

Federal Communications Commission

FCC MAIL SECTION 7-366

Before the
Federal Communications Commission
Washington, D.C. 20554

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DISPATCHED

In the Matter of)
)
Motion of AT&T Corp. to be)
Reclassified as a Non-Dominant Carrier)
)
Petition for Rulemaking to Reclassify)
AT&T Corp. as Having Dominant)
Carrier Status)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

RM 9006

CC Docket No. 96-61 ✓

**ORDER ON RECONSIDERATION,
ORDER DENYING PETITION FOR RULEMAKING,
SECOND ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-61**

Adopted: October 8, 1997

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By the Commission:

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I. INTRODUCTION

1. On October 23, 1995, the Commission issued an order granting AT&T Corporation's (AT&T's) motion to be reclassified as a non-dominant carrier under Part 61 of the Commission's rules and regulations.¹ On November 22, 1995, the State of Hawaii (Hawaii) and General Communications, Inc. (GCI) timely filed Petitions for Reconsideration of the Commission's *AT&T Reclassification Order*.² For the reasons stated below, we deny the petitions of both Hawaii and GCI.

2. On January 23, 1996, more than two months past the statutory deadline, Total Telecommunications Services, Inc. (TTS) also filed a Petition For Reconsideration, and a Motion For Acceptance of Petition For Reconsideration.³ As discussed below, we deny TTS's motion and dismiss its petition as untimely, and therefore do not address the merits of its petition.

3. On December 23, 1996, GCI filed a Petition for Reconsideration or Clarification of the Commission's *Tariff Forbearance Order*.⁴ For the reasons discussed below, we grant GCI's petition for clarification of the *Tariff Forbearance Order*.

¹ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Red 3271 (1996) (*AT&T Reclassification Order*).

² Hawaii Petition for Reconsideration (Hawaii Petition); GCI Petition for Reconsideration or Clarification (GCI Petition). Comments and/or reply comments were filed by the following parties: The State of Alaska, the Commonwealth of the Northern Mariana Islands (CNMI), the Guam Telephone Authority (GTA), the Governor of the U.S. Territory of Guam (Guam), MCI Telecommunications Corporation (MCI), and a collection of LEC Associations (LEC Associations).

³ TTS Petition For Reconsideration, TTS Motion For Acceptance of Petition For Reconsideration (TTS Motion to Accept Petition for Reconsideration).

⁴ GCI Petition for Reconsideration or Clarification 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, Second Report and Order, 11 FCC Red 20730 (1996) (GCI Tariff Forbearance Petition).

4. Finally, on December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA), filed a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status. For the reasons discussed below, we deny UHA's petition.

II. PETITIONS FOR RECONSIDERATION

A. BACKGROUND

5. In the *AT&T Reclassification Order*, the Commission reclassified AT&T as a non-dominant carrier, based on the Commission's finding that AT&T no longer possessed individual market power in the interstate, domestic, interexchange market taken as a whole.⁵ The Commission acknowledged that there was evidence in the record that AT&T, MCI and Sprint had increased basic schedule rates in lock-step, but found that that evidence did not support a finding that AT&T retained the power unilaterally to raise residential prices above competitive levels.⁶ In addition, the Commission found that, to the extent that tacit price coordination with respect to basic schedule or residential rates in general was occurring, the problem was generic to the interexchange industry and not specific to AT&T.⁷ The Commission concluded that concerns regarding such pricing would be better addressed by removing regulatory requirements that may have facilitated such conduct, such as the longer advance notice period for tariff changes then applicable only to AT&T, and by addressing the issues raised by these concerns in the context of a proceeding to examine the interstate, domestic, interexchange market as a whole.⁸ We recently reiterated our concern that "not all segments of [the interstate, interexchange services] market appear to be subject to vigorous competition," and expressed concern about the "relative lack of competition among carriers to serve low volume long distance customers."⁹

6. In assessing whether AT&T possessed individual market power, the Commission followed the relevant product and geographic market definitions adopted by the

⁵ *AT&T Reclassification Order*, 11 FCC Red at 3292.

⁶ *Id.* at 3312-15.

⁷ *Id.* at 3314-15.

⁸ *Id.*

⁹ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 at para. 16 (rel. Aug. 19, 1997), *petitions for recon. pending*.

Commission in the *Competitive Carrier* proceeding.¹⁰ In that proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: "(1) interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. off-shore points) comprises the relevant geographic market for this product, with no relevant submarkets."¹¹ The Commission concluded that it should apply the foregoing market definitions in assessing AT&T's market power, because those definitions were applied in classifying all of AT&T's competitors as non-dominant carriers. The Commission further stated that examination of the substitutability of supply for interstate, domestic, interexchange services also indicated that use of those definitions to evaluate AT&T's market power was appropriate.¹²

7. As a non-dominant interexchange carrier, AT&T is generally subject to the same regulations as its long-distance competitors. In the *AT&T Reclassification* proceeding, however, AT&T made certain voluntary commitments that it described as transitional provisions intended to address concerns expressed by various parties about possible adverse effects of reclassifying AT&T.¹³ These commitments concerned, among other things, service to and from the States of Alaska and Hawaii, and other regions subject to the Commission's rate integration policy,¹⁴ and geographic rate averaging.¹⁵ In the *AT&T Reclassification*

¹⁰ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (*Competitive Carrier NPRM*); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), vacated *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied *MCI Telecommunications Corp. v. AT&T* 509 U.S. 913, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985), vacated *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier* proceeding).

¹¹ *Competitive Carrier Fourth Report and Order*, 95 FCC 2d at 563.

¹² *AT&T Reclassification Order*, 11 FCC Rcd at 3286-87.

¹³ *Id.* at 3283-84, 3364-68.

¹⁴ AT&T committed to continue to comply with all conditions and obligations contained in the Commission orders regarding rate integration between the contiguous forty-eight states and Alaska, Hawaii, Puerto Rico and the Virgin Islands, until or unless those orders are superseded by Congressional or Commission action, and to comply with all the conditions and obligations contained in the Commission orders associated with AT&T's purchase of Alascom, Inc., including the *Alascom Authorization Order*, the *Market Structure Order*, and the *Final Recommended Decision*. *Id.* at 3333-34, 3364 (citing *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands* CC Docket No. 83-1376, Tentative Recommendation and Order Inviting Comments, 8 FCC

Order, the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.¹⁶

8. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted.¹⁷ The 1996 Act seeks "to provide for a pro-competitive, de-regulatory national policy framework" designed to make available to "all Americans" advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition."¹⁸ Consistent with the 1996 Act's objective of ensuring that all Americans benefit from the liberalization of telecommunications markets, the 1996 Act required the Commission, within six months after the date of enactment, to:

adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its

Rcd 3684 (1993); Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) (*Market Structure Order*), adopting *Joint Board Final Recommended Decision*, 9 FCC Rcd 2197 (1993) (*Final Recommended Decision*); *Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corp.*, File No.s W-P-C-7037, 6520, Order and Authorization, 11 FCC Rcd 732 (1995) (*Alascom Authorization Order*) (collectively referred to as the Alaska Orders)).

