band upon command from the gateway earth station.

(d) Notwithstanding other provisions of this section, NVNG satellites sharing the 400.15–401 MHz with DoD–NOAA meteorological satellites shall implement within ninety minutes of receiving notice of a DoD–NOAA system frequency change, all appropriate modifications and updates to operate on a non-interference basis in accordance with subsection (a), above.

(e) At DoD–NOAA's instruction, the Little LEO System-3 operator will test, up to four times a year, the Little LEO system's ability to implement a DoD–NOAA requested frequency change.

[FR Doc. 96–33143 Filed 12–30–96; 8:45 am]

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47 CFR Part 61

[CC Docket Nos. 87–313 and 93–197, FCC 96–454]

Policy and Rules Concerning Rates for Dominant Carriers; Revisions to Price Cap Rules for AT&T

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules; termination.

SUMMARY: This Order terminates as moot proceedings concerning the treatment of AT&T Corp.'s (AT&T) offerings of promotions and optional calling plans (OCPs) under price cap regulation in light of the Commission's determination that AT&T is non-dominant and the resultant removal of AT&T's services from price cap regulation.

DATES: Proceedings were terminated November 26, 1996.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt, 202–418–1513.

SUPPLEMENTARY INFORMATION: The text of the Commission's Order in CC Dockets Nos. 87–313 and 93–197, FCC 96–454, adopted November 21, 1996, and released November 26, 1996, appears below:

I. Introduction

1. In this Order, we terminate as moot proceedings concerning the treatment of AT&T Corp.'s (AT&T) offerings of promotions and optional calling plans (OCPs) under price cap regulation [1] in light of our determination that AT&T is non-dominant and the resultant removal of AT&T's services from price cap regulation.[2]

II. Background

2. In 1989, the Commission replaced traditional rate of return regulation with an incentive-based system of regulation, called price caps, for most of AT&T's services.[3] To implement the price cap system, the Commission defined three categories of AT&T services, or baskets, and defined a price cap index (PCI) for each basket.[4] The basket structure was designed so that AT&T would not be able to raise prices for services in one basket in order to lower prices for dissimilar services in another basket. Therefore, a change in rates in one basket or in services outside of price caps would not affect either the PCI or the actual price index (API) [5] for the other baskets.

3. The Commission was silent in the AT&T Price Cap Order as to the treatment of promotional rates under price caps.[6] After the Commission adopted the price cap rules, AT&T filed tariffs for a significant number of promotions in which it treated the rates associated with these offerings as rate reductions for purposes of API calculations. MCI Telecommunications Corporation (MCI) and Sprint Communications Company LP (Sprint) sought reconsideration of the AT&T Price Cap Order, requesting clarification of the price cap treatment of promotions. In the AT&T Price Cap Reconsideration Order, the Commission decided to exclude promotions from the price cap index prospectively. It reasoned that including promotional rates in price caps would give AT&T a greater degree of flexibility than warranted to offset the discounted promotional rates with increases in residential and small business rates within Basket 1.[7]

4. AT&T sought judicial review of the AT&T Price Cap Reconsideration Order. The United States Court of Appeals for the District of Columbia Circuit found that the Commission's decision to exclude promotional tariffs from the price cap index was not a reasoned decision supported by the record. The court remanded the AT&T Price Cap Reconsideration Order to the Commission with instructions either to show that its action was a clarification of the original AT&T Price Cap Order, or to ''offer a reasoned explanation of why promotional rates should be treated differently from other rates.'' [8]

5. In response, the Commission vacated its prior decision on this issue and issued the Promotions NPRM in Docket 87–313.[9] In the Promotions NPRM, the Commission tentatively concluded that promotions should be excluded from price cap regulation prospectively. The Commission found that AT&T was able to insulate itself from revenue losses created by promotional discounts by raising its rates for other residential services in Basket 1.[10] The Commission relied upon evidence that AT&T had taken advantage of any downward price flexibility generated by promotions to raise other rates in Basket 1, thereby keeping aggregate rates at the price cap maximum. According to the Commission, ''[p]ermitting promotional offerings to be used as a basis for raising basic schedule rates, without limitation, would strongly encourage the proliferation of excessive promotional offerings and undercut the efficiency incentives of the price cap program.'' [11] As an alternative, the Commission sought comment on whether to treat promotions as either new or restructured services.[12]

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[1] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, Order and Notice of Proposed Rulemaking, 8 FCC Rcd 3715 (1993), 58 FR 31936, June 7, 1993 (Promotions NPRM); Revisions to Price Cap Rules for AT&T, CC Docket No. 93–197, Notice of Proposed Rulemaking, 8 FCC Rcd 5205 (1993), 58 FR 44157, August 19, 1993 (OCP NPRM); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, and Revisions to Price Cap Rules for AT&T, CC Docket No. 93–197, Further Notice of Proposed Rulemaking, 10 FCC Rcd 7854 (1995), 60 FR 28774, June 2, 1995 (Further NPRM).

