

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

ORIGINAL

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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OFFICE OF SECRETARY

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To: Chief, Common Carrier Bureau

**REPLY COMMENTS OF AMSC SUBSIDIARY CORP.  
ON REQUEST FOR EXTENSION OF COMPLIANCE DEADLINE**

AMSC Subsidiary Corporation ("AMSC") hereby replies to the comments on AMSC's request for an extension of a year or more of the deadline for its compliance with the rate integration requirements established in the recent *Report and Order* in the above-referenced docket.<sup>1/</sup> While AMSC is currently seeking permanent relief from the Commission's rate integration requirement in its Petition for Reconsideration, AMSC believes strongly that the new and unique nature of its Mobile Satellite Service ("MSS") system justifies no less than a grant of this extension request.<sup>2/</sup>

<sup>1/</sup> FCC 96-331 (August 7, 1996).

<sup>2/</sup> See AMSC Petition for Reconsideration, Public Notice, Report No. 2156 (October 1, 1996). As stated in its Petition for Reconsideration of the *Report and Order*, AMSC believes that the rate integration requirements of the new Telecommunications Act of 1996 are inapplicable to its services. Moreover, even if the rate integration provision is deemed applicable to AMSC's MSS system, AMSC believes that the Commission should forbear from applying these requirements to its services, in accordance with section 10 of the Communications Act, 47 U.S.C. § 160 (1996). In its comments on AMSC's extension request, the State of Hawaii, while not objecting to the Commission's authority to grant temporary relief, expresses the view that the Commission may lack authority to permanently forbear from applying the statutory rate integration provision. AMSC disagrees with this analysis, but will address this issue later, in the more relevant context of the Petition for Reconsideration, which deals with longer-term relief.

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## **Background**

As explained in its extension request, given the technical design and recent inauguration of AMSC's MSS system, immediate imposition of the rate integration requirement on AMSC would impede the development of its service. AMSC's satellite system provides two-way mobile voice communications throughout the United States, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and coastal waters. The traffic on AMSC's system is properly characterized as an undifferentiated mix of interstate, local, and international communications. AMSC's satellite has five slightly overlapping beams. Three central beams cover the continental United States, one peripheral beam covers Alaska and Hawaii and nearby coastal areas, and a second peripheral beam covers Puerto Rico, the U.S. Virgin Islands, and a significant amount of the Caribbean. Due to a combination of technical constraints and economic considerations, the amount of power required to communicate in either of the peripheral beams is more than twice that required to communicate in any of the central beams.

AMSC charges a higher rate generally for any service that requires more power than other services, and, as a result, AMSC assesses a beam surcharge ranging between 62 and 100 percent when a customer operates a mobile terminal in an area served by one of the lower-power beams.<sup>3/</sup> These differences in rates provide AMSC with a price mechanism for allocating its limited power budget and assure that the satellite and the spectrum are used efficiently. The rate integration provision enacted by Congress, as interpreted by the Commission would disrupt the use of this pricing mechanism, thus harming AMSC's ability to manage its power resources and preventing AMSC from achieving important revenue goals. To avoid this result, AMSC filed the

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<sup>3/</sup> See Letter to William F. Caton from Bruce D. Jacobs, Counsel to AMSC Subsidiary Corporation, dated October 16, 1996.

extension request at issue here as well as the Petition for Reconsideration referenced above. In response to the extension request, the Commission granted a temporary extension pending its ruling.<sup>4/</sup>

Comments were submitted by the States of Alaska (“Alaska”) and Hawaii (“Hawaii”), the Commonwealth of the Northern Mariana Islands (“Northern Marianas”), and GTE Service Corporation (“GTE”). Hawaii does not oppose the grant of an extension of a year or less to AMSC, but does argue that any request for an extension longer than a year should be consolidated with AMSC’s Petition for Reconsideration.<sup>5/</sup> Alaska, the Northern Marianas, and GTE oppose the extension, arguing that the statute requires the rate integration requirement to be applied to all providers of interstate interexchange services, and that AMSC is unable to show why it should be treated differently from other carriers in this category.<sup>6/</sup> Also, all of the commenters state that AMSC has not described what it will do during the extension period or how such a grant will help it ultimately comply with the rate integration requirement.<sup>7/</sup> The Northern Marianas contends that the grant of a waiver to AMSC would be against the public interest, and expresses concern that if AMSC’s request is granted, a flood of similar requests from other carriers would result.<sup>8/</sup> Both Alaska and the Northern Marianas argue that neither the

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<sup>4/</sup> *Order and Order Seeking Comment*, DA 96-1538 (Common Carrier Bureau, September 13, 1996).

<sup>5/</sup> Hawaii Comments at 5-6.

<sup>6/</sup> Alaska Comments at 4-5.

<sup>7/</sup> Alaska Comments at 3; Hawaii Comments at 4; Northern Marianas Comments at 7; GTE Comments at 2.

<sup>8/</sup> Northern Marianas Comments at 2-7.