¹⁵ AT&T committed to file any new geographically-specific tariffs that depart from its traditional approach to geographic rate averaging for interstate, residential direct dial services on five business days notice. It further committed to identify clearly such tariff transmittals as affecting the provisions of this commitment. In addition, AT&T agreed that this commitment would continue for three years unless the Commission adopts rules addressing this issue for all carriers or there is a change in federal law addressing this issue. *Id.* at 3333-34, 3349, 3365.

AT&T's other commitments concerned: service to low-income and other residential customers; analog private line and 800 directory assistance services; changes to contract tariffs that adversely affect existing customers; and dispute resolution procedures for reseller customers. *Id.* at 3364-68.

¹⁶ *Id.* at 3292-93, 3356-57.

¹⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934.

¹⁸ *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

subscribers in each State at rates no higher than the rates charged to subscribers in any other State.¹⁹

On August 7, 1996, the Commission adopted a Report and Order implementing these statutory requirements.²⁰

9. On October 31, 1996, the Commission released the *Tariff Forbearance Order*. In that order, the Commission determined that the statutory criteria in section 10 of the Communications Act, as amended,²¹ were met to detariff completely interstate, domestic, interexchange services offered by nondominant interexchange carriers, and, therefore, that the Commission would no longer allow such carriers to file tariffs for such services pursuant to section 203 of the Communications Act.²²

B. ANALYSIS

10. Petitioners raise three substantive arguments in seeking reconsideration or clarification of the Commission's Order granting AT&T's motion to be reclassified as a non-

¹⁹ 47 U.S.C. § 254(g). The legislative history of the 1996 Act states that:

[n]ew section 254(g) is intended to incorporate the Commission's policies of geographic rate averaging and rate integration of interexchange services in order to ensure 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.

Joint Explanatory Statement at 132.

²⁰ See *Policies 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, Report and Order, 11 FCC Rcd 9564 (1996) (*Geographic Averaging Order*); First Memorandum Opinion and Order on Reconsideration, FCC 97-269 (rel. July 30, 1997) (*Geographic Averaging Reconsideration Order*) (denying petitions for reconsideration of the Commission's implementation of the rate integration requirements of section 254(g) of the Communications Act of 1934, as amended, and dismissing as moot the Motion for Partial Stay or Request for Extension filed by GTE Service Corporation), *petitions for recon. pending* Order, FCC 97-357 (rel. Oct. 3, 1997) (granting, in part, the motion filed by PrimeCo Personal Communications, LP, requesting a stay of enforcement of rate integration requirements to the extent such requirements apply to Commercial Mobile Radio Service providers pending reconsideration of the Commission's *Geographic Averaging Reconsideration Order*).

²¹ 47 U.S.C. § 160.

²² *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, Second Report and Order, 11 FCC Rcd 20730, 20732 (1996) (*Tariff Forbearance Order*); Order on Reconsideration, FCC 97-293 (rel. Aug. 20, 1997) (*Tariff Forbearance Reconsideration Order*). The *Tariff Forbearance Order* was stayed by the United States Court of Appeals for the District of Columbia Circuit in *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

dominant carrier. First, Hawaii argues that the Commission should strengthen AT&T's voluntary commitments by requiring AT&T to serve on Hawaii and the State of Alaska (Alaska) copies of any submissions that address the Commission's geographic rate averaging and rate integration policies, in order to ensure that Hawaii and Alaska have a meaningful opportunity to participate in pre-effective review proceedings. Second, GCI maintains that the reclassification of AT&T does not apply to AT&T/Alascom, Inc. (AT&T/Alascom), because AT&T/Alascom is still dominant in the Alaska market. Third, GCI argues that it is not clear which of the obligations and conditions imposed on AT&T and Alascom by the *Market Structure Order*, the *Final Recommended Decision*, and the *Alascom Authorization Order* continue to apply now that AT&T has been reclassified as nondominant.²³

1. Whether the Commission Should Strengthen AT&T's Commitments

a. Positions of the Parties

11. Hawaii requests that the Commission strengthen the commitments made by AT&T in the *AT&T Reclassification* proceeding by requiring AT&T to serve on Alaska and Hawaii copies of any pleadings, tariff revisions or other submissions to the Commission that purport to seek alteration or a specific interpretation of, or otherwise affect, the Commission's rate integration and geographic rate averaging policies, at the same time AT&T files such submissions with the Commission.²⁴ Hawaii argues that the historical importance of the Commission's rate integration and geographic rate averaging policies to Hawaii and Alaska, as well as the alleged lack of reasonably priced telecommunications to Hawaii, warrant assurance that Hawaii and Alaska will have the opportunity to voice their concerns if AT&T proposes to depart from these policies.²⁵ Hawaii acknowledges that AT&T informally committed to give Hawaii notice of tariff filings departing from geographic rate averaging, but maintains that in some situations more time would be needed to ensure that it has an opportunity to respond.²⁶

12. Alaska, CNMI, GTA, and Guam support Hawaii's request. Alaska argues that requiring AT&T to serve Alaska and Hawaii with copies of submissions affecting the Commission's rate integration and geographic averaging policies would not impose a significant burden on AT&T,²⁷ but would ensure that the interests of citizens of Alaska and

²³ See *Alaska Orders* supra n.14.

²⁴ Hawaii Petition at 2, 4.

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 3.

²⁷ Alaska Comments at 1-2.

Hawaii are heard before any action affecting these policies goes into effect.²⁸ CNMI, GTA and Guam contend that the Commission should require AT&T to serve on all interested parties, not just Alaska and Hawaii, copies of submissions that would alter the Commission's rate integration or geographic rate averaging policies.²⁹ Similarly, the LEC Associations argue that AT&T should be required to serve copies of submissions that depart from the Commission's established geographic averaging policies in other states and in U.S. territories, because geographic averaging is essential for maintaining universal service.³⁰ They also urge the Commission to commence a proceeding to codify its geographic averaging policies.³¹

13. AT&T responds that Hawaii's petition relates solely to AT&T's voluntary commitments concerning rate integration and geographic rate averaging, and that, since the commitments were not offered, or used, to support the Commission's finding that AT&T lacks market power in the overall interstate, domestic, interexchange market, the reclassification of AT&T is appropriate.³² AT&T argues that the Commission cannot modify voluntary commitments that were not the basis for its ruling, and cannot create or impose new rules on AT&T in this non-rulemaking proceeding.³³ AT&T also contends that the relief sought by the parties supporting Hawaii's petition would impose significantly greater burdens on AT&T than are required under the Commission's tariff filing rules for dominant carriers.³⁴ AT&T concludes that the requested relief should be rejected as unnecessary and overly burdensome, in light of the fact that all such filings are made on the public record at the Commission.³⁵ AT&T also argues that the relief sought would exceed the Commission's authority by requiring AT&T to make public tariff filings not only with the Commission, but with Hawaii, Alaska, the Northern Mariana Islands, and other state jurisdictions and U.S. territories.³⁶

14. In reply, Hawaii argues that its petition is consistent with the Commission's stated commitment to rate integration and geographic averaging, and the Commission's

²⁸ *Id.* at 2.

²⁹ CNMI Comments at 3-5; GTA Reply at 2; Guam Reply at 2.

³⁰ Comments of the LEC Associations at 3.

³¹ *Id.*

³² AT&T Opposition at 2 (citing *AT&T Reclassification Order*, 11 FCC Red at 3292-93, 3353).

