

JAN 28 1997

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

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

**OPPOSITION AND REPLY OF THE STATE OF HAWAII**

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January 28, 1997

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## SUMMARY OF POSITION

The State of Hawaii supports the petitions for reconsideration of the Rural Telephone Coalition ("RTC") and the Telecommunications Management Information Systems Coalition ("TMIS"). The State agrees with RTC and TMIS that the Commission should significantly strengthen its information disclosure requirements so that the public can: (1) access the information on-line via the Internet; and (2) obtain the same amount of rate and service information that was provided under the tariff regime. Without information disclosure that is sufficiently detailed, accessible, and timely, neither the Commission nor ratepayers will be able to adequately protect the legal rights of consumers to geographically averaged and integrated telecommunications rates.

The State opposes the petition for reconsideration of the Ad Hoc Telecommunications Users Committee et al. Ad Hoc's claim that Section 254(g) does not apply to customer-specific offerings is erroneous and contradicts the plain meaning of Section 254(g). In addition, Ad Hoc's alternative claim that the Commission should forbear from imposing any information disclosure requirement on customer-specific offerings should also be rejected. Some limited form of information disclosure is necessary if the Commission is to adequately enforce the rate integration mandate of Section 254(g). Without public disclosure of rate and service information, customers of specialized offerings will be deprived of the notice necessary to determine whether carriers are possibly engaging in illegal discrimination. Customers will not know that initiating a complaint is warranted unless they have some access to a carrier's rate and service information initially. Ad Hoc's Petition mischaracterizes the Commission's decision in its August 7, 1996 First Report and Order regarding the regulatory treatment of customer-

specific offerings and is, in effect, an untimely petition for reconsideration, and therefore should be rejected.

For similar reasons, the Commission should disregard the late-filed, ex parte submission of the Cellular Telecommunications Industry Association ("CTIA") alleging that Section 254(g) does not apply to CMRS. Congress used expansive language in drafting Section 254(g) to ensure that its universal service policies cover all interexchange carriers and services. Section 254(g) makes no exceptions. There is no basis for excluding coverage of any interexchange service -- landline or wireless.

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**OPPOSITION AND REPLY OF THE STATE OF HAWAII**

The State of Hawaii (the "State")<sup>1</sup> hereby supports the petitions for reconsideration of the Rural Telephone Coalition ("RTC") and the Telecommunications Management Information Systems Coalition ("TMIS") and opposes the petition for reconsideration of the Ad Hoc Telecommunications Users Committee et al. ("Ad Hoc") filed on December 23, 1996 in the above-captioned proceeding.<sup>2</sup>

The State agrees with RTC and TMIS that the Commission should significantly strengthen its information disclosure requirements so that the public can: (1) access the information on-line via the Internet; and (2) obtain the same amount of rate and service information that was provided under the tariff regime. Without information disclosure that is

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<sup>1</sup> This opposition is submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs. Unless specified otherwise, references made herein to petitions for reconsideration are to those filed in this proceeding on December 23, 1996, and references to comments and reply comments are to those filed in this proceeding on April 19 and May 3, 1996, respectively.

<sup>2</sup> As discussed below in a footnote, the State also opposes the late-filed, ex parte submission of the Cellular Telecommunications Industry Association filed on December 11, 1996, in which CTIA makes the erroneous assertion that Section 254(g) does not apply to commercial mobile radio services ("CMRS") providers.

sufficiently detailed, accessible, and timely, neither the Commission nor ratepayers will be able to adequately protect the legal rights of consumers to geographically averaged and integrated telecommunications rates.

Ad Hoc's claim that Section 254(g) does not apply to customer-specific offerings is erroneous and contradicts the plain meaning of Section 254(g). In addition, Ad Hoc's alternative claim that the Commission should forbear from imposing any information disclosure requirement on customer-specific offerings should also be rejected. Some limited form of information disclosure is necessary if the Commission is to adequately enforce Section 254(g). Ad Hoc's attempt to mischaracterize the Commission's decision in its August 7, 1996 First Report and Order<sup>3</sup> regarding the regulatory treatment of customer-specific offerings is, in effect, an untimely petition for reconsideration, and therefore should be rejected.

