

DA 97-129

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

Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	
	)	
Implementation of Section 254(g) of the	)	CC Docket No. 96-61
Communications Act of 1934, as amended	)	
	)	
AT&T Corp.'s Petition for Waiver and	)	
Request for Expedited Consideration	)	

**ORDER**

Adopted: January 17, 1997

Released: January 17, 1997

By the Chief, Common Carrier Bureau:

**I. INTRODUCTION**

1. On October 23, 1996, AT&T Corp. (AT&T) filed a Petition for Waiver and Request for Expedited Consideration requesting that the Commission waive section 64.1801 of the Commission's Rules (47 C.F.R. § 64.1801), and the requirements in the Geographic *Rate Averaging Order*,<sup>1</sup> to permit it and other interexchange carriers to offer deaveraged interstate promotions of more than 90 days' duration to New Jersey customers in the New Jersey-New York and Camden, New Jersey-Philadelphia, Pennsylvania "corridors" served by Bell Atlantic.<sup>2</sup> For the reasons set forth below, we deny the petition.

**II. BACKGROUND**

2. Section 254(g) of the Communications Act of 1934, as amended, (the Act) requires all interexchange carriers to provide interexchange services to subscribers in rural and

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<sup>1</sup> *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, FCC 96-331 (August 7, 1996) ("*Rate Averaging Order*") at ¶ 30.

<sup>2</sup> AT&T Petition at 3. AT&T defines the corridors as comprising calls: (1) from five counties in northeastern New Jersey to the New York City metropolitan area; and (2) between Camden, New Jersey to Philadelphia, Pennsylvania. *Id.* The corridors were created to continue the long-standing interstate service arrangement in these areas and to "preserve for interstate callers in these areas the advantages of the existing local networks." *United States v. Western Electric Co.*, 569 F.Supp. 1057, 1107 (D.D.C. 1983).

high cost areas at rates no higher than the rates charged to its subscribers in urban areas.<sup>3</sup> In the *Rate Averaging Order* the Commission adopted rules that generally require carriers to offer interexchange services to subscribers in rural areas at rates no higher than in urban areas. The Commission concluded, however, that temporary promotions benefited consumers because they facilitate the introduction of new services.<sup>4</sup> Pursuant to section 10(a) of the Act, the Commission forbore from applying section 254(g) to the extent necessary to permit carriers to depart from geographic rate averaging to offer temporary promotions.<sup>5</sup> The Commission allowed carriers, as part of temporary promotions not available throughout a carrier's service area, to offer geographically deaveraged promotions for no longer than 90 days.<sup>6</sup> The Commission required that these promotions be geographically limited, and stated that promotions should not be the basis for repeated offerings by carriers.<sup>7</sup> The Commission also observed that interexchange carriers wishing to offer promotions of longer than 90 days must first obtain a waiver under section 1.3 of the Commission's Rules.<sup>8</sup>

3. In the *Rate Averaging Order*, the Commission also rejected a request by AT&T to forbear from applying the requirements of section 254(g) to the extent necessary to create a competitive exception to geographic rate averaging, to permit AT&T to depart from geographic rate averaging in areas where regional carriers might offer lower interexchange service rates because they experience lower access charges in those regions.<sup>9</sup> The Commission stated that it could not conclude that enforcing the rate averaging requirements was not necessary to ensure just, reasonable and nondiscriminatory rates, and that there was no basis in the record to conclude that it was not necessary to enforce section 254(g) to ensure the protection of consumers.<sup>10</sup>

### III. PLEADINGS

4. AT&T requests a waiver to permit it to offer geographically deaveraged promotions exceeding 90 days to New Jersey residents located within the New Jersey-New

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<sup>3</sup> 47 U.S.C. § 254(g).

<sup>4</sup> *Rate Averaging Order* at ¶ 29.

<sup>5</sup> *Rate Averaging Order* at ¶ 27.

<sup>6</sup> *Rate Averaging Order* at ¶ 30.

<sup>7</sup> *Rate Averaging Order* at ¶¶ 28-29.

<sup>8</sup> *Rate Averaging Order* at ¶ 30, n. 65.

<sup>9</sup> *Rate Averaging Order* at ¶¶ 38-39.

<sup>10</sup> *Rate Averaging Order* at ¶ 39.

