

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

In the Matter of)
)
)
AT&T Inc. Petition for Waiver of Section) WCB/Pricing File No. 06-18
61.42(g) of the Commission's Rules)
)
)

ORDER

Adopted: May 25, 2006

Released: May 25, 2006

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. AT&T Inc. (AT&T) filed a petition¹ on April 7, 2006, seeking a limited waiver of section 61.42(g) of the Commission's rules to exclude its True IP to PSTN (TIPToP) service from any price cap basket in the upcoming 2006 annual access tariff filing.² For the reasons explained below, we grant AT&T the requested waiver for purposes of the 2006 annual access tariff filing.

II. BACKGROUND

2. AT&T has requested a limited waiver of section 61.42(g) of the Commission's rules so that it may exclude its TIPToP service from any price cap basket for purposes of the 2006 annual access tariff filing.³ AT&T states that TIPToP "provides Internet Protocol Voice Information Service Providers (IP-VIS Providers) with connectivity" to the AT&T network.⁴ The service includes "one-way or two-way port interfaces that provide trunking and switching components in a single easy to use time division multiplexed interface."⁵ This interface provides connectivity to "AT&T users or non-AT&T users that are connected through (subtended by) AT&T Access Tandems."⁶ TIPToP first was tariffed in November

1 AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules and Request for Expedited Treatment, WCB/Pricing File No. 06-18 (filed Apr. 7, 2006) (AT&T Petition). AT&T filed the petition on behalf of Pacific Bell Telephone Company, Southwestern Bell Telephone Company, the Ameritech Operating Companies, Southern New England Telephone Company, and Nevada Bell Telephone Company. Id. at 1.

2 See 47 C.F.R. §§ 61.42(g) (new services must be included in the annual price cap filing in the year after the one in which they are introduced), 61.43 (annual price cap filing requirements).

3 AT&T Petition at 1-2. The Wireline Competition Bureau issued a public notice seeking comment on AT&T's petition. See Comments Sought on AT&T Petition For Waiver of Section 61.42(g) of the Commission's Rules, WCB/Pricing File No. 06-18, Public Notice, DA 06-837 (Wireline Comp. Bur. rel. Apr. 11, 2006).

4 AT&T Petition at 1.

5 Id. at 1-2.

6 Id. at 2.

2004 and therefore should have been included in the appropriate price cap basket in the 2005 annual access filing.⁷ SBC Services Inc. (now part of AT&T) requested a waiver to exclude TIPToP from price caps in the 2005 annual access tariff filing, and the Bureau granted the waiver on June 6, 2005.⁸ Absent another waiver, AT&T would be required to include TIPToP in the appropriate price cap basket in the 2006 annual access tariff filing.⁹

3. AT&T offers two reasons why a waiver is warranted. First, it asserts that TIPToP does not fit squarely within either the traffic-sensitive or the trunking basket and that a waiver would preserve the *status quo* until the Commission determines the appropriate treatment of the service under the price cap regime.¹⁰ Second, AT&T contends that a waiver would not harm the public interest because the service is not purchased by any unaffiliated customers and the exclusion of the service from price caps in the 2006 annual filing will have no effect on rates for any price cap services.¹¹

4. Sprint Nextel is the only party to oppose the petition.¹² It argues that AT&T's incumbent local exchange carriers retain market power in the provision of switched access services and that permitting AT&T to provide this service "outside of the light regulatory oversight afforded by price caps provides an opportunity for discriminatory or otherwise anti-competitive pricing."¹³ Sprint Nextel also contends that a waiver is inappropriate because it is not clear when the Commission will determine the appropriate treatment of the service and, as a result, TIPToP will remain outside of price caps for an indefinite period of time.¹⁴ Sprint Nextel requests that AT&T be required to allocate TIPToP revenues between the trunking and switching baskets on "some reasonable and fully explained basis subject to Commission approval."¹⁵

III. DISCUSSION

5. The Commission may waive its regulations for good cause shown.¹⁶ In general, the waiver request must demonstrate special circumstances warranting a deviation from the general rule and that such a deviation will serve the public interest.¹⁷ We find that good cause exists to grant AT&T a limited waiver of section 61.42(g) for TIPToP services for purposes of the 2006 annual access tariff filing. We agree with AT&T that special circumstances exist due to the nature of the service and the limited demand for that service. In particular, we agree with AT&T that TIPToP does not fit squarely within the price cap structure because it appears to include both traffic-sensitive and trunking elements. The Commission is considering the appropriate regulatory treatment of IP-based services, including the intercarrier

⁷ *Id.* at 2; *see* 47 C.F.R. § 61.42(g).

⁸ *See SBC Services Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 05-24, Order, 20 FCC Rcd 10102 (Wireline Comp. Bur. 2005).

⁹ AT&T Petition at 2; 47 C.F.R. § 61.42(g).

¹⁰ AT&T Petition at 3.

¹¹ *Id.*

¹² *See* Comments of Sprint Nextel Corporation, WCB/Pricing File No. 06-18, at 1-2 (filed Apr. 21, 2006) (Sprint Nextel Comments).

¹³ *Id.* at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.* Sprint Nextel observes that AT&T could be allowed to adjust its price cap calculations should the Commission ultimately determine that TIPToP be treated in a different manner. *Id.*

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

compensation rules that apply to IP-originated traffic, in a number of open proceedings.¹⁸ The requested waiver will serve the public interest by permitting the Commission to address the appropriate regulatory treatment of IP-originated traffic in a more comprehensive manner before addressing more detailed issues, such as the appropriate price cap baskets within which particular new services should be placed. For similar reasons, we decline at this time to adopt Sprint Nextel's request that we require AT&T to allocate TIPToP revenues between existing price cap baskets.

6. Further, we do not agree with Sprint Nextel that a grant of the requested waiver would give AT&T an opportunity to engage in discriminatory or anti-competitive pricing. The Commission will maintain regulatory oversight over TIPToP service and will be able to address any discriminatory or anti-competitive pricing that might occur.¹⁹ AT&T's TIPToP rates are subject to Part 61, subparts E and F of the Commission's rules, which provide protection against unreasonable rate increases.²⁰ In particular, these rules require AT&T to justify any rate increases it seeks for its TIPToP service by providing cost and other supporting data in the tariff review process.²¹ Moreover, excluding TIPToP from price cap baskets in the 2006 annual filing would not affect any price cap rates.²² Conversely, including TIPToP in price caps, as Sprint Nextel proposes, would give AT&T greater flexibility to change prices for that service and other services in the same basket. Consequently, although TIPToP will remain outside of price cap regulation under the limited waiver granted here, we find that regulation pursuant to our Part 61 rules is sufficient to address the concerns raised by Sprint Nextel, until the Commission determines the appropriate treatment of this service under price caps.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 61.42(g) of the Commission's rules IS WAIVED for TIPToP services offered by AT&T, with respect to AT&T's 2006 annual access tariff filing requirements under section 61.43 of the Commission's rules, 47 C.F.R. §§ 61.42(g), 61.43.

FEDERAL COMMUNICATIONS COMMISSION

Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau

¹⁸ See, e.g., *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd at 4685 (2005); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

¹⁹ Reply Comments of AT&T Inc., WCB/Pricing File No. 06-18, at 1-2 (filed Apr. 28, 2006) (AT&T Reply).

²⁰ See 47 C.F.R. Part 61, Subparts E & F.

²¹ *Id.*

²² See 47 C.F.R. §§ 61.47(a), (b).