Commission's approval of AMSC's system design nor its 1993 ruling upholding AMSC's tariff provide any basis for exempting AMSC from Congress' rate integration provision.<sup>9/</sup> GTE argues in addition that AMSC's request does not address the Commission's rule requiring carriers to integrate their rates across all affiliates, and that until this rule is changed the Commission must apply it to all parties, including AMSC.<sup>10/</sup>

### **Discussion**

Despite these commenters' claims, the unique nature of AMSC's MSS system clearly justifies the grant of AMSC's extension request. AMSC's service and its situation are unlike any other, including those cited by Alaska in its comments.<sup>11/</sup> Most obviously, AMSC is the **only** domestic provider of MSS. The technical issues described above are faced by no other entity. Moreover, any providers of interstate service, such as AT&T, MCI, and Sprint, can readily distinguish among interstate, intraLATA, and international calls, and can charge for that traffic accordingly. In contrast, because its service is mobile and is reliant on a satellite with relatively large beams, AMSC is unable to differentiate between these classes of traffic, which are simultaneously transmitted over its facilities. Thus, the applicability of section 254(g) to MSS, explicitly encompassing only "interstate interexchange" providers, is unclear. Due to this inability to distinguish between these classes of traffic, AMSC unlike other carriers would be required to integrate local and international calls into its uniform rate scheme.

Moreover, MSS is a new service. AMSC has invested over \$650 million in the

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<sup>9/</sup> Alaska Comments at 6; Northern Marianas Comments at 5-6.

<sup>10/</sup> GTE Comments at 2-4.

<sup>11/</sup> Alaska Comments at 4.

development of the U.S. MSS system, taking a substantial risk that it will be able to develop the market for this service sufficiently quickly to justify this large investment. AMSC needs flexibility in pricing its services. Application of rate integration to AMSC would prevent AMSC's use of a reasonable price mechanism to maximize its capacity and better provide service to all customers. With so little spectrum available in the MSS L-band, it is important that it be used efficiently.<sup>12/</sup> This flexibility is especially critical given the competitive environment facing AMSC -- AMSC competes internationally with TMI, a Canadian company that operates a satellite with the same footprint as that of AMSC; Inmarsat, which operates an established maritime MSS system in the areas covered by AMSC's lower-power beams; Solidaridad, a Mexican satellite that offers an L-band service throughout the Caribbean; and with C-band maritime services. Domestically, AMSC competes with terrestrial service providers, including rural cellular and SMRS and with satellite services such as Qualcomm's Omnitrac.

It is clear that a grant of the requested extension would be in the public interest. There would be no countervailing benefits from a denial of this request, as application of rate integration to AMSC would have little or no impact on long distance service in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. MSS is an entirely different market and the overall capacity of AMSC's system is insignificant compared to the interstate traffic generated in those areas. In addition, a grant is unlikely to produce the "flood" of requests feared by the Northern Marianas. AMSC requests this extension because of the truly unique concerns described both in this reply and its original request. A grant of this request would certainly emphasize AMSC's unique position and therefore would deter others from submitting requests that were not justified

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<sup>12/</sup> See *Notice of Proposed Rulemaking*, IB Docket No. 96-132, FCC 96-259 (June 18, 1996) (proposing to modify AMSC's license to provide additional spectrum due to the inability of the U.S. to coordinate sufficient spectrum in the bands currently assigned to AMSC).

on the same grounds.

In asking for one year or more to comply with the rate integration requirement, AMSC concedes that this extension is not necessary to implement a technical solution or develop a new business strategy. AMSC believes, however, that the factors described above warrant a permanent exemption from rate integration, and that if such lasting relief is not available, that its unique circumstances certainly merit a transition period of a year or more. The requested relief would apply not to AMSC or MSS in general, but just to the circumstances arising from the technical limitations of AMSC's first-generation satellite. AMSC anticipates that the construction of its second-generation satellite will eliminate the need for any of the relief requested here.

On the issue of its reliance on previous Commission rulings, AMSC continues to believe that the equities here favor an exemption to the rate integration requirements. Not only did the Commission approve a satellite design requiring substantial additional power for service to mobile terminals in those beams, but in response to a challenge on the **specific issue** of the surcharge on the low-power beams, the Commission upheld AMSC's tariff. While the Commission did state only that the tariff was "not patently unlawful," the surcharge issue was placed squarely before the Commission in that proceeding. Thus, at least for the first-generation satellite, AMSC should be permitted to rely on the Commission's prior handling of this issue.

Finally, GTE's argument that AMSC's rates must be integrated with AT&T's rates for its non-MSS domestic interstate interexchange service should be summarily rejected by the Commission. Even accepting *arguendo* that AT&T and AMSC are affiliates, nowhere has Congress or the Commission indicated that a provider must integrate rates for altogether different kinds of service. While the Commission did state in the *Report and Order* that interexchange

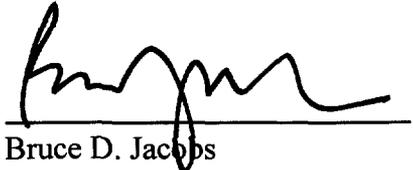
service providers could not avoid rate integration by establishing or using existing subsidiaries to provide service in limited areas, it surely did not mean that such a provider is required to integrate its switched wireline service with an alternative telecommunications service like MSS.<sup>13/</sup> If this were the case, then GTE would be required to charge the same rates, for example, for long distance video-conferencing as for message telephone service.

**Conclusion**

Therefore, based on the foregoing, AMSC urges the Commission to grant the requested extension of the deadline for complying with any applicable rate integration requirements.

Respectfully submitted,

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Dated: October 21, 1996  
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## CERTIFICATE OF SERVICE

I, Cindi Smith Rush, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 21st day of October, 1996, I served a true copy of the foregoing "Reply Comments of AMSC Subsidiary Corporation on Request For Extension of Compliance Deadline" by first class United States Mail, postage prepaid, upon the following:

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