York City and Camden-Philadelphia interstate corridors.<sup>11</sup> AT&T's usual rates for service between points in these corridors reflect its nationwide average cost of service between points of equivalent distances. AT&T claims that a waiver is justified because Bell Atlantic serves only low cost, urban areas within the corridors, and it is able to offer rates within the corridors that are lower than AT&T's rates between the same corridor locations. AT&T argues that in these circumstances the Commission's rate averaging requirements bar AT&T from lowering its prices, and thereby inhibit its ability to compete with Bell Atlantic in these corridors.<sup>12</sup> AT&T contends that a waiver serves the public interest because consumers would benefit from lower prices and increased competition.<sup>13</sup> AT&T also argues that the extended promotional rates requested in its Petition would not affect consumers in other areas of the country, as the promotional rates would only apply to AT&T's services within the two corridors where Bell Atlantic and NYNEX are authorized, pursuant to an exception in the Modification of Final Judgment,<sup>14</sup> to offer in-region interstate interLATA service. AT&T's rates charged to consumers outside of the corridors would continue to be geographically averaged.<sup>15</sup> AT&T also alleges that Bell Atlantic is violating the Commission's rate averaging rules by offering out-of-region interLATA services at rates comparable to AT&T's basic interstate rates, which are higher than Bell Atlantic's in-region interLATA corridor rates. AT&T requests that if its waiver is denied, the Commission require Bell Atlantic to average its out-of-region long distance rates with its in-region interLATA corridor rates.<sup>16</sup>

5. MCI, Sprint, and NYNEX urge the Commission to grant the requested waiver to permit all interexchange carriers price flexibility within these two corridors. These parties contend that if nationwide carriers are required to average their rates between high and low cost areas, they will not be able to compete effectively with a carrier, like Bell Atlantic, that serves only low cost areas.<sup>17</sup>

6. Opponents of AT&T's Petition contend that AT&T has not met the Commission's "good cause" requirement for granting a waiver,<sup>18</sup> provided sufficient evidence

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<sup>11</sup> AT&T Petition at 2.

<sup>12</sup> AT&T Petition at 3.

<sup>13</sup> AT&T Petition at 4-5.

<sup>14</sup> See *United States v. Western Electric Co.*, 569 F. Supp. 990, 1002, n. 54 (D.D.C. 1983).

<sup>15</sup> AT&T Petition at 6.

<sup>16</sup> AT&T Petition at 4-5.

<sup>17</sup> MCI Comments at 3; Sprint Comments at 2-3; NYNEX Comments at 2.

<sup>18</sup> Alaska Comments at 3; Hawaii Comments at 3; Northern Marianas Comments at 2; SWB Comments at 3; USTA Comments at 3.

in this proceeding that it will suffer any hardship,<sup>19</sup> shown that strict compliance with the rule is inconsistent with the public interest,<sup>20</sup> or explained why granting a waiver in these corridors would not become the basis for similar waivers wherever AT&T faces regional competition from a LEC.<sup>21</sup> Alaska and Hawaii assert that the Commission rejected AT&T's argument that regional competition justified deaveraging in the *Rate Averaging Order*. They state that AT&T offers no new arguments, and that the Commission should not reverse itself.<sup>22</sup> Alaska, Hawaii, the Northern Marianas, SWB, and USTA note that the higher rates for rural customers that would result from granting AT&T's Petition contravene both the language and the Congressional intent behind section 254(g).<sup>23</sup> Further, Alaska, Hawaii, and SWB challenge AT&T's claim that the corridors are unique, because many incumbent LECs are preparing to offer interstate interLATA services in all areas of the country.<sup>24</sup> The Northern Marianas also contend that AT&T's asserted justifications for the requested waiver are vague and inadequately supported, and, consequently, the record is therefore insufficient for the Commission to make a reasoned judgment as to their validity.<sup>25</sup> Hawaii proposes that if the petition is granted, the waiver should be limited to: (1) calls that originate and terminate within the corridors; (2) a term of one year subject to renewal; and (3) this particular case. Hawaii further contends that the waiver should expire when Bell Atlantic is allowed to offer interexchange services in-region.<sup>26</sup> Bell Atlantic, the Northern Marianas, and USTA also challenge AT&T's contention that Bell Atlantic pays lower access charges.<sup>27</sup> Bell Atlantic and USTA state that Bell Atlantic imputes to itself the same tariffed access rate as AT&T pays.<sup>28</sup>

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<sup>19</sup> Bell Atlantic Comments at 5; Alaska Comments at 2; Hawaii Comments at 4-5; Northern Marianas Comments at 2-3; USTA Comments at 3-4.

<sup>20</sup> Alaska Comments at 2-3; Hawaii Comments at 2; Northern Marianas Comments at 3; SWB Comments at 3-5; USTA Comments at 3.