³³ AT&T Reply at 3.

³⁴ *Id.* at 3-4.

³⁵ *Id.* at 4. AT&T adds that the comments of CNMI and the LEC Associations should be dismissed as untimely on the ground that they seek relief not sought in Hawaii's petition. *Id.* at 4 n.6.

³⁶ *Id.* at 3-4.

decision to incorporate AT&T's commitments into the *AT&T Reclassification Order*.³⁷ It adds that its request is also consistent with AT&T's pledge to "work very closely on an informal basis with representatives of the State of Hawaii on matters affecting telecommunications there."³⁸ Hawaii claims it is merely seeking assurance that AT&T will honor its pledge.³⁹ Hawaii concludes that the relief it seeks would not burden AT&T or the Commission, but would ensure that citizens of Hawaii have a meaningful opportunity to participate in the pre-effective review of any filings that affect these policies.⁴⁰

b. Discussion

15. As noted above, on August 7, 1996, the Commission adopted the *Geographic Averaging Order*, which implemented the geographic rate averaging and rate integration requirements of the 1996 Act.⁴¹ In that Order, we adopted a rule requiring that "the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."⁴² The Commission also adopted a rule "requiring that 'a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.'"⁴³ As required by the 1996 Act, the Commission found that the geographic rate averaging rule applies "to all providers of interexchange telecommunications services, and to all interexchange 'telecommunications services,' as defined by the Act."⁴⁴ Similarly, the Commission found that the rate integration rule applies "to all domestic interstate interexchange telecommunications services as defined in the 1996 Act, and all providers of such services."⁴⁵

³⁷ Hawaii Reply at 2-3.

³⁸ *Id.* at 3 (citing November 22, 1995 Letter from E.E. Estey, Government Affairs Vice President, AT&T Corporation, to Herbert E. Marks, Counsel for the State of Hawaii, at 1).

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ See *Geographic Averaging Order*, 11 FCC Rcd 9564.

⁴² *Id.* at 9568-69. The Commission stated that this rule "codifies our existing geographic rate averaging policy." *Id.* The LEC Associations' request that the Commission initiate a proceeding to codify its geographic rate averaging policies is therefore moot.

⁴³ *Id.* at 9588-89. As with the Commission's geographic rate averaging rule, the Commission stated that this rule "will incorporate our existing policies." *Id.*

⁴⁴ *Id.* at 9568-69.

⁴⁵ *Id.* at 9588-89.

16. In the *Geographic Averaging Order*, the Commission also determined that the rules adopted in that proceeding superseded the rate averaging and rate integration commitments AT&T voluntarily made in the *AT&T Reclassification* proceeding.⁴⁶ We based this determination on the grounds that the rules we adopted in *Geographic Averaging Order* would require AT&T to provide interexchange service at geographically averaged and integrated rates, and that these requirements incorporated the Commission's rate averaging and rate integration policies then in effect.⁴⁷ We therefore released AT&T from the commitment to comply with the Commission's earlier orders regarding rate integration and the commitment to file any tariff containing a geographically deaveraged rate on five business days' notice.⁴⁸

17. In light of Congress's codification of the Commission's rate averaging and rate integration policies in section 254(g) of the Communications Act, the Commission's rules implementing that section, and the other actions taken in the *Geographic Averaging Order*, we find that Hawaii's request that we impose a service requirement on AT&T has been superseded and is now moot because AT&T cannot deaverage its rates consistent with federal law. We also find no basis to impose on AT&T a service requirement not imposed on other carriers subject to the rate averaging and rate integration rules. Accordingly, for the foregoing reasons, we find that the relief sought by Hawaii is unnecessary in light of the Commission's implementation of the geographic rate averaging and rate integration requirements of the Communications Act, and of AT&T's specific voluntary commitments concerning service to Hawaii and Alaska. We therefore deny Hawaii's petition.

2. Whether Reclassification of AT&T Applies to AT&T/Alascom

a. Position of the Parties

18. GCI asks the Commission either to clarify that the reclassification of AT&T does not apply to AT&T/Alascom, Inc., or to reconsider and reverse any finding that AT&T/Alascom is no longer dominant.⁴⁹ GCI justifies its request on the grounds that AT&T did not seek to reclassify Alascom as non-dominant, and that the Commission did not address the reclassification of Alascom in the *AT&T Reclassification Order*.⁵⁰ GCI argues that the Commission found Alascom dominant in the Alaska market in the *Competitive Carrier Fifth*

⁴⁶ *Id.* at 9600.

⁴⁷ *Id.*

⁴⁸ *Id.* The Commission noted, however, that it did "not release AT&T from its more specific commitments concerning Hawaii and Alaska." *Id.* (citing *AT&T Reclassification Order*, 11 FCC Red at 3333-34 & n.329).

⁴⁹ GCI Petition at 1.

⁵⁰ *Id.* at 3.

Report and Order, and has never reversed that finding.⁵¹ It also contends that this finding could not be reversed, in light of AT&T/Alascom's legally enforced monopoly in the Alaska Bush.⁵² GCI argues that AT&T/Alascom is able to leverage its market power beyond the Bush because of Commission policies requiring other carriers serving Alaska to purchase Bush distribution services from AT&T/Alascom.⁵³ GCI also argues that it is unclear how long AT&T/Alascom's market power in the Alaska Bush will persist.⁵⁴ GCI adds that, even if the Alaska Bush were opened immediately, it would take significant time for the market to become workably competitive, because of the time necessary to construct a competing network.⁵⁵

19. Alaska and MCI likewise claim that the Commission's reclassification of AT&T does not affect AT&T/Alascom's classification as a dominant carrier.⁵⁶ Alaska argues that, in reclassifying AT&T, the Commission noted that Alascom continues to be "governed by dominant carrier rules where it has a facilities monopoly, namely the Bush areas," and therefore that the *AT&T Reclassification Order* does not affect the classification of AT&T Alascom, Inc.⁵⁷ MCI argues that the Commission's reclassification of AT&T as non-dominant in the domestic market was based on market characteristics in the "lower 48" states, which

⁵¹ *Id.* GCI Reply at 2.

⁵² GCI Petition at 3-4. Bush communities are in remote, rural areas and generally have less than 1,000 citizens. *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, CC Docket No. 80-584, Tentative Decision, 92 FCC 2d 736, 757 (1982), *aff'd* Final Decision, 96 FCC 2d 522 (1984). GCI claims that AT&T/Alascom's Bush monopoly is protected by Commission and Alaska PUC policies, and is unique in the U.S. telecommunications market. *Id.*

⁵³ *Id.* at 4.

⁵⁴ GCI notes that in June 1995, GCI requested a waiver to permit the construction of a Bush earth station demonstration project. *Id.* at 5 (citing Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy, File No. 122-SAT-WAIV-95 (filed June 23, 1995)). GCI notes that AT&T initially opposed GCI's partial waiver petition after purchasing Alascom in August 1995, but that AT&T subsequently dropped this claim allegedly because AT&T realized the inconsistency between its motion for reclassification as non-dominant and its insistence on a legally protected monopoly. *Id.* (citing August 11, 1995 Alascom Opposition and September 6, 1995 Alascom Reply, filed in File No. 122-SAT-WAIV-95). We note that, on January 30, 1996, the Chief of the International Bureau granted GCI's petition for partial waiver of the Commission's Bush policy to allow GCI to build and operate up to 50 earth stations to serve Bush areas. *Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy*, File No. 122-SAT-WAIV-95, Memorandum Opinion and Order, 11 FCC Rcd 2535 (1996).

