

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

MAILED

MAY 15 2007

In the Matter of)
)
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
)
Petitions for Reconsideration filed by Nextel)
Communications, Inc., and Rand McNally and)
Company)
)
Further Notice of Proposed Rulemaking)

MEMORANDUM OPINION AND ORDER

Adopted: May 9, 2007

Released: May 11, 2007

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss as moot pending petitions filed by Nextel Communications, Inc. and Rand McNally and Company,¹ asking the Commission to reconsider its December 31, 1998, order addressing the applicability of rate integration requirements to commercial mobile radio service (CMRS) providers.² We also terminate a pending *Further Notice of Proposed Rulemaking* in this docket on certain issues concerning the scope of rate integration requirements as applied to CMRS.³

II. BACKGROUND

2. As part of the 1996 Telecommunications Act,⁴ Congress enacted Section 254(g), which instructs the Commission to promulgate rules to "require that a provider of interstate interexchange service shall provide such services to its subscribers in each State at rates no higher than the rates charged

¹ 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, Petition for Reconsideration filed by Nextel Communications, Inc. (filed March 4, 1999); Petition for Reconsideration and Request for Expedited Action filed by Rand McNally and Company (filed March 4, 1999) (Nextel Petition and Rand McNally Petition, respectively, or March 4th Petitions).

² Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Petitions for Forbearance, *Memorandum Opinion and Order*, CC Docket No. 96-61, 14 FCC Rcd 391 (1998) (*Rate Integration Further Reconsideration and Forbearance Order*).

³ Policy and Rules Concerning the Interstate, Interexchange Marketplace, and Implementation of Section 254(g) of the Communications Act of 1934, as Amended, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 6994 (1999)(*FNPRM*).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

to its subscribers in any other State.”⁵ The Commission duly adopted a rate integration rule in accordance with the language of section 254(g).⁶ The *Rate Integration Order* explained that the rule incorporates the Commission’s existing rate integration policy and applies to all interstate interexchange services, as defined in the Act, and to all providers of these services. However, the Commission did not specifically discuss the application of the rule to CMRS providers.⁷

3. In July 1997, the Commission issued the *Rate Integration Reconsideration Order*, which clarified that CMRS carriers are required to provide interstate, interexchange CMRS services on an integrated basis in all states in which they provide service.⁸ In December 1998, in the *Rate Integration Further Reconsideration and Forbearance Order*, the Commission denied petitions for reconsideration, stating that the language of the statute is clear and unambiguously applies to CMRS providers and also denied pending requests for forbearance from that requirement.⁹

4. On March 4, 1999, both Nextel and Rand McNally filed petitions for reconsideration of the *Rate Integration Further Reconsideration and Forbearance Order*. Nextel argued that the Commission erred in finding that the statutory language of section 254(g) of the 1996 Act unambiguously applied to CMRS providers.¹⁰ Rand McNally requested the Commission revisit its definition of what constitutes a “telephone exchange service,” which had been based on Rand McNally’s Major Trading Areas (MTAs), for the purpose of applying the rate integration rule to CMRS.¹¹

5. In April 1999, the Commission issued a Further Notice of Proposed Rulemaking (*FNPRM*) asking interested parties for comment on open issues concerning the application of the rule to CMRS providers, including: “how section 254(g) should be applied to wide-area calling plans, services offered by affiliates, plans that assess local airtime or roaming charges in addition to separate long-distance charges for interstate, interexchange services, and whether cellular and PCS service rates should be integrated.”¹² In response to the *FNPRM*, certain parties requested forbearance from the application of the Commission’s rate integration rule to CMRS providers.¹³

⁵ *Id.*, 47 U.S.C. § 254(g).

⁶ Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, *Report and Order*, 11 FCC Rcd 9564 (1996) (*Rate Integration Order*); see 47 C.F.R. § 64.1801.

⁷ *Rate Integration Order*, 11 FCC Rcd at 9586-99.

