§ 489.23 Specific limitation on charges for services provided to certain enrollees of fee-for-service FEHB plans.

A provider that furnishes inpatient hospital services to a retired Federal worker age 65 or older who is enrolled in a fee-for-service FEHB plan and who is not covered under Medicare Part A, must accept, as payment in full, an amount that approximates as closely as possible the Medicare inpatient hospital prospective payment system (PPS) rate established under part 412. The payment to the provider is composed of a payment from the FEHB plan and a payment from the enrollee. This combined payment approximates the Medicare PPS rate. The payment from the FEHB plan approximates, as closely as possible, the Medicare PPS rate minus any applicable enrollee deductible, coinsurance, or copayment amount. The payment from the enrollee is equal to the applicable deductible, coinsurance, or copayment amount.

3. In § 489.53, the introductory text to paragraph (a) is republished and a new paragraph (a)(14) is added to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

* * * * *

(14) The hospital knowingly and willfully fails to accept, on a repeated basis, an amount that approximates the Medicare rate established under the inpatient hospital prospective payment system, minus any enrollee deductibles or copayments, as payment in full from a fee-for-service FEHB plan for inpatient hospital services provided to a retired Federal enrollee of a fee-for-service FEHB plan, age 65 or older, who does not have Medicare Part A benefits.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 17, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 97–28594 Filed 10–28–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–61; FCC 97–366]

Petition for Rulemaking to Reclassify AT&T Corp. as Having Dominant Carrier Status

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration in CC Docket No. 96–61 (Order) released October 9, 1997 finds no new evidence or arguments that demonstrate that a new examination of AT&T's regulatory status is warranted. The Order also finds no basis to impose on AT&T a service requirement not imposed on other carriers subject to the rate averaging and rate integration rules, and that the Commission properly included AT&T/Alascom within the scope of the reclassification of AT&T as non-dominant in the provision of interstate, domestic, interexchange services. Finally, the Order clarifies that, to the extent AT&T/Alascom has been found to be dominant in the provision of certain interstate common carrier services (which the Commission has previously defined as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.''), AT&T/Alascom's regulatory obligations with respect to those services remain unchanged.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Heimann, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted October 8, 1997, and released October 9, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–366.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

SYNOPSIS OF ORDER ON RECONSIDERATION

I. Introduction

1. On October 23, 1995, the Commission issued an order granting AT&T Corporation's (AT&T's) motion to be reclassified as a non-dominant carrier under Part 61 of the Commission's rules and regulations. On November 22, 1995, the State of Hawaii (Hawaii) and General Communications, Inc. (GCI) timely filed Petitions for Reconsideration of the Commission's *AT&T Reclassification Order.* For the reasons stated below, we deny the petitions of both Hawaii and GCI.

2. On January 23, 1996, more than two months past the statutory deadline, Total Telecommunications Services, Inc. (TTS) also filed a Petition For Reconsideration, and a Motion For Acceptance of Petition For Reconsideration. As discussed below, we deny TTS's motion and dismiss its petition as untimely, and therefore do not address the merits of its petition.

3. On December 23, 1996, GCI filed a Petition for Reconsideration or Clarification of the Commission's *Tariff Forbearance Order* (61 FR 59340 (November 22, 1996)). For the reasons discussed below, we grant GCI's petition for clarification of the *Tariff Forbearance Order.*

4. Finally, on December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA), filed a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status. For the reasons discussed below, we deny UHA's petition.

II. Petitions for Reconsideration

A. Background

5. In the *AT&T Reclassification Order,* the Commission reclassified AT&T as a non-dominant carrier, based on the Commission's finding that AT&T no longer possessed individual market power in the interstate, domestic, interexchange market taken as a whole. The Commission acknowledged that there was evidence in the record that AT&T, MCI and Sprint had increased basic schedule rates in lock-step, but found that that evidence did not support a finding that AT&T retained the power unilaterally to raise residential prices above competitive levels. In addition, the Commission found that, to the extent that tacit price coordination with respect to basic schedule or residential rates in general was occurring, the problem was generic to the

interexchange industry and not specific to AT&T. The Commission concluded that concerns regarding such pricing would be better addressed by removing regulatory requirements that may have facilitated such conduct, such as the longer advance notice period for tariff changes then applicable only to AT&T, and by addressing the issues raised by these concerns in the context of a proceeding to examine the interstate, domestic, interexchange market as a whole. We recently reiterated our concern that ''not all segments of [the interstate, interexchange services] market appear to be subject to vigorous competition,'' and expressed concern about the ''relative lack of competition among carriers to serve low volume long distance customers.''

6. In assessing whether AT&T possessed individual market power, the Commission followed the relevant product and geographic market definitions adopted by the Commission in the *Competitive Carrier* proceeding. In that proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: ''(1) Interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. off-shore points) comprises the relevant geographic market for this product, with no relevant submarkets.'' The Commission concluded that it should apply the foregoing market definitions in assessing AT&T's market power, because those definitions were applied in classifying all of AT&T's competitors as non-dominant carriers. The Commission further stated that examination of the substitutability of supply for interstate, domestic, interexchange services also indicated that use of those definitions to evaluate AT&T's market power was appropriate.