⁵⁵ *Id.* at 5-6.

⁵⁶ Alaska Comments at 2; MCI Comments at 1-2.

⁵⁷ Alaska Comments at 3 (citing *AT&T Reclassification Order*, 11 FCC Rcd at 3334 n.329).

are not representative of the Alaska market.⁵⁸ It adds that a separate finding that AT&T/Alascom does not possess market power in Alaska is therefore required, but that such a determination is impossible to make and support at this time.⁵⁹

20. AT&T responds that there is no basis for excluding AT&T/Alascom from the ambit of the *AT&T Reclassification Order*, because the Commission expressly found that AT&T lacked market power in the domestic interexchange market *as a whole*, which AT&T claims is the only relevant market for this purpose.⁶⁰ AT&T argues that the fact that AT&T (or AT&T/Alascom) may be the major supplier of specific services does not alter the analysis, and that the Commission has never definitively held that a carrier must lack the ability to control the price of every service in the relevant market before it can be classified as non-dominant.⁶¹ AT&T maintains that its voluntary commitments to continue rate integration for Alaska and to comply with the Commission's orders relating to Alaska necessarily apply to AT&T/Alascom, and that the commitments assume that AT&T/Alascom is included within the scope of the *AT&T Reclassification Order*.⁶²

21. AT&T further responds that the Commission found that, to the extent AT&T is able to control price at all, it is only with respect to specific service segments that are either *de minimis* in relation to the overall market, or exposed to increasing competition so as not to affect materially the overall market.⁶³ AT&T argues that these conditions apply to the Alaska Bush, which generates less than five one-hundredths of one percent (0.0005) of total industry revenue, an amount that AT&T claims is *de minimis* and affords AT&T/Alascom no power in the overall relevant market.⁶⁴ AT&T concludes there is therefore no basis to treat AT&T differently from its competitors, or to treat AT&T/Alascom differently from the rest of AT&T.⁶⁵

⁵⁸ MCI Comments at 2.

⁵⁹ *Id.*

⁶⁰ AT&T Opposition at 4. AT&T rejects MCI's claim that the Alaska market is distinct from the domestic market in the "lower 48" states. AT&T Reply at 1-2.

⁶¹ *Id.* at 4-5. AT&T adds that the Commission found an all-services standard would result in a situation where the cost of regulation exceeds its public benefits. *Id.* at 5.

⁶² *Id.* at 5 n.8.

⁶³ *Id.* at 5 (citing *AT&T Reclassification Order*, 11 FCC Rcd at 3288).

⁶⁴ *Id.* at 5. AT&T notes that GCI has sought, without opposition from AT&T, a waiver to serve 50 Bush locations in 1996. *Id.*

⁶⁵ *Id.* at 6.

22. GCI counters that AT&T does not rebut GCI's claim that AT&T retains an absolute monopoly, and thus market power, in the Alaska market.⁶⁶ GCI maintains that AT&T's suggestion that Alascom's market power in Alaska can be ignored as "*de minimis*" is contrary to prior Commission rulings and AT&T's own statements.⁶⁷ Specifically, GCI contends that, in classifying Alascom as a dominant interexchange carrier, the Commission focused solely on Alascom's position in the Alaska market, and did not require Alascom to be dominant throughout the U.S. market as a whole.⁶⁸ GCI adds that, as recently as August 1995, the Commission identified Alaska as a separate relevant interexchange market.⁶⁹ Specifically, GCI maintains that, while the Commission spoke of a single national market, the Commission identified that market as distinct from the Alaska market occupied by Alascom and in which Alascom retained market power.⁷⁰ GCI also claims that AT&T's own pleadings in the Alaska Joint Board Proceeding contemplate that AT&T could be classified as dominant in the lower 48 states, but non-dominant in Alaska, because of different market characteristics and circumstances.⁷¹ GCI concludes that the Commission classified Alascom as a dominant carrier based on its legally protected monopoly position in the Alaska market, which it alleges has never changed, and that AT&T's purchase of Alascom did nothing reduce Alascom's market power in Alaska.⁷²

23. In its petition for reconsideration or clarification of the Commission's *Tariff Forbearance Order*, GCI requests the Commission either to clarify that the *Tariff Forbearance Order* did not detariff AT&T/Alascom's provision of "common carrier" services,⁷³ or to reconsider and reverse any finding that AT&T/Alascom is not required to file

⁶⁶ GCI Reply at 2.

⁶⁷ *Id.*

⁶⁸ *Id.* (citing *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1201).

⁶⁹ *Id.* at 4.

⁷⁰ *Id.* (citing *Alascom Authorization Order*, 11 FCC Red at 754).

⁷¹ *Id.* at 5 (citing June 28, 1993 AT&T Comments, filed in Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, CC Docket 83-1376). GCI claims AT&T argued that, notwithstanding its dominant carrier status in the U.S. market, if AT&T were required to provide services to Alaska (which it opposed), those services should be classified as non-dominant. *Id.*

⁷² *Id.* at 5-6.

⁷³ The Commission has defined Alascom's "common carrier" services as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier." *Market Structure Order*, 9 FCC Red at 3023 n.5.

a tariff for such services.⁷⁴ In support of its petition, GCI argues that AT&T, in the *AT&T Reclassification* proceeding, made certain voluntary commitments, including a commitment that AT&T/Alascom would provide "common carrier" services under tariff.⁷⁵ In response to GCI's petition, AT&T states that it "does not interpret the [*Tariff Forbearance Order*] to require the detariffing of Alascom's Common Carrier Services."⁷⁶ The American Petroleum Institute (API) disagrees with GCI and argues that, to the extent AT&T/Alascom's services are interstate, domestic, interexchange services offered by a nondominant interexchange carrier, the *Tariff Forbearance Order* completely detariffed those services.⁷⁷

b. Discussion

24. AT&T/Alascom offers certain interstate "common carrier" services. As noted above, in the *Market Structure Order*, the Commission defined Alascom's "common carrier" services as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier."⁷⁸ In the *Market Structure Order*, the Commission adopted the recommendation of the Federal-State Alaska Joint Board in the *Final Recommended Decision* that Alascom be required to provide such services to interexchange carriers under tariff on a nondiscriminatory basis at rates that reflect the cost of the services (i.e., on dominant carrier basis).⁷⁹ AT&T concedes that, to the extent that AT&T/Alascom's "common carrier" services are not interstate, domestic, interexchange telecommunications services as addressed in the *AT&T Reclassification Order*, the classification of those services is not affected by that Order.⁸⁰ AT&T further concedes that the *Tariff Forbearance Order* does not require the detariffing of AT&T/Alascom's "common carrier" services.⁸¹ Indeed, the

⁷⁴ GCI Tariff Forbearance Petition at 1. As we stated in the order on reconsideration of the Commission's *Tariff Forbearance Order*, the issue of whether the Commission detariffed AT&T/Alascom's "common carrier" services is better addressed in this order. *Tariff Forbearance Reconsideration Order*, FCC 97-293 at para. 58.

