

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

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**REPLY COMMENTS OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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SUMMARY OF COMMENTS

The following Reply Comments of the Commonwealth of the Northern Mariana Islands ("Commonwealth") demonstrate that the Commission should expeditiously proceed with the adoption of its proposed rate integration rule as mandated by Section 254(g) of the Telecommunications Act of 1996 ("1996 Act")

As explained below, the vast majority of the commenting parties support the Commission's proposed rule which would extend rate integration to the Commonwealth. In addition to the Commonwealth as well as the Governor of the Territory of Guam, the U.S. Department of Interior, the states of Alaska and Hawaii and even several interexchange carriers ("carriers") endorse the Commission's proposed rule.

A limited number of commenting parties, primarily carriers which stand to see their margins cut if rate integration is implemented, attempt to undermine prompt implementation of the Commission's proposed rule. IT&E and GTE argue that uniquely high costs are associated with serving the Commonwealth. GTE goes so far as to argue that even after rate integration, rates in the Commonwealth may not necessarily come down. The Commonwealth refutes these arguments by showing that Section 254(g) of the 1996 Act is unambiguous in requiring that rates for interexchange services in the Commonwealth "shall be no higher" than rates in mainland urban areas. Moreover, the Commonwealth shows that these parties demonstrate the very point they are attempting to refute since the very purpose of rate integration is "the elimination of distance as a major cost factor." Their arguments, highlighting the steep costs of serving the Commonwealth, essentially show that never before has there been a stronger case presented for rate integration. In short, Section 254(g) must be implemented and rates must come down.

Several carriers attempt to argue that the Commission's rate integration proposal should not extend to the Commonwealth because the region is not currently served by distance insensitive satellite technology. The Commission, however, in Integration of Rates and Services, 62 FCC 2d 693 (1976), has previously rejected this argument and ruled that distance insensitive or satellite technology is not a prerequisite for rate integration.

AT&T and Sprint argue that the Commission should forbear from applying rate integration under Section 401 of the 1996 Act. The Commonwealth demonstrates that not only would this "turn the 1996 Act on its head," but it would clearly be inconsistent with Congress' intent that the Commission expeditiously adopt rate integration rules by August 8, 1996. Finally, the Commonwealth shows that parties advancing this argument do not--and cannot--satisfy the statutory test set forth in Section 401 for forbearance.

Turning to implementation issues, the Commonwealth questions the wisdom and necessity of convening a task force or working group as certain parties request. Such a step could supply an opportune vehicle for carriers which are looking to preserve the *status quo* through delay. Regardless, a task force would be likely to jeopardize the statutory deadline for the adoption of implementing rules. Given the tight deadline imposed by Section 254(g), it is clear that Congress did not intend that the Commission conduct drawn-out implementation proceedings as various parties appear to propose. The Commonwealth would prefer to see the Commission address any implementation issues in the context of the instant proceeding.

The Commonwealth also shows that Section 254(g) clearly requires that rate integration apply to all carrier services. Finally, the Commonwealth reiterates the need for a strong certification requirement and concurs with GTE that carriers be required to include a price list.

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The Commonwealth of the Northern Mariana Islands ("Commonwealth"),¹ by its attorneys and pursuant to the Commission's Notice of Proposed Rulemaking ("Notice") released on March 25, 1996,² hereby submits its Reply Comments in the above-captioned matter.

I. INTRODUCTION

In its Comments, the Commonwealth enthusiastically supports the Commission's proposal to adopt a rule mandating rate integration for the Commonwealth pursuant to Section 254(g) of the Telecommunications Act of 1996 ("1996 Act")³. Comments of the Commonwealth at 7. The Commonwealth's Comments urge the Commission to proceed without delay in integrating

¹ Consistent with the Commission's request that parties consolidate their filings in rulemaking proceedings implementing the Telecommunications Act of 1996 (see Public Notice, FCC 96-81, released March 1, 1996), these Reply Comments are filed by the Office of the Governor of the Commonwealth and concurred in by the Commonwealth's Office of the Resident Representative.