## INTRODUCTION

In adopting Section 254(g), Congress codified the principles of rate integration and geographic averaging because both are essential elements of the broader national objective of promoting universal service. Congress used expansive language in drafting Section 254(g) to ensure that its universal service policies cover all interexchange carriers and services. The statutory section reads:

**SEC. 254. UNIVERSAL SERVICE. . . . (g) INTEREXCHANGE AND INTERSTATE SERVICES. . .** the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to

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<sup>3</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, 11 FCC Rcd 9564 (1996) ("First Report and Order").

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.<sup>4</sup>

Section 254(g) makes no exceptions. It plainly covers all interexchange carriers and all interexchange services. The legislative intent is clear from the Conference Report adopting Section 254(g):

New section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to 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 intend the Commission's rules to require geographic rate averaging and rate integration . . . .<sup>5</sup>

The legislative history thus confirms Congress's intent that, to foster universal service, these two policies require broad application.

In its August 7, 1996 First Report and Order, the Commission properly applied Section 254(g)'s geographic rate averaging and rate integration requirements to all carriers regardless of technology employed (e.g., wireless or landline),<sup>6</sup> carrier size,<sup>7</sup> type of interexchange service,<sup>8</sup> or regional variations in competition.<sup>9</sup> The Commission correctly did

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<sup>4</sup> Telecommunications Act of 1966, Pub. L. No. 104-104, 110 Stat. 56, 73 (1996).

<sup>5</sup> H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996) (emphasis added).

<sup>6</sup> First Report and Order at 9569 (rate averaging applies to all interexchange "telecommunications services"), 9589 (mobile satellite service are subject to rate integration requirement).

<sup>7</sup> Id. at 9583 (rate averaging), 9589 (rate integration).

<sup>8</sup> Id. at 9569 (Commission refuses to exclude business services from rate averaging requirement), 9588 (rate integration applies to all "interexchange telecommunications services").

not exempt any type of carrier or interexchange service because all Americans deserve to receive telecommunications services at reasonable rates.<sup>10</sup> Moreover, in only limited circumstances did the Commission forbear from Section 254(g)'s rate averaging requirement. There was no forbearance from the Section's rate integration requirement.

The maintenance of Section 254(g)'s rate averaging and rate integration policies is critical to ensuring that all Americans share in the benefits of technological improvements and the emergence of competition. If properly enforced, these policies will continue to advance universal service by making telecommunications service available to Hawaii and other locations on the same terms, and at the same reasonable rates, that are available in urban and less remote areas.

**I. THE COMMISSION SHOULD IMPOSE ADDITIONAL RATE INFORMATION DISCLOSURE REQUIREMENTS ON CARRIERS ALONG THE LINES SUGGESTED BY RTC AND TMIS**

In its October 31, 1996 Second Report and Order, the Commission ordered mandatory detariffing of domestic, interexchange telecommunications services.<sup>11</sup> However, to ensure that detariffing does not jeopardize enforcement of Section 254(g)'s geographic rate averaging and rate integration requirements, the Commission requires interexchange carriers to:

(1) file annual certifications that they are in compliance with geographic rate averaging and rate

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<sup>9</sup> Id. at 9582-83, 9588.

<sup>10</sup> Id. at 9566 & n.6.

<sup>11</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, CC Docket No. 96-61, FCC 96-424, at ¶ 77 (released Oct. 31, 1996) ("Second Report and Order").

integration obligations; (2) make information on the current rates, terms, and conditions of their interexchange services available to the public; and (3) maintain, and make available to the Commission upon request, documents supporting the rates, terms, and conditions of their interexchange offerings.<sup>12</sup>

The State agrees with RTC and TMIS that the Commission's current information disclosure requirements are insufficient. The Commission requires carriers to make available "information" on rates and terms of service, but does not indicate what specific information carriers must actually disclose. All the Commission has said is that it does not intend to require carriers to "disclose more information than is currently provided in tariffs."<sup>13</sup> However, the nature and amount of information a carrier must disclose is far from clear. The State agrees with TMIS that:

many carriers will provide only limited information that is wholly inadequate to ensure effective enforcement of statutory requirements. In particular, without more specific information requirements, the Commission and other interest parties likely will not be able to effectively enforce the geographic rate averaging and rate integration requirements of Section 254(g) through the Commissions' complaint process.<sup>14</sup>

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<sup>12</sup> Id. at ¶¶ 83-87.