⁷⁵ GCI Tariff Forbearance Petition at 2, citing *AT&T Reclassification Order*, 11 FCC Rcd at 3334.

⁷⁶ AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of the *Tariff Forbearance Order* at 8 n.12 (Jan. 28, 1997) (AT&T Tariff Forbearance Opposition).

⁷⁷ Statement of the American Petroleum Institute in Opposition and Support of Petitions for Reconsideration at 11-12.

⁷⁸ See *supra* note 73. For purposes of our discussion here, we refer to AT&T/Alascom's "common carrier" services as those services were defined in the *Market Structure Order*.

⁷⁹ See *Market Structure Order*, 9 FCC Rcd at 3023, 3025, 3027. See also *AT&T Reclassification Order*, 11 FCC Rcd at 3334 n.329.

⁸⁰ AT&T Reply at 2-3 n.4.

⁸¹ AT&T Tariff Forbearance Opposition at 8 n.12.

Commission noted in the *AT&T Reclassification Order*,⁸² and we clarify here, that, to the extent AT&T/Alascom has been found to be dominant in the provision of "common carrier" services, as defined above, AT&T/Alascom's regulatory obligations with respect to those services remain unchanged, and therefore AT&T/Alascom is required to file tariffs for such services on a dominant carrier basis.

25. In addition to the foregoing "common carrier" services offered to interexchange carriers, AT&T/Alascom provides interstate, domestic, interexchange services to end-user customers in Alaska. For the reasons set forth below, we reject GCI's petition for reconsideration and find no basis to exclude AT&T/Alascom's provision of these services from the scope of the *AT&T Reclassification Order*.⁸³

26. We reject the suggestion by GCI, MCI and Alaska, that, in order to reclassify AT&T/Alascom as a non-dominant carrier with respect to its provision of interstate, domestic, interexchange services, the Commission must assess AT&T/Alascom's market power in the Alaska market, rather than in the overall interstate, domestic, interexchange services market. The Commission's decision in the *Competitive Carrier Fifth Report and Order* to regulate Alascom as a dominant carrier did not, as GCI implies, disavow or modify the "all interstate, domestic, interexchange services" market definition adopted in the *Competitive Carrier Fourth Report and Order* by "focus[ing] solely on Alascom's position within the Alaska market."⁸⁴ Rather, the Commission concluded that Alascom should be regulated as dominant, without reaching the issue of relevant market definitions, because it was concerned that the Commission's rate-integration policy for interstate MTS and WATS services to noncontiguous domestic points, which limited rate-integration payments only to Alascom, might limit the ability of other carriers to compete in serving Alaska.⁸⁵

27. In addition, we find that GCI mischaracterizes the *Alascom Authorization Order*, in arguing that the Commission there identified Alaska as a separate relevant interexchange market and therefore that we are required to analyze separately AT&T/Alascom's market power in Alaska, for purposes of classifying AT&T/Alascom as non-

⁸² *AT&T Reclassification Order*, 11 FCC Red at 3334 n.329.

⁸³ We note that, because AT&T/Alascom is included within the scope of the *AT&T Reclassification Order*, and therefore subject to nondominant treatment in its provision of interstate, domestic, interexchange services to end-users, AT&T/Alascom will be required to detariff such services pursuant to the *Tariff Forbearance Order* if that order is upheld on appeal. See *supra* note 22 and accompanying text.

⁸⁴ See GCI Reply at 2.

⁸⁵ *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1201 n.33 (noting that the Commission's rate-integration policy for interstate MTS and WATS services to noncontiguous domestic points had led it to inquire into the ability of carriers not receiving rate-integration payments to compete in serving Alaska).

dominant in the interstate, domestic, interexchange market.⁸⁶ While, in the *Alascom Authorization Order*, the Commission did identify two relevant product markets for purposes of evaluating the proposed merger of AT&T and Alascom, the markets it identified were: (1) "interexchange telecommunications services *within* Alaska (the 'Alaska market')," which was the principal business of Alascom; and (2) "*interstate* interexchange telecommunications (the All Interexchange Market)," which AT&T provided, and which included Alascom's and Alaska Telecom's proposed undersea fiber cable services.⁸⁷ In that Order, the Commission did not identify the provision of interstate, domestic, interexchange services to Alaska as a separate relevant product or geographic market. Indeed, the Commission specifically noted that its identification of interstate interexchange telecommunications (including Alascom's and Alaska Telecom's proposed undersea fiber cable services) as a relevant product market was "consistent with the Commission's earlier findings of a single market for all *interstate* interexchange services."⁸⁸ Thus, the Commission did not, in the *Alascom Authorization Order*, disavow or modify in any way, the "all interstate, domestic, interexchange services" market definition adopted in the *Competitive Carrier Fourth Report and Order*.

28. Accordingly, we reject GCI's argument that, based on the *Alascom Authorization Order* and the *Competitive Carrier Fifth Report and Order*, the Commission must analyze separately AT&T/Alascom's market power in Alaska for purposes of classifying AT&T/Alascom as non-dominant in the interstate, domestic, interexchange market. Rather, we affirm our determination in the *AT&T Reclassification Order* that, consistent with the conclusions reached in *Competitive Carrier Fifth Report and Order*, the appropriate relevant geographic market for purposes of assessing AT&T's market power was a "single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points)."⁸⁹ We conclude that, pursuant to Commission policy in effect at the time of the *AT&T Reclassification Order*, the Commission properly included AT&T/Alascom within the scope of the classification of AT&T as non-dominant in the provision of interstate, domestic, interexchange services.

29. Subsequent to GCI's filing of its Petition for Reconsideration, the Commission adopted the *LEC Interexchange Order*, which revises the Commission's approach to defining relevant geographic and product markets for purposes of determining whether a carrier should

⁸⁶ See GCI Reply at 4-6.

⁸⁷ *Alascom Authorization Order*, 11 FCC Red at 754 (emphasis added).

⁸⁸ *Id.* (emphasis added). We note that GCI, in quoting the foregoing sentence, failed to include the word "interstate," which qualified the term "interexchange services." We believe that the Commission's reference to "interstate interexchange services," and not to "interexchange services" generally, is central to the meaning of the Commission's statement and hence to a complete understanding of this statement's relevance in the present context.

⁸⁹ *AT&T Reclassification Order*, 11 FCC Red at 3286 (citing *Competitive Carrier Fourth and Order*, 95 FCC 2d at 573-75).

be regulated as dominant or non-dominant in the provision of interstate, domestic, interexchange services.⁹⁰ Specifically, in the *LEC Interexchange Order*, we defined the relevant geographic market for interstate, domestic, interexchange services as "all possible routes that allow for a connection from one particular location to another particular location (*i.e.*, a point-to-point market)."⁹¹ We clarified, however, that we would

treat, in general, interstate, long distance calling as a single national market unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power, we will refrain from employing the more burdensome approach of analyzing separately data from each point-to-point market.⁹²

30. Considering GCI's Petition for Reconsideration according to the market definition approach established in the recent *LEC Interexchange Order*, we conclude that, even assuming *arguendo* that GCI's petition presents credible evidence suggesting a lack of competition with respect to domestic, interstate, interexchange service in Alaska, GCI's petition fails to demonstrate that geographic rate averaging will not sufficiently mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska.⁹³

31. In the *Geographic Averaging Order*, we found that the 1996 Act required the Commission to mandate rate integration among all states, territories and possessions, and held that "this goal is best achieved by interpreting 'provider' to include parent companies that, through affiliates, provide service in more than one state."⁹⁴ We stated that "nothing in the

⁹⁰ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace* Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, FCC 97-142 (rel. April 18, 1997) (*LEC Interexchange Order*); Order on Reconsideration, FCC 97-229 (rel. June 27, 1997).

