

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1511

September Term, 2002

Filed On: November 18, 2002

[714206]

AT&T Corporation,  
Appellant

v.

Federal Communications Commission,  
Appellee

Appeal from an Order of the Federal Communications Commission

**BEFORE:** GINSBURG, *Chief Judge*, and EDWARDS and GARLAND, *Circuit Judges*.

## **JUDGMENT**

This appeal was considered on the record compiled before the Federal Communications Commission and on the briefs filed by the parties. It is hereby

**ORDERED AND ADJUDGED** that the Commission's Order be affirmed. The decision in this case is controlled by our opinion in *WorldCom, Inc. v. Federal Communications Commission*, No. 01-1198, 2002 U.S. App. LEXIS 22009 (Oct. 22, 2002), in which the appellant made the same basic arguments as does AT&T here. In that case, we rejected a challenge to the Commission's use of New York UNE rates as a benchmark in a § 271 proceeding for Massachusetts. We found that the Commission's reliance upon the states' processes of rate revision and correction provided "reasonable grounds to be satisfied that the disputed rates were unlikely to exceed the range of TELRIC compliance." *Id.* at \*12, slip op. at 8. The same is true in this case.

In the prior case we also acknowledged that "[a]t some point, WorldCom's argument plainly must become a winner. In a market with falling costs, ancient UNE rates cannot serve as a valid benchmark." *Id.* at \*11, slip op. at 7. In this case, however, AT&T has not made a showing that the Texas UNE rates were so antiquated that the Commission's reliance upon the rate revision processes in Texas and Missouri was arbitrary and capricious.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

## **Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:

Michael C. McGrail

Deputy Clerk