

Oct 22 7 41 AM '96

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

OCT 21 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
)  
Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
as a Non-Dominant Carrier )  
)  
Implementation of Section 254(g) )  
of the Communications Act of 1934, )  
as amended )

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

---

**Opposition to Petition for Reconsideration**

The United States Telephone Association (USTA) respectfully submits this opposition to AT&T's Petition for Reconsideration ("AT&T Petition") of the Federal Communications Commission's (Commission)'s Report and Order dated August 7, 1996.<sup>1</sup> USTA is the principal trade association of the local exchange carrier ("LEC") industry. Its members provide a wide variety of telecommunications services, including interstate, interexchange service. This opposition is filed pursuant to Sections 1.429(f) and 1.49(b)(1) of the Commission's rules. 47 C.F.R. §§ 1.429(f); 1.4(b)(1).

**I. The Commission Correctly Declined To Forbear From Enforcing Section 254(g) Because of Competitive Conditions Faced by Subject Carriers**

In the Order, the Commission concluded that AT&T failed to justify forbearance from the toll rate averaging requirements of Section 254(g) of the Communications Act based on the existence of competing regional carriers. The Commission concluded that

---

<sup>1</sup>In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, FCC 96-331, Report and Order (released August 7, 1996)("Order"); see FCC 96-123, Notice of Proposed Rulemaking (released March 25, 1996)("Notice"). The Order appeared in the Federal Register on October 4, 1996.

No. of Copies rec'd 028  
List A B C D E

AT&T had not demonstrated a basis for forbearance because its claims were based entirely on “generalized assertions.” Order, para. 39. AT&T now repeats those generalized assertions, submitting that its need for such a “competitive exception” is “so obvious that even ‘generalized assertions’ more than justify relief on reconsideration.” AT&T Petition at 2. In other words, AT&T has no new arguments to support its position. Accordingly, AT&T’s Petition should be denied.

AT&T’s argument is apparently premised on the fact that other carriers affiliated with incumbent LECs can offer a complete package of local, toll and cellular services, with the charges rendered on a single bill. See, e.g., AT&T Petition at 3. AT&T claims that, although it too is certified to provide local services, and already provides both toll and wireless services, it cannot “reasonably offer such [packaged] services because it cannot successfully negotiate interconnection agreements or obtain effective wholesale rates.” Id., at 3, n.2. Whatever the truth of AT&T’s concerns with interconnection, they are best addressed directly, not by permitting AT&T to avoid the toll rate averaging requirements of the Act as compensation.<sup>2</sup>

Moreover, AT&T’s concerns about competition are overstated. The Commission’s most recent report found that AT&T retains the largest market share of any long-distance carrier by any measure. AT&T’s toll revenues have steadily increased for the last 10 quarters - topping out at \$12.6 billion for the second quarter of 1996. The toll services provided by the regional carriers cited by AT&T in its Petition, in contrast, do not even appear on the report except as a small percentage of the category labeled

---

<sup>2</sup> In fact, the Act addresses interconnection and wholesale rates in a separate section from toll rate averaging, 47 U.S.C. § 251, making clear that no quid pro quo is needed. The interconnection rules are being addressed by the Commission and state commissions separately from toll rate averaging and AT&T can (and has) raised concerns about interconnection and wholesale rates in that proceeding. See First Report and Order, CC Docket 96-98, FCC 96-325 (August 8, 1996)(FCC adopts rules providing for favorable terms and rates for interconnection and wholesale purchasers).

“other.” See “Long Distance Market Shares, Second Quarter 1996,” FCC Industry Analysis Division (released September 27, 1996). AT&T is ably equipped to compete with smaller regional interexchange carriers, including those affiliated with LECs.

The fact that a statutory provision may preclude a particular class of carriers from providing certain types of discounts to some consumers, but not to others, is not a basis for forbearance under Section 10 of the Act. 47 U.S.C. § 160. Rather, as the Commission explained, forbearance requires a three-part analysis: 1) whether enforcement is unnecessary to ensure that charges are just and reasonable and not unreasonably discriminatory; 2) whether enforcement is unnecessary to protect consumers, and 3) forbearance is consistent with the public interest. Order, para. 38. The Commission found that establishing a broad exception for competitive or low-cost regions entails a substantial risk that many subscribers in rural areas may be charged more than subscribers in other areas. Thus, enforcing the rate averaging requirements of the Act is necessary both to ensure just and reasonable rates and to protect consumers. Order, para. 39. The Commission was correct on both counts.