<sup>21</sup> Alaska Comments at 4-5; Hawaii Comments at 5; Northern Marianas Comments at 4-5; SWB Comments at 5.

<sup>22</sup> Alaska Comments at 3; Hawaii Comments at 2, n. 4.

<sup>23</sup> Alaska Comments at 4-5; Hawaii Comments at 2-4; Northern Marianas Comments at 4; SWB Comments at 3-4; USTA Comments at 3-4.

<sup>24</sup> Alaska Comments at 3; Hawaii Comments at 5; SWB Comments at 5-6.

<sup>25</sup> Northern Marianas Comments at 2.

<sup>26</sup> Hawaii Comments at 5-6.

<sup>27</sup> Bell Atlantic Comments at 4; USTA Comments at 3; Northern Marianas Comments at 3.

<sup>28</sup> Bell Atlantic Comments at 4; USTA Comments at 3.

7. Bell Atlantic contends that AT&T does not suffer from any competitive hardship because it can fully compete without a waiver by: (1) introducing promotions of up to 90 days in duration that are limited to the corridor areas; (2) lowering its prices nationally to a level equivalent to, or lower than, the corridor services; or (3) creating its own geographically limited corridor services.<sup>29</sup> Regarding AT&T's argument that Bell Atlantic should comply with the *Rate Averaging Order*, Bell Atlantic acknowledges that its affiliate, Bell Atlantic Communications, Inc. (BACI) charges different rates for its long distance services than Bell Atlantic charges for corridor services, but contends that the corridor is a distinct service, and that the rate averaging requirements do not apply.<sup>30</sup> Bell Atlantic states that this different treatment is appropriate because its corridor services are regulated differently than its long distance services. Specifically, Bell Atlantic asserts that the FCC's current price cap and other regulations prevent Bell Atlantic from raising its corridor rates and limit its ability to coordinate the pricing of its corridor services with BACI's long distance services.<sup>31</sup>

8. Bell Atlantic, NYNEX, and USTA urge the Commission to grant Bell Atlantic's pending petition to regulate its corridor service as non-dominant.<sup>32</sup> NYNEX further requests that the Commission declare that "all similarly situated carriers (such as NYNEX) are non-dominant for their corridor services."<sup>33</sup>

#### IV. DISCUSSION

9. The Commission's rules may be waived for good cause shown.<sup>34</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>35</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>36</sup> Waiver is thus appropriate if special circumstances warrant a

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<sup>29</sup> Bell Atlantic Comments at 5.

<sup>30</sup> Bell Atlantic Comments at 3-4.

<sup>31</sup> Bell Atlantic Comments at 4. Bell Atlantic requests, in the alternative, that if its corridor services must be averaged with its long distance services, that the Commission grant it a waiver of the rate averaging rules for its corridor services.

<sup>32</sup> Bell Atlantic Comments at 5-6; NYNEX Comments at 2; USTA Comments at 4.

<sup>33</sup> NYNEX Comments at 2.

<sup>34</sup> 47 C.F.R. § 1.3.

<sup>35</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>36</sup> *Wait Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

deviation from the general rule and such deviation would better serve the public interest than strict adherence to the general rule.<sup>37</sup>

10. AT&T has failed to show special circumstances justifying waiver of our 90 day limitation on promotional offerings. AT&T's request is supported only by generalized allegations of competitive harm of the type that were specifically considered and rejected by the Commission in adopting rules implementing section 254(g). AT&T has demonstrated no circumstances significantly different from those contemplated by the Commission in considering its requests for exceptions to the rate averaging requirements. Further, we do not find that granting the requested waiver would serve the public interest. AT&T has failed to show in this particular case that the benefit to the public of allowing it to match Bell Atlantic's rates in the corridors outweigh the benefits of the national policy of geographic averaging embodied in section 254(g) of the Act and our implementing regulations.<sup>38</sup>

11. We will not address either the issues concerning Bell Atlantic's compliance with the *Rate Averaging Order* or the requests that we declare Bell Atlantic, NYNEX, and other incumbent LECs non-dominant in their provision of corridors services. Those issues are outside the scope of the instant waiver request.

#### V. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED, pursuant to section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that AT&T's Petition for Waiver and Request for Expedited Consideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney  
Chief, Common Carrier Bureau

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<sup>37</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>38</sup> AT&T has raised on reconsideration of the *Rate Averaging Order* the issue of competitive exceptions to geographic rates averaging.