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Before the
FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)
	)
The Micronesian Telecommunications Corporation	)
	)
Request for Declaratory Ruling	)

MOTION FOR LEAVE TO FILE LATE COMMENTS
OR, IN THE ALTERNATIVE,
TO TREAT AS A PETITION FOR RULE MAKING

IT&E Overseas, Inc. ("IT&E"), hereby respectfully moves the Commission for leave to file the attached comments in opposition to MTC's Request for Declaratory Ruling two days late. In the alternative, if such leave is denied IT&E requests that its Opposition be treated as a Petition for Rule Making. In support thereof, IT&E states as follows:

IT&E is perhaps the only party significantly adversely directly affected by Micronesian Telecommunications Corporation's ("MTC") choice of study area for the Commonwealth of the Northern Mariana Islands ("CNMI"). There are only two other off-island carriers serving the CNMI -- MTC itself (which, under its unseparated corporate structure is effectively untouched by the affects of its high cost access charges), and PCI Communications, Inc., which is both very small, serves a niche market, and does not, insofar as IT&E knows, carry inbound or terminating traffic to the CNMI. (Inbound traffic, such as from nearby Guam, is especially impacted by MTC's access structure.) Moreover, MTC's petition has been pending for nearly one year. As such, neither MTC nor any other party will be prejudiced by accepting IT&E's comments two days late.

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On the other hand, as IT&E points out in its comments, the public long distance users in the CNMI will continue to be adversely affected, at least indirectly in terms of higher long distance rates, to the extent the concerns raised by IT&E's Opposition are ignored or disregarded.

The reason for this late filing is that IT&E's President and only company official knowledgeable about the access issues affecting its operations in the CNMI, and who is ordinarily in Guam, was off-island during the week that IT&E's comments were being prepared attending the PTC conference in Hawaii. As such, he was unavailable to be consulted about and to review the comments to be filed on behalf of his company. Such review was only possible upon his return to Guam and to his office on January 24, 1994.

Counsel for GTE/MTC was alerted to this problem before the ordinary due date and conveyed that GTE/MTC had no objection to a late filing. (At the time,however, the understanding was that the comments would be only one day late, not two.) In addition, attempts were made to seek an extension at the Commission late last week, but due to the state of emergency in the city toward the end of last week it was not possible to reach anyone with authority to act on the request.

Accordingly, for the foregoing reasons it is respectfully requested that this motion be granted.

Respectfully submitted,
IT&E Overseas, Inc.

By: ______________________
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Its Attorney

January 25, 1994

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion and attached Opposition of IT&E Overseas, Inc. was served this date by the undersigned on counsel for GTE/MTC by hand delivery at the address indicated below:

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street
Suite 1200
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Victor J. Toth

January 25, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)
The Micronesian Telecommunications Corporation	)
Request for Declaratory Ruling	)

OPPOSITION OF IT&E OVERSEAS, INC.

IT&E Overseas, Inc. ("IT&E"), pursuant to Public Notice, DA 94-12, released January 5, 1994, hereby respectfully opposes the Request for Declaratory Ruling filed by The Micronesian Telecommunications Corporation ("MTC"). In support thereof, IT&E states as follows:

SUMMARY

MTC's study area request should be placed in abeyance while the Commission conducts a broader investigation of alternative methods or means -- including but not limited to special rules, rule waivers and/or special policies -- by which the effects of MTC's allegedly unique access cost characteristics can be ameliorated so as to bring local CNMI access rates down to reasonable levels. More specifically, IT&E proposes that MTC and its parent, GTE Hawaiian Telephone Company, should be required to consolidate Hawaii and the CNMI as one study area.

As it stands, since just last June, 1993, when MTC's first access tariff went into effect, IT&E's average access payments to MTC

have risen from $0.03/min. to over $0.167/min., or 557%![1] Terminating access is even much higher, and IT&E's cost of access went up 25% this month alone due to MTC's local transport restructuring. Additional increases are anticipated this coming April when MTC files its 1994 annual access charges for the first time under price caps. Such escalating access charge levels are not only unconscionable and headed in the absolute wrong direction, but they are posing a threat to both competitive long distance services and reasonable long distance rate levels for the CNMI.

