

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

CC Docket No. 90-132

In the Matter of

Competition in the Interstate  
Interexchange Marketplace

**MEMORANDUM OPINION AND ORDER  
ON RECONSIDERATION**

Adopted: April 4, 1995;

Released: April 21, 1995

By the Commission:

**I. INTRODUCTION**

1. On May 14, 1993, with the advent of 800 number portability, we acted on an intent first expressed in the *Interexchange Order*,<sup>1</sup> and further streamlined our regulation of most of AT&T's 800 services.<sup>2</sup> We concluded that, as initially envisioned in the *Interexchange Order*, the implementation of number portability rendered the 800 services marketplace substantially competitive, and that the elimination of price cap regulation of AT&T's 800 services would be in the public interest. Sprint Communications Company L.P. (Sprint) filed a petition for reconsideration of the *Second Report and Order* on June 21, 1993. After reviewing the record before us, we reaffirm our conclusion

that further streamlined regulation of AT&T's 800 services is in the public interest. We therefore deny Sprint's petition for reconsideration.

**II. BACKGROUND**

2. In the *Interexchange Proceeding*, we conducted a comprehensive examination of the state of competition in the interstate interexchange marketplace. We found that significant competition existed in business services, and therefore adopted a series of reforms designed to reduce regulatory burdens on AT&T's provision of most business services.<sup>3</sup> Under "further streamlined regulation," AT&T is permitted to file its business services tariffs on fourteen days notice, and those tariffs are presumed lawful for purposes of advance tariff review. In addition, price cap ceilings, floors, and rate bands no longer apply to those tariffs.<sup>4</sup> At the time of the *Interexchange Proceeding*, we declined to extend this regulatory streamlining to AT&T's 800 services and other inbound services.<sup>5</sup> We observed that 800 numbers were not yet portable, and that the lack of number portability constituted a barrier to full competition in 800 services.<sup>6</sup> Based on this finding, we retained price cap regulation of AT&T's 800 services.<sup>7</sup> We found, however, that no party had identified any other significant barriers to 800 services competition, and expressed our specific intent to further streamline regulation of such services when 800 number portability became generally available.<sup>8</sup>

3. 800 numbers became portable on May 1, 1993, through the implementation of a database system of 800 access.<sup>9</sup> In anticipation of this development, AT&T filed a petition on February 17, 1993, asking that we streamline regulation of its 800 services. On May 14, 1993, we issued the *Second Report and Order*, substantially granting AT&T's petition. We determined that number portability rendered the 800 services market substantially competitive, and we therefore adopted streamlined regulation for most of AT&T's 800 services.<sup>10</sup>

<sup>1</sup> *Competition in the Interstate Interexchange Marketplace*, Report and Order, Docket No. CC 90-132, 6 FCC Rcd 5880, 5905 n.233 (1991) (*Interexchange Order*), recon., 6 FCC Rcd 7569 (1991) (*Sua Sponte Reconsideration Order*), further recon., 7 FCC Rcd 2677 (1992), further recon., 8 FCC Rcd 2659 (1993).

<sup>2</sup> *Competition in the Interstate Interexchange Marketplace*, Second Report and Order, Docket No. CC 90-132, 8 FCC Rcd 3668, 3671-72 (1993). We did not, however, further streamline our regulation of AT&T's 800 Directory Assistance. See *infra* note 10.

The term "800 services" refers to Price Cap Basket 2 offerings by AT&T that allow customers to agree in advance to pay for all calls made to them using a designated "800" number. See generally 47 C.F.R. § 61.42(b)(2). The term "inbound services" refers to all other services that use 800 numbers.

<sup>3</sup> *Interexchange Order*, 6 FCC Rcd at 5880-82, 5893-94. We excluded AT&T's Residential and Small Business Services Basket (Basket 1), including Basket 1 operator services and international message telephone service (IMTS), from further streamlining, because there was insufficient evidence that the marketplace for these services was subject to substantial competition. See *id.* at 5906-08.

<sup>4</sup> *Id.* at 5894.

<sup>5</sup> *Id.* at 5903-06.

<sup>6</sup> *Id.* at 5904. In this order, "number portability" refers to the ability of 800 services customers to keep their 800 number when changing carriers. Prior to the implementation of 800 number

portability, specific 800 numbers were assigned to each carrier, and customers wishing to switch 800 service providers would have to surrender their existing numbers. For customers that placed value in retaining their 800 numbers, especially those businesses that had invested in advertising based on their existing numbers, the fact that numbers were not portable constituted a disincentive to switch carriers. AT&T, which had long been the only provider of 800 services, retained most of the available 800 NXX codes even after competitors entered the marketplace. As a result, AT&T had significant market power among 800 service providers before number portability became possible.

<sup>7</sup> *Id.* at 5905.

<sup>8</sup> *Id.* at 5905 & n.233.

