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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-61

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)

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

I. INTRODUCTION

IT&E Overseas, Inc. ("IT&E"), by its attorneys and pursuant to Section 1.429 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.429 (1995), respectfully seeks partial reconsideration of the Commission's Order released on August 7, 1996, in the above-captioned proceeding, Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 (released Aug. 7, 1996) ("Interexchange Marketplace Order").¹ In its Interexchange Marketplace Order, at ¶¶ 66-73, the Commission adopted a rate integration rule implementing Section 254(g) of the Communications Act of 1934, as amended (the "Act"), which requires that "a provider of interstate interexchange services shall

¹ Since the Interexchange Marketplace Order became effective upon publication in the Federal Register, which occurred on August 16, 1996, the deadline for filing a petition for reconsideration under Section 1.429 of the FCC's rules is September 16, 1996. See 47 C.F.R. §§ 1.4(b), 1.429(d). Thus, this Petition for Partial Reconsideration is timely filed.

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provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." 47 U.S.C. § 254(g). In adopting the new rule, the Commission extended its existing rate integration policy to include, for the first time, all interstate interexchange carriers serving the Territory of Guam ("Guam"), the Commonwealth of the Northern Mariana Islands (the "CNMI"), and American Samoa.

As discussed herein, although a number of comments, reply comments, and other substantive pleadings were filed regarding the extension of rate integration to Guam and the CNMI, the parties raised more questions than were answered. Accordingly, IT&E urges the Commission to monitor closely the actual implementation of rate integration on Guam and the CNMI to ensure that competition is preserved and fostered. In addition, because the Commission has misconstrued IT&E's very limited forbearance request, IT&E hereby requests the Commission to reconsider its dismissal of IT&E's request for forbearance from enforcement of the rule requiring rate integration as applied to IT&E's provision of services to Guam and the CNMI.

II. THE COMMISSION SHOULD MONITOR THE EFFECT OF RATE INTEGRATION ON COMPETITION ON GUAM AND THE CNMI

In extending rate integration to Guam and the CNMI, the Commission concluded that new Section 254(g) of the Act mandates the extension of the Commission's existing rate integration policy to Guam and the CNMI, based on its interpretation that the rate integration provision of Section 254(g) applies to interstate interexchange services provided between "states" and that Guam and the CNMI are states within the meaning of this provision. Interexchange Marketplace Order, at ¶ 66. The Commission acknowledged that the legislative history of

Section 254(g) "indicates that Congress intended for [the Commission] to codify [its] pre-existing policies of . . . rate integration," id. at ¶ 3, and that its rate integration policy "is being applied for the first time" to Guam and the CNMI, id. at ¶ 73. In light of these circumstances, it is not surprising that in their comments and reply comments, the parties raised a number of difficult economic and policy questions, the answers to which cannot be known with certainty at this time precisely because rate integration has never been applied to Guam and the CNMI. Yet all of the parties acknowledged that competition in the interexchange markets in Guam and the CNMI is thriving. Accordingly, IT&E urges the Commission to monitor closely the implementation of rate integration on Guam and the CNMI and any effects that such implementation may have on the competitive telecommunications markets of those areas.

Although the effect of rate integration on competition in Guam and the CNMI cannot be known with certainty at the present time, the Commission determined that certain resolutions adopted by the Guam/CNMI Working Group (the "Working Group") offered "a reasonable framework to guide carriers towards implementing rate integration." Id. at 67. IT&E had advocated for the convening of such a working group to address and resolve the novel and complex issues raised by the extension of rate integration to Guam and the CNMI. IT&E fully participated in the Working Group, and the members of the Group were able to reach consensus on broad resolutions regarding the implementation of rate integration on Guam and the CNMI. Indeed, the Working Group participants made considerable progress in narrowing the issues raised by the extension of rate integration to Guam and the CNMI and in identifying possible solutions. However, because there were so many unknown variables and questions as to which there were no definitive answers regarding whether and how rate integration would affect the

unique and highly competitive telecommunications markets on Guam and the CNMI, the Working Group participants were unable to develop a complete record to support a detailed rate integration plan that would ensure the preservation and growth of competition on Guam and the CNMI. Therefore, it may be necessary for the Commission, at a later point in time, to address the unique economic and policy issues raised by the extension of rate integration to Guam and the CNMI.

