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Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of

POLICY AND RULES CONCERNING
THE INTERSTATE, INTEREXCHANGE
MARKETPLACE

IMPLEMENTATION OF SECTION 254(g)
OF THE COMMUNICATIONS ACT OF
1934, AS AMENDED

CC Docket No. 96-61

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COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby submits its Comments in support of the Petition of AT&T Corp. ("AT&T") seeking reconsideration of the Report and Order, FCC 96-331, released by the Commission in the captioned docket on August 7, 1996 (the "Report and Order"). In the Report and Order, the

¹ TRA is an industry association comprised of nearly 500 resale carriers and supporting product and service vendors. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services and are poised to enter the local exchange market.

TRA has submitted multiple comments and reply comments, as well as numerous ex parte filings, in the captioned docket, addressing, among other things, the rate integration and geographic rate averaging proposals set forth in the Notice of Proposed Rulemaking, FCC 96-123 (March 25, 1996).

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Commission adopted rules and regulations implementing Section 254(g) of the Telecommunications Act of 1996 ("1996 Act").²

Section 254(g) directs the Commission to ensure that rates charged by interexchange carriers ("IXCs") are (i) no higher in rural and high cost areas than in urban areas and (ii) are no higher in one state than in any other state. While the rules adopted by the Report and Order track the text of Section 254(g),³ the Commission nonetheless provided for a certain measure of flexibility, recognizing, for example, that geographically-averaged rates may reflect reasonable differences in duration, time of day or mileage bands, and concluding that the public interest requires forbearance from geographic rate averaging requirements for certain pro-competitive offerings, including contract tariffs, optional calling plans, temporary promotions and private line services.⁴ Unfortunately, the Commission declined to expand this reasoned flexibility as requested by TRA and others to create a "competitive exception" to the geographic rate averaging requirements adopted in this proceeding.⁵

TRA and other commenters urged the Commission to forbear from enforcing its geographic rate averaging requirements in certain "competitive conditions." Specifically, TRA expressed concern that incumbent local exchange carriers ("ILECs") which served low cost areas and provided interexchange services primarily within these areas would be able to exploit the Commission's geographic rate averaging requirements to obtain an unfair competitive advantage over interexchange carriers ("IXCs") which provided service throughout the nation. National

² Pub. L. No. 104-104, 110 Stat. 56, § 254(g) (1996); 47 U.S.C. § 254(g).

³ 47 C.F.R. § 64.1701.

⁴ Report and Order, FCC 96-331 at ¶¶ 12, 20 - 30.

⁵ Id. at ¶¶ 38 - 41.

IXCs would be blocked from price-competing with an ILEC serving only a low cost area because cost constraints would prevent them from reducing their rates in higher cost areas and geographic rate averaging requirements would bar them from selectively reducing their rates in the ILEC's low cost service area.

The Commission declined to adopt a "competitive exception" to its geographic rate averaging requirements, asserting that "[c]ommenters ha[d] failed to justify this exception under Section 10 because they ha[d] based their claims entirely on generalized assertions of the alleged need for a competitive exception to geographic averaging requirements."⁶ The Commission also expressed concern that a "broad exception" would "entail a substantial risk that many subscribers in rural and high cost areas may be charged more than subscribers in other areas," and that "widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers."⁷

AT&T has asked the Commission to reconsider its decision not to forbear from enforcement of Section 254(g)'s geographic rate averaging requirements to the extent necessary to permit national IXCs to price-compete effectively with the "in-region" long distance service offerings of ILECs. In its Petition, AT&T addresses and resolves the various concerns identified in the Report and Order as the Commission's basis for rejecting a "competitive exception." AT&T also urges the Commission to reconsider its 90-day limitation on geographically specific promotions on the grounds that this restriction hinders competition and departs from existing policies in a manner seemingly not intended by the Congress. TRA supports AT&T's Petition

⁶ Id. at ¶ 39.

⁷ Id.

and urges the Commission to reconsider and modify the Report and Order in a manner consistent with the changes proposed therein by AT&T.

Initially, AT&T has addressed the Commission's complaint that commenters failed to support their pleas for a "competitive exception" to the geographic rate averaging requirement with other than "generalized assertions." As AT&T points out, the theoretical concerns voiced by the commenters have now become real life problems. AT&T describes how the Southern New England Telephone Company ("SNET") is using the Commission's geographic rate averaging requirements to block competitive responses to its "in-region" long distance offerings by national IXCs; indeed, SNET has filed a complaint against AT&T with the Commission in an effort to use the Commission's processes to limit competition. AT&T also points to activities of ALLTEL Georgia, Inc. as confirmation of the looming problem faced by national IXCs.

Moreover, the concerns expressed by AT&T with regard to the access charges collected by the ILECs are far from theoretical. Access charges are inflated by myriad subsidies,⁸ as well as excess costs left over from the days of rate-of-return regulation. It has been estimated that telephone subsidies, which are largely funded by interstate switched access charges, range as high as \$20 billion.⁹ Indeed, interstate switched access charges generally are believed to recover at least three times the cost of providing originating and terminating access.¹⁰ These

⁸ Common Carrier Bureau, Federal Communications Commission, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms (Feb. 23, 1996).

⁹ "Phone Service Subsidies Cost \$17.5 Billion, Study Says," Telecommunications Reports, Vol. 61, No. 2, p. 32 (Jan. 16, 1995).

¹⁰ See, e.g., "MCI Say LEC Receive \$14 Billion in Excess Access Charges Annually," Telco Competition Report, Vol. 5, No. 20 (Oct. 10, 1996); NYNEX Ex Parte Presentation in CC Docket No. 96-45, submitted March 25, 1996); Pacific Telesis Ex Parte Presentation in CC Docket No. 96-45, submitted August 11, 1995.

inflated charges are collected by the ILEC long distance affiliates' parents, permitting the ILEC to profitably provide service even at severely reduced rates within its local exchange service areas.

AT&T has also addressed the concerns raised by the Commission regarding the potential that "widespread deaveraged rates for interexchange services could produce unreasonably high rates for some subscribers."¹¹ The "competitive exception" to the geographic rate averaging requirement AT&T seeks on reconsideration would permit IXCs only to reduce rates to meet competition. Thus, the requested "competitive exception" would produce only lower rates and would not expose any subscribers to "unreasonably high rates." Most subscribers would continue to pay the same competitive charges; some subscribers, however, would derive additional benefits from increased price competition between national IXCs and ILEC "in-region" long distance service offerings.

A "competitive exception" to the geographic rate averaging requirement accordingly meets the Section 10 forbearance test.¹² If national IXCs are only permitted to reduce charges to meet competition, rates simply cannot be other than just and reasonable. Certainly, consumers benefit from lower rates and the public interest would be furthered by affording IXCs the flexibility to price-compete with ILEC "in-region" long distance service offerings. Obviously, forbearance in this instance will "promote competitive market conditions" and will "enhance competition among providers of telecommunications services."¹³ Accordingly,

¹¹ Report and Order, FCC 96-331 at ¶ 39.

¹² 47 U.S.C. § 160.

¹³ Id.

the Commission can and should reconsider its rejection of a limited "competitive exception" to the geographic rate averaging requirement in furtherance of the new regulatory regime it is structuring in implementing the "pro-competitive, de-regulatory national policy framework" mandated by the 1996 Act.¹⁴

TRA also urges the Commission to revisit its 90-day limit on geographically-targeted promotional discounts. As AT&T emphasizes, undue limitations on geographically-targeted promotions will handicap national IXCs in their efforts to compete with ILEC provision of "in-region" long distance services, particularly if the Commission does not authorize the limited "competitive exception" to the geographic rate averaging requirement requested above. Moreover, the Congress clearly intended to "incorporate" existing Commission policies regarding geographic rate averaging and rate integration¹⁵ and, as AT&T points out, geographically-targeted promotions currently are permitted to extend well beyond the 90-day limit established by the Report and Order.

TRA also submits that a 90-day limit on geographically-targeted promotions will hinder the growth and development of resale carriers. Resale carriers tend to evolve over time from "switchless" to "switch-based" providers. A resale carrier will generally install switching facilities only in those markets in which it has achieved certain traffic volumes, although improved provisioning intervals and enhanced protection of confidential information may drive the resale carrier toward more rapid deployment of switches. As TRA explained in its Comments, once a resale carrier installs a switch, it is imperative that certain traffic volume

¹⁴ Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 113 (1996) ("Joint Explanatory Statement").

¹⁵ *Id.* at 132.

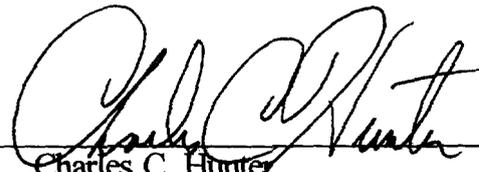
thresholds be achieved and maintained in order to preserve the economic viability of not only the switching investment, but the resale carrier's overall operation. Thus, it is critical that resale carriers that are deploying switching facilities be permitted to offer geographically-targeted promotions of sufficient duration to generate traffic levels sufficient to make cost-effective use of such facilities.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the AT&T Petition and to reconsider and modify the Report and Order in a manner consistent with the changes proposed therein by AT&T.

Respectfully submitted,

**TELECOMMUNICATIONS
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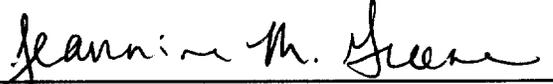
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CERTIFICATE OF SERVICE

I, Jeannine M. Greene, hereby certify that copies of the foregoing document were mailed this 21st day of October, 1996, by United States First Class mail, postage prepaid, to the following:

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