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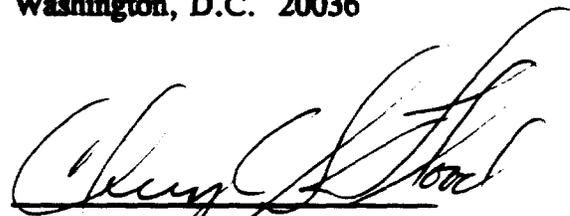
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("GTA") with substantial experience in the telecommunications business, longstanding ties to the island, and deep roots in the local community.

Guam is a United States territory located in the Pacific island group of Micronesia, about 6,000 miles from San Francisco, 3,700 miles from Honolulu, and 1,550 miles from Tokyo at 13° N. 114° W. The island is approximately thirty miles long and between four to eight miles wide. Guam was ceded by Spain to the United States in 1898.<sup>1'</sup> The United States Navy governed the island until 1950, when civilian governance was authorized by Congress.<sup>2'</sup> At the same time, Congress granted United States citizenship to the island's residents. The 1990 population of the island was approximately 130,000.

The Navy transferred local telephone responsibility to the civilian government's public utility agency in 1953, and in 1973 the government entrusted this responsibility to GTA.<sup>3'</sup> RCA Global Communications, Inc. ("Globcom") provided exclusive long distance telephone service to islanders until 1985, at which point IT&E began offering interstate common carrier communications services as well. Currently, MCI, Sprint, IT&E, and Access Telecommunications provide off-island services. These services are provided under an international regulatory regime. In addition, Guam Telecom Ltd. has petitioned for a cable landing license to enter this market, and Columbia Communications has authority to operate satellite services.

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<sup>1'</sup> See 30 Stat. 1754, Art. II (Dec. 10, 1898).

<sup>2'</sup> 64 Stat. 384 (codified at 48 U.S.C. §§ 1421-28) ("Organic Act").

<sup>3'</sup> See 12 Guam Code Ann. § 7103 (1973).

"Rate integration" is an approach to telecommunications regulation that ensures the provision of non-discriminatory, highly competitive services to all consumers -- regardless of where they are located in this geographically expansive republic. Currently, the Commission applies its rate integration policy to numerous offshore domestic points, and has found that doing so significantly benefits the public interest.<sup>41</sup> JAMA respectfully asserts that residents of Guam are equally as entitled to the full benefits of competitive interstate telecommunications as residents of Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.

An integrated rate structure will substantially reduce rates for interstate telephone service, strengthen the ties among all United States citizens -- even those who are not residents of the mainland -- and nurture the development of robust interexchange competition. For these reasons, the petitioner respectfully requests that the Commission immediately institute a rulemaking to implement domestic rate integration policies for Guam.

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<sup>41</sup> See, e.g., Establishment of Domestic Communications Satellite Facilities by Non-Governmental Entities, 35 FCC 2d 845 (1972) ("DomSat II"), aff'd on recon., 38 FCC 2d 665 (1972), aff'd sub nom. Network Project v. FCC, 511 F.2d 786 (DC Cir. 1975).

## II. THE COMMISSION SHOULD REQUIRE RATE INTEGRATION FOR GUAM

The Commission's primary objective in the telecommunications marketplace is to ensure that consumers benefit from effective competition.<sup>5/</sup> Chairman Reed Hundt has emphasized that the market is "on the verge of a transition to a world . . . in which the average consumer will have a choice among competing suppliers of . . . telephone services."<sup>6/</sup> Competition means that consumers will benefit from "declining prices and increased usage of the telecommunications network," as well as "an expanding array of new choices for consumers."<sup>7/</sup> The Chairman's expressed goal is to promote market entry and enhance access in order to ensure competition.<sup>8/</sup>

Despite this compelling public policy goal -- and the numerous benefits it ensures for consumers and competitors alike -- residents of Guam are subjected to the confusing application of multiple regulatory schemes and are unable to share in the benefits of effective competition. While the Commission has required the filing of interstate and foreign exchange tariffs by GTA<sup>9/</sup> in order to implement equal access and the deployment of Feature

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<sup>5/</sup> See, e.g., "Hundt Says FCC is Taking Incremental Steps to Promote Competition," Communications Daily, Oct. 5, 1994 at 2; "US Preaches Competition at Telecom Meeting," Reuter European Business Report, Sept. 21, 1994; "Statement of Reed E. Hundt before the Subcommittee on Telecommunications, Committee on Energy and Commerce," Jan. 27, 1994 ("Hundt Statement"); "FCC Nominee Backs Wider Telecommunications Competition," Washington Post, Sept. 23, 1993 at C13.