<sup>9</sup> See *Provision of Access for 800 Service*, Report and Order, 4 FCC Rcd 2824 (1989) (*800 Order*), recon., 6 FCC Rcd 5421, 5425 (1991) (*800 Reconsideration Order*), further recon., 8 FCC Rcd 1038 (1993), Second Report and Order, 8 FCC Rcd 907 (1993); see *Provision of Access for 800 Service*, Order, 7 FCC Rcd 8616 (1993) (*Extension Order*) (extending the number portability implementation date from March 4, 1993 to May 1, 1993).

<sup>10</sup> See *Second Report and Order*, 8 FCC Rcd at 3669. Because 800 Directory Assistance remained a monopoly service and was not affected by number portability, we retained price cap restraints for AT&T's 800 Directory Assistance. *Id.* at 3671.

## III. PLEADINGS

4. Sprint asks us to reconsider our decision to streamline our regulation of AT&T's 800 services. Sprint asserts that the Commission should have waited until after number portability had been implemented before considering further streamlining, and should have made specific findings that the 800 services market was competitive before taking action.<sup>11</sup> According to Sprint, the Commission failed to conduct such an investigation in the *Second Report and Order*, and treated the elimination of price cap regulation on AT&T's 800 services as a mere "ministerial task" once 800 numbers became portable.<sup>12</sup> Sprint notes that, although the *Second Report and Order* was released after the implementation of number portability, the record in that proceeding closed on March 22, 1993, prior to the initiation of number portability.<sup>13</sup>

5. Sprint also claims that certain recent actions by AT&T undermined the Commission's efforts to mitigate AT&T's advantage in the 800 services marketplace.<sup>14</sup> Specifically, Sprint contends that AT&T has sought to prevent customers from exercising their "fresh look" rights to terminate their service arrangements with AT&T without liability.<sup>15</sup> According to Sprint, AT&T has imposed "dramatically" higher rates upon customers who exercise their fresh look rights but temporarily remain on AT&T's network following the end of the ninety-day fresh look window. Sprint also claims that AT&T has sought to intimidate customers by sending letters and customer advisories falsely alleging that services provided by Sprint and other AT&T competitors pursuant to "secret deals" are illegal and therefore unenforceable. To support its allegations that such actions have had a deleterious effect on competition in 800 services, Sprint cites a *Wall Street Journal* article suggesting that as of August 1993, AT&T had retained most of its large corporate 800 number customers and picked up \$710 million in additional business following the implementation of number portability.<sup>16</sup>

6. In its opposition, AT&T states that Sprint has provided no new facts or analysis to justify reconsideration of the *Second Report and Order*.<sup>17</sup> AT&T argues that the Commission expressed its unambiguous intent in the *Interexchange Order* to streamline regulation of AT&T's 800 services once 800 numbers became portable.<sup>18</sup> AT&T further claims that the Commission did investigate the competitiveness of the 800 services marketplace in the *Interexchange Order* and in the *Second Report and Order*.<sup>19</sup> AT&T dismisses Sprint's allegations about its marketing practices as "unsupported and irrelevant," and argues that the Commission has already considered such claims and determined that they would be addressed in other orders.<sup>20</sup>

## IV. DISCUSSION

7. We find that Sprint has failed to demonstrate that the *Second Report and Order* should be modified. In the *Interexchange Proceeding*, we specifically solicited and evaluated comments on the state of competition in 800 services.<sup>21</sup> We determined that "no party has identified any . . . significant barriers to 800 services competition," other than the absence of number portability,<sup>22</sup> and we expressed our intent to streamline regulation of AT&T's 800 services "when 800 number portability is generally available."<sup>23</sup> Before adopting the *Second Report and Order*, we gave interested parties a further opportunity to identify any remaining significant barriers to 800 services competition.<sup>24</sup> We concluded once again that number portability had been the only significant barrier to substantial competition in the 800 services marketplace.<sup>25</sup> Therefore, we implemented further streamlined regulation of AT&T's 800 services.

8. We are unpersuaded by Sprint's argument that we should have deferred action on AT&T's petition so that commenters could have identified additional barriers to competition that might have arisen after number portability had been put into effect. Sprint and other IXC's have been competing against AT&T for customers of 800 services since 1986. Sprint and other parties had a full opportunity to identify obstacles to competition in the 800 marketplace in the proceedings leading to the 1991 *Interexchange Order* and the 1993 *Second Report and Order*. They did not do so. Indeed, even now on reconsideration Sprint has not identified any barriers to 800 services competition that would warrant the reimposition of price cap regulation of AT&T's 800 services. We therefore reject Sprint's claim that the *Second Report and Order* was based on insufficient information about the competitiveness of the 800 services marketplace.

9. We also reject Sprint's allegations that AT&T's practices have prevented the development of substantial competition in 800 services. Sprint has previously raised the argument that AT&T effectively precluded customers from exercising their fresh look rights. The Common Carrier Bureau considered this claim in connection with AT&T's fresh look tariff transmittal. After reviewing these allegations and the rest of the record, the Bureau concluded that AT&T's tariff filing did not, on its face, violate any statute or Commission rule or policy.<sup>26</sup> Moreover, to assist customers in exercising their fresh look rights and to dispel any confusion that may have deterred customers from do-

<sup>11</sup> Sprint Petition at 3.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 5-6.