Indeed, one issue in particular that the Commission may need to examine in the future involves whether the extension of rate integration to Guam and the CNMI would prevent regional carriers, such as IT&E and PCI Communications, Inc., from competing effectively with the integrated, below-cost rates of national carriers, who would be able to subsidize such rates by spreading the high costs of service to Guam and the CNMI among their larger national customer base. IT&E notes that the Commission incorrectly stated in its Interexchange Marketplace Order that commenters, such as IT&E, GTE Service Corp. ("GTE"), and Columbia Long Distance Services, Inc. ("Columbia"), "urge[d] the Commission to forbear from applying rate integration to small providers of interexchange service in high-cost areas, arguing that they would be unable to compete with nationwide carriers that can charge lower rates by spreading their costs over a larger customer base." Interexchange Marketplace Order, at ¶ 50. In fact, IT&E, GTE, and Columbia did not argue that rate integration should apply only to national carriers and not to small, regional carriers. Rather, IT&E, GTE, and Columbia, raised the concern that the imposition of rate integration on all carriers serving Guam and the CNMI without regard to the unique circumstances of those areas may have unintended anticompetitive effects. See Comments of IT&E, at 20-21 (filed Apr. 19, 1996); Comments of GTE, at 21

(filed Apr. 19, 1996); Comments of Columbia, at 7-9 (filed Apr. 19, 1996). Since the effect of rate integration on regional carriers serving Guam and the CNMI cannot be known with certainty at this point in time, the Commission may need to address and resolve this issue when a more complete factual record has been developed through the actual experience of the carriers and their subscribers.

III. THE COMMISSION SHOULD RECONSIDER IT&E'S FORBEARANCE REQUEST

Although rate integration is intended to lead to lower rates for subscribers in high-cost areas, IT&E believes that a strict application of rate integration to IT&E's particular rates could in fact lead to higher rates for subscribers on Guam, who currently must bear the high costs of service to Guam. IT&E accordingly urges the Commission to reconsider its dismissal of IT&E's specific request for forbearance from enforcement of its rule requiring rate integration as applied to IT&E's provision of services to Guam and the CNMI.

Rather than addressing IT&E's forbearance request on its merits in the Interexchange Marketplace Order, at ¶ 62, the Commission misconstrued the request as a claim that Section 254(g) of the Act applies only to national carriers and not to regional carriers such as IT&E. In fact, in its letter, dated June 19, 1996, responding to the Common Carrier Bureau's request for a rate integration implementation plan, IT&E acknowledged that "[t]he FCC's proposed rule mandating rate averaging and rate integration for Guam and the CNMI apparently would require IT&E to geographically average its rates between Guam and the CNMI."² IT&E, however,

² Letter from Margaret L. Tobey and Phuong N. Pham, Attorneys for IT&E, to Regina M. Keeney, Chief of the Common Carrier Bureau, at 5 (June 19, 1996) ("IT&E Letter").

explained that any differential between the rates charged to subscribers on Guam and those charged to subscribers in the CNMI for calls to the U.S. mainland is wholly attributable to the higher costs of serving the CNMI.³ IT&E further explained that these higher costs are the result of the monopoly rates of Comsat for INTELSAT space segment and the non-cost-based access charges of the Micronesian Telecommunications Corporation, the exclusive provider of local exchange services as well as a primary provider of interexchange services to the CNMI.⁴

IT&E stated that the rigid application of rate integration to the specific case of IT&E could result in higher rates to subscribers on Guam, who already bear the high costs of service to Guam.⁵ Indeed, the Governor of Guam has acknowledged the "inequities in the cost of providing service [to Guam] due to [Guam's] remoteness or distance" and has advocated that such higher costs should be "offset by competitively neutral universal service support mechanisms adopted by the Commission."⁶ Thus, in recognition of the high costs of serving Guam, the Governor of Guam has agreed that special consideration should be given to the likely burdens imposed by rate integration on regional carriers such as IT&E, who would be required to compete with the integrated rates of national carriers, while lacking the requisite ability to cover the high costs of service to Guam by drawing on a large national pool of interstate revenues.⁷

³ Id. at 4.

⁴ Id. at 4-5.

⁵ Id. at 5.

⁶ See Comments of the Governor of Guam, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 3 (filed Apr. 12, 1996).

