

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	CC Docket No. 96-61
Interstate, Interexchange Marketplace	)	
	)	
	)	
Implementation of Section 254(g) of the	)	DOCKET FILE COPY ORIGINAL
Communications Act of 1934, as amended	)	

To: The Commission

COMMENTS OF IT&E OVERSEAS, INC.

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## SUMMARY

IT&E Overseas, Inc. ("IT&E"), a facilities-based international and domestic interexchange carrier serving the Territory of Guam ("Guam") and the Commonwealth of the Northern Mariana Islands ("CNMI"), supports the universal service principles underlying the rule proposed by the Federal Communications Commission ("FCC" or "Commission") to codify its existing rate integration policy for all areas of the United States. However, because the FCC's existing domestic rate integration policy has never been applied to Guam or the CNMI, the extension of rate integration to Guam and the CNMI will require the Commission to resolve unique economic and policy issues that have not been addressed in prior proceedings implementing rate integration for other noncontiguous U.S. points such as Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Accordingly, IT&E urges the Commission to convene a separate working group or task force, whose work would be conducted concurrently with the instant generic proceeding, to address the issues that are unique to the telecommunications markets on Guam and the CNMI. In the absence of an existing rate integration policy for Guam and the CNMI, a working group or task force focused specifically on these issues will facilitate the development of the necessary factual record on which to base any new rule or policy. IT&E also believes that any rule requiring rate integration for Guam and the CNMI must be implemented on an individualized basis and conditioned on the introduction of competing distance-insensitive satellite services to Guam and the CNMI and on the introduction of cost-based access charges uniformly applied to all interexchange carriers by the affected local exchange carriers.

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**COMMENTS OF IT&E OVERSEAS, INC.**

**I. INTRODUCTION**

The passage of the Telecommunications Act of 1996 ("Telecom Act") on February 8, 1996, ushered in a new era for the United States telecommunications industry. The Telecom Act seeks to replace regulation with competition in all sectors of the telecommunications marketplace while ensuring that all of the citizens of the United States benefit from the revolutionary technological changes that characterize the marketplace today. As an integral part of the United States, the Territory of Guam ("Guam") and the Commonwealth of the Northern Mariana Islands ("CNMI") also share in the common national effort to modernize telecommunications and ensure that basic and advanced communications services are available to all of the people of the United States at affordable rates. As a major provider of facilities-based international and domestic interexchange services to Guam and the CNMI, IT&E Overseas, Inc. ("IT&E") welcomes the challenges and opportunities of the new

telecommunications era and is pleased to be at the forefront of the dynamic changes that will be of particular benefit to the residents of Guam and the CNMI.

As the drafters of the Telecom Act recognized, competition spurs technological innovation, leads to greater and more diverse service offerings, and reduces prices. IT&E, as the carrier responsible for introducing competition into Guam's interexchange market, has a substantial stake in ensuring that the rules adopted in this proceeding foster, rather than stifle, that competition. Accordingly, IT&E, pursuant to Sections 1.415 and 1.419 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §§ 1.415, 1.419 (1995), respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> Specifically, these comments are responsive to the FCC's proposed rule requiring geographic rate averaging and rate integration throughout the United States, including noncontiguous U.S. points such as Guam and the CNMI.

**A. The Interexchange NPRM**

In its Interexchange NPRM, the Commission proposed to adopt, revise, or eliminate a number of rules and policies regarding domestic interstate, interexchange telecommunications services. Notably, the Commission proposed, pursuant to new Section 254(g) of the Communications Act of 1934 ("Communications Act"), as amended by the Telecom Act,<sup>2</sup> to

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<sup>1</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 (released Mar. 25, 1996) ("Interexchange NPRM").

<sup>2</sup> New Section 254(g) of the Communications Act, as amended by the Telecom Act,  
(continued...)

adopt a rule requiring geographic rate averaging, to codify its existing domestic rate integration policy, and to extend rate integration to noncontiguous U.S. points, such as Guam and the CNMI, that are not currently subject to the existing rate integration policy.<sup>3</sup>

In proposing a rule requiring geographic rate averaging, the Commission observed that although it "has consistently endorsed a policy of geographic rate averaging, it has not formally promulgated a requirement that rates be geographically averaged."<sup>4</sup> The Commission also noted that the legislative history of new Section 254(g) of the Communications Act, as amended by the Telecom Act, which mandates geographic rate averaging, reveals a Congressional intent to codify the Commission's existing policy "to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those

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<sup>2</sup>(...continued)

directs the FCC, within six months after the enactment of the Telecom Act, 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.

Telecom Act, Pub. L. No. 104-104, 110 Stat. 56 (1996). The Interexchange NPRM does not specifically mention American Samoa, which also is a territory of the United States. However, we assume that the rate integration rules adopted herein would apply to American Samoa.

<sup>3</sup> See Interexchange NPRM, at ¶¶ 64-79.

<sup>4</sup> Id. at ¶ 67.

paid by urban subscribers."<sup>5</sup> Thus, the Commission proposed to require all interexchange carriers to charge their subscribers in rural and high cost areas at rates no higher than those which they charge their subscribers in urban areas.

The Commission also proposed to require all interexchange carriers to integrate their rates or, in other words, to charge their subscribers in each state at rates no higher than those which they charge their subscribers in any other state. In addition to codifying its existing rate integration policy, the Commission proposed to extend rate integration to noncontiguous U.S. points such as Guam and the CNMI, which presently are not subject to the Commission's current rate integration policy. Accordingly, the Commission is soliciting comments on the appropriate mechanisms to implement rate integration for those noncontiguous U.S. points.

The precise issue of whether and how to implement a domestic rate integration policy for Guam and the CNMI also is the subject of three petitions currently pending before the Commission to establish rulemakings to implement a domestic rate integration policy for Guam and the CNMI (collectively, the "Rate Integration Petitions").<sup>6</sup> Because the Commission's proposed rule requiring geographic rate averaging and rate integration involves the same issues raised by the Rate Integration Petitions, IT&E hereby incorporates by

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<sup>5</sup> *Id.* at ¶ 68 (quoting Conference Committee, Joint Explanatory Statement on the Telecommunications Act of 1996, 104th Cong., 2nd Sess. at 132).

<sup>6</sup> *See* Governor's Office of Guam Petition for Rulemaking to Integrate Rates, filed May 12, 1995, Public Notice, AAD 95-84 (released June 16, 1995); JAMA Corporation Petition for Rulemaking to Implement Domestic Rate Integration Policies for Guam, filed May 1, 1995, Public Notice, AAD 95-85 (released June 16, 1995); CNMI Petition for Rulemaking to Implement Domestic Rate Integration for the CNMI, filed June 7, 1995, Public Notice, AAD 95-86 (released June 16, 1995).

reference its comments, petition to convene a negotiated rulemaking, and reply comments, previously filed in response to the Rate Integration Petitions.<sup>7</sup> The Commission indicated in its Interexchange NPRM that the instant proceeding to adopt rules requiring geographic rate averaging and rate integration effectively moots the pending proceeding to consider the Rate Integration Petitions for a rulemaking proceeding to establish a rate integration policy for Guam and the CNMI.<sup>8</sup> However, issues regarding the appropriate mechanisms to implement any rate integration plan for Guam and the CNMI, many of which were identified by IT&E in the earlier proceeding, remain relevant and therefore must be addressed.

**B. The Need for a Separate Working Group or Task Force**

Since the Commission has never adopted a rate integration policy for Guam and the CNMI,<sup>9</sup> IT&E believes that the issues raised by the proposed extension of rate integration to Guam and the CNMI require more thorough analysis and deliberation than will be required by the relatively simple matter of codifying the Commission's existing rate integration policy with respect to the other noncontiguous U.S. points. Therefore, IT&E urges the Commission to convene a separate working group or task force, whose work would be conducted

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<sup>7</sup> See Comments and Petition to Convene a Negotiated Rulemaking Proceeding of IT&E, FCC File Nos. AAD 95-84, 95-85, and 95-86 (filed August 15, 1995); Reply Comments of IT&E, FCC File Nos. AAD 95-84, 95-85, and 95-86 (filed September 14, 1995).

<sup>8</sup> See Interexchange NPRM, at ¶ 77 n.170.

<sup>9</sup> Although the Commission sought comments on the requests of the Rate Integration Petitions to institute a rulemaking proceeding to implement rate integration for Guam and the CNMI, it did not solicit comments on the substantive issue of whether and how to implement rate integration until March 25, 1996, when it released its Interexchange NPRM.

concurrently with the instant generic proceeding, to address specifically the unique economic and policy issues regarding the extension of domestic rate integration to Guam and the CNMI. IT&E understands that the Governor of Guam intends to propose the creation of such a working group to assist in the implementation of rate integration for Guam. Such a proceeding ideally would involve face-to-face meetings and input from representatives of the Commission, the Public Utility Commission of Guam, the Commonwealth Utilities Corporation of the CNMI, the interexchange carriers presently serving or proposing to serve Guam and the CNMI, and other interested parties. IT&E looks forward to participating fully in this working group to reach an expedited resolution of these difficult issues. In the absence of such a task force, however, IT&E is concerned that this proceeding may result in an ill-considered rule that is based on an inadequate factual record and fails to address the unique geographical circumstances and technical requirements of the Western Pacific region. Such a rule is likely to impede rather than foster telecommunications competition on Guam and the CNMI without corresponding benefits. IT&E also believes that any rule requiring rate integration for Guam and the CNMI must be implemented on an individualized basis and conditioned on the introduction of competing distance-insensitive satellite services to Guam and the CNMI and the implementation of cost-based access charges by the local exchange carriers.