Additionally, forbearance would be inconsistent with the public interest, as that interest has been defined by Congress. As USTA explained in its comments in this proceeding, Congress could not have intended to simultaneously pass Section 254(g) to protect consumers in rural and high-cost areas, while intending that the Commission forbear from enforcing it in any meaningful way. See, e.g., Reply Comments of USTA, CC Docket 96-61, at 3. AT&T does not claim that rural consumers will be adequately protected from discrimination without regulation. Rather, AT&T repeats the same argument it raised in its initial comments: the public interest would be better served if interexchange carriers were permitted to engage in such discrimination. See, e.g., Comments of AT&T at 29-31; see also Petition at 8 (“freeing national carriers to compete...protects consumers by assuring the widest range of competition”). But

disagreement with Congressional goals is not a basis for forbearance.<sup>3</sup> AT&T's Petition must be denied.

## **II. AT&T Has Not Justified Evisceration of the Toll Rate Averaging Rule Through Extended Geographically-Specific "Temporary" Discounts**

The Commission concluded that consumers will be protected as long as long-term discounts and promotions are available to all similarly situated customers throughout a carrier's service area, Order, para. 29, and therefore elected to forbear from enforcement of the toll rate averaging provisions of the Act to the extent necessary to permit short-term geographically-specific discounts, for no more than 90 days. Order, para. 30.<sup>4</sup> Not content with the ability to discriminate against rural consumers for three months, AT&T now requests that the Commission permit such discrimination through "temporary" discounts offered for up to two years. AT&T Petition at 10.

AT&T takes issue with the Commission's decision that, even though AT&T has on occasion tariffed promotions for up to 24 months in the past, a 90 day limitation best implements the statutory mandate for geographic rate averaging. AT&T Petition at 9-10; see Order, para. 29. AT&T claims that the statute intended to incorporate the

---

<sup>3</sup>Congress contemplated that the Commission could authorize limited exceptions to the general geographic rate averaging policy under the forbearance authority to permit existing contracts to continue. Joint Explanatory Statement on the Telecommunications Act of 1996, 104th Cong., 2nd Sess., at 132 ("Conference Report"). Thus, Congress implicitly intended that the Commission should not forbear from the entirety of Section 254(g).

<sup>4</sup>The Order states that the Commission forbears to the extent necessary to permit carriers to offer "optional calling plans, temporary promotions, and private line services in accordance with our policy as previously applied to AT&T." Order, para. 27. The Commission later notes that its policy as previously applied did not exempt entire groups of services, such as optional calling plans, from the geographic rate averaging policy. Id., para. 28. No facts or argument was presented in the Order to justify forbearance from enforcing the geographic averaging rules with respect to optional calling plans. Therefore, USTA understands the Order to permit only geographically-specific discounts which are temporary in nature, and that all IXC optional calling plans must be offered throughout a carrier's service area.

Commission's existing policy (which AT&T claims occasionally permitted such extensive discounts), and therefore the Commission should simply codify its prior policy. But the legislative history makes clear that the Act does not foreclose the Commission's discretion to implement Section 254(g) in a meaningful way. It provides that "the Commission, where appropriate, could continue to authorize limited exceptions" through the forbearance provisions of the Act. Conference Report at 132. Thus, Congress intended that the Commission had discretion to authorize or not authorize exceptions, and to determine what type of exceptions would be appropriate. That is precisely what the Commission has done here.

The Commission's decision to limit temporary promotions to 90 days was not arbitrary. The Commission noted that it had previously treated promotional rates to be "temporary" for purposes of price cap regulation as long as they were offered for no more than 90 days. Order, para. 29, citing 10 FCC Rcd 7854, 7865 (1995). The Commission also found that this length of time for temporary promotions not available throughout a carrier's service area best implements the statutory mandate, and ensures that "temporary" promotions are in fact temporary. Id.

AT&T's request to offer "temporary" promotions lasting as long as two years indicates that AT&T has no interest in "temporary" promotions. Rather, AT&T wants to use purportedly "temporary" promotions to avoid or eviscerate meaningful implementation of Section 254(g). This conclusion is supported by the fact that AT&T's argument against the 90 day limitation rests on identical grounds as its argument for the "competitive exception" discussed earlier. AT&T argues that "[n]ational carriers seek to offer geographically specific promotions...as a tool to compete." AT&T Petition at 10. For the same reasons that the Commission declined to forbear based on competitive considerations, the Commission should decline to create an enormous loophole in the toll

rate averaging mandate of the Act by abuse of “temporary” promotions.<sup>5</sup>

### **III. AT&T’s Petition Demonstrates That Effective Enforcement Measures Will Be Necessary To Preserve the Congressional Mandate**

