

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

DOCKET FILE COPY ORIGINAL

**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Dave Ecret  
Special Assistant to the Governor  
for Telecommunications and Utilities  
OFFICE OF THE GOVERNOR  
Commonwealth of the Northern  
Mariana Islands  
Capitol Hill  
Saipan, MP/USA 96950

Thomas K. Crowe  
Michael B. Adams, Jr.  
LAW OFFICES OF THOMAS K. CROWE,  
P.C.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 973-2890

COUNSEL FOR THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS

October 21, 1996

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Exhibit

## **SUMMARY OF OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The Commonwealth of the Northern Mariana Islands ("Commonwealth") opposes the Petitions for Reconsideration filed with the Commission by GTE Service Corporation, U S West, Inc., AMSC Subsidiary Corporation, AT&T Corporation and IT&E Overseas, Inc. The arguments raised by the petitioners were rejected before by the Commission and should be rejected again on reconsideration.

GTE's and U S West's arguments that they cannot be required to integrate rates across affiliates at the parent company level are entirely without merit. As demonstrated below, were the Commission only to apply rate integration on an affiliate-specific basis, the rate integration doctrine would be rendered a nullity. Carriers serving the Commonwealth, as well as other off-shore rate integrated points, would establish separate subsidiaries to avoid integrating rates across broader service areas. Such a result would both undermine rate integration as a policy as well as thwart the Congressional intent underlying Section 254(g) of the Telecommunications Act of 1996 ("1996 Act").

As shown below, the Commission was entirely justified in interpreting the term "provider" in Section 254(g) to apply at the parent company level. GTE's and U S West's efforts to limit the definition of "provider" to "telecommunications carriers" defy logic and are without support in the 1996 Act.

The position of GTE and U S West is also undermined by both the law and actual operations of the companies. Both GTE and U S West exercise de jure and de facto control over their subsidiaries and file annual reports containing consolidated financial statements which

include their telecommunications subsidiaries. Micronesian Telecommunications Corporation ("MTC"), the monopoly local exchange carrier serving the Commonwealth and predominant provider of off-island communications, is wholly-owned by GTE Hawaiian Telephone Company which, in turn, is wholly-owned by GTE. Since GTE clearly controls the operational decisions of MTC, it cannot disassociate itself with the rate integration obligation.

More significantly, GTE acts on behalf of its affiliate, MTC, to the point where the two companies are inseparable. For example, on the inside front cover of MTC's telephone book for the Commonwealth, MTC promotes its technical expertise as being "backed by the strength of GTE, the world's 4th largest publicly-owned telephone company." During the 1996 meetings of the Guam/CNMI Working Group, MTC's interests were represented by GTE's Director of Regulatory Affairs. In addition, GTE voluntarily includes MTC in its access tariff; files rates on behalf of MTC and routinely submits other Commission filings on behalf of MTC.

AMSC's claim that rate integration should not apply to its operations and its request for forbearance are without merit. AMSC's attempt to portray itself as a hybrid service provider somehow exempt from rate integration is unavailing since the fact remains that AMSC is a "provider of interexchange telecommunications services" under Section 254(g) of the 1996 Act. Other carriers covered by rate integration also provide hybrid services such as local exchange and international services. As demonstrated below, AMSC also fails to satisfy the three-part test for forbearance. Among other things, AMSC has failed to show how its request would benefit the public interest (as opposed to AMSC's own private interest).

AT&T raises again its argument that the Commission forbear from the geographic rate averaging requirement. Again AT&T has failed to meet its burden and this argument should be

rejected. The Commonwealth shares the concerns expressed the State of Hawaii in its Petition for Clarification and Reconsideration that forbearance from geographic rate averaging may create uncertainty regarding permissible pricing practices and may undermine the central principal of rate integration.

The Commonwealth also demonstrates below that IT&E's request that the Commission reconsider its forbearance request is without merit. IT&E has raised nothing new that would affect the Commission's prior rejection of IT&E's request and, contrary to IT&E's claim, the Commission did not misunderstand IT&E's request. IT&E's attempt to bootstrap its request onto the interim waiver request of AMSC (which the Commission granted) is unavailing for several reasons. Most significant is the fact that IT&E serves the Commonwealth and Guam, two of the three remaining U.S. points with respect to which rate integration has not yet been implemented. By contrast, AMSC does not serve these points. Unlike AMSC's request, a grant of IT&E's request potentially delays the implementation of rate integration in the Commonwealth and Guam. In addition, IT&E has already received an extended period of time in which to comply with rate integration--until August 7, 1997. AMSC, on the other hand, would have had to comply with the rate integration requirement almost immediately.

Thus, the Commonwealth urges the Commission to deny the above-referenced petitions for reconsideration.