<sup>6/</sup> Hundt Statement at p.3.

<sup>7/</sup> Id. at pp.6-7.

<sup>8/</sup> Id. at p.7.

<sup>9/</sup> See In the Matter of IT&E Overseas, Inc. and PCI Communications, Inc. Petition for Emergency Relief and Expedited Declaratory Ruling, 7 FCC Rcd 4023 (1992) ("Show Cause Order").

Group D ("FGD"), the Commission has not yet acted to rectify the imposition of international rates for calls between Guam and other domestic United States points. If the Commission is to ensure that the residents of Guam, and all United States citizens who communicate with Guam, receive the full benefits of competition, then it must ensure that Guam's telecommunications services are regulated under a domestic integrated rate structure.

**A. Guam is a domestic point fully within the Commission's "interstate" jurisdiction**

The Communications Act grants the Commission jurisdiction over communications between Guam and other points within the United States. The Communications Act defines communication between a United States territory and any other state, territory, the District of Columbia, or possession (with the exception of the Panama Canal Zone) as an "interstate" communication.<sup>10'</sup>

The Commission has exercised its jurisdiction over Guam, recognizing it as a domestic point of communication.<sup>11'</sup> Indeed, this approach has been recently affirmed in a

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<sup>10'</sup> See 47 U.S.C. § 153(e). Communications between Guam and the rest of the United States are not "foreign communications." The Communications Act defines "United States" to include its territories, e.g. Guam. See § 153(g). By definition, "foreign communications" do not include communications between two points in the United States. See § 153(f). The Commission itself has recognized that communication between mainland and offshore points, or among such points, is "interstate communication" within the meaning of Sec. 3(e) of the Communications Act. See Integration of Rates and Services, 62 FCC 2d 693, 694 ¶ 6 (1976).

<sup>11'</sup> See Common Carrier Services, 93 FCC 2d 54, 62 (1983); Net Express Communications, Inc., 2 FCC Rcd 1664 (1987); Micronesian Telecommunications Corp., 2 FCC Rcd 1105 (1987).

related proceeding.<sup>12/</sup> There, the Commission cited with approval court decisions recognizing its authority over Guam for the purposes of "interstate communications."<sup>13/</sup>

Consistent with its jurisdiction, the Commission supports a policy of encouraging the development of healthy competition in the telecommunications market serving Guam.<sup>14/</sup> The Commission holds that United States citizens resident on the island are "just as entitled to the benefits of competition in telecommunications as any other Americans."<sup>15/</sup>

**B. Rate integration for telecommunications between domestic points is the approach most consistent with the public interest and the development of market competition**

**1. Rate integration makes sense in light of the Commission's policy objectives**

Rate integration is a policy approach taken by the Commission to extend the availability of accessible and reasonably priced telecommunications services. As initially conceived, rate integration was meant to ensure that "interstate service between the contiguous states and Alaska, Hawaii, Puerto Rico, and the Virgin Islands [would be provided] at rates that are equivalent to those prevailing for comparable distances in the

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<sup>12/</sup> Show Cause Order at 4024 ¶ 5.

<sup>13/</sup> See id. at n.15.

<sup>14/</sup> See Guam Telephone Authority Petition for Declaratory Ruling, FCC 94-205 (rel. Sept. 16, 1994) at ¶ 8 ("FGD Order").

<sup>15/</sup> Show Cause Order at 4026 ¶ 15 (emphasis supplied). See also FGD Order at ¶ 9.

contiguous states."<sup>16/</sup> With an integrated rate structure, consumers benefit from near-universal access to reasonably priced long-distance services; competitors benefit from access to an expanded market. This is precisely what has happened in the "mainland" interstate market, which integrates Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The application of domestic rate integration generally involves several steps. First, it requires the development of cost data and the jurisdictional separation of these costs into intrastate and interstate components. The local carrier's intrastate costs are recovered through customer rates regulated at the State level. The local carrier's interstate costs are recovered through the federally prescribed access structure, including end-user charges and charges paid by interstate carriers.<sup>17/</sup> The market structure in its entirety, including any financial arrangements between carriers, is of course a major consideration in this analysis.<sup>18/</sup>

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<sup>16/</sup> Memorandum Opinion and Order, 2 FCC Rcd 2442 n.1 (1987). At that time, the Commission determined that the advent of distance insensitive facilities "should be accompanied by an integration of services, and . . . charges, between [contiguous and non-contiguous points.]" DomSat II at 856 ¶ 35.

<sup>17/</sup> There are a number of different ways in which to implement rate integration for Guam. Additional rate "bands" or "zones" could be established through the Commission, which would provide parity between Guam traffic and comparable domestic calling distances. The cables serving Guam could be designated as "domestic" up until the island, and then "international" beyond that point. As part of this proceeding, the petitioner expects that a detailed record will be developed by the Commission regarding the actual processes for implementing rate integration.

<sup>18/</sup> Domestic rate integration for noncontiguous points is generally accompanied by compensation to carriers serving those points for their interstate costs, as determined by the separation procedures codified in Part 36 of the Commission's rules, 47 C.F.R. Part 36. The costs of providing rate-integrated interstate services are recovered through nationally averaged interstate rates based on aggregate costs, including the financial arrangements between those carriers serving noncontiguous markets.

The single most important component of integrated rates is that of rate averaging.<sup>19/</sup> Rate averaging is the process whereby a carrier assesses costs based on its entire system rather than based on the specific lines used in each communication. The Commission has consistently supported the use of this principle for domestic interstate service.<sup>20/</sup> This support underscores the need to implement rate integration for Guam.

Under the Commission's policies, it has been determined that rate averaging enhances competition and benefits consumers. As initially recognized, rate averaging contributes "significantly" to achieving and maintaining universal service.<sup>21/</sup> Ratepayers in geographically distant settings are protected from unduly high costs, and ensured access to the system at a reasonable price.<sup>22/</sup> This has always been a fundamental goal of the Commission's telecommunications policies.

In addition, the Commission has found that rate averaging encourages robust interexchange competition.<sup>23/</sup> This is of paramount concern in today's telecommunications arena, where the Commission seeks to rely on competition -- rather than regulation -- to keep

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<sup>19/</sup> See Referral of Questions from GCI v Alascom, Inc., 2 FCC Rcd 6479, 6480 ¶ 7 (1987).

<sup>20/</sup> See, e.g. In the Matter of Competition in the Interexchange Marketplace, 5 FCC Rcd 2627, 2649 ¶ 181 (1990) ("Interexchange Competition NPRM"), and Policy and Rules Concerning Rates for Dominant Carriers, FNPRM, 3 FCC Rcd 3195, 3450 ¶ 483 (1988) ("FNPRM") (noting that the principle has been "extolled" by the Commission).

<sup>21/</sup> FNPRM at 3450 ¶ 483, citing Guidelines for Dominant Carrier's MTS Rates and Rate Structure Plans, NPRM, 100 FCC 2d 363, 375 (1985). See also Interexchange Competition NPRM at 2649 ¶ 181.

<sup>22/</sup> FNPRM at 3450 ¶ 483. See also Interexchange Competition NPRM at 2649 ¶ 181.

