

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

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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)
)
AT&T Petition for Waiver Request)
for Expedited Consideration)

CC Docket No. 96-61

CCB/CPD 96-26

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**Opposition to AT&T Waiver Petition
of the United States Telephone Association**

The United States Telephone Association (USTA) respectfully submits this opposition to AT&T's Petition for Waiver ("Waiver Petition") of the Commission's rate averaging rules, 47 C.F.R. § 64.1701.¹ 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.

In the instant Waiver Petition, AT&T yet again seeks to establish a conceptual basis for eliminating the nationwide geographic long distance rate averaging rules, notwithstanding their codification by Congress in Section 254(g) of the Communications Act. 47 U.S.C. § 254(g). As in its other recent filings, AT&T repeats the same argument it raised in its initial

¹Public Notice, DA 96-1779, released October 28, 1996; see 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"); FCC 96-123, Notice of Proposed Rulemaking (released March 25, 1996)("Notice").

comments: the public interest would be better served if AT&T were permitted to ignore the statutory requirement. See, e.g., Comments of AT&T, CC Docket 96-61 at 29-31; see also ; Waiver Petition at 5 (“enforcement of the rate averaging rules is not necessary to protect the consumers there, who already benefit from the highest degree of competition possible”). And as before, disagreement with Congressional goals is not a basis for waiver.

Congress recognized that competitive market forces in high-demand urban areas were likely to result in higher rates for interexchange services for customers in low-demand, high-cost rural areas. But Congress preferred that “subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.” Telecommunications Act of 1996, Joint Explanatory Statement of the Committee of Conference at 132 (“Conference Report”).

In the Second Report and Order in the Interexchange proceeding,² the Commission recognized that, in competitive markets, carriers might not necessarily maintain geographically averaged interexchange rates, as required by Section 254(g), but would seek to deaverage their rates to respond to competition. Second Report and Order, para. 84, n.232. The Commission declined to create a competitive exception to the Congressional mandate in its initial Order, and it adopted public information disclosure requirements in the Second Report and Order in order to permit meaningful enforcement of Section 254(g). The Commission should continue to decline AT&T’s requests to eliminate the nationwide geographic long distance rate averaging requirements enacted by Congress.

The Waiver Petition seeks a waiver of the Commission’s rules in order to offer extended discounts to interexchange subscribers in high-demand urban “corridors.” In order

²In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Second Report and Order, FCC 96-424 (October 31, 1996)(“Second Report and Order”).

to justify a waiver, AT&T must demonstrate good cause, and that the purpose of the rule would not be undermined by grant of the waiver. See, e.g., 47 C.F.R. § 1.3; Northeast Cellular Tel. Co. V. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The facts presented by AT&T do not rise to the level of “good cause” required to justify a waiver. Predictably, AT&T again attempts to justify these discounts by demonstrating the public interest benefits of such reduced rates for urban customers, while ignoring the effect of its proposals on rural customers. Waiver Petition at 5 (“enforcement of the rate averaging rules is not necessary to protect the consumers there)(emphasis added). But grant of the waiver would result in precisely the harm sought to be prevented by Section 254(g): customers in rural areas would effectively pay higher rates than those paid by urban customers for the same AT&T service. Thus, the standard for grant is not met by this argument.

AT&T’s alternative basis is founded upon the fact that AT&T’s competitor in these circumstances is an incumbent LEC, whose lower corridor rates “may reflect its lower cost of access,” and do not reflect the costs of higher access rates charged elsewhere in the country. Waiver Petition at 4. This conjecture about the costs of access is belied by the facts - LECs who provide corridor service impute to themselves the tariffed access rate. And of course, corridor service does not reflect access rates charged in areas where corridor service is not provided. Moreover, AT&T’s claims are irrelevant to the issue raised by the Waiver Petition. The only point in issue is whether enforcement of the nationwide geographic long distance rate averaging requirements can be waived for “good cause.” See, e.g., 47 C.F.R. § 1.3.

Such “good cause” is not present here, and cannot be based on access charges in one narrowly-defined market. Grant of the AT&T waiver request would discriminate against rural subscribers and is not necessary for AT&T to compete. Congress intended that all consumers share in the pricing benefits of competition, and AT&T’s proposed waiver to offer extended discounts only in these “corridor” areas would preclude that result. Customers in other areas would be affected by AT&T’s geographic rate deaveraging. Moreover, AT&T can compete in

the provision of corridor long distance service without a waiver.³ The AT&T Waiver Petition offers no reason for the Commission to ignore the statutory requirement and consequently, it should be denied.

Finally, the facts presented in AT&T's Waiver Petition support Commission action to remove the LEC interexchange services basket from price cap regulation. AT&T cites the "special competitive circumstances" present in these corridors and argues that customers in the corridor area "benefit from the highest degree of competition possible." Ostensibly, the purpose of including interexchange services in the price cap basket arrangement is to prevent a carrier from raising prices for interexchange services to offset lost revenues in other competitive markets. See, e.g., First Report and Order, CC Docket 94-1, Phase I, 10 FCC Rcd 8962, para. 414. But as AT&T makes clear, competition in the interexchange services market is vigorous - a LEC's ability to raise prices in that market is significantly constrained such that price cap constraints are superfluous at best.

AT&T should not be allowed to enhance its competitive advantage through a waiver. If such a waiver were to be granted without corresponding relief for incumbent LECs, AT&T would be able to provide service without any tariffing requirements and without adherence to the rate averaging and integration rules, while the incumbent LECs would be subject to the most restrictive tariff and pricing regulations. Accordingly, there is no continued need for a separate interexchange services basket; those services should be removed from price cap regulation.⁴

³Corridor service, unlike generic interexchange services, connects only two limited, pre-defined geographic areas; it is a distinct and separate service. See, e.g., Reply Comments of Bell Atlantic, CC Docket 96-61, November 5, 1996 at 2.

⁴See, e.g., Petition to Regulate Bell Atlantic as Nondominant Provider of Interstate InterLATA Corridor Service, DA95-1666, filed July 7, 1995.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY

A handwritten signature in cursive script, appearing to read "C.D. Cosson", written over a horizontal line.

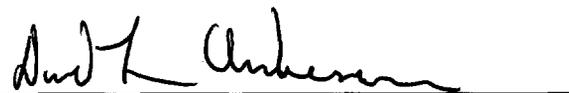
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CERTIFICATE OF SERVICE

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