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**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"),<sup>1</sup> by its attorneys and pursuant to Rule 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby opposes the Petition for Reconsideration and Clarification filed by GTE Service Corporation ("GTE"), the Petition for Clarification, or, In the Alternative, Reconsideration filed by U S West, Inc. ("U S West"), the Petition for Reconsideration filed by AMSC Subsidiary Corporation ("AMSC"), the Petition for Reconsideration filed by AT&T Corporation ("AT&T") and the Petition for Partial Reconsideration filed by IT&E Overseas, Inc. ("IT&E"), each of which was filed on September 16, 1996 in the above-captioned matter.

**I. THE COMMISSION HAS THE AUTHORITY TO REQUIRE RATE INTEGRATION ACROSS AFFILIATES**

The Telecommunications Act of 1996 ("1996 Act")<sup>2</sup> allows the Commission both the

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<sup>1</sup> This Opposition is filed by the Office of the Governor on behalf of the people of the Commonwealth.

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 5 (1996).

discretion and the legal authority to require rate integration across corporate affiliates. Integration across affiliates is absolutely essential to the success of rate integration, and furthers the clearly stated purposes of Section 254(g) of the 1996 Act. As demonstrated below, the Commission should therefore reject GTE and U S West's respective arguments to the contrary.

**A. Both GTE and U S West May be Defined  
As Providers of Telecommunications Services**

GTE and U S West both claim that the 1996 Act requires that a "provider" of telecommunications services must be a "telecommunications carrier," and therefore argue that the Commission exceeded its authority by defining a "provider" to include parent companies for purposes of Section 254(g).<sup>3</sup> These arguments -- rejected by the Commission in its Report and Order<sup>4</sup> -- are wholly incorrect. As shown below, neither Section 254(g) nor any other provision of the 1996 Act contain this limitation, leaving the Commission free to adopt its own definition of the term.

The term "provider" is not defined anywhere within the 1996 Act, as GTE even admits in a moment of candor.<sup>5</sup> GTE nonetheless makes the contradictory argument that Section 254(g) is "clear on its face" in equating carriers and providers and that the statute "requires no additional

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<sup>3</sup> See Petition for Reconsideration and Clarification submitted by GTE Service Corporation in CC Dkt. No. 96-61, at 2-5 (Sept. 16, 1996) ("GTE Petition") and U S West Inc.'s Petition for Clarification, Or, In the Alternative, Reconsideration in CC Dkt. 96-61, at 5-6 (Sept. 16, 1996) ("U S West Petition").

<sup>4</sup> In re Implementation of Section 254(g), Report and Order, CC Dkt. 96-61, FCC 96-331, ¶ 69 (Aug. 7, 1996) ("Report and Order").

<sup>5</sup> GTE Petition at 4.

interpretation.”<sup>6</sup> U S West, in turn, offers the bald assertion that the 1996 Act defines “provider” to be coterminous with the meaning “telecommunications carrier.”<sup>7</sup> Both parties accomplish this interpretation not by citing Section 254(g), which admittedly contains no such limitation, but rather by citing Section 3(a)(44) of the 1996 Act, which defines “telecommunication carrier” to mean “any provider of telecommunications services.”<sup>8</sup> It is therefore apparent that GTE and U S West assert that since all telecommunications carriers are providers, the 1996 Act -- by extrapolation -- requires

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<sup>6</sup> Id. at 3-4.

<sup>7</sup> U S West Petition at 5. Citing U S West, Inc. v. FCC, 778 F.2d 23, 26 (D.C. Cir. 1985), U S West adds that it has established in court that since it does not provide services directly, it is therefore not a telecommunications carrier. U S West Petition at 5-6. This court decision, however, in no way prevents the Commission from requiring U S West to integrate the rates of its affiliates. First, as U S West v. FCC case very clearly establishes, the Commission has not determined whether the “regional holding companies” (RHCs) created out of the breakup of the AT&T monopoly -- such as U S West -- are themselves common carriers. See 778 F.2d at 27 (dismissing U S West’s appeal on finding that “[t]he FCC has not made any finding with respect to the common-carrier status of the RHCs, not based its jurisdiction over them on such a determination.”) Second, the Commission’s authority to require rate integration across the affiliates of parent companies derives from the Commission’s firmly established jurisdiction over the affiliates. In other words, even without exercising jurisdiction over corporate parents, the Commission can clearly exercise jurisdiction over all the affiliates that operate under a parent company in order to effectuate Congress’ requirement in Section 254(g) that the rates for interstate, interexchange services be integrated. Third, it is established that the Commission does enjoy a measure of jurisdiction over holding companies, and under the 1996 Act this jurisdiction should be interpreted to allow the Commission to apply Section 254(g) in a manner consistent with Congressional intent.

<sup>8</sup> 1996 Act at § 3(a)(49). The complete definition states that, “(T)he term ‘telecommunications carrier’ means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.” The very fact that this definition excludes aggregators, although not companies such as GTE, suggests that if Congress had wished to differentiate them from their subsidiaries or otherwise provide that such corporations were not “carriers” it would have done so explicitly.

all providers to be carriers. This is an ancient and discredited logical fallacy similar to claiming that since a cathedral is a type of building, all buildings must necessarily be cathedrals. Accordingly, the Commission must reject these arguments.