7. As a non-dominant interexchange carrier, AT&T is generally subject to the same regulations as its long-distance competitors. In the *AT&T Reclassification* proceeding, however, AT&T made certain voluntary commitments that it described as transitional provisions intended to address concerns expressed by various parties about possible adverse effects of reclassifying AT&T. These commitments concerned, among other things, service to and from the States of Alaska and Hawaii, and other regions subject to the Commission's rate integration policy, and geographic rate averaging. In the *AT&T Reclassification Order,* the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.

8. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted. The 1996 Act seeks ''to provide for a pro-competitive, de-regulatory national policy framework'' designed to make available to ''all Americans'' advanced telecommunications and information technologies and services ''by opening all telecommunications markets to competition.'' Consistent with the 1996 Act's objective of ensuring that all Americans benefit from the liberalization of telecommunications markets, the 1996 Act required the Commission, within six months after the date of enactment, to:

> adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to subscribers in any other State.

On August 7, 1996, the Commission adopted a Report and Order implementing these statutory requirements.

9. On October 31, 1996, the Commission released the *Tariff Forbearance Order.* In that order, the Commission determined that the statutory criteria in section 10 of the Communications Act, as amended, were met to detariff completely interstate, domestic, interexchange services offered by nondominant interexchange carriers, and, therefore, that the Commission would no longer allow such carriers to file tariffs for such services pursuant to section 203 of the Communications Act.

B. Analysis

10. Petitioners raise three substantive arguments in seeking reconsideration or clarification of the Commission's Order granting AT&T's motion to be reclassified as a non-dominant carrier. First, Hawaii argues that the Commission should strengthen AT&T's voluntary commitments by requiring AT&T to serve on Hawaii and the State of Alaska (Alaska) copies of any submissions that address the Commission's geographic rate averaging and rate integration policies, in order to ensure that Hawaii and Alaska have a meaningful opportunity to participate in pre-effective review proceedings. Second, GCI maintains that the reclassification of AT&T does not apply to AT&T/Alascom, Inc. (AT&T/Alascom), because AT&T/Alascom is still dominant in the Alaska market. Third, GCI argues that it is not clear which of the obligations and conditions imposed on AT&T and Alascom by the *Market Structure Order* (59 FR 27496 (May 27, 1994)), the *Final Recommended Decision* (58 FR 63345 (December 1, 1993)), and the *Alascom Authorization Order* continue to apply now that AT&T has been reclassified as nondominant.

1. Whether the Commission Should Strengthen AT&T's Commitments

a. Positions of the Parties. 11. Hawaii requests that the Commission strengthen the commitments made by AT&T in the *AT&T Reclassification* proceeding by requiring AT&T to serve on Alaska and Hawaii copies of any pleadings, tariff revisions or other submissions to the Commission that purport to seek alteration or a specific interpretation of, or otherwise affect, the Commission's rate integration and geographic rate averaging policies, at the same time AT&T files such submissions with the Commission. Hawaii argues that the historical importance of the Commission's rate integration and geographic rate averaging policies to Hawaii and Alaska, as well as the alleged lack of reasonably priced telecommunications to Hawaii, warrant assurance that Hawaii and Alaska will have the opportunity to voice their concerns if AT&T proposes to depart from these policies. Hawaii acknowledges that AT&T informally committed to give Hawaii notice of tariff filings departing from geographic rate averaging, but maintains that in some situations more time would be needed to ensure that it has an opportunity to respond.

12. Alaska, CNMI, GTA, and Guam support Hawaii's request. Alaska argues that requiring AT&T to serve Alaska and Hawaii with copies of submissions affecting the Commission's rate integration and geographic averaging policies would not impose a significant burden on AT&T, but would ensure that the interests of citizens of Alaska and Hawaii are heard before any action affecting these policies goes into effect. CNMI, GTA and Guam contend that the Commission should require AT&T to serve on all interested parties, not just Alaska and Hawaii, copies of submissions that would alter the Commission's rate integration or geographic rate averaging policies. Similarly, the LEC Associations argue that AT&T should be required to serve copies of submissions that depart from the Commission's established geographic averaging policies in other states and in U.S. territories, because

geographic averaging is essential for maintaining universal service. They also urge the Commission to commence a proceeding to codify its geographic averaging polices.

13. AT&T responds that Hawaii's petition relates solely to AT&T's voluntary commitments concerning rate integration and geographic rate averaging, and that, since the commitments were not offered, or used, to support the Commission's finding that AT&T lacks market power in the overall interstate, domestic, interexchange market, the reclassification of AT&T is appropriate. AT&T argues that the Commission cannot modify voluntary commitments that were not the basis for its ruling, and cannot create or impose new rules on AT&T in this non-rulemaking proceeding. AT&T also contends that the relief sought by the parties supporting Hawaii's petition would impose significantly greater burdens on AT&T than are required under the Commission's tariff filing rules for dominant carriers. AT&T concludes that the requested relief should be rejected as unnecessary and overly burdensome, in light of the fact that all such filings are made on the public record at the Commission. AT&T also argues that the relief sought would exceed the Commission's authority by requiring AT&T to make public tariff filings not only with the Commission, but with Hawaii, Alaska, the Northern Mariana Islands, and other state jurisdictions and U.S. territories.