² In re Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, CC Docket No. 96-61 (released March 25, 1996).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §254(g) (1996).

the Commonwealth into the domestic rate plan. Comments of the Commonwealth at 15. The Commission's action in this proceeding should result in the meaningful implementation of integrated rates in the Commonwealth.

However, the regulatory status of the Commonwealth has not always been clear under the Communications Act of 1934, as amended. For example, while a domestic point as a U.S. commonwealth, telecommunications services between the Commonwealth and the mainland U.S. have traditionally been tariffed as international services. See id. at 3. In order to avoid confusion and regulatory uncertainty of this nature in the future, the Commonwealth's Comments propose that the Commission *expressly* indicate, either in the rate integration rule which the Commission is proposing to adopt or in its decision adopting the rule, that the rule applies to the Commonwealth. Id. at 10.

As the instant Reply Comments demonstrate, the Commission should proceed expeditiously with the adoption of its proposed rate integration rule as mandated by Section 254(g) of the 1996 Act.

II. THE VAST MAJORITY OF COMMENTING PARTIES SUPPORT THE COMMISSION'S PROPOSED RULE

A majority of the commenting parties support the Commission's proposed rule which would codify its rate integration policy and extend it to the Commonwealth and other U.S. Pacific territories.⁴

⁴ See, e.g., America's Carriers Telecommunication Association, AMSC Subsidiary Corporation ("AMSC"), Cable & Wireless, Incorporated ("C&W"), Columbia Long Distance Services, Incorporated ("Columbia"), Competitive Telecommunications Association, U.S. Department of Interior ("Department"), General Communication Incorporated, General Services

In its Comments, the Department of Interior ("Department"), which has jurisdiction over the Pacific territories' relations with the U.S., strongly advocates implementation of the Commission's rate integration proposal and urges the Commission to act "expeditiously" towards the integration of the insular areas. Comments of Department at 1. The Department has continually supported the extension of rate integration to the Pacific territories.⁵ The Department believes that rate integration will promote U.S. economic development in the Commonwealth⁶ in accordance with U.S. obligations under the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America."⁷

The states of Alaska and Hawaii, two offshore domestic U.S. points currently integrated into the U.S. domestic rate system, voice strong support for the Commission's rate integration proposal. In its Comments, Alaska recognizes the benefits derived from rate integration to its U.S. residents residing in the state. Comments of Alaska at ii. Both Alaska and Hawaii extol

Administration, GTE Service Corporation ("GTE"), GUAM Public Utility Commission (GUAM PUC), Office of the Governor of the Territory of Guam and Guam Telephone Authority ("GUAM/GTA"), LDDS WorldCom ("LDDS"), MCI Telecommunications Corporation ("MCI"), Pacific Telesis' Group, Rural Telephone Coalition, State of Alaska ("Alaska"), State of Hawaii ("Hawaii"), Telecommunications Consultants Incorporated, United States Telephone Association.

⁵ See letter from Allen P. Stayman, Deputy Assistant Secretary, Territorial and International Affairs, U.S. Department of Interior dated August 8, 1995 ("Department letter").

⁶ According to the Department, "[w]ith the advancement of facsimile and electronic data transfer, facilitated telecommunications access with the United States mainland will only help the Commonwealth's economy to grow. Closer telecommunications links to the mainland will strengthen and promote American business." Department letter at 1.

⁷ See 48 U.S.C. §1801 note (Supp. 1995), approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263 ("Covenant"). See also Comments of the Commonwealth, Dkt. 96-61 (filed April 19, 1996) at n.14.

the public interest benefits derived from rate integration including elimination of geographic discrimination, the promotion of universal service and the integration of U.S. offshore residents into the social and economic fabric of the Nation. Comments of Alaska at ii; Comments of Hawaii at 3.

Not surprisingly, a limited number of parties opposing the Commission's rate integration proposal are interexchange carriers ("carriers") serving the Pacific territories whose profitability stands to be potentially adversely impacted if the proposal is implemented. Nonetheless, even the majority of carriers support the proposed rate integration rule.⁸

In short, the comments submitted in the instant proceeding -- representing a diverse group including governments, U.S. departments and agencies, the states, and the telecommunications industry -- overwhelmingly demonstrate that the Commission's rate integration proposal advances the interests of all Americans.

III. THE COMMISSION SHOULD PROCEED WITHOUT DELAY IN IMPLEMENTING THE PROPOSED RULE

A limited number of commenting parties (primarily carriers serving the Pacific) raise arguments which would undermine the application of rate integration to the Commonwealth. Specifically, IT&E Overseas, Inc. ("IT&E") and GTE argue that the high cost of serving the Commonwealth must be taken into account and may not result in rates going down. Several carriers also argue that rate integration should not extend to the Commonwealth due to a lack of distance insensitive satellite technology. Finally, two commentators argue that the Commission

⁸ The following carriers' comments voice support for the Commission's rate integration proposal: C&W, Columbia, GTE and LDDS.

should forbear altogether from applying the proposed rule. As demonstrated below, these arguments are entirely without merit.

**A. The High Cost of Serving the Commonwealth
Justifies the Immediate Application of Rate Integration**

In its Comments, GTE claims that "rate integration alone will not necessarily lower the rates for interexchange services originating in the U.S. overseas territories." Comments of GTE at 19. According to GTE, "[i]n the particular case of the Commonwealth, it is important to recognize that MTC faces unusually high costs due to unique circumstances arising from its location." Id. at 20. Not surprisingly, IT&E advances a similar argument, emphasizing the high cost of providing service to the Commonwealth and Guam. Comments of IT&E at 15.

These claims fail to recognize the inherent purpose of rate integration as mandated by Section 254(g) of the 1996 Act. Moreover, the arguments actually prove the very point they are attempting to refute--they demonstrate the great need for rate integration in the Commonwealth.

Section 254(g) of the 1996 Act requires that,

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.⁹

Despite the efforts of some carriers to have the Commission believe otherwise, Section 254(g) is unequivocal in its requirement that rates for interexchange and interstate services in the Commonwealth "shall be no higher than" rates in urban areas of the contiguous U.S.¹⁰

⁹ 1996 Act at §254(g) (emphasis added).

¹⁰ It should be noted that the prescription in Section 254(g) is mandatory, as designated by the use of the word "shall." Moreover, Section 254 as a whole is designed to ensure that telecommunications rates across the Nation are "affordable." See 1996 Act at §254(b)(1). Section 254(b)(3) further mandates that consumers "in all regions of the Nation, including low-

The requirement of Section 254(g) that rates in the Commonwealth must come down is fully supported by the Commission's own principles underlying rate integration. While the provision of telecommunications services to the Pacific territories may be more costly than service provision to other points in the contiguous U.S., the very purpose of rate integration is that end user rates do not reflect these higher costs. According to the Commission,

[r]ate integration for Alaska interstate MTS and WATS service has, to date, involved both the charging of partially averaged rates that *may not reflect the underlying costs of providing the service* and settlement between carriers based on the investment, expenses, and return element associated with the services provided."¹¹

The arguments made by GTE and IT&E demonstrate the very point they are attempting to refute. IT&E and GTE attribute the high cost of providing telecommunications services to the Commonwealth to its location.¹² This argument is ineffective since the very purpose of rate integration is "the elimination of distance as a major cost factor."¹³ By highlighting the high costs of serving the Commonwealth and its geographic distance from the contiguous U.S., these parties make clear that there never before has been a stronger case for rate integration than that

income consumers and those in rural, insular, and high cost areas, should have access to telecommunications ...at rates that are reasonably comparable to rates charged for similar services in urban areas." 1996 Act at §254(b)(3).

¹¹ See In the Matter of Integration of Rates and Services, 2 FCC Rcd 2442, 2447, n.1 (citing Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856-57, aff'd on recon., 511 F. 2d 786 (D.C. Cir. 1975) ("Domsat II")).

¹² Singling out the Commonwealth, GTE points to the "unusually high costs due to unique circumstances arising from its location." Comments of GTE at 20. Similarly, IT&E states, "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." Comments of IT&E at 17.

¹³ Domsat II, 35 FCC 2d 844.

which is now presented by the Commonwealth.¹⁴

In sum, and notwithstanding the efforts of carriers to sustain their current profit margins in the U.S. Pacific territories, rates in the Commonwealth must come down. As mandated by Section 254(g), the ultimate result must be affordable rates that are "no higher than" mainland rates.

B. The Commission has Previously Determined that Distance Insensitive Satellite Technology is Not a Prerequisite for Rate Integration

Some parties argue that the Commission's rate integration proposal should not extend to the Pacific territories because the region is not currently served by distance insensitive technology. See Comments of IT&E at 16; Comments of Columbia at 5; Comments of Sprint Corporation ("Sprint") at 25; Comments of MCI at 37; Comments of GTA at 7; and Comments of AMSC at 3. The parties generally argue that distance insensitive or domestic satellite technology is a prerequisite for rate integration. Id. To the contrary, the Commission has made clear that distance insensitivity is not a prerequisite for the implementation of rate integration.

In Integration of Rates and Services,¹⁵ the Commission faced the same argument from AT&T with respect to the application of rate integration to traffic between the offshore points themselves (i.e., Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands ("USVI")). In particular, AT&T argued that traffic between Puerto Rico and the USVI will not use satellites,

¹⁴ See In re Petitions for Rulemaking to Provide Rate Integration for the Provision of Communications Between the United States mainland, Alaska, Hawaii, Puerto Rico, Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands, Reply Comments of the Commonwealth of the Northern Mariana Islands, Dkt. No. 95-86, at 6-9 (filed September 14, 1995). Id.

¹⁵ 62 FCC 2d 693 (1976).

and traffic between those points and Alaska and Hawaii will be provided via the mainland, though some may be routed in part over domestic satellites.¹⁶ The Commission flatly rejected AT&T's argument, finding that the actual implementation of rate integration does not depend on actual use of domestic satellite facilities. According to the Commission,

The potential cost savings from the use of the domestic satellite technology were the catalyst for our decision to integrate these points into domestic rate patterns coincident with the inauguration of domestic satellite services. *But implementation of rate integration does not, and cannot, depend on the actual use of domestic satellite facilities.* Whether MTS between the Mainland and the offshore points is routed via cable or satellite, or a combination of both, the same integrated rate applies.¹⁷

The Commission went on to explain that unless rates for other like interstate services are not adjusted similarly, "questions of possible discrimination in violation of Section 202(a) of the Communications Act would arise."¹⁸

In short, Commission precedent makes clear that distance insensitivity or satellite technology is not a prerequisite for rate integration. On the other hand, disproportionately high rates which "have inhibited the free flow of communications ...to the disadvantage of all of our citizens" is the prerequisite of rate integration.¹⁹

¹⁶ 62 FCC 2d 694-695.

¹⁷ *Id.* at 695.

¹⁸ *Id.* at 695-696. Based on Integration of Rates and Services as well as the language of Section 254(g), the rates between the Commonwealth and other offshore points must also be rate integrated.

¹⁹ *Id.* at 695.

**C. The Commission Should Not--and Cannot--
Forebear from Applying the Proposed Rule**

Two commentors, AT&T and Sprint, urge the Commission to forbear from implementing rate integration.²⁰ AT&T argues that the forbearance requirements under Section 401 of the 1996 Act are met with regard to rate integration and rate averaging. Comments of AT&T at 33-34. AT&T claims that the Commission's proposed rule in the instant proceeding is too rigid and ignores the Commission's broad forbearance authority in developing such rules. Id. at 31-32. Sprint also argues that forbearance is the correct alternative with respect to rate integration. Comments of Sprint at 25. The arguments advanced by AT&T and Sprint are without merit for several reasons.

First, the forbearance argument makes little sense when applied to rate integration. Section 254(g) of 1996 Act mandates rapid adoption of rate integration rules by the Commission.²¹ Indeed, while certain other requirements of the 1996 Act must also be adopted in the same rapid time frame, no other provision is to be implemented more rapidly. The argument that the Commission should forbear from applying Section 254(g) -- a crucial component of the 1996 Act's universal service provisions -- would turn the 1996 Act on its head. Furthermore, it would totally undermine Congress' intent that the Commission expeditiously

²⁰ Some comments respond to the Commission's request for comment on "whether there may be competitive conditions or other circumstances that could justify Commission forbearance from enforcing the proposed geographic rate averaging requirement with respect to particular interexchange telecommunications carriers or services." Notice at 38 (emphasis added). However, AT&T and Sprint offered unsolicited comments on forbearance from implementation of rate integration itself. The Commission's Notice does not contemplate nor seek comment on forbearance with respect to rate integration.