[2] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) (AT&T Reclassification Order), recon. pending. In a subsequent order, the Commission removed AT&T's remaining price cap services, international services, from price cap regulation. Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96–209 (rel. May 14, 1996).

[3] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313, Notice of Proposed Rulemaking, 2 FCC Rcd 5208 (1987), 52 FR 33962, September 9, 1987; Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195 (1988), 53 FR 22356, June 15, 1988; Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989), 54 FR 19836, May 8, 1989 (AT&T Price Cap Order); Erratum, 4 FCC Rcd 3379 (1989); Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 665 (1991), 56 FR 5952, February 14, 1991 (AT&T Price Cap Reconsideration Order), remanded sub nom. AT&T v. FCC, 974 F.2d 1351 (D.C.Cir. 1992) (Remand Order). Those services that are not under price cap regulation are subject to streamlined regulation, which reduces their regulatory obligations under Part 61 of the Commission's rules, 47 CFR Part 61.

[4] See Further NPRM, 10 FCC Rcd at 7855–56, for an explanation of how the price cap index is calculated.

[5] The API represents a weighted average of actual prices of the services within the basket. *Id.*

[6] *Id.* at 7857.

[7] AT&T Price Cap Reconsideration Order at 671.

[8] Remand Order, 974 F.2d at 1355.

[9] Promotions NPRM, 8 FCC Rcd 3715.

[10] *Id.* at 3716.

[11] *Id.*

[12] *Id.* at 3717. Under price cap regulation, a service is classified as new if it provides an additional option to a service, but does not replace the existing service. A service is classified as a restructured offering if it replaces an existing service. See Sections 61.44(g), 61.46(b), and 61.47(b) of the Commission's rules, 47 CFR §§ 61.44(g), 61.46(b), and 61.47(b).

6. In the OCP NPRM, the Commission tentatively concluded that the ReachOut category of services (i.e., most domestic MTS OCPs) should be removed from Basket 1 because there is substantial competition among providers of discounted residential services.[13] The Commission sought comment on whether the treatment of OCPs under the AT&T price cap plan should be changed, and, if so, in what manner. Specifically, the Commission sought comment on whether it should adjust the API or the PCI for Basket 1 to reflect the removal of OCPs from Basket 1. As an alternative to removal of OCPs from price cap regulation, it asked for comment on whether OCPs should remain subject to price cap regulation, but be placed in a separate basket.[14]

7. Because the issues presented in determining the regulatory treatment of promotions and OCPs were closely related, we consolidated these issues in a Further Notice of Proposed Rulemaking.[15] In the Further NPRM, we made several tentative conclusions. We determined that Basket 1 domestic MTS promotions, domestic MTS OCPs, and basic schedule MTS offerings exhibit significant cross-elasticities of demand and are generally offered to the same class of customers, *i.e.*, residential customers, following the removal of AT&T's domestic commercial services from price cap regulation.[16] If we removed domestic MTS OCPs and promotions from price caps, the result would be that some of AT&T's offerings of domestic MTS for residential customers would be streamlined while retaining price cap regulation for similar offerings to the same class of customers. We declined to take this step and determined that the issue of further streamlining of OCPs and promotions might be better considered together with AT&T's motion for non-dominant status in a separate proceeding. We did propose, however, a number of related modifications to AT&T's price cap plan. Specifically, we recommended that, because promotions and OCPs are simply different ways of pricing the same service, they should be redefined as alternative pricing plans (APPs) for domestic, residential MTS, which co-exist with the basic domestic MTS rate schedule.[17]

8. On October 23, 1995, we released an order granting AT&T's motion to be reclassified as a non-dominant carrier.[18] The Commission defined the relevant product and geographic market for AT&T, under the Competitive Carrier paradigm,[19] as the interstate, domestic, interexchange market.[20] We then decided that the appropriate standard to evaluate AT&T's reclassification request was whether AT&T possessed market power in the overall relevant market, even if AT&T has the ability to control the prices of one or more services. Applying this standard to the record, the Commission concluded that the market structure characteristics and the indicia of market conduct and performance all indicate that AT&T lacks market power in the interstate, domestic, interexchange market.[21]