14. In reply, Hawaii argues that its petition is consistent with the Commission's stated commitment to rate integration and geographic averaging, and the Commission's decision to incorporate AT&T's commitments into the *AT&T Reclassification Order*. It adds that its request is also consistent with AT&T's pledge to ''work very closely on an informal basis with representatives of the State of Hawaii on matters affecting telecommunications there.'' Hawaii claims it is merely seeking assurance that AT&T will honor its pledge. Hawaii concludes that the relief it seeks would not burden AT&T or the Commission, but would ensure that citizens of Hawaii have a meaningful opportunity to participate in the pre-effective review of any filings that affect these policies.

b. *Discussion*. 15. As noted above, on August 7, 1996, the Commission adopted the *Geographic Averaging Order* (61 FR 42558 (August 16, 1996)), which implemented the geographic rate averaging and rate integration requirements of the 1996 Act. In that Order, we adopted a rule requiring that ''the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.'' The Commission stated that this rule ''codifies our existing geographic rate averaging policy.'' The LEC Associations'' request that the Commission initiate a proceeding to codify its geographic rate averaging policies is therefore moot. The Commission also adopted a rule ''requiring that 'a provider of interstate interexchange telecommunications services 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.''' As required by the 1996 Act, the Commission found that the geographic rate averaging rule applies ''to all providers of interexchange telecommunications services, and to all interexchange 'telecommunications services,' as defined by the Act.'' Similarly, the Commission found that the rate integration rule applies ''to all domestic interstate interexchange telecommunications services as defined in the 1996 Act, and all providers of such services.''

16. In the *Geographic Averaging Order*, the Commission also determined that the rules adopted in that proceeding superseded the rate averaging and rate integration commitments AT&T voluntarily made in the *AT&T Reclassification* proceeding. We based this determination on the grounds that the rules we adopted in *Geographic Averaging Order* would require AT&T to provide interexchange service at geographically averaged and integrated rates, and that these requirements incorporated the Commission's rate averaging and rate integration policies then in effect. We therefore released AT&T from the commitment to comply with the Commission's earlier orders regarding rate integration and the commitment to file any tariff containing a geographically deaveraged rate on five business days' notice.

17. In light of Congress's codification of the Commission's rate averaging and rate integration policies in section 254(g) of the Communications Act, the Commission's rules implementing that section, and the other actions taken in the *Geographic Averaging Order*, we find that Hawaii's request that we impose a service requirement on AT&T has been superseded and is now moot because AT&T cannot deaverage its rates consistent with federal law. We also find no basis to impose on AT&T a service requirement not imposed on other carriers subject to the rate averaging and rate integration rules. Accordingly, for the foregoing reasons, we find that the relief sought by Hawaii is unnecessary in light of the Commission's implementation of the geographic rate averaging and rate integration requirements of the Communications Act, and of AT&T's specific voluntary commitments concerning service to Hawaii and Alaska. We therefore deny Hawaii's petition.

2. Whether Reclassification of AT&T Applies to AT&T/Alascom

a. *Position of the Parties*. 18. GCI asks the Commission either to clarify that the reclassification of AT&T does not apply to AT&T/Alascom, Inc., or to reconsider and reverse any finding that AT&T/Alascom is no longer dominant. GCI justifies its request on the grounds that AT&T did not seek to reclassify Alascom as non-dominant, and that the Commission did not address the reclassification of Alascom in the *AT&T Reclassification Order*. GCI argues that the Commission found Alascom dominant in the Alaska market in the *Competitive Carrier Fifth Report and Order* (49 FR 34824 (September 4, 1984)), and has never reversed that finding. It also contends that this finding could not be reversed, in light of AT&T/Alascom's legally enforced monopoly in the Alaska Bush. GCI argues that AT&T/Alascom is able to leverage its market power beyond the Bush because of Commission policies requiring other carriers serving Alaska to purchase Bush distribution services from AT&T/Alascom. GCI also argues that it is unclear how long AT&T/Alascom's market power in the Alaska Bush will persist. GCI adds that, even if the Alaska Bush were opened immediately, it would take significant time for the market to become workably competitive, because of the time necessary to construct a competing network.

19. Alaska and MCI likewise claim that the Commission's reclassification of AT&T does not affect AT&T/Alascom's classification as a dominant carrier. Alaska argues that, in reclassifying AT&T, the Commission noted that Alascom continues to be ''governed by dominant carrier rules where it has a facilities monopoly, namely the Bush areas,'' and therefore that the *AT&T Reclassification Order* does not affect the classification of AT&T Alascom, Inc. MCI argues that the Commission's reclassification of AT&T as non-dominant in the domestic market was based on market characteristics in the

''lower 48'' states, which are not representative of the Alaska market. It adds that a separate finding that AT&T/Alascom does not possess market power in Alaska is therefore required, but that such a determination is impossible to make and support at this time.

20. AT&T responds that there is no basis for excluding AT&T/Alascom from the ambit of the *AT&T Reclassification Order*, because the Commission expressly found that AT&T lacked market power in the domestic interexchange market as a whole, which AT&T claims is the only relevant market for this purpose. AT&T argues that the fact that AT&T (or AT&T/Alascom) may be the major supplier of specific services does not alter the analysis, and that the Commission has never definitively held that a carrier must lack the ability to control the price of every service in the relevant market before it can be classified as non-dominant. AT&T maintains that its voluntary commitments to continue rate integration for Alaska and to comply with the Commission's orders relating to Alaska necessarily apply to AT&T/Alascom, and that the commitments assume that AT&T/Alascom is included within the scope of the *AT&T Reclassification Order.*

21. AT&T further responds that the Commission found that, to the extent AT&T is able to control price at all, it is only with respect to specific service segments that are either *de minimis* in relation to the overall market, or exposed to increasing competition so as not to affect materially the overall market. AT&T argues that these conditions apply to the Alaska Bush, which generates less than five one-hundredths of one percent (0.0005) of total industry revenue, an amount that AT&T claims is *de minimis* and affords AT&T/Alascom no power in the overall relevant market. AT&T concludes there is therefore no basis to treat AT&T differently from its competitors, or to treat AT&T/Alascom differently from the rest of AT&T.