²¹ According to Section 254(g), rules implementing rate integration must be adopted within 6 months of the enactment of the 1996 Act, or by August 8, 1996. See 1996 Act at §254(g).

adopt implementing rules within six months of enactment. In short, Congress would not have mandated rate integration if it believed that the Commission would immediately elect to forbear from implementing this requirement. See Comments of Hawaii at 11-13.

Second, the legislative history does not contemplate Commission forbearance with regard to the implementation of rate integration.²² By contrast, the Joint Explanatory Statement provides for possible forbearance with respect to rate averaging.²³ As the State of Hawaii correctly points out "although the legislative history of Section 254(g) indicates Congress contemplated the possibility of limited exemptions from the geographic averaging policy, there is no such suggestion with regard to rate integration."²⁴ Comment of Hawaii at 13 (emphasis added). This further underscores the point made in the previous paragraph that Congress intended that the Commission implement rate integration without qualification.

Third, and perhaps most importantly, Section 401 of the 1996 Act clearly provides that in order to forbear from applying any regulation or provision of the 1996 Act, the Commission must determine that enforcement of the regulation or statute is 1) unnecessary to protect against unjust and unreasonably discriminatory practices; 2) not necessary to protect consumers; and 3)

²² Conference Committee, Joint Explanatory Statement on the Telecommunications Act of 1996, 104th Cong., 2nd Sess. at 132 ("Joint Explanatory Statement").

²³ According to the Conference Report, "[t]he conferees are aware that the Commission has permitted interexchange providers to offer non-averaged rates for specific services in limited circumstances (such as services offered under Tariff 12 contracts), and intend that the Commission, where appropriate, could continue to authorize limited exceptions to the general geographic rate averaging policy using the authority provided by new section 10 of the Communications Act." Joint Explanatory Statement at 132.

²⁴ See Joint Explanatory Statement at 132.

that forbearance is in the public interest.²⁵ As demonstrated below, this three prong test simply cannot be met with regard to rate integration regulation.

The rate integration provision in the 1996 Act is critically necessary to protect against unjust and unreasonably discriminatory practices. The U.S. Pacific territories remain the only U.S. points which have not yet been rate integrated.²⁶ The rates for calls between the Commonwealth and the contiguous U.S. are at least five times as high as mainland rates in the highest rate band.²⁷ Both the Commonwealth's Comments in the instant proceeding²⁸ and its Petition²⁹ clearly demonstrate that non-integrated rates to the Commonwealth are unlawfully discriminatory. Nothing short of full and prompt enforcement of Section 254(g) can eliminate the unreasonably discriminatory charges that apply to calls between the Commonwealth and the contiguous U.S.

With regard to the second prong of the test, enforcement of the Section 254(g) rate integration provision is critically necessary to protect U.S. consumers in the Commonwealth. As the Commonwealth has demonstrated, without rate integration, consumers in the Commonwealth will be disadvantaged by unlawfully discriminatory and disproportionately high

²⁵ 1996 Act at §401 (adding §10(a) to the Communications Act of 1934, as amended).

²⁶ Notice at 41-42.

²⁷ In re Petition for Rulemaking to Implement Domestic Rate Integration Policies for the Commonwealth of the Northern Mariana Islands, Dkt. No. 95-86 (filed June 7, 1995) ("Petition"); Comments of the Commonwealth 3, n.8. Significantly, the disparity between prevailing mainland rates, on the one hand, and rates between the Commonwealth and the U.S. mainland, on the other, is much greater than the disparity between pre-rate integration rates between Alaska/Hawaii/Puerto Rico/USVI and the mainland, and then-prevailing mainland rates.

²⁸ Comments of the Commonwealth at 9-10.

²⁹ Petition at 15.

toll calling rates which exclude them from the benefits of the Information Age. Comments of the Commonwealth at 2-3. Moreover, in its Comments, Alaska correctly expressed "grave doubts concerning whether carriers would adhere to geographic rate averaging and rate integration in the absence of a statutory or regulatory requirement (as demonstrated by the efforts of some carriers, in prior Commission proceedings, to avoid these obligations or claim that these obligations do not apply to them)." Comments of Alaska at 4-5. Thus, enforcement of Section 254(g) is absolutely necessary to protect U.S. consumers in the Commonwealth from unlawfully discriminatory and excessive rates.

Finally, forbearance by the Commission from enforcing Section 254(g) would be detrimental to the public interest. As the Commonwealth has shown, rate integration leads to numerous important benefits and, therefore, is in the public interest. First, implementing rate integration results in lower communications prices for ratepayers.³⁰ Second, rate integration promotes increased competition between interexchange carriers, leading to the adoption of new technologies, the development of new and innovative services, and improved customer service.³¹ Third, rate integration enhances economic growth.³² Fourth, rate integration ensures that U.S. citizens have access to the Nation's communications infrastructure.³³ Finally,

³⁰ See, e.g., Petition at 13.

³¹ Id.

³² As the Commonwealth indicates in its Comments, the U.S. has a special obligation under Section 701 of the Covenant to assist the Commonwealth in achieving a higher standard of living for U.S. citizens residing there. Comments of the Commonwealth at 5.

³³ Petition at 14-15. In addition, rate integration will help promote universal service in the Commonwealth. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3132 at para. 537 (1989). Congress too is clearly of this view since the rate integration mandate (i.e., Section 254(g)) is contained within Section 254 of the 1996 Act,

rate integration promotes unification of the United States.³⁴

In short, the commentators advocating forbearance satisfy none of the three prongs of the Section 401 test. Thus, there can be no question that rate integration must be fully implemented in accordance with Congress' mandate.³⁵

In its Comments, AT&T also proposes that the Commission "defer or waive the effectiveness of its rate averaging rules, to make them effective concurrently with access charge reform." Comments of AT&T at 35. Since this proposal too is in effect a forbearance request, the forbearance test must be satisfied. As indicated above, the Section 401 test has not been satisfied with regard to rate integration. Furthermore, instead of deferring implementation of rate integration pending access charge reform (something the 1996 Act could have done), the 1996 Act unequivocally mandates adoption of rate integration rules within six months.³⁶ If Congress intended that rate integration await access reform, it would have stated such desire. It did not. Rather, Congress set forth specific deadlines.³⁷

Notwithstanding the efforts of certain carriers - which stand to profit from the continuation of non-integrated rates - to preserve the *status quo*, the Commission has been given a clear mandate by Section 254(g) of the 1996 Act. It must promptly implement rate integration

entitled "Universal Service."

³⁴ See Petition at 8-9.

³⁵ Moreover, Section 401 of the 1996 Act contemplates Commission action pursuant to a "Petition for Forbearance." 1996 Act at §401(c). See Joint Explanatory Statement at 184. No such petition is currently before the Commission.

³⁶ See supra n.21. As AT&T concedes, the 1996 Act contemplates and requires that the access charge mechanism be completely overhauled. Comments of AT&T at 34.

³⁷ Id.

for the Commonwealth and other U.S. Pacific territories.

IV. IMPLEMENTATION ISSUES

As demonstrated below, the Commonwealth believes that all carrier services should be subject to rate integration and that a strong certification requirement is necessary. The Commonwealth, however, questions the wisdom and necessity of a task force to address potentially undefined implementation issues.

A. The Commonwealth Questions the Wisdom and Necessity of Convening a Task Force to Address Implementation Issues

Guam/GTA and IT&E both propose that a task force or working group be convened to address implementation issues. Guam/GTA's Comments state that "the Governor of Guam proposes to convene a Working Group to provide input to the Commission and develop mechanisms for implementing rate integration for Guam in accordance with Section 254(g) of the 1996 Act.³⁸" Comments of Guam/GTA at 5. IT&E expresses a similar proposal by suggesting that the Commission convene a separate working group or task force to address the unique economic and policy issues regarding the extension of rate integration to both the Commonwealth and Guam. Comments of IT&E at 5.

