcast stations. While we need not definitively resolve the question raised by USITA as to whether or not the Commission can require or order common carriers to provide such free or reduced rate service, we do believe that we have ample authority to promote the congressional purpose and the public interest in this important area.

12. Authority for the adoption of the addition contained herein is contained in sections 4(i), 218, 219(b), and 396(h) of the Communication Act of 1934, as amended.

13. In view of the foregoing, *It is ordered*, That effective July 1, 1969, part 43 of the Commission's rules is amended to add section 43.74 to read as follows:

Section 43.74 Service rendered free or at reduced rates pursuant to section 396(h) of the act; reports relative thereto.

Any common carrier subject to the Communications Act may render free or reduced rate communications interconnection services for noncommercial educational television or radio services, subject to the rules contained in this part. Every carrier furnishing such service shall make and file, in duplicate, with the Commission within 40 days after the end of each calendar quarter, two certified copies of reports covering each quarter of the year. The reports shall show the call signs and locations of the stations to which such service was rendered pursuant to this rule and the dates such service was rendered; the names of any agency, corporation or association of stations, other than the stations interconnected, to which service was charged or credited; the general character of the service provided; the charges in dollars which would have accrued to the carrier for such services rendered if all charges for such services had been calculated at the published tariff rates; the charges in dollars, if any, actually made or credited for such service; the name and address of any person whose request for such service is pending as of the last day of the reporting period, the date of such request, a general description of the service requested, and the expected date of decision on the pending request; the name and address of any person whose request for such free or reduced rate service has been denied during the reporting period together with a general description of the service requested, and the reasons for such denials of service and the dates thereof.

FEDERAL COMMUNICATIONS COMMISSION,  
BEN F. WAPLE, *Secretary*.