22. GCI counters that AT&T does not rebut GCI's claim that AT&T retains an absolute monopoly, and thus market power, in the Alaska market. GCI maintains that AT&T's suggestion that Alascom's market power in Alaska can be ignored as ''*de minimis*'' is contrary to prior Commission rulings and AT&T's own statements. Specifically, GCI contends that, in classifying Alascom as a dominant interexchange carrier, the Commission focused solely on Alascom's position in the Alaska market, and did not require Alascom to be dominant throughout the U.S. market as a whole. GCI adds that, as recently as August 1995, the Commission identified Alaska as a separate relevant interexchange market. Specifically, GCI maintains that, while the Commission spoke of a single national market, the Commission identified that market as distinct from the Alaska market occupied by Alascom and in which Alascom retained market power. GCI also claims that AT&T's own pleadings in the Alaska Joint Board Proceeding contemplate that AT&T could be classified as dominant in the lower 48 states, but non-dominant in Alaska, because of different market characteristics and circumstances. GCI concludes that the Commission classified Alascom as a dominant carrier based on its legally protected monopoly position in the Alaska market, which it alleges has never changed, and that AT&T's purchase of Alascom did nothing to reduce Alascom's market power in Alaska.

23. In its petition for reconsideration or clarification of the Commission's *Tariff Forbearance Order*, GCI requests the Commission either to clarify that the *Tariff Forbearance Order* did not detariff AT&T/Alascom's provision of ''common carrier'' services, (The Commission has defined Alascom's ''common carrier'' services as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'') or to reconsider and reverse any finding that AT&T/Alascom is not required to file a tariff for such services. In support of its petition, GCI argues that AT&T, in the *AT&T Reclassification* proceeding, made certain voluntary commitments, including a commitment that AT&T/Alascom would provide ''common carrier'' services under tariff. In response to GCI's petition, AT&T states that it ''does not interpret the [*Tariff Forbearance Order*] to require the detariffing of Alascom's Common Carrier Services.'' The American Petroleum Institute (API) disagrees with GCI and argues that, to the extent AT&T/Alascom's services are interstate, domestic, interexchange services offered by a nondominant interexchange carrier, the *Tariff Forbearance Order* completely detariffed those services.

b. Discussion. 24. AT&T/Alascom offers certain interstate ''common carrier'' services. As noted above, in the *Market Structure Order,* the Commission defined Alascom's ''common carrier'' services as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'' For purposes of our discussion here, we refer to AT&T/Alascom's ''common carrier'' services as those services were defined in the *Market Structure Order.* In the *Market Structure Order,* the Commission adopted the recommendation of the Federal-State Alaska Joint Board in the *Final Recommended Decision* that Alascom be required to provide such services to interexchange carriers under tariff on a nondiscriminatory basis at rates that reflect the cost of the services (*i.e.,* on dominant carrier basis). AT&T concedes that, to the extent that AT&T/Alascom's ''common carrier'' services are not interstate, domestic, interexchange telecommunications services as addressed in the *AT&T Reclassification Order,* the classification of those services is not affected by that Order. AT&T further concedes that the *Tariff Forbearance Order* does not require the detariffing of AT&T/Alascom's ''common carrier'' services. Indeed, the Commission noted in the *AT&T Reclassification Order,* and we clarify here, that, to the extent AT&T/Alascom has been found to be dominant in the provision of ''common carrier'' services, as defined above, AT&T/Alascom's regulatory obligations with respect to those services remain unchanged, and therefore AT&T/Alascom is required to file tariffs for such services on a dominant carrier basis.

25. In addition to the foregoing ''common carrier'' services offered to interexchange carriers, AT&T/Alascom provides interstate, domestic, interexchange services to end-user customers in Alaska. For the reasons set forth below, we reject GCI's petition for reconsideration and find no basis to exclude AT&T/Alascom's provision of these services from the scope of the *AT&T Reclassification Order.*

26. We reject the suggestion by GCI, MCI and Alaska, that, in order to reclassify AT&T/Alascom as a non-dominant carrier with respect to its provision of interstate, domestic, interexchange services, the Commission must assess AT&T/Alascom's market power in the Alaska market, rather than in the overall interstate, domestic, interexchange services market. The Commission's decision in the *Competitive Carrier Fifth Report and Order* to regulate Alascom as a dominant carrier did not, as GCI implies, disavow or modify the ''all interstate, domestic, interexchange services'' market definition adopted in the Competitive Carrier Fourth Report and Order (48 FR 52452 (November 18,

1983)) by ''focus[ing] solely on Alascom's position within the Alaska market.'' Rather, the Commission concluded that Alascom should be regulated as dominant, without reaching the issue of relevant market definitions, because it was concerned that the Commission's rate-integration policy for interstate MTS and WATS services to noncontiguous domestic points, which limited rate-integration payments only to Alascom, might limit the ability of other carriers to compete in serving Alaska.