⁸ Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, *Petitions for Forbearance, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 11812, 11821 (1997) (*Rate Integration Reconsideration Order*).

⁹ *Rate Integration Further Reconsideration and Forbearance Order*, 14 FCC Rcd at 396 (1998).

¹⁰ See Nextel Petition, at 1-6.

¹¹ Rand McNally Petition, at 1.

¹² *FNPRM*, 14 FCC Rcd at 6998, ¶ 8.

¹³ See, e.g., 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, Comments and Petition for Forbearance, filed by BellSouth Corp. (May 27, 1999) at 6-19; 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, Comments filed by CommNet Cellular Inc. (May 27, 1999) at 1-6.

6. On July 14, 2000, the U.S. Court of Appeals for the District of Columbia Circuit vacated the *Rate Integration Further Reconsideration and Forbearance Order*.¹⁴ The court found that the Commission erred in determining that section 254(g) was unambiguous and plainly applied to CMRS providers, but remanded the matter for further determination whether, as an exercise of our discretionary authority to interpret the Act, section 254(g) should be read as including CMRS providers.¹⁵

7. In light of the Court of Appeals' action vacating the *Rate Integration Further Reconsideration and Forbearance Order*, the Commission dismissed as moot the pending forbearance requests. The Commission stated, "there is currently no rate integration rule to apply to CMRS carriers and no rule to forbear from applying. In this situation, we conclude that the forbearance requests are moot."¹⁶

III. DISCUSSION

8. We conclude that the pending Petitions for Reconsideration should be dismissed as moot because the court's vacatur of the *Rate Integration Further Reconsideration and Forbearance Order* means that there is no rate integration rule currently applicable to CMRS carriers.¹⁷ As such, we can neither reconsider that rule, as requested by Nextel, nor reconsider the manner in which we have defined how that rule is applicable, as requested by Rand McNally.

9. The *FNPRM* is similarly premised on the existence of a rule applying section 254(g) to CMRS providers and focuses on how that rule should be implemented in certain situations. It would be premature and procedurally defective to address the questions posed in the *FNPRM* while there is no rule that applies section 254(g) to CMRS providers.¹⁸ For those reasons, we terminate the *FNPRM*.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), the above-captioned petitions filed by Nextel Communications, Inc., and Rand McNally & Company ARE DISMISSED.

¹⁴ *GTE Service Corp. and Micronesian Telecommunications Corp. v. FCC*, 224 F.3d 768 (D.C. Cir. 2000) (*GTE Service Corp.*).

¹⁵ *Id.* at 775-76.

¹⁶ See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, *Memorandum Opinion and Order*, CC Docket No. 96-61, 15 FCC Rcd 21066, 21068, ¶ 6 (2000) (*Rate Integration Forbearance Order*).

¹⁷ See *id.* at 21068, ¶¶ 6-7. See also Application By Qwest Communications International Inc. For Authorization To Provide In-Region, Interlata Services In Arizona, *Memorandum Opinion and Order*, 18 FCC Rcd 25504, 25536, n.24 (2003) (discussing precedent in which court vacates existing rules and there are no rules in effect).

¹⁸ *Id.* See also Petition of SBC Communications Inc. For Forbearance From the Application of Title II Common Carrier Regulation to IP Platform Service, *Memorandum Opinion and Order*, 20 FCC Rcd 9361, 9363-64 at ¶¶ 7-8 (2005) ("We find that the petition is procedurally defective because it asks us to forbear from the application of statutory provisions and regulations that 'may or may not' apply to the telecommunications carrier or telecommunications service at issue.").

11. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), and section 1.412 of the Commission's rules, 47 C.F.R. § 1.412, the above-captioned Further Notice of Proposed Rulemaking IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Marlene H. Dortch". The signature is written in black ink and is positioned to the right of the typed name.

Marlene H. Dortch
Secretary