The law clearly establishes that when a statute does not clearly define a term, the government agency charged with administering the statute may adopt any permissible construction.<sup>9</sup> Since the 1996 Act does not define or otherwise limit the term “provider,” and since the 1996 Act requires the Commission to issue regulations that will implement a nondiscriminatory system of rate integration encompassing all parts of the nation, it is perfectly clear that the Commission acted within the scope of its rulemaking authority by defining the term broadly. Furthermore, the Commission’s definition makes sense. As a policy matter, an inclusive definition fulfills the 1996 Act’s purpose that rate integration brings consumers in remote, insular and high cost areas telecommunications rates that are no higher than those paid by urban consumers, since it averages carrier rates over the widest possible range of territory. The narrow definition urged by GTE and U S West, on the other hand, would eviscerate rate integration and render the policy meaningless.<sup>10</sup> Clearly, this is not what Congress intended.

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<sup>9</sup> See Chevron U.S.A. v. National Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984).

<sup>10</sup> As the Commission recognizes in its Report and Order, “nothing in the record supports a finding that Congress intended to allow providers of interexchange service to avoid rate integration by establishing or using their existing subsidiaries to provide services in limited areas.” Report and Order at ¶ 69.

**B. Both the Law and the Actual Operations of GTE and U S West Confirm That Corporations, for Purposes of Rate Integration, Should Be Indistinguishable from Their Affiliates**

Failing to obfuscate the definition of “provider,” GTE alternatively claims that “neither GTE Service Corporation nor GTE Corporation is a carrier or provider within the terms of the Communications Act.”<sup>11</sup> Similarly, U S West argues that it should not be required to integrate its rates across its corporate affiliates where, for example, U S West has two separate subsidiaries of the same holding company which operate independently and provide different services in different markets.<sup>12</sup> These arguments must fail. Nothing in the 1996 Act prevents or prohibits the Commission from applying the rate integration mechanism to GTE and U S West at the corporate level rather than merely to their individual affiliates.

GTE asserts that since the 1996 Act defines company affiliates to be “persons” and in turn defines LECs as “persons engaged in the provision of telephone exchange or access services,” each LEC is therefore a separate “person.”<sup>13</sup> Upon this modest basis, GTE then makes a wild flight of logic, arguing that since Congress “recognized” that if LECs are both “providers” and separate “persons,” the activities of subsidiaries are therefore “separate” and cannot be imputed to their corporate parents for purposes of Section 254(g).<sup>14</sup> The Commission should reject GTE’s claim as a distorted interpretation of Section 254(g). If Congress had wished to make the distinction between

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<sup>11</sup> GTE Petition at 4-5.

<sup>12</sup> U S West Petition at 2-3, 5-6.

<sup>13</sup> GTE Petition at 5.

<sup>14</sup> Id.

corporate parents and subsidiaries that GTE wishes to read into the 1996 Act, Congress would have done so directly. Instead, Congress left the term undefined. Since Section 254(g) makes no distinction between parents and subsidiaries, it is clear both that the Commission correctly interpreted the scope of its rulemaking authority and that GTE may be considered a “provider” in unity with its subsidiaries.

In contrast to GTE, U S West asserts that the ownership and operations of two of its subsidiaries are sufficiently separate from their parent holding company that rate integration should only apply to each subsidiary.<sup>15</sup> The Commission must reject this argument, which is unfounded within the provisions of the 1996 Act and which would allow corporations to effectively thwart the purposes of rate integration. As the Report and Order demonstrates, the Commission has determined that successful, nationwide rate integration must be based upon the cross-affiliate integration of parent companies that provide services in more than one state.<sup>16</sup> Particularly in the case of GTE, but also in the case of U S West, if rate integration can only be applied to regional affiliates rather than parent companies, the practical effect of rate integration would be completely undermined. In short, applying rate integration on a discrete affiliate basis would render the doctrine a nullity, thwarting Congressional intent. As a whole, nationwide carriers such as GTE and U S West are capable of absorbing the costs of rate integration. This is precisely the reason why the Commission decided that

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<sup>15</sup> U S West asserts that these subsidiaries, U S West Communications Group, Inc. and U S West Media Group, Inc., each provide telecommunications services whereas their corporate parent, U S West, does not, and are managed separately. U S West Petition at 1-4.