27. In addition, we find that GCI mischaracterizes the *Alascom Authorization Order,* in arguing that the Commission there identified Alaska as a separate relevant interexchange market and therefore that we are required to analyze separately AT&T/Alascom's market power in Alaska, for purposes of classifying AT&T/Alascom as non-dominant in the interstate, domestic, interexchange market. While, in the *Alascom Authorization Order,* the Commission did identify two relevant product markets for purposes of evaluating the proposed merger of AT&T and Alascom, the markets it identified were: (1) ''interexchange telecommunications services within Alaska (the 'Alaska market'),'' which was the principal business of Alascom; and (2) ''*interstate* interexchange telecommunications ('the All Interexchange Market'),'' which AT&T provided, and which included Alascom's and Alaska Telecom's proposed undersea fiber cable services. In that Order, the Commission did not identify the provision of interstate, domestic, interexchange services to Alaska as a separate relevant product or geographic market. Indeed, the Commission specifically noted that its identification of interstate interexchange telecommunications (including Alascom's and Alaska Telecom's proposed undersea fiber cable services) as a relevant product market was ''consistent with the Commission's earlier findings of a single market for all interstate interexchange services.'' We note that GCI, in quoting the foregoing sentence, failed to include the word ''interstate,'' which qualified the term ''interexchange services.'' We believe that the Commission's reference to ''interstate interexchange services,'' and not to ''interexchange services'' generally, is central to the meaning of the Commission's statement and hence to a complete understanding of this statement's relevance in the present context. Thus, the Commission did not, in *the Alascom Authorization Order,* disavow or modify in any way, the ''all interstate, domestic, interexchange services'' market definition adopted in the *Competitive Carrier Fourth Report and Order.*

28. Accordingly, we reject GCI's argument that, based on the *Alascom Authorization Order* and the *Competitive Carrier Fifth Report and Order,* the Commission must analyze separately AT&T/Alascom's market power in Alaska for purposes of classifying AT&T/Alascom as non-dominant in the interstate, domestic, interexchange market. Rather, we affirm our determination in the *AT&T Reclassification Order* that, consistent with the conclusions reached in *Competitive Carrier Fifth Report and Order,* the appropriate relevant geographic market for purposes of assessing AT&T's market power was a ''single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points).''' We conclude that, pursuant to Commission policy in effect at the time of the *AT&T Reclassification Order,* the Commission properly included AT&T/Alascom within the scope of the classification of AT&T as non-dominant in the provision of interstate, domestic, interexchange services.

29. Subsequent to GCI's filing of its Petition for Reconsideration, the Commission adopted the *LEC Interexchange Order* (62 FR 35974 (July 3, 1997)), which revises the Commission's approach to defining relevant geographic and product markets for purposes of determining whether a carrier should be regulated as dominant or non-dominant in the provision of interstate, domestic, interexchange services. Specifically, in the *LEC Interexchange Order,* we defined the relevant geographic market for interstate, domestic, interexchange services as ''all possible routes that allow for a connection from one particular location to another particular location (*i.e.*, a point-to-point market).'' We clarified, however, that we would

> treat, in general, interstate, long distance calling as a single national market unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power, we will refrain from employing the more burdensome approach of analyzing separately data from each point-to-point market.

30. Considering GCI's Petition for Reconsideration according to the market definition approach established in the recent *LEC Interexchange Order,* we conclude that, even assuming arguendo that GCI's petition presents credible evidence suggesting a lack of competition with respect to domestic, interstate, interexchange service in Alaska, GCI's petition fails to demonstrate that geographic rate averaging will not sufficiently mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska.

31. In the *Geographic Averaging Order,* we found that the 1996 Act required the Commission to mandate rate integration among all states, territories and possessions, and held that ''this goal is best achieved by interpreting 'provider' to include parent companies that, through affiliates, provide service in more than one state.'' We stated that ''nothing in the record supports a finding that Congress intended to allow [interexchange carriers] to avoid rate integration by establishing subsidiaries that provide service in limited areas.'' Applying this general rule in a specific context, we held that GTE, for purposes of section 254(g), was required to integrate its rates for domestic, interstate, interexchange services across affiliates. We find that, pursuant to the rule established in the *Geographic Averaging* proceeding, AT&T, like GTE, is required to integrate and average its rates across affiliates, including AT&T/Alascom.

32. Because AT&T is required to integrate and average its rates geographically for interstate, domestic, interexchange services across all of its affiliates, including AT&T/Alascom, we believe that AT&T/Alascom could not raise and sustain prices for such services above the competitive level in Alaska, unless AT&T were able profitably to charge supracompetitive prices in the ''lower 48'' states. Nothing in the record of this reconsideration proceeding supports a reversal of our determination in the *AT&T Reclassification Order,* that ''AT&T neither possesses nor can unilaterally exercise market power within the interstate, domestic, interexchange market taken as a whole,'' which includes the ''lower 48'' states. Nor is there any evidence in the record on reconsideration to support a finding that geographic rate averaging, together with AT&T's lack of market power in the ''lower 48,'' will not mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska. Therefore, we find no reason to analyze separately AT&T/Alascom's market power in Alaska. Accordingly, we find that AT&T/Alascom is appropriately classified, as established in the *AT&T Reclassification Order,* as non-dominant

in the provision of interstate, domestic, interexchange services.