⁷ See Joint Comments of the Governor of Guam and GTA, at 8-9 (filed Apr. 19, 1996).

In its June 19th letter to the Commission, IT&E also asserted that, although rate integration may have been intended to spread the high costs of serving a discrete, insular area to subscribers in low-cost areas, it was never intended to spread the high costs of service to a discrete, insular area, such as the CNMI, among a limited pool of subscribers residing in another high-cost, insular area, such as Guam.⁸ Accordingly, IT&E requested the Commission to forbear from enforcing any rule requiring rate integration as applied specifically to IT&E and to permit IT&E to charge rates that reflect the cost differential between serving Guam and the CNMI.⁹ IT&E reasoned that the higher rates charged to its subscribers in the CNMI are just and reasonable because they reflect a true cost difference that is beyond IT&E's control. Since such charges are just and reasonable, IT&E stated that a rule requiring IT&E to integrate its rates between Guam and the CNMI would not be necessary to ensure just and reasonable rates or to protect consumers.¹⁰ Consequently, Commission grant of IT&E's forbearance request would be consistent with the public interest.

Furthermore, the grant of IT&E's forbearance request would be consistent with the Commission's recent Order granting an interim waiver of the rate integration rule to American Mobile Satellite Carriers Subsidiary Corp. ("AMSC"), pending further consideration of AMSC's request for an extension of at least one year to comply with the rate integration rule. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Order and Order Seeking Comment, CC Docket No. 96-61 (released Sept. 13, 1996) ("AMSC Order"). In the AMSC

⁸ See IT&E Letter, at 5.

⁹ Id. at 5-6.

¹⁰ Id. at 6.

Order, AMSC requested an extension of at least one year to comply with the rate integration rule in order to continue assessing a surcharge on customers using its mobile satellite service ("MSS") in the noncontiguous U.S. points of Alaska, Hawaii, Puerto Rico, and the Virgin Islands. AMSC asserted that its surcharge was necessary to recover the higher costs resulting from higher power requirements of providing MSS in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. Id. at ¶ 4. AMSC further stated that rate integration would limit its ability to manage its power resources and achieve revenue goals. Id. at ¶ 5. In considering AMSC's request, the Commission noted that AMSC's request "raises significant issues concerning AMSC's ability to comply with our rate integration requirements." Id. at ¶ 7. The Commission believed it necessary to provide an opportunity for public comment on AMSC's request in order to develop a complete record and thus granted AMSC an interim waiver of the rate integration rule pending further consideration of its request. Id.

In granting such a waiver to AMSC, the Commission acknowledged that special consideration should be given to the higher costs of providing satellite service to noncontiguous U.S. locations. Indeed, IT&E's situation presents an even more compelling case for forbearance or waiver of the rate integration rule because IT&E has even less control than AMSC over its satellite costs. As IT&E stated in its June 19th letter to the FCC, since telephone calls placed from the CNMI to the U.S. mainland must be routed through Guam and since no operational undersea cable currently exists between Guam and the CNMI, IT&E has no choice but to purchase INTELSAT space segment at Comsat's monopoly rates in order to route calls from the CNMI to the U.S. mainland. At a minimum, IT&E should receive the same type of special consideration that was given recently to AMSC.

Because the Commission misconstrued IT&E's forbearance request as a general claim of exemption from any rate integration requirements, it failed to address IT&E's request on its merits and to conduct a forbearance analysis, as required by Section 10 of the Act. IT&E is confident that a careful review of its forbearance request will lead the Commission to conclude that the Commission's exercise of its forbearance authority would be appropriate in the particular case of IT&E and would be consistent with its recent grant of an interim waiver of the rate integration rule to AMSC.

IV. CONCLUSION

Based on the foregoing, IT&E urges the Commission affirm its commitment to monitoring the effect of rate integration on the competitive telecommunications markets on Guam and the CNMI and ensuring that any plan to implement rate integration on Guam and the CNMI will foster, not stifle, competition. In addition, IT&E urges the Commission to address and grant IT&E's forbearance request on its merits. IT&E believes that the Commission's continued responsiveness to the telecommunications concerns of Guam and the CNMI will ensure a

vibrant, competitive marketplace, as well as high quality telecommunications services at affordable rates to all the residents of Guam and the CNMI.

Respectfully submitted,

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