<sup>23/</sup> FNPRM at 3452 ¶ 483.

prices down and ensure quality services.<sup>24/</sup> A simplified rate structure allows for easy comparison of carriers by consumers.<sup>25/</sup> At lower integrated rates, the demand for interstate calls between Guam and other domestic points would likely rise, expanding the total amount of business and drawing in new competitors.<sup>26/</sup>

## 2. Rate integration makes sense for Guam

The Commission recognizes that Guam is the United States' gateway to the Pacific Rim region, an area of burgeoning economic and strategic significance.<sup>27/</sup> The closure of United States military installations, and the evolving nature of international relations in the region, enhance Guam's strategic value to the mainland.<sup>28/</sup>

With this in mind, the Commission recently brought the island's telecommunications structure partially within the domestic common carriage scheme by requiring GTA to show cause why it should not be required to file interstate and foreign exchange tariffs.<sup>29/</sup> As a

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<sup>24/</sup> See Hundt Statement, supra note 5.

<sup>25/</sup> Interexchange Competition NPRM at 2649 ¶ 181.

<sup>26/</sup> See Hundt Statement, supra note 5.

<sup>27/</sup> FGD Order at ¶ 9 (noting that Guam is "[p]oised on the Pacific rim, with tourism and commerce that have increased at an accelerating pace.")

<sup>28/</sup> See, e.g., Austin Bay, "What overseas bases does U.S. need to keep?" *Houston Chronicle*, July 23, 1993 at A37. See also David C. Morrison, "Uncle Sam, Shove Off!" *National Journal*, June 12, 1993, p.1412 (noting that the loss of the Philippines bases has "boosted the number of billets on Guam" and that "the air station plays a vital new supply and maintenance role").

<sup>29/</sup> See Show Cause Order.

result of this proceeding, GTA filed an Integrated Compliance Plan and Interim Tariff.<sup>30/</sup> In that plan, GTA proposed to begin implementation of Parts 32, 36, and 64 of the Commission's Rules by October 1, 1993. Beginning in January, 1994, GTA planned to implement usage sensitive access tariffs and transition to the "domestic" access regime, imposing subscriber line charges and jurisdictional revenue shifts.<sup>31/</sup> By January 1, 1997, GTA proposed to convert to a Part 69 Access Tariff and complete adjustments of the subscriber line charges and revenue shifts. On October 20, 1994, GTA claimed that it had "accomplished" implementation of Parts 32, 36, and 64 of the Rules, and that it was beginning to implement a usage sensitive tariff and transition to the targeted access regime.<sup>32/</sup>

Despite the fact that the Commission's orders recognize that "reasonable charges" should apply to Guam telecommunications services -- and that federal policies must prevent these services from being "balkanized"<sup>33/</sup> -- residents of Guam face immediate local rate increases as a result of the requirement that GTA file a Part 69 access tariff. For instance, GTA estimated that local rates are projected to increase by 141%, from twelve to twenty-nine dollars a month on average.<sup>34/</sup> At the same time, because interstate rates for Guam are

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<sup>30/</sup> "Integrated Compliance Plan and Reply of Guam Telephone Authority," filed April 19, 1993 ("GTA Plan").

<sup>31/</sup> Id.

<sup>32/</sup> Letter of Veronica M. Ahearn, GTA Counsel, to Geraldine Matise, Acting Chief, Tariff Division, Common Carrier Bureau, dated Oct. 20, 1994.

<sup>33/</sup> See FGD Order at ¶ 13.

<sup>34/</sup> Id.

developed pursuant to international accounting standards, rates between Guam and mainland points remain three times higher than comparable calls under the integrated rate scheme.<sup>35/</sup> The Commission has therefore inadvertently created a regulatory result that causes users of telecommunications services on Guam to bear all the costs of the domestic access regime but receive none of the benefits of lower competitive rates.<sup>36/</sup>

If residents of Guam are part of the "domestic" regime for access charge purposes, they should benefit from rate integration for interstate calling, which will reduce interstate rates. Instead, today the Commission requires utilization of international settlement principles for Guam-United States accounting rates.<sup>37/</sup> Meanwhile, Guam Telecom Ltd. has applied for a cable landing license to operate a fiber optic cable on a non-tariffed, non-common carrier basis between Hawaii and Guam.<sup>38/</sup> The application for this license heightens the importance of resolving the regulatory confusion arising from the Commission's inconsistent treatment of Guam. Indeed, there is a serious issue as to whether

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<sup>35/</sup> "Opposition of Guam Telephone Authority," SCL-94-003, filed July 22, 1993, at 12.