While the Commonwealth does not oppose a task force or working group to address implementation issues, the Commonwealth questions the necessity and wisdom of such a step. In light of the statutory deadline calling for the adoption of rate integration rules by August 8,

³⁸ According to Guam/GTA's Comments, "[t]he Governor will invite the participation of all interested parties, including interexchange carriers, the Guam Public Utilities Commission, and the Commission." Comments of Guam/GTA at 5

1996,³⁹ the Commonwealth encourages the Commission to first look to the instant rulemaking proceeding to address implementation issues. Since Congress established a six month deadline for implementation of rules pertaining to rate integration, Congress clearly did not envision the Commission spending significant time and effort--as it did in the case with Alaska and Hawaii--addressing diverse implementation issues.⁴⁰ See, e.g., Comments of IT&E at 13-14.

The Commonwealth's primary concern is that the Congressionally mandated six month deadline is at serious risk of not being met should the Commission decide to convene a task force or working group to address implementation issues. The Commonwealth urges the Commission to avoid delay in the implementation of Congress' mandate. Moreover, carriers opposed to rate integration may have an interest in delaying implementation of rate integration and furthering the *status quo* for as long as possible in order to maximize profits. Such carriers may view a task force or study group as the optimal vehicle to achieve this goal.⁴¹ The

³⁹ See supra n.21.

⁴⁰ IT&E appears to suggest that such a task force would examine, among other things, the questions of distance insensitive satellite service to the Commonwealth as well as the high cost of serving the Commonwealth. Comments of IT&E at 6. However, as shown infra at 5-8, these issues have been settled by both Commission precedent as well as the 1996 Act.

⁴¹ Indeed, parties have attempted to foster delay in the past by requesting further study with respect to Pacific territory issues. For example, IT&E has been accused of doing this in order to defer the implementation of Feature Group D in Guam. On January 25, 1996, IT&E filed an ex parte letter with the Commission requesting that the Commission convene a negotiated rulemaking for the purpose of consolidating the implementation of Feature Group D with rate integration and North American Numbering Plan entry. Letter from IT&E to Regina M. Keeney (January 25, 1996). By letter dated Feb. 7, 1996, the Commonwealth opposed this request. Letter from Commonwealth to Regina M. Keeney (February 7, 1996). GTA also opposed this request and, in its letter dated January 30, 1996, accuses IT&E of intentionally attempting to prevent the introduction of competition in Guam. Letter from GTA to Regina M. Keeney at 2 (January 30, 1996). According to GTA, "IT&E is desperately attempting to freeze the status quo for as long as possible in order to delay the introduction of competition that the Commission found to accompany the implementation of FGD." Id. The Commonwealth is concerned that

Commonwealth respectfully requests that the Commission consider these concerns when assessing parties' requests to convene a task force.

If the Commission is inclined to convene a task force, the Commonwealth offers the following observations. First, any task force should be required to address only specific issues, determined by the Commission, as they relate only to the instant proceeding. The Commission must avoid allowing such a task force to become a vehicle for a broad examination of Pacific telecommunications issues. Second, the task force should be required to adhere to a specific schedule which will allow the Commission to adopt implementing rules by August 8, 1996, the mandated deadline for the adoption of such rules.⁴² In the event that the task force is unable to meet this deadline, the Commission should decide such issues based on the information available to it at that time. Finally, if a task force is necessary, it should be convened only by the Commission--not an interested party (such as the Guam Governor's Office). The Commission has jurisdiction over interstate communications, including rate integration, and clearly cannot relinquish this jurisdiction to parties with a direct interest in the outcome of this proceeding.

In short, the Commonwealth questions the wisdom of convening a task force or working group to address implementation issues in light of Section 254(g)'s statutory deadline. Instead, the Commonwealth encourages the Commission to endeavor to address implementation issues expeditiously in the context of the instant rulemaking proceeding.

were a task force convened, tactics such as these could invariably come into play.

⁴² See supra n.21.

B. All Carrier Services Should be Included in Rate Integration

Several commenting parties argue that rate averaging and rate integration should apply only to basic interexchange services. See e.g., Comments of C&W at 5-6; Comments of Frontier Corporation at 8-9; and Comments of Telecommunications Resellers Association at 29. The Commonwealth opposes this argument and offers the following in support of including all services within the rate integration policy as mandated by Congress.

The 1996 Act expressly states 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 its subscribers in any other State."⁴³ Congress' language states that all services provided by an interstate interexchange carrier will be subject to rate integration. This unambiguous language provides for no limitations on the type of interexchange services subject to the Section 254(g) requirement. As the State of Alaska correctly asserts, "[t]here is no room in that language for generally exempting certain carriers or certain services." Comments of Alaska at 3. To exclude any services would defeat Congress' clear intention that all consumers in all regions of the Nation have access to advanced telecommunications services.⁴⁴

Limiting the applicability of rate integration to a small number of services will result in

⁴³ 1996 Act at §254(g).

⁴⁴ 1996 Act at §254(b)(2); See also §254(b)(3). The danger of limiting Section 254(g)'s application to certain interexchange services is best illustrated by AT&T's proposal that the Commission require all IXCs to file one tariffed schedule of averaged rates available to residential customers. Comments of AT&T at 39. Such a proposal would result in consumers receiving a single service offering, probably the most undesirable offering, at integrated rates. Congress' intent that all Americans have access to advanced telecommunications services will not be served if the services ratepayers are entitled to receive are restricted.

a disservice to the public, specifically U.S. citizens residing in the Commonwealth. This discriminatory approach will prevent U.S. citizens from accessing advanced telecommunications services.

C. A Strong Certification Requirement is Absolutely Necessary

In their Comments, Alaska and Hawaii argue that the Commission's proposed certification procedure is inadequate due to its failure to supply sufficient information to allow the public to file complaints. Comments of Alaska at 5-6; Comments of Hawaii at 10-11. While the Commonwealth believes that a certification requirement can be workable, the Commonwealth agrees with Alaska and Hawaii's concerns that certification alone will likely result in the public shouldering the "burden of ascertaining whether a carrier's rates are discriminatory." Comments of Hawaii 8-9.

In its Comments, GTE suggests that carriers should have the option of demonstrating their compliance with the rate averaging and integration requirements by filing either a tariff or a certification containing a basic price list. Comments of GTE at 18. The Commonwealth concurs with GTE's proposal to require, in the absence of tariffs, a certification supported by a price list. The price list would provide the public with sufficient information enabling consumers to file complaints with the Commission.⁴⁵ To meet this objective, the price list would show all rates that were or are in effect for the period covered by the price list. For

⁴⁵ In its Comments, the Commonwealth proposes that the certifications be filed no less than once annually. See Comments of the Commonwealth at 13, n.30. The Commonwealth believes that requiring the certifications every six months would best protect consumer interests. Moreover, the Commonwealth also proposes that the certifications be served upon interested governments (such as the Commonwealth government and the governments of Alaska, Hawaii, etc.). See id.

example, if the certification is to be filed every six months and a carrier modifies its rates three times over that six month period, the price list would reflect not only the current rates, but also the previous rates which were in effect and the dates they were modified during the applicable period.

A certification supported by a price list should satisfy all parties' concerns. First, the proposed price list will afford the public adequate information to determine a carrier's compliance and challenge possible violations. Second, a price list is not as burdensome to prepare, review or administer as a traditional tariff. And third, a price list will prevent carriers from deaveraging their rates and serve to ensure compliance by carriers with rate averaging and rate integration.

V. CONCLUSION

As the initial comments in this proceeding demonstrate, the Commission should expeditiously promulgate its proposed rate integration rule as mandated by Section 254(g) of the 1996 Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", is written over a horizontal line.

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Dated: May 3, 1996

CERTIFICATE OF SERVICE

I, Guled Hersi, serving as secretary to the Law Offices of Thomas K. Crowe, P.C., hereby certify that a copy of the foregoing Reply Comments was sent by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (*), this 3rd day of May, 1996, to the following:

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