Background

The Micronesian Telecommunications Corporation is a dominant carrier, and provides local exchange service, interexchange access services, and off-island long distance telephone service to the Commonwealth of the Northern Mariana Islands ("CNMI"). MTC also provides non-regulated CPE equipment services, local cellular telephone service, and owns and operates all the major off-island facilities, including the sole earth station to the Intelsat satellite system, and the only microwave link between the CNMI and Guam. MTC is 96% owned by its parent, GTE Hawaiian Telephone Company ("GTE/HTC") which, of course, is

[1] IT&E acknowledges that prior to the June 17, 1993 first access rate increase IT&E was receiving a modified trunkside FG-B form of access, whereas after that date it received a modified FG-D form of trunkside access. However, MTC's conversion from one form of trunkside access to another was not a significant factor in MTC's post-June 17, 1993 surge in access rates.

owned, in turn, by the GTE Company and is regulated by the FCC as one of the General Telephone Operating Companies ("GTOC").[2]

MTC allegedly conducts its operations in the CNMI -- including but not limited to exchange and exchange access, off-island long distance and cellular -- under two corporate entities, Micronesian Telecommunications Corporation and Micronesian International.[3] MTC's off-island long distance operations are allegedly conducted by the latter. As of the most recent FCC Rule 43.61 International Traffic Reports, MTC had at least 94% of the off-island market in the CNMI.

IT&E is a relatively small, locally owned long distance telecommunications company based in Guam. IT&E serves the Mariana Islands, including Guam and the CNMI. IT&E has operated in the CNMI as MTC's only significant competitor in the off-island market since 1986.[4] As of August, 1993, one other competitor has emerged in Saipan, PCI Communications, Inc.

MTC's Access Treatment, Local Facilities
<u>and Deployment of FG-D Equal Access</u>

MTC owns and operates a very modern and efficient local plant and switching system serving about 14,000 subscribers with two Northern Telecom DMS 100 central office switches, one DMS 200 access tandem and several remote DMS 10 switches. MTC's exchange plant is

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[2] According to GTE/HTC's 1991 Annual Report, p. 12, as of that year MTC has been at least 96% owned by GTE/HTC.

[3] The only evidence of an entity referred to as "Micronesia International" appears in the Reply of the GTE Telephone Operating Companies, filed May 28, 1993 in the context of GTOC Transmittal No. 783. Micronesian International files no FCC tariffs and has no FCC operating authorities. Otherwise, IT&E is unaware of any such entity and believes that, at most, Micronesia International is a mere business division of MTC, perhaps formed solely in response to IT&E's access concerns.

[4] Since MTC's deployment of FG-D equal access as of August, 1993 a third carrier is now operating in Saipan, PCI Communications, Inc.

essentially 100% underground cable and fiber optics except for the interoffice, interisland trunk facilities connecting the islands of Rota and Tinian with Saipan, which are microwave. MTC's exchange plant has been totally re-constructed since 1986 with low cost REA money.

The history of IT&E's quest for equitable access treatment from MTC is long and arduous. For purposes of the issue at hand it suffices simply to recount that, from 1986 through 1991 IT&E was offered only FG-A lineside access. In 1990 IT&E demanded FG-D type equal access but, instead, was provided only with FG-B-type trunkside access in 1991. For both lineside and trunkside access MTC assessed interstate access charges on both a usage sensitive and flat-rated basis at rate levels which MTC represented to be from the NECA FCC access tariff. Indeed, MTC had represented to IT&E since at least 1986 that it was following and applying NECA rates in Saipan.[5] IT&E was paying $4000.00/month for modified FG-B trunkside access from 1991 until June 1993.[6]

MTC moved to deploy FG-D-type access at an expedited pace in early 1993, but only after IT&E pursued relief through

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5 <u>See</u>, IT&E Petition to Reject GTOC Transmittal No. 783, May 13, 1993, at Attachment 2.