⁹¹ *LEC Interexchange Order*, FCC 97-142 at para. 64.

⁹² *Id.* at para. 67.

⁹³ In the *LEC Interexchange* proceeding, GCI suggested that the Commission treat Alaska as a separate market in assessing the market power of AT&T/Alascom. *Id.* at para. 69. In response, we stated that we would consider whether any modifications to decisions reached in the *AT&T Reclassification Order* may be necessary, in light of our revised approach to defining relevant product and geographic markets for interstate, long-distance calling. *Id.* We stated, however, that, "because market definition is only one step in assessing market power, changes made in the approach to defining relevant markets will not necessarily produce different assessments of market power."

⁹⁴ *Geographic Averaging Order*, 11 FCC Red at 9598.

record supports a finding that Congress intended to allow [interexchange carriers] to avoid rate integration by establishing subsidiaries that provide service in limited areas."⁹⁵ Applying this general rule in a specific context, we held that GTE, for purposes of section 254(g), was required to integrate its rates for domestic, interstate, interexchange services across affiliates.⁹⁶ We find that, pursuant to the rule established in the *Geographic Averaging* proceeding, AT&T, like GTE, is required to integrate and average its rates across affiliates, including AT&T/Alascom.

32. Because AT&T is required to integrate and average its rates geographically for interstate, domestic, interexchange services across all of its affiliates, including AT&T/Alascom, we believe that AT&T/Alascom could not raise and sustain prices for such services above the competitive level in Alaska, unless AT&T were able profitably to charge supracompetitive prices in the "lower 48" states. Nothing in the record of this reconsideration proceeding supports a reversal of our determination in the *AT&T Reclassification Order*, that "AT&T neither possesses nor can unilaterally exercise market power within the interstate, domestic, interexchange market taken as a whole,"⁹⁷ which includes the "lower 48" states. Nor is there any evidence in the record on reconsideration to support a finding that geographic rate averaging, together with AT&T's lack of market power in the "lower 48," will not mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska.⁹⁸ Therefore, we find no reason to analyze separately AT&T/Alascom's market power in Alaska. Accordingly, we find that AT&T/Alascom is appropriately classified, as established in the *AT&T Reclassification Order*, as non-dominant in the provision of interstate, domestic, interexchange services.

3. Whether the Commission Should Clarify the Requirements of the Alaska Orders that Continue to Apply to AT&T and AT&T/Alascom

a. Position of the Parties

⁹⁵ *Id.*

⁹⁶ *Id.*; *Geographic Averaging Reconsideration Order*, FCC 97-357 at para. 19 (clarifying that the requirement that rate integration applies across affiliates applies to all corporate families, not just GTE companies).

⁹⁷ *AT&T Reclassification Order*, 11 FCC Rcd at 3292.

⁹⁸ We note that, should GCI proffer credible evidence that there is or could be a lack of competitive performance for interstate, long-distance calling in Alaska, and that geographic rate averaging will not sufficiently mitigate AT&T/Alascom's exercise of market power, if any, in Alaska, we would, of course, consider whether a modification to the decisions reached in the *AT&T Reclassification Order* is necessary.

33. GCI requests that the Commission clarify which requirements of the Commission's Alaska Orders continue to apply to AT&T and AT&T/Alascom.⁹⁹ GCI argues that, while AT&T made a generalized promise to comply with outstanding Commission orders relating to Alaska in the *AT&T Reclassification* proceeding, it is impossible to determine which requirements of the Alaska Orders AT&T has specifically agreed to follow, and which it will try to contest or ignore.¹⁰⁰

34. GCI adds that, as a non-dominant carrier, AT&T may be able to discriminate and to deaverage its Alaska rates by providing Alaska services through two entities -- AT&T and AT&T/Alascom.¹⁰¹ GCI argues that, although the *Final Recommended Decision* provided that AT&T would remain subject to Section 214 entry and exit certification requirements, non-dominant status removes the requirement that AT&T obtain Section 214 authority to serve the Alaska market.¹⁰² GCI further argues that, if AT&T provides separate service to Alaska pursuant to separate tariffs from those filed by AT&T/Alascom, AT&T will be able to discriminate between customers served by AT&T and customers served by AT&T/Alascom.¹⁰³ GCI also claims that it will be impossible to determine whether AT&T is integrating Alaska rates into its domestic rate schedule, and that any difference in rates or offerings between AT&T and AT&T/Alascom would call into question which rate is appropriate for purposes of judging rate integration.¹⁰⁴

35. Finally, GCI argues that separate service by AT&T would disadvantage captive monopoly customers that buy service under the AT&T/Alascom common carrier services tariff, because, to the extent AT&T provides separate service to Alaska and does not use the carrier services of AT&T/Alascom, AT&T will reduce traffic on the AT&T/Alascom network and drive up rates for AT&T/Alascom's captive monopoly customers.¹⁰⁵ GCI states that all carriers, including AT&T, are required to buy Alaska distribution services under the AT&T/Alascom carrier services tariff.¹⁰⁶

⁹⁹ GCI Petition at 10.

¹⁰⁰ *Id.* at 6-7.

¹⁰¹ *Id.* at 8.

¹⁰² *Id.*

¹⁰³ *Id.* at 8-9.

¹⁰⁴ *Id.* at 9.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

36. Alaska, supporting GCI's request for clarification, notes that AT&T committed to comply with the Commission's orders regarding rate integration and with *all* the obligations and conditions set forth in the Alaska Joint Board Proceeding and the *Alascom Authorization Order*.¹⁰⁷ Alaska requests the Commission to clarify the *AT&T Reclassification Order* if there is any uncertainty on these points.¹⁰⁸

37. AT&T responds that GCI's request for clarification is inappropriate, because it seeks to inject into this proceeding issues already litigated in other dockets.¹⁰⁹ AT&T adds that its voluntary commitments assume that both AT&T and its AT&T/Alascom affiliate will continue to adhere to the Commission's orders regarding the restructuring of the Alaska market.¹¹⁰ In addition, AT&T notes that the Commission defined Alascom's "common carrier" services as interstate interexchange transport and switching services necessary for other interexchange carriers to provide service in Alaska up to the point of interconnection with LECs.¹¹¹ As previously noted, AT&T concedes that, to the extent AT&T/Alascom's "common carrier" services are not domestic interstate interexchange services as addressed in the *AT&T Reclassification Order*, the classification of those "common carrier" services is not affected by that Order,¹¹² and, therefore, that, to the extent Alascom's "common carrier" services have been found to be dominant, AT&T/Alascom's regulatory obligations relating to those services remain unchanged.¹¹³

b. Discussion

38. We believe that there is no ambiguity concerning the requirements of the Alaska Orders that continue to apply to AT&T and AT&T/Alascom, but for the sake of clarity we note that the *AT&T Reclassification Order* contains a lengthy and detailed statement of both AT&T's and AT&T/Alascom's obligations with respect to Alaska.¹¹⁴ In addition, AT&T has committed to comply voluntarily with all the conditions and obligations

¹⁰⁷ Alaska Comments at 3 (citing *AT&T Reclassification Order*, 11 FCC Rcd at 3335).