<sup>36/</sup> Along these lines, the Commission should coordinate the implementation of FGD with integration of Guam into the domestic regulatory scheme. See Part II.D., infra. Haphazard application of mandatory FGD will hinder the development of competition in the Guam telecommunications marketplace. The petitioner intends to make this argument formally to the Commission.

<sup>37/</sup> Common Carrier Bureau, Summary of International Accounting Rates, May 5, 1993.

<sup>38/</sup> "Application for a license to land and operate a submarine fiber optic cable extending between the U.S. Territory of Guam and the State of Hawaii," S-C-L- No. 94-003, filed June 17, 1994.

the Commission should allow any non-common carrier service to go forward before it has resolved the questions of how common carrier service should be regulated.<sup>39/</sup>

The existing disparity unfairly burdens the people of Guam and discourages communication between all United States citizens. Moreover, utilization of this inappropriate regulatory regime will discourage competitive entry and retard development of a robust telecommunications market. As Chairman Hundt has stated, competition offers significant benefits to consumers by stimulating improved service offerings and lower prices.<sup>40/</sup>

In addition, by requiring flash cut implementation of FGD, the Commission will exacerbate the market's dysfunctional characteristics. FGD equal access is predicated on low entry barriers for competitors. The Commission decided to require the implementation of FGD primarily because it can accommodate "more than 900 interexchange carriers."<sup>41/</sup> In fact, Guam's market presents very high barriers. Competitive telecommunications providers are stymied by the confluence of Commission policy and lack of cooperation on the part of international carriers.<sup>42/</sup> In addition, FGD is a "domestic" regulatory regime, but service between Guam and other United States points is provided under international rates. For

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<sup>39/</sup> Significantly, the Petitioner has been unable to obtain access to any facilities on a common carrier basis. Thus, the Commission should not allow new non-common carrier facilities when there are not adequate common carrier facilities at the present time.

<sup>40/</sup> See Hundt Statement, supra note 5.

<sup>41/</sup> FGD Order at ¶ 8.

<sup>42/</sup> The process for settling international toll usages greatly impedes international resale efforts. JAMA itself has encountered substantial difficulty in obtaining circuits for Guam and has ultimately been unsuccessful in its efforts to do so.

these reasons, consumers on Guam do not currently benefit from true competition as envisioned by the Commission.

**C. Interstate communications between Guam and the rest of the United States should benefit from "integrated rates"**

The rate integration framework has already been adopted for the rest of the United States, and it has been shown to be consistent with the Commission's important long-term goals of universal access and a competitive market for telecommunications services in furtherance of the public interest. Furthermore, there are no reasonable grounds to treat Guam differently than any other offshore point within the United States.<sup>43/</sup> The Commission has stated that "the public interest requires that . . . distinctions . . . with respect to level of charges and rate patterns, should be eliminated."<sup>44/</sup>

It is crucial to keep in mind that the implementation of rate integration did not, "does not, and cannot, depend on the actual use of domestic satellite facilities."<sup>45/</sup> The Commission's policy from the beginning has been in favor of integrated rates regardless of how message transfer service is routed (i.e., cable, satellite, or a combination).<sup>46/</sup> The trend

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<sup>43/</sup> See Integration of Rates and Services, 50 Fed. Reg. 41714, 41716 (Oct. 15, 1985) (describing the "national policy prohibiting unjust or unreasonable rate discrimination").

<sup>44/</sup> DomSat II at 856. See also Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627, 2649 (1990) and Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3132 (1989).

<sup>45/</sup> Integration of Rates and Services, 62 FCC 2d at 695 ¶ 6.

<sup>46/</sup> Id.

towards "deemphasizing distance as a cost factor"<sup>47/</sup> merely served as a catalyst in the adoption of rate integration. Nevertheless, there are sound economic reasons for rate integration in this case. The current regulatory framework will perpetuate the existence of inflated long-distance rates, while imposing higher local rates on Guam as well.