<sup>16</sup> Report and Order at ¶ 69. The Commission summarized in its well-reasoned analysis as follows: “[t]he statute mandates that the Commission require rate integration among all states, territories and possessions, and this goal is best achieved by interpreting ‘provider’ to include parent companies that, through affiliates, provide service in more than one state.” Id.

interexchange providers must implement rate integration by rate averaging throughout their operations, including corporate affiliates.<sup>17</sup>

The position of both GTE and U S West is also contradicted by the fact that both companies file annual reports containing consolidated financial statements encompassing their telecommunications subsidiaries.<sup>18</sup>

Contrary to GTE's claims, both the *de facto* and *de jure* control that GTE exercises over its affiliates demonstrates that the affiliates are by no means independent service providers.<sup>19</sup> GTE and its affiliated carriers frequently operate so closely that their identity is often indistinguishable, as demonstrated by the example of Micronesian Telecommunications Corporation ("MTC"), the monopoly local exchange company ("LEC") providing services in the Commonwealth. MTC is a

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<sup>17</sup> Id. It should be noted that the similarity between U S West's and GTE's oppositions to this provision contradicts GTE's claims that it is being "singled out" in the Report and Order's rate integration requirements, or that the Commission is being "grossly arbitrary" to GTE by requiring it to integrate across affiliates. See GTE Petition at 1-2.

<sup>18</sup> See U S West, Inc., 1994 Annual Report (1995); GTE Corp., 1994 Annual Report (1995). In its 10-K filing, U S West describes itself as a "diversified global communications company" which "conducts its operations through U S West Communications Group [sic] and U S West Media Group." U S West, Inc. 10-K, 1995 Copyright SEC Online, 1, \*3 (filed Mar. 28, 1996).

<sup>19</sup> As the Commission is aware, *de jure* control of a corporation or partnership exists where there is 51% or greater ownership by any single shareholder, such as a parent company. See Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorization Under Section 301(d) of the Communications Act of 1934, 43 Fed. Comm. L. J. 3, 296-99 (July 1991). *De facto* control is in turn determined on a fact-based, case-by-case analysis in which the determinative question is whether the alleged controlling party has the power to dominate the management of corporate finances, licenses, business practices and corporate affairs. Id.; see also Application of Fox Television Stations, Inc., 10 FCC Rcd 8452, 8514 (1995), citing In re Applications of Univision Holdings, Inc., 7 FCC Rcd 6672, 6675 (1992). Under either measure, GTE's control over MTC and GTE Hawaiian Telephone Company ("GTE Hawaiian Tel") is overwhelming.

100% owned subsidiary of GTE Hawaiian Tel, which in turn is a 100% owned subsidiary of GTE.<sup>20</sup> In addition to being a LEC, MTC also provides interexchange traffic from the Commonwealth to other U.S. and international points<sup>21</sup> while other GTE affiliates, such as GTE Hawaiian Tel, GTE Card Services, GTE Mobilenet Incorporated and GTE Airfone Incorporated in turn provide interexchange services to the Commonwealth from offshore points.<sup>22</sup>

The inseparability of MTC's operations from GTE goes still further. On the inside front cover of MTC's telephone book for the Commonwealth, MTC promotes its technical expertise as being "backed by the strength of GTE, the world's 4th largest publicly-owned telephone company."<sup>23</sup> Moreover, during the July, 1996 meetings of the Guam/CNMI Working Group,<sup>24</sup> MTC's interests were represented by Gordon Maxson, GTE's Director of Regulatory Affairs.<sup>25</sup> Furthermore, GTE voluntarily includes MTC in its access tariff,<sup>26</sup> files rates on behalf of MTC,<sup>27</sup> and submits other

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<sup>20</sup> See Reply Comments of the Commonwealth of the Northern Mariana Islands, File No. AAD 95-86 (Sept. 14, 1995).

<sup>21</sup> GTE Petition at 6-8.

<sup>22</sup> Id.

<sup>23</sup> A copy of this advertisement is attached as an Exhibit.

<sup>24</sup> See Report and Order at ¶¶ 64-65, 66-68.

<sup>25</sup> See Letter from Thomas K. Crowe and Robert F. Kelley to William F. Caton of July 22, 1996 (attaching minutes of the July 8 and 9, 1996 meetings of the Guam/CNMI Working Group).

<sup>26</sup> See GTE Telephone Operating Companies Transmittal No. 783, GTE Telephone Operating Companies Tariff FCC No. 1, Description and Justification at 3 (Apr. 19, 1993)("GTOC Tariff No. 1").

<sup>27</sup> See GTOC Tariff No. 1 at 3.

Commission filings on behalf of MTC.<sup>28</sup> In short, despite GTE's claims to the contrary, GTE's and MTC's actual operations clearly illustrate that the two entities typically operate as one.

In the final analysis, however, the fact that GTE and U S West have established a holding company structure for business and/or tax purposes does not bind the Commission. Section 254(g) allows, indeed obligates, the Commission to look beyond such corporate strategies in implementing the rate integration provisions of the 1996 Act. In this case, the Commission's clear objective is that GTE and other carriers implement rate integration by rate averaging across the corporate affiliates of a parent company. Were the policy only to apply to individual affiliates such as MTC, the practical effect of rate integration would be altogether undermined. The Commission is therefore permitted under Section 254(g) to take corporate structure into account in adopting its rules so that the policy objectives of the 1996 Act may be accomplished.