In the Order, the Commission stated that it would review at a later time specific carrier’s practices if necessary. The Commission also committed to examining a carrier’s practice over time to determine whether they reflect a pattern of undue discrimination against rural or high-cost areas. Order, para. 30. USTA supports both these conclusions and cautions that additional measures may be necessary in light of AT&T’s adamant reluctance to comply with the Communications Act’s toll rate averaging mandate. See AT&T Petition at 4 (AT&T has filed and offered geographically-specific promotional discounts for periods of six to twelve months); Id., n.3 (AT&T’s Answer to an SNET complaint concerning these promotions defends these promotions as consistent with the public interest, even though the Answer was filed after release of the Order).<sup>6</sup>

Specifically, the Commission should ensure that any decision regarding detariffing of interexchange services does not preclude meaningful enforcement of Section 254(g). See Order, para. 10, n.25 (deferring consideration of enforcement mechanisms). In order to examine a carrier’s specific practices, particularly over time, some type of rate information will be necessary. It would be prudent to have such information available to the public, so that carriers and customers can assist the

---

<sup>5</sup>AT&T also presents no meaningful argument why the waiver process is unacceptable. AT&T Petition at 11. AT&T’s argument is simply that requiring it to demonstrate good cause for a waiver might delay its ability to violate the policy of the toll rate averaging mandate. AT&T’s desire to discriminate is not a basis for ignoring a Congressional mandate.

<sup>6</sup>USTA fully expects that AT&T will come into compliance with the rules adopted in the Order when the rules become effective later this month.

Commission in enforcing the toll rate averaging policy.<sup>7</sup>

Additionally, the Commission should be prepared to respond to complaints based on repetitive use of "temporary" geographically limited discounts to evade the toll rate averaging rules. In particular, the Commission should clarify that a pattern of specific geographically-limited discounts may constitute a violation of the toll rate averaging rules even if the discounts are less than 90 days in duration, where the cumulative effect of such "temporary" discounts is to permit carriers to evade the effect of the Commission's rules and the Congressional mandate of Section 254(g) of the Communications Act.

### CONCLUSION

The Commission should deny AT&T's Petition in its entirety and adopt meaningful measures for enforcing the geographic toll rate averaging mandate of Section 254(g) of the Communications Act.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY 

Mary McDermott  
Linda Kent  
Charles D. Cosson  
Keith Townsend

1401 H Street, N.W., Suite 600  
Washington, DC 20005  
(202) 326-7249

October 21, 1996

---

<sup>7</sup>USTA recommends that all interexchange carriers annually publish a list of all services and prices, for all distance bands and locations. See Comments of USTA at 4-5.

Federal Communications Comm.  
1919 M Street, NW  
Room 544  
Washington, DC 20554

Campbell L. Ayling  
NYNEX  
1111 Westchester Avenue  
White Plains, NY 10604

Elizabeth Dickerson  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Marc C. Rosenblum  
Robert J. McKee  
Peter H. Jacoby  
Albert M. Lewis  
AT&T  
295 North Maple Avenue  
Room 2255F2  
Basking Ridge, NJ 07920

Marc E. Manly  
AT&T  
1722 Eye Street, NW  
Washington, DC 20006

Alan Ciamporcero  
Pacific Telesis  
1275 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20004

Michael J. Shortley, III  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

R. Michael Senkowski  
Jeffrey S. Linder  
Ilene T. Weinreich  
Wiley, Rein & Fielding  
(Tele-Communications Association)  
1776 K Street, NW  
Washington, DC 20006

Jay C. Keithley  
Leon M. Kestenbaum  
H. Richard Juhnke  
Norina T. Moy  
Sprint Corporation  
1850 M Street, NW  
11th Floor  
Washington, DC 20036

W. Richard Morris  
Sprint Corporation  
P.O. Box 11315  
Kansas City, MO 64112

Genevieve Morelli  
Competitive Telecommunications  
Association  
1140 Connecticut Avenue, NW  
Suite 220  
Washington, DC 20036

Danny E. Adams  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
(Competitive Telecommunications  
Association)  
1776 K Street, NW  
Washington, DC 20006

Jonathan E. Canis  
Swidler & Berlin  
(Intermedia Communications of  
Florida, Inc.)  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Robert M. Lynch  
Richard C. Hartgrove  
Thomas A. Pajda  
Southwestern Bell Telephone Co.  
One Bell Center  
Room 3520  
St. Louis, MO 63101

Edward D. Young, III  
Sherry F. Bellamy  
Bell Atlantic  
1310 North Court House Road  
8th Floor  
Arlington, VA 22201