## **II. INTEREXCHANGE CARRIERS SERVING GUAM AND THE CNMI CURRENTLY OPERATE IN A COMPETITIVE ENVIRONMENT**

### **A. Telecommunications on Guam**

Guam is a self-governing, unincorporated U.S. territory under the jurisdiction of the U.S. Department of the Interior. Guam is located in the Pacific island group of Micronesia, approximately 8,769 miles from New York, 6,000 miles from San Francisco, 3,700 miles from Honolulu, and 1,550 miles from Tokyo. Today, Guam has a population of approximately 140,000 people.

Guam has been a U.S. territory since 1898, when it was ceded to the United States by Spain as a result of the Spanish American War. Guam was lawfully governed, and telephone service on Guam was provided, by the U.S. Navy until 1950, when Congress adopted the Organic Act which authorized civilian governance of those portions of Guam that were not reserved to the Navy and transferred administration from the Department of Defense to the Department of Interior. The Organic Act also granted U.S. citizenship to the residents of Guam and permitted them to elect a legislature that could enact laws consistent with the laws of the United States as they apply to Guam. Guam is currently in the process of renegotiating its political relationship with the United States to secure greater local autonomy.

In 1953, the Navy transferred responsibility for civilian telephone service to the Public Utility Agency of Guam ("PUAG"), and in 1973 the government of Guam created the Guam Telephone Authority ("GTA") as a separate, not-for-profit public corporation and autonomous instrumentality to acquire the entire communications system from the PUAG and to provide civilian local telephone service. Today, GTA is Guam's only local exchange carrier with over 60,000 subscriber lines.

Until 1983, when IT&E began offering competitive interexchange services, long distance telephone service to Guam was provided exclusively by RCA Global Communications, Inc. ("Globcom").<sup>10</sup> In 1988, MCI Telecommunications Corp. ("MCI") acquired Globcom's assets and operates Globcom's facilities through its subsidiary, Western Union International. Sprint Communications Co. L.P. ("Sprint") commenced service and established a point of presence ("POP") on Guam in 1994. Today, IT&E, MCI, and Sprint, are the major providers of long distance service to Guam. Access Telecommunications, PCI Communications, Columbia Communications Corporation ("Columbia"), JAMA Corporation, Island Long Distance Company, and others also are currently providing or planning to provide long distance service to Guam. Although it has not yet commenced service, Columbia has been authorized by the FCC to provide satellite service via the Tracking and Data Relay Satellite System ("TDRSS") of the National Aeronautics and Space Administration ("NASA").<sup>11</sup>

The long distance carriers on Guam currently provide service through INTELSAT space segment and fiber optic submarine cables co-owned by U.S. and foreign entities.<sup>12</sup> Guam presently is linked to the United States by three fiber optic submarine cable systems -- HAW-4/TPC-3, TPC-4 (via TPC-3), and TPC-5.<sup>13</sup> In addition, the FCC in 1995

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<sup>10</sup> Globcom provided the first civilian long distance service to Guam in 1951, utilizing high frequency single side-band radios.

<sup>11</sup> See Columbia Communications Corp., 7 FCC Rcd 6616 (1992).

<sup>12</sup> The two copper cable systems that previously served Guam (i.e., HAW-2/TPC-1 and HAW-3/TPC-2) were retired in 1993.