<sup>15</sup> Under our "fresh look" policy, AT&T customers with bundled packages of services that included 800 or inbound service were permitted to terminate those service arrangements without being contractually liable for such termination. Customers had ninety days after implementation of number portability to exercise this right.

<sup>16</sup> Sprint Reply at 6.

<sup>17</sup> AT&T Opposition at 2.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> See *Competition in the Interstate Interexchange Marketplace*, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2641 (1990) (*Interexchange NPRM*); *Interexchange Order*, 6 FCC Rcd at 5904-06.

<sup>22</sup> *Interexchange Order*, 6 FCC Rcd at 5905 n.233.

<sup>23</sup> *Id.*

<sup>24</sup> *Second Report and Order*, 8 FCC Rcd at 3668-71.

<sup>25</sup> *Id.* at 3669-71.

<sup>26</sup> AT&T Communications Tariff FCC No. 12, Transmittal Nos. 4941 and 4999, DA 93-431, 8 FCC Rcd 2679 (1993). The Bureau also concluded that an investigation of the tariff's lawfulness was not warranted at that time. *Id.*

ing so, the Commission issued a public notice explaining the fresh look policy and the rights of customers who availed themselves of this option.<sup>27</sup>

10. Sprint's generalized allegations about other anticompetitive practices do not convince us that customers were intimidated from exercising their fresh look rights, or, more importantly, that AT&T was able to so undermine our fresh look policy as to effectively thwart competition in 800 services. The *Second Report and Order* determined that streamlined regulation of most of AT&T's 800 services would serve the public interest, and Sprint has not presented any arguments that would justify altering that conclusion.<sup>28</sup> There is evidence that AT&T has lost market share in 800 services since number portability was put into effect.<sup>29</sup> More importantly, carriers now actively and successfully compete for 800 services customers based on price, features, and service.<sup>30</sup> Sprint has failed to demonstrate that AT&T's alleged market power or structural advantages, rather than these competitive forces, determine the shape of the 800 services marketplace today. If Sprint is aware of specific actions by AT&T that violate the Communications Act, it should make those allegations to us and we will take any necessary remedial action. We find nothing in Sprint's petition to suggest that the reimposition of price cap regulation on AT&T's 800 services is a more appropriate regulatory response.

#### V. CONCLUSION

11. We have acted carefully to ensure that our lifting of price cap regulation for various of AT&T's business and 800 services has been in the public interest. As envisioned in the Interexchange Order and the *Second Report and Order*, number portability has rendered the 800 services market substantially competitive. We therefore deny Sprint's petition for reconsideration.

#### VI. ORDERING CLAUSE

12. Accordingly, pursuant to the authority contained in sections 1, 4, and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 201-205, IT IS ORDERED that the Petition for Reconsideration of Sprint Communications Company, L.P. IS DENIED.

<sup>27</sup> Consumer Public Notice in CC Docket No. 90-132 Regarding Fresh Look Rights, March 10, 1993.

<sup>28</sup> The *Wall Street Journal* article cited in Sprint's reply does not demonstrate that number portability has failed to facilitate competition in 800 services. The article indicated that AT&T had managed to retain many of its large 800 services customers thanks to the "marketing savvy" of one of its executives and to its ability to match competitors' offers. See John J. Keller, *In a New Offensive, AT&T Reassigns Nacchio to Fight Long-Distance Rivals*, *Wall Street Journal*, August 10, 1993, at B5. Such information is consistent with our belief that competition, rather than the anticompetitive exercise of market power, would drive the 800 services marketplace after the advent of number portability. Furthermore, the *Wall Street Journal* article appeared barely three months after 800 number portability had been put into effect, and more recent evidence further supports the argument that the market is substantially competitive. See *infra* note 30.

<sup>29</sup> See, e.g., *AT&T Executive Says Legislation is Essential for "Industry Repositioning"*, *Common Carrier Week*, October 3, 1994 (stating that according to AT&T Executive Vice President

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William F. Caton  
Acting Secretary

Alex Mandl, AT&T's 800 services have lost market share since the implementation of number portability); Joanie Wexler, *AT&T Advances on 800 Front*, *Network World*, May 2, 1994, at 7 (noting that according to Joe Noel, general manager of telecommunications research at Intelliquest, Inc., AT&T had lost \$500 million in 800 services business to MCI in the past year).

<sup>30</sup> See, e.g., Peter Weaver, *Is it Time to Join the 800 Network?* *Nation's Business*, December, 1994, at 37 ("Until 1987, only AT&T offered 800 numbers. Now, there's intense competition among more than 400 companies. . ."); Neil Hediger, *One Year Later, the Story is Only Beginning to Unfold: 800-Number Portability's First Birthday*, *Telemarketing*, May, 1994, at 84 ("Today, vendors compete with one another based on features, reliability, service and overall value, not on who owns the 800 exchange."); *U.S. Industrial Outlook* at 29 (1994) ("Competition heated up in the 800-calling market as thousands of customers reportedly decided to switch carriers [after the implementation of number portability].").