Michael E. Glover  
Edward D. Shakin  
Karen Zacharia  
Bell Atlantic  
1310 North Court House Road  
8th Floor  
Arlington, VA 22201

Dr. Lee L. Selwyn  
Dr. David J. Roddy  
Susan M. Gately  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02018

Scott C. Lundquist  
Sonia N. Jorge  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02018

James S. Blaszak  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20036

Brian R. Moir  
Moir & Hardman  
(International Communications  
Association)  
2000 L Street, NW  
Suite 512  
Washington, DC 20036

Andrew D. Lipman  
Russell M. Blau  
Swidler & Berlin, Chtd.  
(MFS Communications Co., Inc.)  
3000 K Street, NW  
Washington, DC 20007

John C. Smith  
Aeronautical Radio, Inc.  
2551 Riva Road  
Annapolis, MD 21401

Margot Smiley Humphrey  
Koteen & Naftalin  
(National Rural Telecom Assn.)  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Carol C. Henderson  
American Library Association  
110 Maryland Avenue, NE  
Washington, DC 20002

W. Theodore Pierson, Jr.  
Pierson & Tuttle  
(Association for Local  
Telecommunication Services)  
1200 19th Street, NW  
Suite 607  
Washington, DC 20036

J. Manning Lee  
Teleport Communications Group, Inc.  
One Teleport Drive  
Staten Island, NY 10311

Charles A. Zielinski  
Rogers & Wells  
(Computer & Communications  
Industry Association)  
607 14th Street, NW  
Washington, DC 20005

Allan J. Arlow  
Computer & Communications  
Industry Association  
666 11th Street, NW  
Washington, DC 20001

Anthony M. Alessi  
Ameritech  
1401 H Street, NW  
Suite 1020  
Washington, DC 20005

Gary M. Epstein  
James H. Barker  
Latham & Watkins  
1001 Pennsylvania Avenue, NW  
Suite 1300  
Washington, DC 20004

M. Robert Sutherland  
Richard M. Sbaratta  
4300 Southern Bell Center  
675 West Peachtree Street, NE  
Atlanta, GA 30375

James Gattuso  
Beverly McKittrick  
Citizens for a Sound Economy  
Foundation  
1250 H Street, NW  
Washington, DC 20005

Dr. Jerome R. Ellig  
Center for Market Processes  
4084 University Drive  
Suite 208  
Fairfax, VA 22030

Richard McKenna, **HQE03J36**  
GTE  
P.O. Box 152092  
Irving, TX 75015

Gail L. Polivy  
GTE  
1850 M Street, NW  
Suite 1200  
Washington, DC 20036

Tenley A. Carp  
General Services Administration  
Office of General Counsel  
Washington, DC 20405

Robert A. Mazer  
Nixon, Hargrave, Devans & Doyle  
One Thomas Circle, NW  
Suite 800  
Washington, DC 20005

Paul B. Jones  
Janis A. Stahlhut  
Time Warner Communications  
300 First Stamford Place  
Stamford, CT 06902

Susan M. Baldwin  
Patricia D. Kravtin  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02018

David R. Poe  
Cherie R. Kiser  
LeBoeuf, Lamb, Greene & MacRae  
1875 Connecticut Avenue, NW  
Washington, DC 20009

James T. Hannon  
U S WEST Communications, Inc.  
1020 19th Street, NW  
Suite 700  
Washington, DC 20036

Blaine Gilles  
WiTel, Inc.  
P.O. Box 21348  
Tulsa, OK 74121

Peter A. Rohrbach  
Linda L. Oliver  
Hogan & Hartson  
Columbia Square  
555 13th Street, NW  
Washington, DC 20004

Henry M. Rivera  
Ginsburg, Feldman and Bress,  
Chartered  
1250 Connecticut Avenue, nW  
Washington, DC 20036

Lisa M. Zaina  
OPASTCO  
21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036

Alan J. Gardner  
Jeffrey Sinsheimer  
California Cable Television  
Association  
4341 Piedmont Avenue  
Oakland, CA 94611

Terry L. Murray  
Murray and Associates  
101 California Street  
Suite 4225  
San Francisco, CA 94111

Frank W. Lloyd  
Kecia Boney  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004

David C. Bergmann  
Yvonne T. Ranft  
Office of the Consumers' Counsel  
State of Ohio  
77 South High Street  
15th Floor  
Columbus, OH 43266

Anne U. MacClintock  
Southern New England Telephone  
Company  
227 Church Street  
New Haven, CT 06510

Barbara Stonebraker  
Cincinnati Bell  
201 E. 4th Street  
Suite #102-300  
Cincinnati, OH 45201