<sup>13</sup> The TPC-5 cable became operational in December 1995.

authorized Guam Telecom, Ltd., L.C., to land and operate a digital fiber optic submarine cable between Guam and Hawaii.<sup>14</sup> That cable is not scheduled to be operational until December 1996.<sup>15</sup>

**B. Telecommunications in the CNMI**

Guam's closest neighbor, the CNMI, is a 300-mile-long archipelago in the western Pacific Ocean consisting of sixteen islands approximately 120 miles from Guam, 3,300 miles from Hawaii, and 5,500 miles from the U.S. mainland. Only three of the islands -- Saipan, Tinian, and Rota -- are populated, with a total population of approximately 43,345. The CNMI has been a U.S. commonwealth since 1986. Between 1947 and 1986, the CNMI was part of the United Nations Trust Territory of the Pacific Islands, which was administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations. As trustee of the CNMI, the United States exercised full powers of administration, legislation, and jurisdiction, but not sovereignty. In 1975, the CNMI and the United States entered into a "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." The Covenant was declared to be in full force and effect by Presidential Proclamation in 1986, and the Trusteeship Agreement as it applied to the CNMI was terminated. Upon termination of the Trusteeship Agreement, the CNMI became a U.S. commonwealth and residents of the islands were granted U.S. citizenship.

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<sup>14</sup> See Guam Telecom Ltd., L.C., DA 95-2212 (released November 3, 1995).

<sup>15</sup> Id.

The local exchange carrier serving the CNMI is the Micronesian Telecommunications Corporation ("MTC"), which serves approximately 14,000 subscriber lines. MTC also is a major provider of long distance services. In 1981, GTE Hawaiian Telephone Company, a subsidiary of GTE Corporation, acquired MTC and currently owns 98 percent of MTC's outstanding stock. Since IT&E began operating in Saipan in 1986, IT&E has competed with MTC for the provision of long distance services in the CNMI. Presently, IT&E and MTC are the only two facilities-based long distance carriers with a point of presence ("POP") in the CNMI. Although other carriers can terminate traffic to the CNMI using MTC's or IT&E's facilities, none has a POP in the CNMI and thus none can originate traffic from the CNMI.

IT&E currently provides long distance service to the CNMI over a combination of submarine cable and INTELSAT space segment. IT&E's traffic from the CNMI is routed first to Guam via satellite facilities, then to the U.S. mainland and offshore points via submarine cables, which are backed up with a satellite restoration path. Although submarine cable facilities do not presently serve the CNMI directly, the FCC has granted MTC authorization to land and operate a submarine fiber optic cable between the CNMI and Guam.<sup>16</sup> In addition, an application filed by GST Telecom, Inc. for authority to land and operate a submarine fiber optic cable between the CNMI and Guam currently is pending before the Commission.<sup>17</sup>

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<sup>16</sup> See Micronesian Telecommunications Corporation, 8 FCC Rcd 748 (1993).

<sup>17</sup> See FCC Public Notice, Report No. I-8135 (released Jan. 23, 1996).

### III. THE FCC HISTORICALLY HAS TAKEN AN INDIVIDUALIZED APPROACH TO IMPLEMENTING RATE INTEGRATION

Interexchange carriers traditionally have used a uniform domestic rate schedule based on geographically averaged rates for long distance service between points within the U.S. mainland. In 1972, the FCC determined that the introduction of domestic satellite service would be accompanied by the integration of long distance rates between the U.S. mainland and Alaska, Hawaii, and Puerto Rico. Thus, the FCC established a rate integration policy that required domestic satellite service providers, particularly the American Telephone and Telegraph Co. ("AT&T"), to offer long distance service between the U.S. mainland and Alaska, Hawaii, and Puerto Rico at the same rates that apply for comparable distances between points within the U.S. mainland.<sup>18</sup> The FCC subsequently extended this rate integration policy to the Virgin Islands.<sup>19</sup>

The FCC's rate integration policy was premised on the economic rationale that the advent of domestic satellite communications with their distance insensitive features would mitigate distance as a cost factor in rate making and thus justify the inclusion of noncontiguous U.S. points served by such satellites in the nationwide rate averaging scheme.<sup>20</sup> In adopting its rate integration policy, the FCC recognized, however, that "there

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<sup>18</sup> See Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, Second Report and Order, 35 FCC 2d 844, 856-7 ("Domsat II"), aff'd on recon., Memorandum Opinion and Order, 38 FCC 2d 665, 692-697 (1972) ("Domsat II Reconsideration"), aff'd sub. nom., Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

<sup>19</sup> See Integration of Rates and Services, Memorandum Opinion, Order and Authorization, 61 FCC2d 380 (1976) ("Integration Authorization").