¹⁰⁸ *Id.*

¹⁰⁹ AT&T Opposition at 6 (noting that the *AT&T Reclassification Order* contains a lengthy statement of AT&T's and AT&T/Alascom's obligations, and that AT&T has voluntarily committed to comply with the Commission's prior orders affecting Alaska).

¹¹⁰ AT&T Reply at 2 n.4.

¹¹¹ *Id.* (citing *Market Structure Order*, 9 FCC Rcd at 3023 n.5).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See *AT&T Reclassification Order*, 11 FCC Rcd at 3334 n.329 (listing the obligations and conditions set forth in the Alaska Orders that continue to apply to AT&T and AT&T/Alascom).

set forth in the Alaska Orders, and has specifically acknowledged that AT&T's commitment applies to AT&T/Alascom.¹¹⁵ Moreover, as the Commission noted in the *AT&T Reclassification Order*, any failure by AT&T or AT&T/Alascom to comply with any of the conditions and obligations in the Alaska Orders may result in the imposition of forfeitures on AT&T or AT&T/Alascom, or a revocation of their Commission licenses.¹¹⁶ In addition, if GCI believes that either AT&T or AT&T/Alascom has failed to honor the commitment to comply with all of the conditions and obligations in the Alaska Orders, GCI may seek relief under Section 208 of the Communications Act.

39. We also reject GCI's claim that AT&T may be able to deaverage its Alaska rates by providing Alaska services through two entities. As an initial matter, we note that, contrary to GCI's suggestion, the reclassification of AT&T as a non-dominant carrier did not remove the requirement that AT&T obtain Section 214 authority to serve the Alaska market. As we stated in the *AT&T Reclassification Order*, AT&T may build or lease facilities to serve the Alaska market subject to dominant carrier authorization rules.¹¹⁷ Moreover, as discussed above, in the *Geographic Averaging Order*, we found that Congress did not intend to allow interexchange carriers to avoid the rate integration requirements of the 1996 Act by establishing subsidiaries that provide service in limited areas.¹¹⁸ As noted above, we find that, pursuant to the rule established in the *Geographic Averaging Order*, AT&T must integrate and average its rates across its affiliates.¹¹⁹ Accordingly, AT&T may not deaverage its Alaska rates by providing services to Alaska through two entities.

4. Other Matters

40. On January 23, 1996, well after the statutory deadline for filing petitions for reconsideration of the *AT&T Reclassification Order*, TTS filed a Petition for Reconsideration requesting that the Commission reclassify AT&T as dominant on the grounds that AT&T retains a dominant position in the interstate, domestic, interexchange market, and has abused,

¹¹⁵ *Id.* at 3333-34 (citing AT&T September 21, 1995, *Ex Parte* Letter at 1, as clarified by AT&T October 5, 1995, *Ex Parte* Letter at 1). See also AT&T Opposition at 5 n.8 ("AT&T's voluntary commitments . . . to comply with the Commission's orders regarding the Alaska marketplace . . . necessarily apply to its AT&T/Alascom affiliate"); AT&T Reply at 2 n.4 ("AT&T's comments (n.8) acknowledge that AT&T's voluntary commitments to the Commission assume that both AT&T and its AT&T/Alascom affiliate will continue to adhere to the Commission's orders regarding the restructuring of the Alaska marketplace").

¹¹⁶ *AT&T Reclassification Order*, 11 FCC Rcd at 3356.

¹¹⁷ *Id.* at 3334 n.329 (citing *Final Recommended Decision*, 9 FCC Rcd at 2203 (stating that "[t]he construction of facilities and provision of services by Alascom and AT&T would be governed by the same regulatory requirements applicable to dominant [interexchange carriers] in the rest of the nation")).

¹¹⁸ *Geographic Averaging Order*, 11 FCC Rcd at 9598.

¹¹⁹ See discussion *supra* at para. 31.

and is likely to continue to abuse, its dominant position in the market.¹²⁰ On the same date, TTS filed a motion for acceptance of its late-filed petition for reconsideration.¹²¹ TTS states that it was unable to file its petition before the statutory deadline because AT&T's "bad acts," on which TTS's petition is based,¹²² did not occur until November 22, 1995, the due date for filing petitions.¹²³ TTS alleges that its petition was delayed further by its attempt to negotiate with AT&T to resolve their dispute, and by the blizzard in Washington, D.C., in January, 1996.¹²⁴ TTS maintains that these facts establish substantial justification and good cause for the Commission to accept TTS's late-filed petition.¹²⁵

41. On April 15, 1997, TTS filed, in the record of the UHA Petition for Rulemaking proceeding, a Supplement to Petition for Reconsideration and a Motion to Accept Supplement to Petition for Reconsideration.¹²⁶ TTS states that the information in its supplement was not available to TTS at the time it filed its petition for reconsideration and that the information is necessary in order for the Commission to have a complete record.¹²⁷

42. Section 405 of the Communications Act, provides, in relevant part, that: "[a] petition for reconsideration must be filed within thirty days from the day upon which public notice is given of the order, decision, report, or action complained of."¹²⁸ Section 1.4(b) of

¹²⁰ TTS Petition for Reconsideration at 3.

¹²¹ TTS Motion to Accept Petition for Reconsideration at 4.

¹²² TTS argues that AT&T's abuse of its dominant position is demonstrated by certain "bad acts," which show AT&T's "ability and inclination to take advantage of its superior market position" by ridding itself of competition. *Id.* at 5. These "bad acts" allegedly consist of the wrongful blocking and discontinuance of all long-distance calls terminating at facilities operated by TTS, and AT&T's refusal to pay TTS compensation for terminating interstate calls prior to AT&T's termination of service. *Id.* at 4-5. TTS maintains that AT&T's actions show that AT&T cannot be relied upon to fulfill its commitment, on which it claims the Commission relied in reclassifying AT&T, "to act in good faith and not to take advantage of its market position." *Id.* at 5-6. TTS argues that the most appropriate means to prevent such anticompetitive conduct would be to reclassify AT&T as a dominant carrier. *Id.*

¹²³ *Id.* at 2.

¹²⁴ *Id.* at 3.

¹²⁵ TTS Motion to Accept Petition for Reconsideration at 3.

¹²⁶ Without explanation, TTS did not file its supplement or its motion to accept supplement in the reconsideration record.

¹²⁷ TTS Motion to Accept Supplement to Petition for Reconsideration at 1.