6 At IT&E's June, 1993 volume levels this amounted to about $0.03/min.

the Department of Justice under the 1984 GTE Consent Decree. Conversion to FG-D officially occurred on June 17, 1993.

MTC's First Access Tariff Filing

In anticipation of converting to FG-D MTC filed its first access tariff ever on April 19, 1993, under GTOC Transmittal No. 783. MTC's proposed initial rates increased IT&E's average access costs by about 449% (from about $0.03/min. to $0.139/min.) IT&E engaged a consultant to review MTC's tariff and support material, and filed a petition to reject and/or suspend MTC's proposed access rates, pointing out several serious deficiencies and objections, including the following:

> -- While GTE claimed to have conducted a Part 36 and Part 69 cost study, IT&E could not get access to any meaningful results from this study, notwithstanding its repeated informal requests.
>
> -- As to the cost information that MTC did supply, MTC's reported costs were consistently far out of line with industry experience, particularly for the relatively small size of its operations.
>
> -- Insofar as IT&E can discern MTC's own interexchange operations are not subject to the new access charges, either in the originating or terminating direction.
>
> -- MTC has only one customer, IT&E, that pays MTC's especially outrageous terminating access charges, because no other IXC terminates calls into the CNMI on a conventional access basis. (MTC, for example, terminates inbound calls from Hawaii for its parent, GTE/HTC, <u>for which no terminating access charges are paid</u>.)
>
> -- Under MTC's rate schedule IT&E paid terminating charges of over $0.41/min. for calls to certain destinations in the CNMI -- about twice MTC's charge for a local toll call using the same interoffice transport facilities over the same distance.

MTC responded to IT&E's objections by claiming that its access costs and rates were determined in complete conformance to the Commission's existing Part 36, 64 and 69 rules, and that it was not required to follow any different practices (such as using GTOC company-wide averages) notwithstanding the practices of its GTE affiliates. MTC summarily disputed IT&E's contention that parallel access tariff development for nearby Guam demonstrated that the region's cost and traffic characteristics were not extreme, but tended in the exact opposite direction from those claimed by MTC -- that is, lower than usual access costs and very high local versus interexchange traffic. MTC argued that neither the cost nor the traffic characteristics of Guam (which has an even much more robust business, government, military and tourist-based economy than the CNMI) can be used as a relevant benchmark for the CNMI. In any event, it claimed that MTC's access rates have been cost-based, but costs in the CNMI are nevertheless "unique". (Cost-based access rates for Guam have been determined at about $0.08/min., or less than half the average rate per minute tariffed by MTC.)

Pursuant to the Commission's mandated interim change in the local transport rate element GTE filed access tariff changes for MTC purporting to reflect the new LTR structure. MTC's new LTR access rates were permitted to go into effect on December 31, 1993. As a result of MTC's LTR's adjustments IT&E's cost of transport increased 92%; IT&E's overall access costs increased another 24.2%. The discrepancy between MTC's access charges to IT&E and the corresponding access rate ranges of the RBOCs and the other GTOCs[7] is shown below:

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[7] It should be noted that MTC has chosen to have itself included as a concurring carrier to the tariff of its affiliated GTOCs rather than subscribing, for example, to the NECA tariff or filing its own access tariff. Thus, it is reasonable to make comparisons between its rates and those of the other RBOCs and GTOCs rather than with other LECs nearer its size. On the other hand, however, IT&E submits that MTC's access rates would be off the scale irrespective of what benchmark was used.