<sup>20</sup> See Domsat II, 35 FCC2d at 856-57.

may be extraordinary technical or economic factors, such as, earth station costs and traffic loadings that may warrant some deviation from this approach or justify a phased implementation of the integrated pattern."<sup>21</sup> Thus, when the FCC commenced implementation of its rate integration policy adopted in 1972, it realized that the dynamic telecommunications market structures of Alaska, Hawaii, Puerto Rico, and the Virgin Islands required that rate integration be introduced on a gradual and individualized basis.<sup>22</sup> Full rate integration had to be achieved through phased reductions in tariffed rates and individually tailored to the unique market characteristics of each particular area. Consequently, full rate integration for Puerto Rico and the Virgin Islands, Hawaii, and Alaska was not achieved until July 1, 1980, January 1, 1985, and January 1, 1987, respectively.<sup>23</sup>

When the FCC initially adopted its rate integration policy for Alaska, Hawaii, and Puerto Rico in 1972, AT&T was still the monopoly provider of long distance services, and independent telephone companies providing service in conjunction with AT&T were able to recover their entire costs of providing service from the interstate settlements pool consisting of the total revenues collected for interstate toll services.<sup>24</sup> Thus, rate integration was compatible with the existing market structure because any below-cost rates resulting from

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<sup>21</sup> Id. at 857.

<sup>22</sup> See Integration Authorization, 61 FCC 2d at 384.

<sup>23</sup> See Integration of Rates and Services, Notice of Proposed Rulemaking, 1985 FCC LEXIS 2532 (released September 27, 1985) ("Integration NPRM"); Integration of Rates and Services, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994).

<sup>24</sup> See Integration of Rates and Services, Notice of Inquiry, 96 FCC 2d 567, 571 (1984) ("Integration NOI").

rate integration could be subsidized by the interstate settlements pool. Since then, the telecommunications landscape has undergone dramatic changes resulting from the divestiture of AT&T and the entry of multiple carriers competing for long distance customers. The interstate settlements pool has been eliminated and replaced by a competitive market structure with cost-based access charges.<sup>25</sup> Indeed, the FCC has noted that the "increased levels of competition in the contiguous states and entry of competitors owning facilities in the noncontiguous points raises [sic] questions of the viability of competition under the existing rate integration procedures."<sup>26</sup>

Although the FCC in 1985 concluded that, based on a review of the record existing at the time, its rate integration policy was compatible with interexchange competition in Hawaii, Puerto Rico, and the Virgin Islands, it did not reach the same conclusion with respect to Alaska. Rather, the FCC found it necessary to convene a Joint Federal-State Board, pursuant to Section 410(c) of the Communications Act, 47 U.S.C. § 401(c), to examine the intricate relationship between rate integration and competition and the proper regulatory framework for Alaska's telecommunications market.<sup>27</sup> Thus, in the particular case of Alaska, the FCC struggled for over twenty years with the question of what type of telecommunications market structure for Alaska would best accommodate the often

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<sup>25</sup> See MTS-WATS Market Structure Inquiry (Phase I), 93 FCC2d 241, mod'd on recon., 97 FCC2d 682 (1983), mod'd on further recon., 97 FCC2d 834, aff'd in substantial part sub nom., NARUC v. FCC, 737 F.2d 1095 (D.C. Cir. 1984). IT&E notes that GTA continues to impose access charges based on a percentage of gross interexchange revenues and will not fully implement cost-based access charges until it converts to equal access in mid-1997. See Comments of GTA, CC Docket No. 96-45, at 4 (filed April 12, 1996).

<sup>26</sup> Integration NOI, 96 FCC 2d at 573.

<sup>27</sup> See Integration NPRM, 1985 FCC LEXIS at ¶ 14.

conflicting goals of rate integration, competition, and service to remote and unserved areas.<sup>28</sup>

In implementing rate integration for Alaska, Hawaii, Puerto Rico, and the Virgin Islands, the FCC not only analyzed the potential anticompetitive effects with respect to each geographic market area, but also recognized the wisdom of implementing rate integration on a gradual, rather than immediate, basis. Indeed, the FCC asserted that a gradual implementation plan "ensures that rate integration will not stimulate demand to the point where the available facilities might not be adequate to provide acceptable levels of service and service reliability."<sup>29</sup> The FCC's experience with implementing rate integration for Alaska, Hawaii, Puerto Rico, and the Virgin Islands suggest that any plan to extend rate integration to Guam and the CNMI likewise should be implemented on a gradual and individualized basis that takes into account the dynamic market structure of telecommunications on Guam and the CNMI and the unique geographical features of these Western Pacific islands.

#### **IV. THE ABSENCE OF AN EXISTING RATE INTEGRATION POLICY FOR GUAM AND THE CNMI REQUIRES THE DEVELOPMENT OF A FULL RECORD THAT ACCOUNTS FOR UNIQUE MARKET CHARACTERISTICS**

Because the FCC does not have an existing rate integration policy for Guam and the CNMI, it cannot assume that rate integration will operate in the same manner that it did in

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<sup>28</sup> See Integration of Rates and Services, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3024 (1994).