**C. The Commission Cannot Incorporate Offshore Points Using the Existing Rate Integration Mechanism**

GTE argues that rather than requiring rate integration across corporate affiliates, the

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<sup>28</sup> See, e.g., In the Matter of Petition for Rulemaking to Implement Domestic Rate Integration Policies for the Northern Mariana Islands, Comments of GTE in DA 95-1361 (Aug. 5, 1995)(opposing the Commonwealth's rate integration on behalf of MTC). Of course, GTE's submissions in this and other rulemakings implementing the 1996 Act -- which each time have been filed both on behalf GTE Service Corporation and its affiliates -- serve as further examples of GTE's close corporate relationships with its subsidiaries. See In the Matter of Federal-State Joint Board on Universal Service, GTE's Comments to the Notice of Proposed Rulemaking and Order Establishing Joint Board in CC Dkt. No. 96-45 (Apr. 12, 1996); GTE's Reply Comments in CC Dkt. No. 96-45 (May 7, 1996); GTE's Comments on Cost Models in CC Dkt. 96-45 (Aug. 9, 1996); In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Reply Comments of GTE in CC Dkt. No. 96-98 (June 3, 1996); In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Comments of GTE in CC Dkt. 96-149 (Aug. 29, 1996).

Commission should incorporate offshore points using its pre-1996 Act rate integration policies, which GTE claims “did not require any carrier to integrate rates across affiliates.”<sup>29</sup>

First, while the 1996 Act deliberately incorporated the Commission’s prior rate integration policies, it also subsumed them into a new set of explicit policies set forth in Section 254(g).<sup>30</sup> As the Commission is aware, Section 254(g) broadened the Commission’s rate integration responsibilities, requiring that the Commission must take action to ensure that “rates charged by 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.”<sup>31</sup> Accordingly, under Section 254(g) the Commission does not have the discretion of either simply applying its old rate integration rules or of otherwise allowing providers like GTE to avoid integrating across its affiliates, if such forbearance would compromise the broad purpose of lowering prices and achieving nationwide rate averaging.

Second, assuming a straightforward application of the Commission’s prior rate integration rules to GTE -- as GTE urges -- the Commission could still require GTE to integrate across affiliates in order to achieve the benefits of widespread geographic rate averaging. In fact, the Commission’s prior rate integration decisions would necessitate integration across affiliates. Specifically, the Commission has determined that a route-by-route sharing would not satisfy the requirements of rate

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<sup>29</sup> GTE Petition at 9-11.

<sup>30</sup> See Report and Order at ¶¶ 2-5, citing the Joint Explanatory Statement of the Committee of Conference, 104th Cong., 2nd Sess. at 132-33 (1996) (“Joint Explanatory Statement”).

<sup>31</sup> 1996 Act at Section 254(g).

integration.<sup>32</sup> If route-by-route sharing, which entails rate averaging on a route-specific basis, is inconsistent with rate integration, limiting rate integration to individual subsidiaries, where there would be no sharing at all, clearly does not satisfy Section 254(g). As the Commission has stated, “[r]ate integration of the offshore points into the domestic pattern includes within it the concept that all costs and revenues are jointly shared.”<sup>33</sup> Thus, GTE’s claim that the Commission’s pre-1996 rate integration policies somehow do not require it to integrate across affiliates is entirely without merit.

## **II. AMSC IS NOT ENTITLED TO ANY EXEMPTION FROM RATE INTEGRATION**

AMSC argues that rate integration does not apply to its operations and, in the alternative, asserts that it is entitled to forbearance by the Commission. Close examination shows that AMSC’s arguments are unfounded and must be rejected by the Commission for the reasons discussed below.

### **A. Section 254(g) is Clear On Its Face In Requiring All Providers of Interexchange Services to Participate in Rate Integration**

AMSC argues that Section 254(g) does not clearly require AMSC to participate in rate integration since AMSC uses its facilities to provide international and local services in addition to interstate services.<sup>34</sup> This argument is based, however, upon a misreading of the 1996 Act, and AMSC’s attempts to twist ambiguity from an unambiguous text must fail.

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<sup>32</sup> See In the Matter of Integration of Rates and Services for the Provision of Communications By Authorized Common Carriers Between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands, Memorandum Opinion and Order, 65 F.C.C. 2d 324, 326 (1977).

<sup>33</sup> Id.

<sup>34</sup> See Petition for Reconsideration submitted by AMSC in CC Dkt. No. 96-61, at 4-6 (Sept. 16, 1996)(“AMSC Petition”).

Section 254(g) is plain in its requirement that “a provider of interexchange telecommunications services shall provide such services to subscribers in each State at rates no higher than the rates charged to its subscribers in any other State,” thus requiring rate integration. Section 254(g) allows no exceptions. Although it also provides other services, the fact remains that AMSC provides interstate communications between U.S. points and is therefore an “interstate interexchange” provider within the terms of Section 254(g). AMSC’s argument that “hybrid” carriers are not encompassed by Section 254(g) is especially weak since most or all of the other providers covered by Section 254(g), regardless of the type of technology they use, route other types of telecommunications traffic -- i.e., international and/or local -- in addition to interstate services over their facilities.<sup>35</sup> Accordingly, under Section 254(g), AMSC must comply with the rate integration requirement just like any other interexchange service provider.

