

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

In the Matter of)	
)	
Policy and Rules Concerning the)	
Interstate Interexchange Marketplace)	CC Docket No. 96-61
)	
Implementation of Section 254(g))	
of the Communications Act of 1934,)	
as Amended.)	

MEMORANDUM OPINION AND ORDER

Adopted: August 17, 2000

Released: August 23, 2000

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address requests filed by BellSouth and other parties¹ that the Commission forbear from application of the rate integration requirements of section 254(g) of the Communications Act, as amended,² to commercial mobile radio service (CMRS) providers. In light of the July 14, 2000 decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating the Commission's rate integration rules as applied to CMRS carriers and remanding the matter to the Commission for further proceedings in accordance with the Court's decision, we find that the forbearance requests are moot and premature.³ Accordingly, we dismiss the requests as fully discussed below.

II. BACKGROUND

2. Section 254 (g), enacted as part of the 1996 Telecommunications Act,⁴ instructs the Commission to adopt rules that "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 to its subscribers in any other State." On August 7, 1996, we adopted a rate integration rule that reiterated the language of section 254(g).⁵ We stated that this rule would incorporate our existing rate integration policy, and would

¹ AT&T, CTIA, CommNet, Nextel, Omnipoint, PCIA, and PrimeCo.

² 47 U.S.C. § 254(g).

³ *GTE Service Corp. and Micronesian Telecommunications Corp. v. FCC*, No. 97-1538 (D.C. Cir., July 14, 2000).

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

apply to all interstate, interexchange services, as defined in the Act, and to all providers of these services.⁶ We did not, however, expressly address application of the rate integration requirement to CMRS providers.

3. In July 1997, in response to petitions for reconsideration, we clarified that the rate integration rule does not require a carrier to integrate an interstate, interexchange CMRS service with other non-CMRS interstate, interexchange service offerings. We further clarified, however, that this rule requires CMRS carriers to provide interstate, interexchange CMRS services on an integrated basis in all states in which they provide service.⁷

4. In December 1998, we denied multiple petitions for reconsideration of our conclusion that the rate integration requirement of section 254(g) applied to interstate, interexchange services offered by CMRS providers.⁸ Specifically, we determined that the language of the statute is unambiguous and plainly applies to CMRS providers.⁹ We also denied petitions for forbearance from the application of rate integration to CMRS under section 10 of the Act.¹⁰ In April 1999, we released a *FNPRM* seeking comment on a number of issues concerning implementation of rate integration requirements to CMRS carriers.¹¹ In response to the *FNPRM*, BellSouth and other parties requested forbearance from the application of our rate integration rule to CMRS providers.¹² On May 26, 2000, the date on which the requests for forbearance would be deemed granted was extended to August 24, 2000.¹³

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⁵ Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, CC Docket No. 96-61, 11 FCC Rcd 9564 (1996) (*Rate Integration Order*); see 47 C.F.R. § 64.1801.

⁶ *Rate Integration Order*, 11 FCC Rcd at 9586-99.

⁷ 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*, CC Docket No. 96-61, 12 FCC Rcd 11812, 11821 (1997) (*Rate Integration Reconsideration Order*).

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, Memorandum Opinion and Order*, CC Docket No. 96-61, 14 FCC Rcd 391 (1998) (*Rate Integration Further Reconsideration and Forbearance Order*).

⁹ *Id.* at 396 (paras. 10-11).

¹⁰ *Id.* at 407 (para. 36).

¹¹ 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*, CC Docket No. 96-61, 14 FCC Rcd 6994 (1999) (*FNPRM*).

¹² See, e.g., BellSouth Comments and Petition for Forbearance; CTIA Comments; CommNet Comments at 3; PCIA Comments at 3-12. Because BellSouth styled its pleading as “Comments and Petition for Forbearance,” we treat it as a petition for forbearance under section 10 of the 1996 Act and act upon it pursuant to the statutory timeframes set forth in section 10(c). Other forbearance requests do not meet the standard for treatment as a forbearance request recently adopted by the Commission. See Adoption of Section 1.53 of the Commission’s Rules, *Memorandum Opinion and Order*, 15 FCC Rcd 1140 (2000). We nonetheless act upon them pursuant to section 10(c).

¹³ *Petition for Forbearance from Enforcement of Section 254(g) of the Communications Act of 1934, as Amended, Order*, CC Docket No. 96-61, DA 00-1180 (rel. May 26, 2000). Pursuant to 47 U.S.C. § 160(c), the Commission must act on petitions for forbearance within one year after the Commission receives it, unless the one-year period is extended by an additional 90 days.

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

III. DISCUSSION

6. We conclude that the requests of BellSouth and others for forbearance should be dismissed. The Court of Appeals' decision reversed our finding that section 254(g) unambiguously applies to CMRS providers and vacated our order applying the rate integration rule to CMRS carriers. Thus, 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.¹⁵

7. At the same time, we find that acting upon the forbearance requests before reaching a decision on remand would be premature. The Court of Appeals remanded this matter to the Commission so that we could determine whether, as an exercise of our discretionary authority to interpret the statute, it is reasonable to find that section 254(g) applies to CMRS providers. In our view, it would be meaningless for us to consider whether to forbear from application of section 254 (g) to CMRS carriers before we have even considered whether, as a matter of our discretionary authority to interpret the statute, section 254(g) should in fact be applied to such carriers. Pursuant to the Court's order, we will further consider the matter of whether CMRS carriers are covered under section 254(g) expeditiously. If and when we impose any rate integration obligations on CMRS providers, BellSouth may pursue any forbearance relief it may deem appropriate.

IV. PROCEDURAL MATTERS

8. For further information regarding this Order, contact Peter Wolfe, Wireless Telecommunications Bureau, Policy Division, at (202) 418-1310.

V. ORDERING CLAUSES

9. IT IS ORDERED, pursuant to Sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 160, that the Petition for Forbearance of BellSouth is DISMISSED.

¹⁴ *GTE Service Corp. and Micronesian Telecommunications Corp. v. FCC*, 2000WL892959 (D.C. Cir.).

¹⁵ See *Enrico's Inc. v. Rice*, 730 F. 2d 1250, 1252-53 (9th Cir. 1984) (action of Commission to abandon price posting rule which had been found invalid by a judicial decision made moot a request for injunction against the pricing rule); *Washington Ass'n for Television and Children v. FCC*, 665 F.2d 1264, 1268 (D.C. Cir. 1981) (Commission's abandonment of multiple ownership rule in an intervening Commission proceeding made moot appeal from grant of an exemption from that policy).

10. IT IS FURTHER ORDERED that the requests for forbearance contained in the comments filed by AT&T, CTIA, CommNet, Nextel, Omnipoint, PCIA, and PrimeCo are DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary