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June 13, 1996

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Federal Communications Commission
Office of Secretary

By Hand

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of Oral and Written Ex Parte Presentation; CC Docket No. 96-61

Dear Mr. Caton:

On June 12, 1996, Herbert E. Marks and the undersigned, attorneys for the State of Hawaii, met with Common Carrier Bureau Chief Regina Keeney, other members of the Bureau's front office and members of the Competitive Pricing Division to discuss the State's position in the above-referenced proceeding. The information discussed during the meeting is contained in the State's Comments and Reply Comments filed April 19 and May 3, 1996, respectively. Attached is a copy of a synopsis of the State's pleadings which was distributed at the meeting to several of its participants

In accordance with Section 1.1206(a) of the Commission's rules, two copies of this notice and its attachment are being submitted for inclusion in the public record. Please contact me if you have any questions.

Sincerely,

Marc Berejka

Marc Berejka

cc: Regina Keeney
A. Richard Metzger, Jr.
Laurence Atlas
Gregory L. Rosston
Anna M. Gomez
Patrick Donovan
Sherille Ismail
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Policy and Rules Concerning the Interstate, Interexchange Marketplace:
Implementation of Section 254(g) of the Communications Act of 1934, as amended

Statutory language

- Section 254(g) instructs the Commission 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 its subscribers in any other State."

- Section 202(a) prohibits unreasonable discrimination based on locality, which the Commission has interpreted as the basis for rate integration policy.

- Section 10 supports forbearance only if the Commission finds that (i) rates will not be unreasonably discriminatory, (ii) consumers will be protected, *and* (iii) forbearance is consistent with the public interest (promotion of competition is relevant only to the third element).

Legislative history (to the extent relevant)

- Geographic averaging and rate integration *serve the public interest* because they "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 paid by urban subscribers."

- "The 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 . . ." (emphasis added).

Position of the State of Hawaii

- Carriers' requests for relief are not "limited" but rather would undo Section 254(g) and the public interests which it serves, *nor* are their requests consistent with the policy against geographic discrimination manifested in Sections 10 and 202(a) of the Act.

- Congress intended, in order to support social and economic integration, that all Americans should benefit from the development of the National Information Infrastructure even if they live or work in non-contiguous states, or communicate with those states.

Carrier activity	*Carrier argument*	*Analysis*
Extension of service	Section 254(g) does not require an IXC to extend all of its services to all locations in the nation.	Agreed. Questions of "service integration" (*i.e.*, providing all services to all localities) are distinguishable from "rate integration" issues and are not addressed by Section 254(g).
Service options, including discount plans and private lines	Section 254(g) should not disrupt existing practices with regard to the availability of service options, discount plans or private line pricing plans.	Rate integration (as well as Section 202(a)) requires an IXC to use the same methodology for calculating rates for similar services *and* service options throughout its service territory. The IXCs do not explain how geographically discriminatory pricing practices for similar service options comport with this policy, protect *all* consumers, or are consistent with Congress' recent public interest finding that such discrimination should be prohibited.
Promotional discounts	Promotional discounts should be permitted because of their benefits to consumers and competition.	Same argument as above. In particular, note that the IXCs offer no assurance that discounts would be offered on a geographically non-discriminatory basis.
Custom-type tariffs	Section 254(g) should not bar IXCs from offering rates like those embedded in custom-type tariffs.	Same argument as above. In particular, note that the IXCs offer no assurance that custom-type tariffs would be offered on a geographically non-discriminatory basis.
Competitive response	Section 254(g) should not be enforced against IXCs responding out of "competitive necessity."	Section 254(g) (and Section 202(a) regarding rate integration) applies to all IXCs throughout the nation. Competitive response would lead to geographic discrimination against localities where competition is less intense. Also note that Congress was fully aware that regional competition might arise even as it, in the public interest, enacted Section 254(g).
State of the interexchange market	Non-dominant IXCs should be exempt from Section 254(g).	Again, Section 254(g) (and Section 202(a)) applies to all IXCs. Lack of dominant carriers does not protect consumers from geographically discriminatory conduct. Congress also was fully aware of the state of IXC competition even as it, in the public interest, enacted Section 254(g).
Cost differentials	Section 254(g) should not apply where IXCs' underlying costs are geographically disparate.	This argument directly contradicts the 1996 mandate of Section 254(g). The purpose of geographic averaging is to ameliorate the effect on rates of geographically disparate costs. No explanation is offered (nor could be) as to how consumers in affected areas would be protected or the public interest served by writing geographic averaging out of the Act.