<sup>13</sup> Id. at ¶ 84.

<sup>14</sup> Petition for Clarification of the Telecommunications Management Information Systems Coalition at 2 (filed Dec. 23, 1996). See also Comments of the State of Hawaii at 10 ("There is a very real problem in assuring effective enforcement of these congressionally mandated policies in a regulatory regime where tariffs might not be required."); Reply Comments of the State of Hawaii at 24-25.

The Commission generally should require carriers to disclose the same amount of information that is currently provided in tariffs. Such a requirement would not be burdensome because carriers have already been providing this amount of information to the Commission.

In the Second Report and Order, the Commission did not require carriers to make rate and service information available to the public in any particular format, or at any particular location. In particular, the Commission rejected the suggestion that carriers be required to provide the information on-line or in each state that they provide service.<sup>15</sup> The Commission should reconsider this issue. As RTC states:

This decision will effectively preclude all but the most tenacious of rural consumers from determining whether his or her rates are "no higher than the rates charged . . . in urban areas." There is no rational basis for concluding that consumers need the information, and then ruling that a consumer in Alaska, Hawaii, Idaho or even Washington, D.C. must go to a single location picked by AT&T, such as Basking Ridge, New Jersey, to find out if he or she is being overcharged.<sup>16</sup>

The State agrees with RTC that the Commission should require carriers to provide the information on-line; an Internet posting is not burdensome.<sup>17</sup> Some carriers, such as AT&T and MCI, operate their own web sites. Those carriers that do not can easily post the information on another entity's site. If a cash-strapped public institution such as the Commission

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<sup>15</sup> Second Report and Order at ¶ 86.

<sup>16</sup> Petition for Partial Consideration of Rural Telephone Coalition at 4 (filed Dec. 23, 1996).

<sup>17</sup> Id.

can have its own web page, so can for-profit carriers.<sup>18</sup> The Internet component of the National Information Infrastructure ("NII") would be a superb vehicle for assuring compliance with Congressionally mandated and FCC implemented rate integration and geographic averaging policies.

In addition, because some people do not have access to the Internet, the Commission should require carriers to file the information in each state that they provide service. Again, carriers have presented no persuasive evidence that such a filing requirement would be unreasonably burdensome.

**II. AD HOC'S ASSERTION THAT CUSTOMER-SPECIFIC OFFERINGS ARE EXEMPT FROM SECTION 254(g) IS UNTIMELY AND, IN ANY EVENT, UNTRUE**

Ad Hoc states that disclosure of customer-specific offerings cannot be justified on grounds relating to enforcement of Section 254(g) "because Section 254(g) does not apply to these offerings."<sup>19</sup> Ad Hoc also states that the Commission, in the First Report and Order, forbore from applying Section 254(g) to contract tariffs and Tariff 12 offerings.<sup>20</sup> Not only are these assertions incorrect, they are out of time.

The scope of Section 254(g) was fully debated and resolved in the First Report and Order and is not relevant to the detariffing issue of the Second Report and Order. Section

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<sup>18</sup> See id. at n.2 ("[A] majority of the Commission has agreed to a Joint Board recommendation that any school desiring to make use of the discount provisions of Section 254(h) must cause its services orders to be posted on a website.").

<sup>19</sup> Petition for Clarification and Partial Reconsideration of the Ad Hoc Telecommunications Users Committee et al. at 9 (filed Dec. 23, 1996) ("Ad Hoc Petition").

<sup>20</sup> Id. at 9 & n.14.