**B. AMSC Is Not Entitled to Forbearance Under the Commission’s Standards**

Despite its claims, AMSC is not entitled to forbearance by the Commission.<sup>36</sup> Section 401 of the 1996 Act requires 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)

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<sup>35</sup> AMSC also makes the related claim that it is unable to differentiate its interstate traffic from its international and local services traffic, and that Section 254(g) should therefore not apply. AMSC Petition at 4. The Commission has previously rejected similar arguments, finding that providers may in fact distinguish different types of traffic (specifically, interstate and intrastate calls) either through the use of a switching platform which separates calls on a real-time basis or through after-the-fact tracking methods such as comparing call records. See, e.g., In the Matter of The Time Machine, Inc., Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services, Memorandum Opinion and Order, 11 FCC Rcd. 1186, ¶¶ 32-35 (1995). There is no reason why AMSC could not use this or similar methods to distinguish its interstate, local and international calls from each other.

<sup>36</sup> AMSC Petition at 7-9.

unnecessary to protect against unjust and unreasonably discriminatory practices; 2) not necessary to protect consumers; and 3) that forbearance is in the public interest.<sup>37</sup> AMSC has failed to make the requisite showing under these standards.

First, as the Commission has already determined, rate integration is necessary in order to implement Section 254(g)'s mandate that the telecommunications rates charged in rural and high cost areas are no higher than those in urban areas.<sup>38</sup> Enforcement of rate integration will be necessary in order to protect subscribers against unjust and unreasonably discriminatory practices. AMSC's request for forbearance, however, would interfere with full and prompt enforcement of Section 254(g) and would hinder the elimination of the unreasonably discriminatory charges that may exist.

In the second prong of the test, it is clear that enforcement of the Section 254(g) rate integration provision is critically necessary to protect U.S. consumers. As the Commonwealth has demonstrated, without rate integration, consumers in rural and high cost areas will be disadvantaged by unlawfully discriminatory and disproportionately high toll calling rates.<sup>39</sup> As the Commonwealth has shown in previous submissions to the Commission, allowing an interexchange provider such as AMSC exemption from rate integration would encourage efforts by other carriers to avoid their

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<sup>37</sup> 1996 Act at §401 (adding §10(a) to the Communications Act of 1934, as amended).

<sup>38</sup> Report and Order at ¶¶ 47-48. Specifically, the Commission adopted a rule providing that a provider of interstate services shall provide such services at rates no higher than the rates charged to its subscribers in any other state.

<sup>39</sup> Comments of the Commonwealth to the Notice of Proposed Rulemaking in CC Dkt. No. 96-61, 3 at 9-10 (Apr. 19, 1996) ("Commonwealth Comments") (noting the disparity between rates charged in the Commonwealth and the prevailing mainland rates).

obligations or claim that the obligations do not apply to them.<sup>40</sup>

Finally, forbearance by the Commission from enforcing Section 254(g) would be detrimental to the public interest.<sup>41</sup> As the Commonwealth has shown in its previous comments, rate integration leads to numerous important benefits and is therefore in the public interest.<sup>42</sup> Implementing rate integration results in lower communications prices for ratepayers<sup>43</sup> and promotes increased competition between interexchange carriers, leading in turn to the adoption of new technologies, the development of new and innovative services, and improved customer service.<sup>44</sup> Rate integration also enhances economic growth, ensures that U.S. citizens have access to the Nation's communications infrastructure,<sup>45</sup> and promotes the unification of the United States.<sup>46</sup>

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<sup>40</sup> See Comments of the Commonwealth to the Order and Order Seeking Comment in CC Dkt. No. 96-61, 2-3 (Oct. 4, 1996) ("Commonwealth Comments Regarding AMSC"). In these Comments, the Commonwealth opposed the Request for Extension of Compliance Deadline filed by AMSC in this docket on August 23, 1996. The Commonwealth demonstrated that 1) granting AMSC's request would open the door to further requests by other telecommunications carriers, and 2) AMSC's request failed to show good cause since such a waiver was directly contrary to the public interest. Commonwealth Comments Regarding AMSC at 1-5.

<sup>41</sup> Id. at 4-5.

<sup>42</sup> Id.

<sup>43</sup> See, e.g., Petition for Rulemaking to Implement Domestic Rate Integration Policies for the Commonwealth of the Northern Mariana Islands, Dkt. No. 95-86, at 13 (filed June 7, 1995) ("Commonwealth Petition").

<sup>44</sup> Id.

<sup>45</sup> Commonwealth Petition at 14-15. In addition, rate integration will help promote universal service. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd. 2873, 3132 at ¶ 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, entitled "Universal Service."

<sup>46</sup> See Commonwealth Petition at 8-9.