¹²⁸ 47 U.S.C. § 405(a).

the Commission's rules defines the date of public notice of the final Commission action.¹²⁹ Section 1.4(b)(2) provides that, for "non-rulemaking documents released by the Commission or staff, whether or not published in the Federal Register, the release date" is date of public notice.¹³⁰ Accordingly, public notice in this case was given on October 23, 1995, the date on which the *AT&T Reclassification Order* was released. Therefore, petitions to reconsider that decision were, as TTS concedes, due on or before November 22, 1995.¹³¹

43. Because the period for filing petitions for reconsideration is prescribed by statute, the Commission may not, with one narrow exception articulated by the courts, waive or extend the filing period.¹³² The narrow exception to this statutory filing period allows the Commission to extend or waive the 30-day filing period only in an "extraordinary case," such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought.¹³³ In such circumstances, the petitioner must demonstrate that the delay in filing is attributable to Commission error in giving notice and that it acted promptly upon discovering the adoption of the Commission's decision.¹³⁴

44. TTS has not demonstrated that its delay in filing is attributable to Commission error in giving notice. Indeed, TTS does not dispute that the Commission gave appropriate notice by the release of the *AT&T Reconsideration Order* on October 23, 1995. As noted above, TTS states only that its petition was delayed because the alleged actions on which TTS's petition is based, did not occur until the due date for filing petitions for reconsideration, and that its petition was further delayed by its attempt to negotiate with AT&T as well as by the blizzard in Washington, D.C., in January, 1996. Accordingly, we find that TTS does not meet the narrow exception of an "extraordinary case" in which the Commission may extend or waive the statutory deadline for filing petitions for reconsideration. We, therefore, deny TTS's Motion for Acceptance of Petition for Reconsideration, and dismiss its petition as

¹²⁹ 47 C.F.R. § 1.4(b).

¹³⁰ *Id.* at § 1.4(b)(2).

¹³¹ TTS Motion to Accept Petition for Reconsideration at 2.

¹³² *Reuters, Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986); see also *Applications of PDB Corporation, State College* Memorandum Opinion and Order, 11 FCC Red 6198, 6199 (1996); *Application of Robert J. Maccini, Receiver Assignor* Memorandum Opinion and Order, 10 FCC Red 9376, 9376 (1995); and *Burwood Broadcasting of Memphis, Ltd.*, MM Docket No. 85-205, Memorandum Opinion and Order, 4 FCC Red 827, 828 n.2 (1989).

¹³³ *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976); see also *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993); *Applications of Stephen E. Powell* Memorandum Opinion and Order, 11 FCC Red 11925, 11926 (1996); *Eight Applications for Authority to Construct and Operate Multipoint Distribution Service Stations* Order on Reconsideration, 11 FCC Red 7008, 7009-10 (1996); *Applications of PDB Corporation, State College* Memorandum Opinion and Order, 11 FCC Red 6198; *Application of Robert J. Maccini, Receiver Assignor* Memorandum Opinion and Order, 10 FCC Red at 9376.

¹³⁴ *Applications of Stephen E. Powell* Memorandum Opinion and Order, 11 FCC Red 11925, 11926 (1996).

untimely. Because we dismiss TTS's petition for reconsideration, we also deny TTS's Motion to Accept Supplement to Petition for Reconsideration and dismiss TTS's Supplement to Petition for Reconsideration.¹³⁵

III. PETITION FOR RULEMAKING

45. On December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA) filed with the Commission a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status.¹³⁶ UHA requests that the Commission undertake a review and "reinstate AT&T's dominant carrier status."¹³⁷ In support of its petition, UHA argues that consumers are adversely affected by the classification of AT&T as a non-dominant interexchange carrier, as demonstrated by a rate increase AT&T instituted in November 1996.¹³⁸ UHA argues that, "without regulatory supervision, AT&T consumers will have no protection from unjust rates increases,"¹³⁹ and that classifying AT&T as dominant is necessary in order to monitor AT&T's rate increases until there is meaningful competition in the long-distance market.¹⁴⁰ UHA also points to what it alleges is AT&T's 54.2 percent market share as evidence that AT&T has market power in the long distance market and therefore should be classified as dominant.¹⁴¹

¹³⁵ We note that the facts alleged in TTS's petition for reconsideration and supplement to petition for reconsideration are the same as those presently before the Commission in TTS's formal complaint proceeding against AT&T. *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.* FCC File No. E-97-03 (filed October 28, 1996).

¹³⁶ AT&T filed comments in opposition to UHA's petition, and TTS filed comments in support of UHA's petition. Pacific Telesis Group (PacTel) filed a reply to AT&T's opposition.

¹³⁷ Petition for Rulemaking at 2. We note that UHA refers generally to AT&T's status as a carrier of "long distance service," rather than more specifically to AT&T's status as a provider of domestic, interstate, interexchange service. See Petition for Rulemaking at 1. Because UHA consistently refers in its petition only to the Commission's October 23, 1995, decision, we are treating the petition as applying only to AT&T's regulatory status with respect to domestic, interstate, interexchange service, and not international services. See *id.* at 1 ("We believe for the reasons outlined below, that the FCC erred in its decision on October 23, 1995, when it released an order granting AT&T's motion to be reclassified as a non-dominant carrier"), 4-5 (citing to the *AT&T Reclassification Order*), 5 ("we believe that the FCC's decision to reclassify AT&T as a non-dominant carrier eighteen months ago should be revisited and reversed").

¹³⁸ *Id.* at 2-4.

¹³⁹ *Id.* at 4.

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.* at 4-5.

46. TTS submitted comments in support of UHA's petition. TTS cites to alleged discriminatory conduct by AT&T against TTS as evidence of AT&T's abuse of its market power and the need therefore to reclassify AT&T as a dominant carrier.¹⁴²

47. In opposition to UHA's petition, AT&T argues that the Petition for Rulemaking should be denied because UHA's arguments already were addressed and properly rejected in the orders classifying AT&T as non-dominant for domestic and international services.¹⁴³ AT&T also maintains that UHA's allegations, even if true, are immaterial under the Commission's rules defining dominant carriers.¹⁴⁴ AT&T notes that the Commission examined and found in the *AT&T Reclassification Order* that AT&T does not retain market power in the domestic, interstate, interexchange market.¹⁴⁵ In addition, AT&T maintains that UHA is mistaken in arguing that a change in AT&T's regulatory classification would affect AT&T's ability to make the price changes referenced by UHA. AT&T claims that, even as a dominant carrier subject to price cap regulation, AT&T did not need Commission approval to raise rates within price cap limits.¹⁴⁶ AT&T further argues that UHA's "unsupported claims of 'tacit collusion'" among various interexchange carriers does not support regulatory action aimed solely at AT&T,¹⁴⁷ and that "any attempt to paint the long distance industry as an oligopoly must fail."¹⁴⁸ Finally, relying on the Commission's *AT&T Reclassification Order*, AT&T maintains that market share is not the sole determining factor of whether a firm possesses market power, and that the 54.2 percent market share figure referenced by UHA "is even lower than the market share cited in the [*AT&T Reclassification Order*], and shows a further erosion of AT&T's market share since the Order was released."¹⁴⁹

¹⁴² TTS Comments at 3-6. As previously noted, the facts TTS alleges in its supporting comments are the same as those presently before the Commission in TTS's formal complaint proceeding against AT&T. See *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, FCC File No. E-97-03 (filed October 28, 1996).

¹⁴³ AT&T Opposition at 1 (citing to the *AT&T Reclassification Order* and *Motion of AT&T to be Declared Non-Dominant for International Services Order*, 11 FCC Rcd 12942 (1996)).

¹⁴⁴ *Id.* at 1.

¹⁴⁵ *Id.* at 2-3.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.* at 5.