<sup>29</sup> Integration Authorization, 61 FCC 2d at 385.

Alaska, Hawaii, Puerto Rico, and the Virgin Islands, particularly in view of the intervening changes in the telecommunications marketplace and the vastly greater distances involved. Indeed, the Congressional Joint Explanatory Statement, which accompanies the Telecom Act, provides that the geographic rate averaging and rate integration provision of the Telecom Act "simply incorporates in the Communications Act the existing practice of geographic rate averaging and rate integration for interexchange, or long distance, telecommunications rates to ensure that rural customers continue to receive such service at rates that are comparable to those charged to urban customers."<sup>30</sup> Since the Commission is proposing to extend its rate integration policy, in addition to codifying its existing rate integration policy, it should develop a complete record that includes a thorough analysis of the impact of rate integration on the unique telecommunications markets on Guam and the CNMI.

Unlike the long distance monopolies that existed in Alaska, Hawaii, Puerto Rico, and the Virgin Islands when the FCC adopted its rate integration policy, the long distance markets on Guam and the CNMI are truly competitive. Furthermore, in contrast to the specific circumstances that justified rate integration for Alaska, Hawaii, Puerto Rico, and the Virgin Islands, Guam and the CNMI are not presently served by any competing satellite service provider utilizing satellite facilities that are separate and distinct from those of the International Satellite Organization ("INTELSAT"). Instead, long distance service to Guam is presently provided over a combination of fiber optic submarine cables and INTELSAT space segment. As demonstrated below, the evolution of telecommunications competition on

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<sup>30</sup> Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 129 (1996) (emphasis added).

Guam and the CNMI presents a unique set of circumstances raising novel and complex issues that must be thoroughly addressed before any plan to extend rate integration to Guam and the CNMI can be implemented.

**A. Rate Integration Should Be Conditioned on the Availability of Competing Distance-Insensitive Satellite Services to Guam and the CNMI**

The FCC's implementation of rate integration for Alaska, Hawaii, Puerto Rico, and the Virgin Islands was premised on the widespread availability of competing distance-insensitive domestic satellite services. Although the FCC has stated that "implementation of rate integration does not, and cannot, depend on the actual use of domestic satellite facilities,"<sup>31</sup> it assumed in making such a statement that domestic satellite service would be available nonetheless.<sup>32</sup> Given the assumption of the availability of domestic satellite service, a carrier's decision to use alternative transmissions facilities would indicate that such use involves lower costs than the use of domestic satellite service alone. In that case, the resulting rates should not be any higher than the integrated rates obtained on the assumption of the actual use of low-cost, distance-insensitive domestic satellite service.

Because low-cost, distance-insensitive satellite service is not presently available to Guam and the CNMI, the traditional foundation for the implementation of rate integration for

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<sup>31</sup> Integration of Rates and Services, Memorandum Opinion and, 62 FCC 2d 693, 695 (1976) (emphasis added).

<sup>32</sup> See id. ("AT&T's domestic satellite facilities are capable of direct satellite service between Puerto Rico/Virgin Islands and Hawaii, though the carriers may choose to provide this service via the Mainland and use satellites only in part or not at all.").

these areas has not yet been established.<sup>33</sup> Unlike satellite facilities, the fiber optic cable facilities currently used to provide long distance service to Guam and the CNMI do not involve distance-insensitive costs. The costs of constructing, operating, and maintaining submarine cable systems vary in direct proportion to the entire length of the cable. Thus, because of the longer distance between Guam and the U.S. mainland, the costs associated with the trans-Pacific cable systems serving Guam are much higher than for the cable systems serving other noncontiguous U.S. points.

Furthermore, although carriers serving Guam and the CNMI may provide long distance service via INTELSAT space segment, the costs and rates associated with such facilities are not comparable to the costs and rates associated with satellite systems serving mainland points. Unlike Alaska, Hawaii, Puerto Rico, and the Virgin Islands, where the costs of satellite service are equivalent to those that apply to the U.S. mainland, satellite service to Guam and the CNMI must be obtained at the monopoly rates charged by Comsat, the U.S. signatory and only provider of INTELSAT space segment. Because the cost of INTELSAT service to Guam and the CNMI is significantly higher than the cost of satellite service to the U.S. mainland and other noncontiguous U.S. points obtained from competing domestic providers such as AT&T and others, the integration of Guam and the CNMI into

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<sup>33</sup> Although the FCC eliminated the distinction between domestic satellite systems and separate international satellite systems for regulatory purposes, see Amendment to the Commission's Regulatory Policies Domestic Fixed Satellites, Report and Order, IB Docket No. 95-41, ¶ 3 (released Jan. 22, 1996), the important fact remains that costs of satellite service between Guam and the CNMI and the U.S. mainland are significantly higher than the costs of satellite service between other U.S. domestic points.

the domestic rate presents unique problems that were not addressed when Alaska, Hawaii, Puerto Rico, and the Virgin Islands were integrated into the domestic rate pattern.