In contrast, AMSC fails to demonstrate that the forbearance it requests from the Commission will benefit the public. AMSC's claims that it is operationally unique;<sup>47</sup> that it is a new business;<sup>48</sup> that it would be inconvenienced due to its technical configurations;<sup>49</sup> that it faces foreign competition;<sup>50</sup> and that the 65 to 100% per-minute surcharge it assesses some customers is cost-justified<sup>51</sup> each fail to demonstrate the primary point that AMSC's customers will not be harmed by exempting AMSC from rate integration.<sup>52</sup> The fact that AMSC faces competition for the provision of mobile satellite services does not establish that the competitiveness of the marketplace will be harmed if AMSC is required to rate integrate.<sup>53</sup> Moreover, exempting an interexchange provider

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<sup>47</sup> AMSC Petition at 8.

<sup>48</sup> Id. at 8-9.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id. at 7-9, as corrected by Letter from Bruce D. Jacobs to William F. Caton (noting factual error in the per-minute rate discussed within the AMSC Petition at 6-8).

<sup>52</sup> AMSC Petition at 7-9. In addition to these assertions, AMSC also claims that the Commission did not find AMSC's price structure unlawful when the Commission reviewed AMSC's tariff in 1993. This is a mischaracterization. In fact, as the Commission noted within the Report and Order at ¶ 54, the Commission did not make a ruling on the tariff's lawfulness, finding merely that it was "not patently unlawful." See Request for Extension of Compliance Deadline of AMSC, CC Dkt. No. 96-61, at 5 (filed Aug. 23, 1996) ("AMSC Extension Request"), citing In re AMSC Subsidiary Corp., Order, 8 FCC Rcd. 2871 (1993) ("1993 AMSC Order"). Furthermore, the Commission has previously rejected AMSC's claim that this finding exempted AMSC, noting that the 1993 AMSC Order "did not establish any policy of excluding AMSC services from rate integration." Report and Order at ¶ 54.

<sup>53</sup> It should be noted that AMSC's competitors, even if they are foreign-based, will also have to integrate the rates they charge for any interexchange services provided within the United States.

such as AMSC from rate integration would establish a treacherous precedent that may trigger a relentless stream of similar exemption requests from other service providers.<sup>54</sup> Thus, there can be no question that rate integration must be fully implemented in accordance with Congress' mandate<sup>55</sup> and that AMSC's request should be denied.

### III. AT&T'S RECONSIDERATION REQUEST WOULD COMPROMISE RATE INTEGRATION

AT&T argues in its Petition that national carriers must be given the "flexibility to file geographically specific rates and optional calling plans" in order to deal with regionally-based competitors and therefore requests that the Commission reconsider its decision not to forbear from geographic rate averaging.<sup>56</sup> This request has dangerous implications and should once more be rejected by the Commission.

If national carriers are allowed to exempt themselves from rate integration in every service area in which they face competition from a regional carrier, rate integration will be gradually hollowed out.<sup>57</sup> National carriers such as AT&T are most likely to encounter competition from

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<sup>54</sup> Indeed, within three days after the Commission responded to the AMSC Extension Request with its September 13, 1996 Order and Order Seeking Comment in CC Docket 96-61, IT&E filed a petition in the instant proceeding arguing that, "[a]t a minimum, IT&E should receive same type of special consideration that was recently granted to AMSC." See IT&E Petition at 8.

<sup>55</sup> See Joint Explanatory Statement at 184.

<sup>56</sup> See AT&T Corp.'s Petition for Reconsideration in CC Dkt. No. 96-61, at 2-5 (Sept. 16, 1996) ("AT&T Petition").

<sup>57</sup> The Commonwealth therefore shares the concerns articulated by the State of Hawaii in its Petition for Clarification and Reconsideration ("State of Hawaii Petition") that forbearance from the geographic rate averaging requirement may create uncertainty regarding permissible pricing practices and may undermine the central principal of rate integration -- that all locations must be

regional interexchange carriers affiliated with incumbent local exchange carriers in urban and developed areas of the country. If long-term or permanent rate discounts are allowed in such markets, a disparity will once more grow between the rates charged in rural and high cost areas such as the Commonwealth. The Commission therefore runs the risk that such “forbearances” and exceptions will gradually swallow the rule. The reestablishment of such a disparity in rates would violate the clear mandate given by Section 254(g) that, “the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than rates charged in urban areas.” Accordingly, the Commission was entirely correct when it ruled in its Report and Order that similar requests made by the national carriers failed to satisfy the 1996 Act’s three-prong forbearance requirement and should therefore reject AT&T’s reconsideration request.

#### **IV. IT&E’S FORBEARANCE REQUEST IS WITHOUT MERIT**

In its Petition, IT&E argues that the Commission “misconstrued” IT&E’s previous forbearance request and, on this basis, once more argues that the Commission should forbear from applying the rate integration requirement to IT&E.<sup>58</sup> The Commission should again reject this request since it is flatly inconsistent with the Commission’s specific goal of providing rate

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treated the same in terms of ratemaking methodology . See State of Hawaii Petition at 4-6. The Commonwealth supports Hawaii’s request that the Commission clarify that forbearance from rate averaging does not result in forbearance from rate integration. Id. at 4.