International Transcription Service  
2100 M Street, NW  
Suite 140  
Washington, DC 20036

Lawrence C. St. Blanc  
Gayle Kellner  
Louisiana PSC  
P.O. Box 91154  
Baton Rouge, LA 70821

Susan Drombetta  
Scherers Communications Group, Inc.  
575 Scherers Court  
Worthington, OH 43085

John Abernathy  
Network Analysis Center, Inc.  
45 Executive Drive  
Suite GL 3  
Plainview, NY 11803

James D. Ellis  
Robert M. Lynch  
David F. Brown  
SBC Communications, Inc.  
175 E. Houston  
Room 1254  
San Antonio, TX 78205

John W. Pettit  
Sue W. Bladek  
Richard J. Arsenault  
Drinker, Biddle & Reath  
901 15th Street, NW  
Washington, DC 20005

Rodney L. Joyce  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, NW  
Washington, DC 20036

Robert Self  
Market Dynamics  
4641 Montgomery Avenue  
Suite 515  
Bethesda, MD 20814

John Crump  
National Bar Association  
1225 11th Street, NW  
Washington, DC 20001

Natalie Marie-Street  
Telco Communicaiions Group, Inc.  
Long Distance Wholesale Club  
4219 Lafayette Center Drive  
Chantilly, VA 22021

Michael G. Hoffman  
Vartec Telecom, Inc.  
3200 W. Pleasant Run Road  
Lancaster, TX 75146

Joseph P. Markoski  
Marc Berejka  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, NW  
P.O. Box 407  
Washington, DC 20044

William H. Welling  
Xiox Corporation  
577 Airport Voulevard  
Suite 700  
Burlingame, CA 94010

Aliceann Wohlbruck  
National Association of Development  
Organizations  
444 North Capitol Street, NW  
Suite 630  
Washington, DC 20001

Paraquad  
311 North Lindbergh  
St.Louis, MO 63141

United Homeowners Assn.  
1511 K Street, NW  
Third Floor  
Washington, DC 20005

National Hispanic Council on the  
Aging  
2713 Ontario Road, NW  
Washington, DC 20009

Consumers First  
P.O. Box 2346  
Orinda, CA 94563

National Association of Commissions  
for Women  
1828 L Street, NW  
Washington, DC 20036

Lee M. Weiner  
Douglas W. Kinkoph  
LCI International Telecom. Corp.  
8180 Greensboro Drive  
Suite 800  
McLean, VA 22102

Robert J. Aamoth  
Jonathan E. Canis  
Reed Smith Shaw & McClay  
1301 K Street, NW  
Suite 1100 - East Tower  
Washington, DC 20005

Winston R. Pittman  
Chrysler Minority Dealer Assn.  
27777 Franklin Road  
Southfield, MI 48034

Samuel A. Simon  
Telecommunications Research and  
Action Center  
901 15th Street, NW  
Suite 230  
Washington, DC 20005

Glenn S. Richards  
Stephen J. Berman  
Fisher Wayland Cooper Leader &  
Zaragoza LLP  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20006

Eileen Seidowitz  
Audits Unlimited, Inc.  
139-15 83rd Avenue  
Briarwood, NY 11435

Thierry Zerbib  
Telesoft Corp.  
Monterey Plaza  
3216 North Third Street  
Phoenix, AZ 85012

Dina M. Gallo  
Systems Design & Development, Inc.  
Atrium Financial Center  
1515 N. Federal Highway  
Suite 212  
Boca Raton, FL 33432

Mark A. Scheraga  
Scheraga and Sheldon Associates  
39-40 Broadway Fair Lawn  
New Jersey 07410

Robert D. Carlitz  
Information Renaissance  
c/o Anthony P. Picadio  
600 Grant Street  
Suite 4680  
Pittsburgh, PA 15219

Ann Flynn  
Tampa Educational Cable Consortium  
703 N. Willow Avenue  
Tampa, FL 33606

S. Joseph Dorr  
American Computer  
209 Perry Parkway  
Gaithersburg, MD 20877

Allen P. Stayman  
U.S. Department of Interior  
Office of the Secretary  
Washington, DC 20240

Michael Greenspan  
MBC  
370 Lexington Avenue  
New York, NY 10017

Betty Montgomery  
Duane Luckey  
Ann E. Henkener  
Ohio PUC  
180 East Broad Street  
Columbus, OH 43215

Susan Drombetta  
Scherers Communications Group, Inc.  
575 Scherers Court  
Worthington, OH 43085

**CERTIFICATE OF SERVICE**

I, David L. Anderson, do certify that on October 21, 1996 Opposition to Petition for Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
David L. Anderson