3. Whether the Commission Should Clarify the Requirements of the Alaska Orders That Continue to Apply to AT&T and AT&T/Alascom

a. *Position of the Parties.* 33. GCI requests that the Commission clarify which requirements of the Commission's Alaska Orders continue to apply to AT&T and AT&T/Alascom. GCI argues that, while AT&T made a generalized promise to comply with outstanding Commission orders relating to Alaska in the *AT&T Reclassification* proceeding, it is impossible to determine which requirements of the Alaska Orders AT&T has specifically agreed to follow, and which it will try to contest or ignore.

34. GCI adds that, as a non-dominant carrier, AT&T may be able to discriminate and to deaverage its Alaska rates by providing Alaska services through two entities—AT&T and AT&T/Alascom. GCI argues that, although the *Final Recommended Decision* provided that AT&T would remain subject to Section 214 entry and exit certification requirements, non-dominant status removes the requirement that AT&T obtain Section 214 authority to serve the Alaska market. GCI further argues that, if AT&T provides separate service to Alaska pursuant to separate tariffs from those filed by AT&T/Alascom, AT&T will be able to discriminate between customers served by AT&T and customers served by AT&T/Alascom. GCI also claims that it will be impossible to determine whether AT&T is integrating Alaska rates into its domestic rate schedule, and that any difference in rates or offerings between AT&T and AT&T/Alascom would call into question which rate is appropriate for purposes of judging rate integration.

35. Finally, GCI argues that separate service by AT&T would disadvantage captive monopoly customers that buy service under the AT&T/Alascom common carrier services tariff, because, to the extent AT&T provides separate service to Alaska and does not use the carrier services of AT&T/Alascom, AT&T will reduce traffic on the AT&T/Alascom network and drive up rates for AT&T/Alascom's captive monopoly customers. GCI states that all carriers, including AT&T, are required to buy Alaska distribution services under the AT&T/Alascom carrier services tariff.

36. Alaska, supporting GCI's request for clarification, notes that AT&T committed to comply with the Commission's orders regarding rate integration and with *all* the obligations and conditions set forth in the Alaska Joint Board Proceeding and the *Alascom Authorization Order.* Alaska requests the Commission to clarify the *AT&T Reclassification Order* if there is any uncertainty on these points.

37. AT&T responds that GCI's request for clarification is inappropriate, because it seeks to inject into this proceeding issues already litigated in other dockets. AT&T adds that its voluntary commitments assume that both AT&T and its AT&T/Alascom affiliate will continue to adhere to the Commission's orders regarding the restructuring of the Alaska market. In addition, AT&T notes that the Commission defined Alascom's ''common carrier'' services as interstate interexchange transport and switching services necessary for other interexchange carriers to provide service in Alaska up to the point of interconnection with LECs. As previously noted, AT&T concedes that, to the extent AT&T/Alascom's ''common carrier'' services are not domestic interstate interexchange services as addressed in the *AT&T Reclassification Order,* the classification of those ''common carrier'' services is not affected by that Order, and, therefore, that, to the extent Alascom's ''common carrier'' services have been found to be dominant, AT&T/Alascom's regulatory obligations relating to those services remain unchanged.

b. *Discussion.* 38. We believe that there is no ambiguity concerning the requirements of the Alaska Orders that continue to apply to AT&T and AT&T/Alascom, but for the sake of clarity we note that the *AT&T Reclassification Order* contains a lengthy and detailed statement of both AT&T's and AT&T/Alascom's obligations with respect to Alaska. In addition, AT&T has committed to comply voluntarily with all the conditions and obligations set forth in the Alaska Orders, and has specifically acknowledged that AT&T's commitment applies to AT&T/Alascom. Moreover, as the Commission noted in the *AT&T Reclassification Order,* any failure by AT&T or AT&T/Alascom to comply with any of the conditions and obligations in the Alaska Orders may result in the imposition of forfeitures on AT&T or AT&T/Alascom, or a revocation of their Commission licenses. In addition, if GCI believes that either AT&T or AT&T/Alascom has failed to honor the commitment to comply with all of the conditions and obligations in the Alaska Orders, GCI may seek relief under Section 208 of the Communications Act.

39. We also reject GCI's claim that AT&T may be able to deaverage its Alaska rates by providing Alaska services through two entities. As an initial matter, we note that, contrary to GCI's suggestion, the reclassification of AT&T as a non-dominant carrier did not remove the requirement that AT&T obtain Section 214 authority to serve the Alaska market. As we stated in the *AT&T Reclassification Order,* AT&T may build or lease facilities to serve the Alaska market subject to dominant carrier authorization rules. Moreover, as discussed above, in the *Geographic Averaging Order,* we found that Congress did not intend to allow interexchange carriers to avoid the rate integration requirements of the 1996 Act by establishing subsidiaries that provide service in limited areas. As noted above, we find that, pursuant to the rule established in the *Geographic Averaging Order,* AT&T must integrate and average its rates across its affiliates. Accordingly, AT&T may not deaverage its Alaska rates by providing services to Alaska through two entities.