There is no reason for the current discriminatory treatment of Guam. Guam is already benefiting to the same extent from the advent of distance-insensitive domestic satellites capable of providing service to off-shore points and the use of fiber-optic cable to replace much more costly copper wire. Rate integration would stimulate long-distance competition, and help to balance the effects of local rate increases resulting from the Commission's implementation of equal access policies.

**D. The Commission should delay the implementation of Equal Access and Feature Group D until it has established a record and process to incorporate Guam into the domestic rate integration scheme**

Implementation of equal access and Feature Group D will require a fundamental change in the telecommunications marketplace on Guam, which will potentially leave Guam even more isolated from the domestic regulatory regime, and without the benefits of competition that the Commission seeks.<sup>48/</sup> The implementation of FGD is premised upon the availability of sufficient carriers to provide consumer choice. However, implementation of FGD without rate integration would in fact stymie competition.

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<sup>47/</sup> DomSat II at 857 ¶ 36.

<sup>48/</sup> See FGD Order at 2 ¶ 8 (noting policy in favor of competition).

The transition to FGD will represent a dramatic shift in the Guam telephone market because consumers there will be required to give up three-digit call-by-call access and adopt 1+ presubscription and seven-digit carrier access codes for non-presubscribed carriers. The FGD plan assumes that carriers have already been assigned four-digit carrier identification codes ("CIC"), which every access purchaser must have in order to obtain FGD access.<sup>49/</sup> However, Guam is not part of the North American Numbering Plan ("NANP"). In fact, one carrier has not been able to obtain a CIC because the NANP administrator has expressed doubts about whether Guam is within its jurisdiction.<sup>50/</sup> Furthermore, while the Commission has recommended a gradual conversion to the new four-digit CIC codes for the entire domestic system, Guam seems to be subject to a "flash-cut" conversion.<sup>51/</sup> JAMA is concerned that the Commission has not sufficiently considered these issues and the need for an appropriate transition.<sup>52/</sup>

Further, the requirement of 800-number portability may impose an unreasonable burden at this time. To ensure that consumers receive the benefit of these policies, the Commission must develop its regulatory approach by a thorough understanding of the specific situation in Guam. JAMA urges that the Commission coordinate the implementation of equal access, the deployment of FGD, and its policies regarding competitive numbering

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<sup>49/</sup> See Administration of the North American Numbering Plan, 9 FCC Rcd 2068 (1994) ("NANP Notice").

<sup>50/</sup> See IT&E Petition for Expedited Consideration, filed March 22, 1995, at p.8.

<sup>51/</sup> See FGD Order at ¶ 20 ("the benefits of FGD should be available to the people of Guam, and those calling Guam, as soon as possible.") (emphasis supplied).

<sup>52/</sup> The Petitioner intends to address the timing issues regarding the implementation of equal access and FGD more formally in the near future.

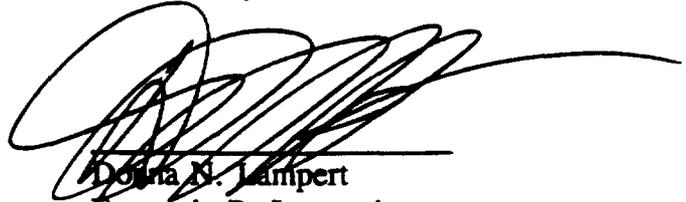


issues for Guam with the institution of rate integration and the availability of adequate facilities to support robust competition.

### III. CONCLUSION

For the foregoing reasons, JAMA Corporation respectfully requests that the Commission immediately institute a rulemaking to incorporate Guam into the domestic rate integration framework and extend the full benefits of a competitive telecommunications policy to all United States citizens.

Respectfully submitted,



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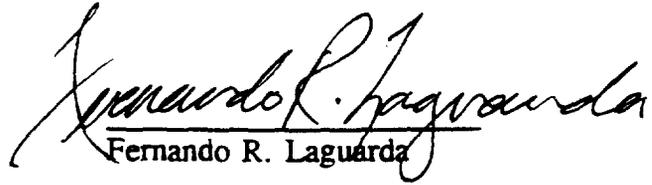
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