1.429(d) of the Commission's rules requires reconsideration petitions to be filed within 30 days of public notice of a final Commission action. The deadline for filing petitions for reconsideration of the First Report and Order was September 16, 1996. The Commission should therefore dismiss out of hand Ad Hoc's untimely attempt to reexamine the scope of Section 254(g).<sup>21</sup>

In any event, as the State has argued throughout this proceeding, the statute is plain on its face and applies to all "interexchange telecommunications services."<sup>22</sup> Accordingly, any claim that Section 254(g)'s mandate does not apply to a class of interstate interexchange telecommunications services because they are not mass-market offerings or because they are wireless is in error.

Contrary to Ad Hoc's assertion, the Commission did not forebear from applying Section 254(g) to customer specific offerings in the First Report and Order. In fact, the Commission forbore only from Section 254(g)'s geographic rate averaging requirement, and only

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<sup>21</sup> For similar reasons, the Commission should disregard the late-filed, ex parte submission of CTIA alleging that Section 254(g) does not apply to CMRS. See Letter from Howard J. Symons to William Caton (Dec. 11, 1996) (disclosing that an ex parte meeting took place between CTIA and members of the Common Carrier Bureau on Dec. 10, 1996). The Commission expressly rejected the claim that Section 254(g) does not apply to wireless services when it ruled that American Mobile Satellite Carriers Subsidiary Corp. ("AMSC") must comply with Section 254(g). See First Report and Order at 9589 ("We believe that AMSC is required by the plain terms of the 1996 Act to integrate the rates charged for its offshore service into the rate structure for its mainland rates. Further, as with rate averaging, we interpret Section 254(g) to extend to all providers of interexchange service the rate integration policy that previously was applied only to AT&T. AMSC's services would appear to fall within the definition of interstate interexchange telecommunications services subject to Section 254(g)."). There is no basis for excluding coverage of interexchange services -- landline or wireless.

<sup>22</sup> See, e.g., Reply Comments of the State of Hawaii at 4-10; Consolidated Opposition and Reply Comments of the State of Hawaii at 10-14 (filed Oct. 21, 1996).

"to the extent necessary" to allow carriers to make available optional calling plans, contract tariffs and Tariff 12 offerings.<sup>23</sup> The Commission emphasized, however, that carriers must (and the State wholeheartedly agrees that they must) make these services available to similarly situated customers regardless of their geographic location:

As with current policy, we will require carriers to offer the same basic service package to all customers in their service areas, and permit carriers to offer contract tariffs, Tariff 12 offerings, and optional calling plans provided they are available to all similarly situated customers, regardless of their geographic location.

Contrary to the claims of some IXCs, we have not in the past exempted from our geographic rate averaging policy entire groups of services, such as contract tariffs, negotiated arrangements, or optional calling plans, where carriers offer discounted rates on a permanent or long-term basis. The record is clear, in fact, that we have . . . prohibited geographic restrictions in contract tariffs because a service package that is available to only one customer unreasonably discriminates among similarly situated customers, and is therefore unlawful.<sup>24</sup>

Moreover, the Commission expressly did not exempt customer-specific offerings from Section 254(g)'s rate integration requirement:

We are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in competitive conditions, for the same reasons discussed with respect to geographic rate averaging. Our rate integration policy has integrated offshore points into the domestic interstate interexchange rate structure so that the benefits of growing competition for interstate interexchange telecommunications services, as well as

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<sup>23</sup> First Report and Order at 9576-79.

<sup>24</sup> Id. at 9577 (emphasis added). The Commission defined contract tariffs and Tariff 12 offerings as "generally" involving discounts from basic rate schedules. Id. at 9574. Where the basic schedule is averaged, these services also will remain averaged and forbearance will therefore be unnecessary.

regulatory and other developments concerning interstate services, are available throughout the nation.<sup>25</sup>

Even where the Commission might allow a carrier's customized service offerings to contain non-averaged rates, rate integration requires the carrier to use the same rate structure within that tariff for the provision of services to and from offshore points as it would use in calculating charges for services within the continental United States. As the State argues in its "Petition for Clarification and Reconsideration" of the First Report and Order, because the Commission did not forbear with respect to rate integration, a carrier's customized service offerings must employ the same rate structure for remote (or so-called offshore) points that it applies for Mainland traffic.<sup>26</sup> This rule applies regardless of the geographic location of the customer for the service.