Rate Element	**BOC Range**	**GTOC Range*** **	**MTC**
RIC*	0.013031-0.0044	0.00-0.0186776	0.065871
Fixed	0.000228-0.00043	0.00-0.0004085	0.00022
Per Mi.	0.000037-0.000053	0.00-0.0000526	0.000068
Tandem	0.00078-0.001347	0.0126-0.043	0.00143
Loc. Sw.		0.01	0.052956
Orig. CCL		0.01708	0.01
Term. CCL			0.0835754
Total (Term.)**			**0.2047324**
Total (Orig.)**			**0.131157**

* "Residual Interconnection Charge"
** Assuming 10 mile transport
*** Excluding MTC

IT&E continues to dispute MTC's access rates and many of the underlying assumptions and representations which MTC has relied upon to support both its underlying costs and traffic data. In due course IT&E may challenge these costs and rates in a formal proceeding. For the time being, however, IT&E, other IXCs and the long distance subscribers in the CNMI are saddled with the access rates as it now finds them, and their attendant impact on off-island long distance charges.

MTC's Request for Creation of a Study Area

MTC has already effectively adopted the CNMI as its "study area" for access cost purposes in its past two tariff filings. It is now asking the FCC to formalize its decision so that MTC can proceed to prepare and file its Tariff Review Plan, Form 492A and ARMIS reports. (MTC Request, pp. 2-3.) While such approval ordinarily might be forthcoming as a necessary *albeit* perfunctory step, in this instance it threatens to lock-up the CNMI as a very high cost area, with no offsetting local subsidies[8] and no prospects of enjoying future long distance rate reductions for off-island services.[9] Thus, it would not be in the public interest to condone MTC's choice of study area if, to do so, will penalize CNMI ratepayers and MTC's competitors indefinitely into the future.

If MTC's underlying CNMI access costs are to be presumed correct, and if those costs are based on the CNMI's true cost characteristics, then, at the very least, the Commission ought to be hesitant about codifying any factor, including the chosen study area, that will contribute to perpetuating excessive access rates without investigating the study area effects thoroughly, and without also considering other possible alternatives. As MTC has now twice demonstrated, as a study area the CNMI does not produce the kind of favorable access charge results (at a current average premium rate of $0.167/min.) that the Commission's access rules and policies were designed to produce. Therefore, as a first step the Commission should inquire into and verify all the factors that allegedly make the CNMI "uniquely" the highest cost service area in all the United States. In addition, MTC should be required to explain what adjustments, if any, will come into play, and when, to lower access costs for Interexchange

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[8] Of interest, MTC has not suggested that the CNMI is inherently a high cost service area for all services across the board. There is no evidence, for example, that MTC's local exchange service rates are unusually high, or that MTC subsidizes its local services with either interstate access or long distance revenues. Indeed, MTC's interisland toll charges in some instances are less than its charges for terminating access over the same route and distances. Further, MTC has not suggested that its subscribers would benefit from any participation in any high cost NECA pools, lifeline assistance programs or other possible subsidies. IT&E submits that MTC has never had to account for <u>all</u> its costs, local service, interexchange access, and long distance, and reconcile its jurisdictional cost allocations before any regulatory authority.

[9] If there are any high cost characteristics in that region, it is the high cost of providing overseas domestic and international long distance services.

carriers.[10]

If the results of an MTC showing are unsatisfactory or otherwise unpromising, then the Commission should consider mandating, such as by a rule change, that the relevant study area shall consist of a consolidation of the CNMI with Hawaii.[11] Such a consolidation would be in the public interest in that it would go a long way toward normalizing with the rest of the country access costs and thus access rates for the CNMI with very little if not negligible impact on Hawaii. Moreover, such an action would go further toward normalizing access rates for the entire Pacific Rim area comprising the whole Northern Mariana Islands, including both Guam and the CNMI.

Guam's local exchange carrier, the Guam Telephone Authority ("GTA") does not claim to be burdened with high cost characteristics and is already moving toward cost-based rates. At the conclusion of a transition period it is expected that GTA's access costs will be in line with comparable mainland LECs. Thus, in the entire Pacific Rim community now covered by the FCC's access rules (i.e., Hawaii, Guam and the CNMI), this will leave only the CNMI and MTC out of step with abnormally high access charges.