4. Other Matters

40. On January 23, 1996, well after the statutory deadline for filing petitions for reconsideration of the *AT&T Reclassification Order,* TTS filed a Petition for Reconsideration requesting that the Commission reclassify AT&T as dominant on the grounds that AT&T retains a dominant position in the interstate, domestic, interexchange market, and has abused, and is likely to continue to abuse, its dominant position in the market. On the same date, TTS filed a motion for acceptance of its late-filed petition for reconsideration. TTS states that it was unable to file its petition before the statutory deadline because AT&T's ''bad acts,'' on which TTS's petition is based, did not occur until November 22, 1995, the due date for filing petitions. TTS alleges that its petition was delayed further by its attempt to negotiate with AT&T to resolve their dispute, and by the blizzard in Washington, D.C., in January, 1996. TTS maintains that these facts establish substantial justification and good cause for the Commission to accept TTS's late-filed petition.

41. On April 15, 1997, TTS filed, in the record of the UHA Petition for Rulemaking proceeding, a Supplement to Petition for Reconsideration and a Motion to Accept Supplement to Petition for Reconsideration. TTS states that the information in its supplement was not available to TTS at the time it filed its petition for reconsideration and that the information is necessary in order for the Commission to have a complete record.

42. Section 405 of the Communications Act, provides, in

relevant part, that: ''[a] petition for reconsideration must be filed within thirty days from the day upon which public notice is given of the order, decision, report, or action complained of.'' Section 1.4(b) of the Commission's rules defines the date of public notice of the final Commission action. Section 1.4(b)(2) provides that, for ''non-rulemaking documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date'' is date of public notice. Accordingly, public notice in this case was given on October 23, 1995, the date on which the *AT&T Reclassification Order* was released. Therefore, petitions to reconsider that decision were, as TTS concedes, due on or before November 22, 1995.

43. Because the period for filing petitions for reconsideration is prescribed by statute, the Commission may not, with one narrow exception articulated by the courts, waive or extend the filing period. The narrow exception to this statutory filing period allows the Commission to extend or waive the 30-day filing period only in an ''extraordinary case,'' such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought. In such circumstances, the petitioner must demonstrate that the delay in filing is attributable to Commission error in giving notice and that it acted promptly upon discovering the adoption of the Commission's decision.

44. TTS has not demonstrated that its delay in filing is attributable to Commission error in giving notice. Indeed, TTS does not dispute that the Commission gave appropriate notice by the release of the *AT&T Reconsideration Order* on October 23, 1995. As noted above, TTS states only that its petition was delayed because the alleged actions on which TTS's petition is based, did not occur until the due date for filing petitions for reconsideration, and that its petition was further delayed by its attempt to negotiate with AT&T as well as by the blizzard in Washington, D.C., in January, 1996. Accordingly, we find that TTS does not meet the narrow exception of an ''extraordinary case'' in which the Commission may extend or waive the statutory deadline for filing petitions for reconsideration. We, therefore, deny TTS's Motion for Acceptance of Petition for Reconsideration, and dismiss its petition as untimely. Because we dismiss TTS's petition for reconsideration, we also deny TTS's Motion to Accept Supplement to Petition for Reconsideration and dismiss TTS's Supplement to Petition for Reconsideration.

III. Petition for Rulemaking

45. On December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA) filed with the Commission a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status. UHA requests that the Commission undertake a review and ''reinstate AT&T's dominant carrier status.'' We note that UHA refers generally to AT&T's status as a carrier of ''long distance service,'' rather than more specifically to AT&T's status as a provider of domestic, interstate, interexchange service. Because UHA consistently refers in its petition only to the Commission's October 23, 1995, decision, we are treating the petition as applying only to AT&T's regulatory status with respect to domestic, interstate, interexchange service, and not international services. In support of its petition, UHA argues that consumers are adversely affected by the classification of AT&T as a non-dominant interexchange carrier, as demonstrated by a rate increase AT&T instituted in November 1996. UHA argues that, ''without regulatory supervision, AT&T consumers will have no protection from unjust rates increases,'' and that classifying AT&T as dominant is necessary in order to monitor AT&T's rate increases until there is meaningful competition in the long-distance market. UHA also points to what it alleges is AT&T's 54.2 percent market share as evidence that AT&T has market power in the long distance market and therefore should be classified as dominant.

46. TTS submitted comments in support of UHA's petition. TTS cites to alleged discriminatory conduct by AT&T against TTS as evidence of AT&T's abuse of its market power and the need therefore to reclassify AT&T as a dominant carrier.

47. In opposition to UHA's petition, AT&T argues that the Petition for Rulemaking should be denied because UHA's arguments already were addressed and properly rejected in the orders classifying AT&T as non-dominant for domestic and international services. AT&T also maintains that UHA's allegations, even if true, are immaterial under the Commission's rules defining dominant carriers. AT&T notes that the Commission examined and found in the *AT&T Reclassification Order* that AT&T does not retain market power in the domestic, interstate, interexchange market. In addition, AT&T maintains that UHA is mistaken in arguing that a change in AT&T's regulatory classification would affect AT&T's ability to make the price changes referenced by UHA. AT&T claims that, even as a dominant carrier subject to price cap regulation, AT&T did not need Commission approval to raise rates within price cap limits. AT&T further argues that UHA's ''unsupported claims of 'tacit collusion' '' among various interexchange carriers does not support regulatory action aimed solely at AT&T, and that ''any attempt to paint the long distance industry as an oligopoly must fail.'' Finally, relying on the Commission's *AT&T Reclassification Order*, AT&T maintains that market share is not the sole determining factor of whether a firm possesses market power, and that the 54.2 percent market share figure referenced by UHA ''is even lower than the market share cited in the [*AT&T Reclassification Order*], and shows a further erosion of AT&T's market share since the Order was released.''