Although Columbia has been authorized to provide satellite service via non-INTELSAT facilities, such service is not currently available to Guam and the CNMI. Moreover, Columbia previously has stated that because of the unique geographic location of Guam, the proposed provision of satellite service between Guam and the U.S. mainland by Columbia would not be "equivalent to the service available via domestic satellites, which cover all fifty states in addition to the integrated offshore points."<sup>34</sup> Unlike the case with other noncontiguous U.S. points, which can be reached from the U.S. mainland via a single satellite transmission, or "hop," satellite service between Guam and the U.S. mainland requires a "double hop," at twice the cost and with inferior quality.<sup>35</sup> Indeed, when the FCC granted Columbia authorization to provide satellite service to Guam and the CNMI, it noted the "vast distances between that portion of the United States located in the eastern Pacific (i.e. CONUS, Hawaii and Alaska) and geographically dispersed U.S. points located in the western Pacific [e.g., Guam]."<sup>36</sup> Thus, the FCC acknowledged the unique costs of satellite service to Guam and the CNMI by concluding that "permitting Columbia to provide service between these eastern and western Pacific U.S. points does not alter the primarily international character of its separate international satellite system."<sup>37</sup>

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<sup>34</sup> Comments of Columbia Long Distance Services, Inc. (an affiliate of Columbia), FCC File Nos. AAD 95-84, 95-85, and 95-86, at 5 (filed Aug. 15, 1995).

<sup>35</sup> Id. at 6.

<sup>36</sup> Columbia Communications Corp., 7 FCC Rcd 6616, 6617 (1992).

<sup>37</sup> Id.

As further evidence of the paucity of satellite service to Guam and the CNMI, PanAmSat originally proposed an "Oceania Beam" for its POR satellite (PAS-2) serving Guam and the CNMI at rates lower than Comsat's. In reliance on this proposal, IT&E sought and received authorizations to construct earth stations to access the Oceania Beam. However, on July 25, 1994, shortly after the successful launch of PAS-2, PanAmSat advised IT&E that it had decided not to implement an Oceania Beam and that space segment would be available only on the Pacific Rim Beam. PanAmSat further advised IT&E that because the Pacific Rim Beam would not cover Guam and Saipan with sufficient EIRP to permit "economical" pricing of the space segment services, the quoted prices would have to be increased by 50 percent and IT&E would have to install larger, more expensive earth stations. As a result of these circumstances, the final costs of the PanAmSat proposal would have exceeded those under Comsat's tariff, and IT&E declined to go forward.

The consensus among all parties affected by the proposed extension of rate integration to Guam and the CNMI appears to be that because of the unique geographic locations of Guam and the CNMI, the costs of service to these areas are different from and inherently greater than the costs of service to other U.S. locations.<sup>38</sup> Thus, the existing transmission facilities serving Guam and the CNMI cannot be deemed distance-insensitive. Consequently,

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<sup>38</sup> Comments of the CNMI, CC Docket No. 96-45, at 7 (noting that the CNMI is an "insular area" and a "high cost area"); Comments of the Governor of Guam, CC Docket No. 96-45, at (recognizing the "unique geographic situation" of Guam and endorsing universal service support mechanisms to mitigate the "distance factor"); Comments of GTA, CC Docket No. 96-45, at 5 (filed April 12, 1996)("GTA's . . . goal . . . is to gain recognition of the special requirements attendant to status as an "insular area," in particular, a Pacific Island territory. The most important of these relates to geography, and in particular, the distance between Guam and points in the mainland.").

because of the distance-sensitive costs of transmission between Guam and the CNMI and the U.S. mainland, any decision to implement rate integration therefore cannot rely on the traditional economic rationale based on the use of distance-insensitive satellite transmission, but rather must provide some other economic justification, which has yet to be formulated or adopted by the Commission.

