

FCC MAIL SECTION

Federal Communications Commission

FCC 00-121

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

In the Matter of)
DISTRICT OF)
Deaveraged Rate Zones for) CC Docket No. 96-98
Unbundled Network Elements)

Order on Reconsideration

Adopted: April 4, 2000

Released: April 6, 2000

By the Commission:

I. Summary

1. In this order we reject the request of GTE Florida that we reconsider lifting on May 1, 2000, our *sua sponte* stay of 47 C.F.R. § 51.507(f). Section 51.507(f) requires state commissions to establish at least three deaveraged rate zones for the pricing of interconnection and unbundled network elements (UNEs). Section 51.507(f) will take effect May 1, 2000, as previously contemplated.

II. Background

2. The Commission promulgated certain rules in the August 1996 *Local Competition Order* to implement section 251 of the Communications Act of 1934, as amended.¹ One such rule, section 51.507(f), requires each state commission to “establish different rates for [interconnection and UNEs] in at least three defined geographic areas within the state to reflect geographic cost differences.”² Numerous parties, including incumbent local exchange carriers and state commissions, appealed the *Local Competition Order*, and the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's section 251 pricing rules in September 1996 pending its consideration of the appeal.³ In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the

¹ See *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Report and Order*, 11 FCC Rcd. 15499 (1996).

² 47 C.F.R. § 51.507(f).

³ *Iowa Utilities Board v. FCC*, 96 F. 3d 1116 (8th Cir. 1996) (per curium) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). See also *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

Commission lacked jurisdiction.⁴ On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion.⁵

3. Because the section 251 pricing rules had not been in force for more than two years, and because not all states established at least three deaveraged rate zones, the Commission stayed the effectiveness of section 51.507(f) on May 7, 1999, to allow the states to bring their rules into compliance.⁶ The Commission stated that the stay would remain in effect until six months after the Commission released its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural local exchange carriers.⁷ The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in the Universal Service proceeding.⁸ On November 2, 1999, the Commission adopted its order in CC Docket No. 96-45.⁹ In that order, the Commission announced that section 51.507(f) would become effective six months later, on May 1, 2000, as planned.¹⁰

III. Discussion

4. We deny GTE's request that we reconsider lifting our stay of section 51.507(f) of our rules.¹¹ Consequently, by May 1, 2000, each state commission is obligated to establish at least three rate zones for the pricing of interconnection and UNEs.¹² GTE asks that we extend the duration of the stay until at least May 2001.¹³ According to GTE,

⁴ *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997).

⁵ *AT&T v. Iowa Utilities Board*, 119 S. Ct. 721, 733, 738 (1999).

⁶ *See In re Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98, *Stay Order*, 14 FCC Rcd. 8300, 8300-01 (1999).

⁷ *Id.*, 14 FCC Rcd. at 8301.

⁸ *Id.*, 14 FCC Rcd. at 8302.

⁹ *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432 (1999).

¹⁰ *Id.*, 14 FCC Rcd. at 20492-93.

¹¹ *See In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, GTE Petition for Reconsideration (filed Jan. 3, 2000) (GTE Petition). *See also* Ohio PUC Comments at 2-5 (expressing support for the petition); Letter from the Oregon PUC, to Secretary, FCC (filed Jan. 24, 2000) (expressing support for the petition).

¹² *See* 47 C.F.R. § 51.507(f).

¹³ GTE Petition at 1-2.

states must remove implicit subsidies from local rates and establish explicit, portable, intrastate universal service mechanisms simultaneously with deaveraging to avoid creating arbitrage opportunities and undermining investment incentives.¹⁴ GTE argues that state commissions will not be able to accomplish this by May 1, 2000.¹⁵ We agree with AT&T that it is inappropriate at this time to extend the stay.¹⁶ State commissions have been aware of our deaveraging policy since August 1996 and were certainly aware of the FCC's reinstated pricing authority when the Supreme Court ruled in January 1999. The states have also been on notice since May 1999 that the deaveraging rule would be reinstated, and since November 1999 that it would take effect on May 1, 2000. Many states have already created at least three deaveraged rate zones, some even while they were not obligated to do so under our rule.¹⁷ Further delaying the effectiveness of our deaveraging rule would impede the ability of competitive local exchange carriers to obtain interconnection and UNEs at cost-based rates, and to compete in the local market.

IV. Ordering Clause

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201, 251, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 251, 303(r), and 405, and Sections 1.106 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.106 and 1.429, that the petition for reconsideration filed by GTE Florida is DENIED.

Federal Communications Commission



Magalie Roman Salas
Secretary

¹⁴ *Id.* at 1, 6.

¹⁵ *Id.* at 1, 7-8.

¹⁶ *See* AT&T Opposition at 2, 5-9.

¹⁷ *See, e.g., In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Letter from Leonard J. Cali, AT&T Vice President & Director of Federal Regulatory Affairs, to Magalie R. Salas, FCC Secretary, Tbl. 1 (filed Mar. 2, 1999) (listing Colorado, Delaware, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin as states with at least three deaveraged rate zones). *See also* AT&T Opposition at 5 (stating that the more than twenty states that have already set deaveraged loop rates did so within the nine-month arbitration process established by Congress).