In the alternative, Ad Hoc argues that rate and service information on customer-specific offerings should be exempted from the minimal information disclosure requirement required by the Commission in the Second Report and Order. According to Ad Hoc, this information should only be disclosed to: (1) complainants in discovery proceedings; (2) Commission staff; (3) Congress; and (4) state officials.<sup>27</sup> Customers of specialized offerings are also entitled to some protection to assure compliance with the rate integration mandate. Without public disclosure of rate and service information, customers of specialized offerings will

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<sup>25</sup> Id. at 9588 (emphasis added).

<sup>26</sup> See Petition for Clarification and Reconsideration of the State of Hawaii at 5-6 (filed Sep. 16, 1996). For example, if a carrier offers a postalized rate structure within the continental United States, rate integration requires that postalized rates be available to Hawaiian callers as well. However, rate integration alone would not require the customer to be offered any specific rate structure.

<sup>27</sup> Ad Hoc Petition at 10.

be deprived of the notice necessary to determine whether carriers are possibly engaging in illegal discrimination. Customers will not know that initiating a complaint is warranted unless they have some access to a carrier's rate and service information initially.

Ad Hoc's professed concern with price collusion is unfounded.<sup>28</sup> Under the tariff regime, the Commission expressly determined that AT&T could be required to file limited rate and service information without promoting price collusion. Specifically, the Commission agreed that AT&T should not be required to file its actual customer-specific contracts. Rather, AT&T was only required to file a tariff summarizing the contract and containing the following information: (1) the term of the contract, including any renewal options; (2) a brief description of each of the services provided under the contract; (3) minimum volume commitments for each service; (4) the contract price for each service or services at the volume levels committed to by the customers; (5) a general description of any volume discounts built into the contract rate structure; and (6) a general description of other classifications, practices, and regulations affecting the contract rate.<sup>29</sup> The Commission concluded that the provision of this limited amount of information "avoid[s] disclosure of customer proprietary information or information that might increase the risk of tacit collusion in the marketplace."<sup>30</sup>

Despite the foregoing evidence that limited rate disclosure does not promote price collusion, the State is sensitive to Ad Hoc's concern that overbroad disclosure would be detrimental to purchasers of customer-specific offerings. If Ad Hoc believes that the requisite

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<sup>28</sup> Id. at 8 & n.11.

<sup>29</sup> Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5902 (1991).

<sup>30</sup> Id.

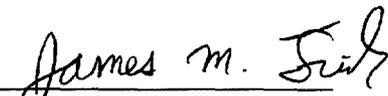
notice for customer-specific offerings should be less than that previously required by the Commission under the contract tariff regime, it should submit a specific disclosure proposal to the Commission for consideration, in which it justifies the need for such reduced disclosure.

### CONCLUSION

For the foregoing reasons, and those discussed earlier in this proceeding, the State of Hawaii urges the Commission to maintain its course in effecting Congress's universal service goals, as enunciated in Section 254(g) of the Communications Act. In particular, the RTC and TMIS Petitions requesting that carriers be required to disclose additional rate and service information should be GRANTED and the portion of Ad Hoc's Petition requesting exemption of customer-specific offerings from Section 254(g) obligations should be DENIED.

Respectfully submitted,

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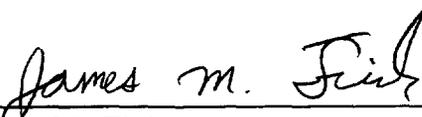
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STATE OF HAWAII

January 28, 1997

## CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 28th day of January, 1997, I have caused a copy of the foregoing "Opposition and Reply of the State of Hawaii" to be served via first class United States Mail, postage pre-paid, upon the persons listed below.

  
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