**B. The FCC Must Consider the Impact of Rate Integration on the Growth and Competitiveness of the Telecommunications Markets on Guam and the CNMI**

Because the Commission's proposed rule mandating geographic rate averaging and rate integration for Guam and the CNMI appears to disregard the distance-sensitive cost of service to these areas, such a rule may have the unintended consequence of impeding the growth of competitive telecommunications markets that presently exist on Guam and the CNMI. Currently, the presence of multiple interexchange carriers on Guam and the CNMI, along with the potential entry of new competitors, has resulted in competitively priced long distance services. Carriers serving Guam and the CNMI routinely offer promotional rates and discount calling plans. For example, IT&E has consistently offered its "Right Plan Program," which provides subscribers with substantial discounts on long distance calls originating from Guam and the CNMI.<sup>39</sup> Under this plan, a call from Guam to the U.S. can cost as little as \$.27 a minute during certain time periods. These low rates have stimulated the competition that currently exists on Guam and the CNMI. This competition,

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<sup>39</sup> See IT&E Tariff FCC No. 2, 4th Revised Page No. 56 & 12th Revised Page No. 57, effective April 1, 1996.

however, may be threatened by the possibility that rate integration will enable large national interexchange carriers to spread the high costs of service to Guam and the CNMI among all their customers nationwide, while locally based carriers, such as IT&E, and other small competitors will be unable to subsidize below-cost rates mandated by a rate integration requirement by drawing on a large pool of interstate revenues. If this differential ability to absorb the high costs of service to and from Guam and the CNMI threatens the viability of smaller carriers under a mandatory rate integration scheme, competition will clearly be stifled in the absence of some compensating mechanism. This result would be even more regrettable if the impact were felt exclusively by locally owned companies, such as IT&E, that were founded by Pacific Islanders and provide an important source of local jobs for the residents of these isolated islands.<sup>40</sup> Therefore, we urge the Commission to adopt a mechanism to protect locally based carriers from the competitive harm that could result from a mandatory rate integration scheme.

The Commission previously has recognized the potential anticompetitive effects of rate integration when it granted interim relief to General Communication Inc. ("GCI"), a competitive entrant in the Alaskan interexchange market, which claimed that it was unable to

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<sup>40</sup> Since new Section 254(g) of the Communications Act, as amended by the Telecom Act, requires an interexchange carrier to charge its subscribers in each State at "rates no higher than the rates charged to its subscribers in any other State," it would appear that the statute does not directly require IT&E to alter its rates to conform with the national domestic rate pattern, given that IT&E currently does not serve subscribers in any "State" other than Guam and the CNMI. However, because IT&E intends to offer competitive rates and to be a full participant in the proposed rate-integrated telecommunications markets of Guam and the CNMI, IT&E would seek the benefit of any mechanisms adopted by the Commission to permit carriers to recover the differential between integrated rates and the costs of service resulting from the extraordinary distances and unique technological requirements of service to the Western Pacific region.

compete with the fully integrated rates offered by Alascom, Inc. ("Alascom"), the dominant interexchange carrier serving Alaska.<sup>41</sup> In its request for relief, GCI claimed that, although it was not a satellite service provider subject to the Commission's rate integration policy, the implementation of full rate integration would reduce Alascom's rates and thereby force GCI to respond by lowering its own rates. GCI thus argued its operating margins resulting from such below-cost rates would render it unprofitable to continue operations and create an insurmountable barrier to entry. In an effort to protect the "nascent competition in Alaska," the Commission accordingly granted interim relief to GCI in the form of a subsidy to support GCI's rates.<sup>42</sup> Consequently, the underlying claim of unfair competition resulting from rate integration prompted in part an extensive FCC inquiry regarding the tailoring of rate integration to Alaska's emerging competitive telecommunications market.<sup>43</sup>

In addition to examining the potential anticompetitive effects resulting from the differential ability of carriers to subsidize of below-cost integrated rates, the Commission also should investigate the possibility, previously raised by AT&T in its comments filed in response to the Rate Integration Petitions, that rate integration may result in Guam becoming

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<sup>41</sup> See Integration of Rates and Services, Memorandum Opinion and Order, CC Docket No. 83-1376, 1984 FCC LEXIS 1559 (released Dec. 11, 1984).

<sup>42</sup> Id. at ¶ 20. Although the Commission's interim relief was later invalidated by a reviewing court on the ground of inadequate evidence to justify the specific interim relief awarded, neither the court nor the Commission discounted the valid concerns regarding the potential anticompetitive effects resulting from fully integrated rates. See Alascom, Inc. v. FCC, No. 85-1279 (D.C. Cir. Jan. 27, 1987); Integration of Rates and Services, Memorandum Opinion and Order, 2 FCC Rcd 2896 (1987).

<sup>43</sup> See Integration of Rates and Services, Notice of Proposed Rulemaking, CC Docket No. 83-1376 (released Sept. 27, 1985).