9. The Commission noted that the reclassification of AT&T as a non-dominant carrier would free AT&T from price cap regulation for its residential, operator, 800 directory assistance, and analog private line services.[22] By subsequent order, we removed AT&T's international services from price cap regulation as well, thus completing the process of ending price cap regulation of AT&T.[23]

III. Discussion

10. In the AT&T Reclassification Order, we granted AT&T's motion to be reclassified as a non-dominant carrier.[24] The reclassification of AT&T as a non-dominant carrier resulted in the end of price cap regulation for AT&T's residential, operator, 800 directory assistance, and analog private line services. Since AT&T's domestic MTS, including promotions and OCPs, is no longer subject to price caps, the issues raised in our tentative conclusions and proposals in the Further NPRM concerning whether to remove promotions and OCPs from price cap regulation are now moot. Similarly, the issues raised by the D.C. Circuit in the Remand Order in CC Docket No. 87–313 are moot. Accordingly, we will terminate as moot CC Docket Nos. 87–313 and 93–197.

IV. Ordering Clause

11. Accordingly, it is ordered that CC Docket Nos. 87–313 and 93–197 are terminated as moot.

List of Subjects in 47 CFR Part 61

Communications common carriers.

Federal Communications Commission

Shirley S. Suggs,

Chief, Publications Branch.

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[13] OCP NPRM, 8 FCC Rcd at 5205–6. The price cap system's treatment of OCPs differs from that accorded promotions. OCPs are included in a separate service category (the ReachOut service category) from the basic MTS service categories within Basket 1, whereas promotions are included in the applicable MTS service categories. Changes in OCP rates, therefore, are not subject to the same limitations on rate changes as the basic schedule service categories. Further NPRM, 10 FCC Rcd at 7859.

[14] The Commission also proposed a number of other changes to the price cap rules in the OCP NPRM, including whether to remove commercial, 800 Directory Assistance, and analog private line services from price caps. In the Report and Order in CC Docket No. 93–197, 10 FCC Rcd 3009 (1995), 60 FR 4569, January 24, 1995 (Commercial Services Price Cap Order), the Commission resolved these issues, removed commercial services from price cap regulation, and deferred the question of the regulatory treatment of OCPs to this proceeding.

[15] Further NPRM, 10 FCC Rcd 7854.

[16] *Id.* at 7861.

[17] *Id.* at 7862.

[18] AT&T Reclassification Order, 11 FCC Rcd 3271.

[19] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979), 44 FR 67445, November 26, 1979; First Report and Order, 85 FCC 2d 1 (1980), 45 FR 76148, November 18, 1980; Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981), 46 FR 10924, February 5, 1981; Second Further Notice of Proposed Rulemaking, FCC 82–187, 47 FR 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982), 47 FR 37889, August 27, 1982; Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 FR 28292 (1983); Third Report and Order, 48 FR 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), 48 FR 52452, November 18, 1983, *vacated, AT&T* v. *FCC*, 978 F.2d 727 (D.C.Cir. 1992), *cert. denied, MCI Telecommunications Corp.* v. *AT&T*, 113 S.Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984), 49 FR 11856, March 28, 1984; Fifth Report and Order, 98 FCC 2d 1191 (1984), 49 FR 34824, September 4, 1984; Sixth Report and Order, 99 FCC 2d 1020 (1985), 50 FR 1215, January 10, 1985, *vacated, MCI Telecommunications Corp.* v. *FCC*, 765 F.2d 1186 (D.C.Cir. 1985) (collectively referred to as the Competitive Carrier proceeding).

[20] AT&T Reclassification Order, 11 FCC Rcd at 3292.

[21] *Id.* at 3347.

[22] *Id.* at 3281.

[23] Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, FCC 96–209 (rel. May 14, 1996).

[24] AT&T Reclassification Order, 11 FCC Rcd 3271.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Status Reviews for the Alexander Archipelago Wolf and Queen Charlotte Goshawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status reviews; extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the rangewide status reviews for the Queen Charlotte goshawk (*Accipiter gentilis laingi*) and the Alexander Archipelago wolf (*Canis lupus ligoni*) is extended. The Service solicits any information, data,