<sup>58</sup> See Petition for Partial Reconsideration submitted by IT&E in CC Dkt. No. 96-61, at 5 (Sept. 16, 1996)(“IT&E Petition”).

integration to U.S. Pacific Territories.<sup>59</sup>

IT&E asserts that it would be premature or even harmful to require the rate integration of its services, essentially claiming that the Commission should grant it “special consideration” due to the regional nature of its operations.<sup>60</sup> The Commission did not misunderstand the implications of IT&E’s requests for exemption when it rejected them in the past, and the Commission’s decision that IT&E must participate in rate integration on an equal basis with other interexchange providers was correct. Any other action by the Commission would have indefinitely delayed the rate integration of IT&E’s services within the Pacific Territories and would have encouraged noncompliance efforts by the region’s other carriers. Accordingly, the Commission should once more reject IT&E’s claim that it is entitled to forbearance.

IT&E also compares its forbearance request to the AMSC Extension Request, claiming “IT&E’s situation presents an even more compelling case for forbearance or waiver.”<sup>61</sup> The Commission should reject this completely unwarranted comparison.

As the Commission is aware, AMSC provides mobile satellite services to rate integrated

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<sup>59</sup> Report and Order at ¶ 70.

<sup>60</sup> IT&E Petition at 6. IT&E argues that since it is a regional carrier, it will be unable to spread its costs over a wide rate pool and will therefore have to charge higher rates to its consumers in Guam as a consequence of lowering its rates charged in the Commonwealth. Id. at 5-7. IT&E also argues that has high facilities costs (due to its use of INTELSAT satellite facilities), which justify charging higher rates in the Commonwealth. Id. at 8-9. IT&E therefore asks that the Commission to forebear from applying rate integration to its operations. Id. at 5-9. Alternatively, IT&E asks that the Commission take more time to study the “unique” nature of the market in the Pacific Territories before requiring rate integration, a request which would also amount to indefinite forbearance. Id. at 2-5.

<sup>61</sup> Id. at 7-8.

points in the mainland United States, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, as well as to points in the coastal waters. The new rate integration rules would bar the surcharge that AMSC charges services provided to Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. Arguing that the loss of such a surcharge would cause it operational difficulties due to the design of its satellite system,<sup>62</sup> AMSC therefore petitioned the Commission for an extension of the rate integration deadline.<sup>63</sup> On September 13, 1996, the Commission granted AMSC a temporary or interim waiver of the rate integration rules pending comments on AMSC's request by interested parties and further review by the Commission.<sup>64</sup>

On closer examination, it is clear that IT&E's exemption claim is totally dissimilar to that of AMSC and presents no issues that the Commission has not already addressed at length. The most significant distinction, of course, is that IT&E serves the Commonwealth and Guam, two of the three remaining U.S. points with respect to which rate integration has not yet been implemented. AMSC, by contrast, does not serve these points. This distinction is important because a grant of IT&E's request potentially delays the implementation of rate integration in the Commonwealth and Guam,<sup>65</sup> a concern not presented by the AMSC waiver. It is also important to note that, unlike AMSC, IT&E

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<sup>62</sup> AMSC Extension Request at 1.

<sup>63</sup> Id.

<sup>64</sup> Order and Order Seeking Comment in CC Dkt. No. 96-61, FCC DA 96-1538 (Sept. 13, 1996). The Commonwealth filed Comments in this proceeding on October 4, 1996, opposing AMSC's request for a waiver. See supra at 14, note 40.

<sup>65</sup> Since the Commonwealth and Guam have never received the benefits of rate integration before, granting IT&E even a temporary stay of rate integration would substantially harm the interest of ratepayers living in the Pacific Territories.

has already been afforded a one year waiver of the rate integration rules, lasting until August 7, 1997.<sup>66</sup> AMSC was granted an interim waiver because it would have otherwise been required to comply with the rate integration requirement almost immediately. IT&E, by contrast, faces no such time constraint and has been afforded more than ample time to prepare for rate integration implementation.

Further, the other bases on which the Commission based its AMSC interim waiver do not apply to IT&E. Specifically, unlike AMSC, IT&E faces no technological constraints in adopting rate integration and does not assess surcharges in order to reflect the higher costs of higher-powered beams necessary to serve offshore points. Moreover, the Commission has already rejected IT&E's contention that the higher costs of serving the U.S. Pacific Territories is a legitimate reason to avoid rate integration.<sup>67</sup> Finally, AMSC's interim waiver was partially predicated upon the fact that AMSC is a non-traditional provider of interexchange services. It is therefore clear that IT&E's claims do not warrant further consideration by the Commission, and that IT&E has not justified an extension of the rate integration compliance deadline.

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<sup>66</sup> Report and Order at ¶ 68.

<sup>67</sup> Id. at ¶ 70.