The purpose of the present freeze on study areas has been under review since 1990 to the extent that it is either interfering with contemporary industry needs, such as in mergers, acquisitions or

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[10] In this connection, MTC has also unilaterally deployed a transition schedule for phasing in EUCL charges for the first time to CNMI residential and business subscribers, ultimately leading to the Commission's EUCL rate caps of $3.50 and $6.00 respectively. If common line costs are so disproportionately high, would it not be reasonable that the EUCL caps be adjusted proportionately for the CNMI to thereby relieve IXCs of an excessive CCL burden?

[11] The rule change would be added to Part 36, at Section 36.2(f) or (i), and would simply provide that, for study area purposes, GTE/HTC shall consolidate its costs for the service area of Hawaii and that of its subsidiary, MTC, consisting of the CNMI.

price caps, or otherwise no longer threatens to burden the high cost pools.[12] There is no reason why still further adjustments to the study area rules cannot be accommodated particularly where, as here, it would serve the overall goals and objectives of the Commission's access policies in general. GTE/HTC's Hawaii access rates closely resemble those of its affiliate GTOCs operating on the mainland. Considering that MTC's total CNMI operations are a small fraction of GTE/HTC's, folding the CNMI into the Hawaii study area would be imperceptible to Hawaii, yet tremendously noticeable to the CNMI.

As for the consolidation of two otherwise jurisdictionally distinct study areas, the CNMI and Hawaii, such treatment is permitted and may even already exist under the Part 36 rules, particularly where, as here, the service areas are owned by a common telephone company, and there exists a community of interest.[13] As noted above, MTC is 96% owned by GTE/HTC, the LEC serving Hawaii. The intense amount of long distance traffic between the CNMI and Hawaii attests, indisputably, to the strong community of interest between these two Pacific Rim markets. It only makes sense that if a post-November 15, 1984[14] study area is going to be approved for MTC, it ought to be one that advances the public's interest and the Commission's access policies, not one that sets them back.

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[12] See, *In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rule Making, CC Docket No. 80-286, 5 FCC Rcd 5974 (1990).

[13] *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Id., at ¶4.

[14] Under existing access rules study areas were frozen as they existed on November 15, 1984. MTC claims that it technically was not subject to the FCC's access jurisdiction as of that date (a contention that IT&E would dispute), and therefore it lacks a formally recognized study area for purposes of its current access compliance.

Other Alternatives

In the event that consolidation is found unacceptable or infeasible, the Commission should investigate other changes which could relieve the access burden. At the very least these should include:

-- Incorporation of GTOC company wide average rates for MTC's access rate elements, particularly the terminating CCL component, irrespective of study area definition.

-- Equalization of originating and terminating CCL charges (to lower the excessive terminating CCL rate ($0.083/min.) the burden of which tends to fall exclusively on IT&E.

-- Increase the EUCL caps so that a proportionate share of common line costs fall on end users and not just on IXCs.

Conclusion

IT&E strongly urges that consolidation of the CNMI and Hawaii study areas as the best and most practical solution for reducing MTC's extraordinarily high access charges. This approach would bring the CNMI within range of where the Guam Telephone Authority expects its access charges to fall at the end of its transition to cost based rates in 1996, thereby ensuring relative access uniformity throughout the three most significant Pacific Rim market areas -- Hawaii, Guam and the CNMI. With uniformity in access charges, lower and more uniform long distance rates will follow.[15]

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[15] Unless MTC's access charges are corrected as proposed herein, GTA's access charges will fall to cost-based mainland levels, competition in Guam will thereby be further stimulated, and long distance rate disparity between Guam and the CNMI calls will only increase in favor of Guam-based customers. Considering that Guam and the CNMI are within 40 miles of each other, there is no sound reason why long distance rates from one jurisdiction ought to be disproportionately higher than rates for calls made from the other. Such a situation already exists in the Mariana Islands; the reason for the disparity is not understood by the local residents (who travel frequently between and among the islands), and such perceived discriminatory treatment is not fair to the competing business interests in the region. Thus, the normalization of access costs throughout the region ought to be made a Commission objective.

Accordingly, MTC's request for the establishment of the CNMI as a study area should be rejected in favor of the consolidated area proposed herein.

Respectfully submitted,
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January 25, 1994