48. In reply to AT&T's Opposition, Pacific takes no position on whether AT&T should be reclassified as a dominant carrier. Pacific only responds to AT&T's argument that there is no evidence of tacit collusion among the big interexchange carriers. Pacific argues that the evidence of tacit collusion ''is not 'inconclusive' anymore,'' that AT&T has continued to raise prices after reclassification, and that new facilities-based entry by the Regional Bell Operating Companies is the best solution to rising prices.

49. We find that the arguments raised by UHA's petition were addressed and decided in the *AT&T Reclassification Order*. Neither UHA, Pacific nor TTS has presented any new evidence or arguments that demonstrate that a new examination of AT&T's regulatory status is warranted. We thus decline to initiate a proceeding at this time to classify AT&T as a dominant carrier. ''Petitions [for rulemaking] * * * which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.'' Accordingly, we deny without prejudice UHA's Petition for Rulemaking.

IV. Ordering Clauses

50. Accordingly, *it is ordered* That Hawaii's Petition for Reconsideration is hereby *denied*.

51. *It is further ordered* That GCI's Petition for Reconsideration or Clarification of the AT&T Reclassification Order is hereby *denied*.

52. *It is further ordered* That GCI's Petition for Clarification of the *Tariff Forbearance Order is granted.*

53. *It is further ordered* That TTS's Motion for Acceptance of Petition for Reconsideration is hereby *denied,* and TTS's Petition for Reconsideration is hereby *dismissed.*

54. *It is further ordered* That TTS's Motion to Accept Supplement to Petition for Reconsideration is hereby *denied,* and TTS's Supplement to Petition for Reconsideration is hereby *dismissed.*

55. *It is further ordered* That the United Homeowners Association and United Seniors Health Cooperative's Petition for Rulemaking is hereby *denied.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28613 Filed 10–28–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 97–380]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, we adopt a filing window period that begins on the date that the Schools and Libraries Corporation and the Health Care Corporation begin to receive applications for support. We also conclude that the administrative corporations will determine the length of the window and resolve other administrative issues necessary to implement our decision to adopt a window filing period consistent with our guidance set forth below. Therefore, we amend our rules to implement this change. In addition, we delegate authority to the Chief, Common Carrier Bureau to resolve unanticipated technical and operational issues relating to the new universal service mechanisms that may arise in the future.

EFFECTIVE DATE: All policies and rules adopted herein shall be effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order adopted on October 10, 1997 and released on October 14, 1997, including changes made in an erratum released October 15, 1997. The full text of the Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking and Order Establishing Joint Board, Federal-State Joint Board on Universal Service, CC Docket No. 96–45 on March 8, 1996 (61 FR 10499 (March 14, 1996)), a Recommended Decision on November 8, 1996 (61 FR 63778 (December 2, 1996)), a Public Notice on November 18, 1996 (61 FR 63778 (December 2, 1996)), and a Report and Order that was adopted on May 7, 1997 and released on May 8, 1997 (62 FR 32862 (June 17, 1997)) implementing rules for §§ 254 and 214(e) of the Act relating to universal service. Also pursuant to the Telecommunications Act of 1996, the Commission released a Report and Order in CC Docket 97–21 on July 18, 1997 (62 FR 41294 (August 1, 1997)). The Common Carrier Bureau released a Public Notice seeking comment on additional issues addressed in the Third Report and Order on September 10, 1997 (62 FR 48280 (September 15, 1997)).

Summary of the Third Report and Order

1. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act), the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service. As required by the RFA, the NPRM included an Initial Regulatory Flexibility Analysis (IRFA). At that time, the Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis (FRFA). On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers. This FRFA supplements the FRFA that was included in the First Report and Order and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's September 10 Public Notice. This present FRFA conforms to the RFA.

2. In the Universal Service Order, we concluded that the Administrator would commit funds to applicants on a first-come first-served basis. We now conclude, based on the nearly unanimous comments received in response to the September 10 Public Notice, that all applications filed during the window will be treated as if simultaneously received. For the reasons discussed below, we find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner.

3. In response to commenters' requests, we clarify that an applicant's ''place in line,'' or seniority, with respect to funds will be determined by the date on which an applicant submits a contract to the applicable administrative corporation. An applicant's submission of its initial request for services, which one of the administrative corporations will post on its website, does not determine the applicant's seniority for the purposes of allocating funding. We clarify that the Schools and Libraries Corporation, as administrator, will allocate funds reasonably and in accordance with the rules of priority set forth in § 54.507(g) of our rules.

4. In light of our decision to adopt a window filing period, we also conclude that the administrative corporations should determine the length of the window and resolve other administrative matters necessary to implement a window filing period. We conclude that this responsibility entails ''administering the support mechanisms for eligible schools and libraries and rural health care providers,'' a function already within the scope of the corporations' general duties. We find that the goals of the universal service mechanisms will best be served if the administrative corporations are responsible for implementing the window filing periods because they will be performing the day-to-day functions of the schools, libraries, and rural health care universal service mechanisms and thus are better able to determine an appropriate window periods in light of their needs and resources. We remain committed to the general principle that funds will be allocated to applicants on a first-come first-served basis. Consistent with this principle, we direct the corporations to adopt a reasonable window period that is of sufficient duration to effectuate the administrative purposes of the window, as set forth