

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

**COMMENTS OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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SUMMARY OF COMMENTS

As the Commonwealth of the Northern Mariana Islands (“Commonwealth”) demonstrates in these Comments, the final rate integration plans submitted by the carriers in this docket fail to comply with the Commission’s Report and Order in numerous respects.

Although paragraph 92 (ordering clause) of the Report and Order directly ordered the carriers to file final plans which integrate rates for calls between the Commonwealth and the Territory of Guam (“Guam”), the final plan submitted by Sprint Communications, L.P. refuses to do this.

Paragraph 92 also required carriers to integrate rates for calls between the Commonwealth and American Samoa in their final plans. Notwithstanding this, both AT&T Corporation and MCI Telecommunications Corporation state that they will continue tariffing and rating calls between American Samoa and other U.S. points as international, and IT&E Overseas, Inc. proposes a discriminatory rate structure which would continue rating calls to American Samoa as if they were non-integrated. Further, neither GTE Service Corporation (“GTE”), Sprint Communications, L.P. nor PCI Communications, Inc. demonstrate that they intend to include American Samoa in their integrated rates.

Lastly, the final plan submitted by GTE specifies only a set of “basic rates” which applies to 1+ direct-dialed calls, and does not appear to integrate rates for Operator Handled calls, private line services, calling card services or prepaid calling card services. GTE apparently does not intend to include these services in its integrated rates despite the requirements of the Report and Order.

The Commission should take action to ensure that such noncompliance does not occur when rate integration is implemented on August 1, 1997. The Commonwealth requests that the Commission, either in response to the instant filing or on its own motion, direct any carrier submitting a noncompliant tariff to immediately correct the filing, impose sanctions or appropriate penalties, order appropriate consumer refunds or take such other actions as may be necessary to protect consumers.

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**COMMENTS OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"),¹ by its attorneys, hereby submits these Comments in the above-captioned proceeding to address the final rate integration plans submitted to the Commission by GTE Service Corporation ("GTE"), Sprint Communications, L.P. ("Sprint"), IT&E Overseas, Inc. ("IT&E"), PCI Communications, Inc. ("PCI"), MCI Telecommunications Corporation ("MCI") and AT&T Corporation ("AT&T") between May 30 and June 2, 1997.

I. INTRODUCTION

The final rate integration plans submitted by the carriers in this docket are seriously deficient in numerous respects. As demonstrated below, although the Commission has directly ordered the carriers to file final plans which integrate rates for calls between the Commonwealth and the Territory of Guam ("Guam") as well as between the Commonwealth and American Samoa, not all of the plans do that. Carriers instead attempt to justify their noncompliance with the Commission's

¹ These Comments are submitted by the Office of the Governor on behalf of the people of the Commonwealth.

Report and Order by relying upon arguments which have been expressly rejected before by the Commission.² Finally, as shown below, the final plan of at least one carrier, GTE, would fundamentally undermine rate integration by excluding important service offerings, such as Operator Handled calls, private line services, calling card and prepaid calling card services. The Commission should take action to ensure that carriers comply with its Report and Order.

Although the Commonwealth will attempt to review and respond to the tariff revisions which the carriers will soon file in order to implement their rate integration plans, the Commonwealth may not have sufficient time -- given the one-day notice period for nondominant carriers³ -- to react to the filings prior to time they take effect. Accordingly, the Commonwealth respectfully requests that the Commission, either in response to the instant filing or on its own motion,⁴ direct any carrier submitting a noncompliant tariff to immediately correct the filing, impose sanctions or appropriate penalties,⁵ order appropriate consumer refunds or take such other actions as may be necessary to protect consumers.

II. SPRINT MUST INTEGRATE RATES FOR SERVICE BETWEEN THE COMMONWEALTH AND GUAM

By specifically refusing to integrate its rates for interexchange calls between the

² See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Report and Order, 11 F.C.C. Rcd. 9564 (1996)(“Report and Order”).

³ See 47 C.F.R. § 61.23(c) (1996).

⁴ See, e.g., Communications Act of 1934 (“1934 Act”), 47 U.S.C. § 403 (1996).

⁵ For example, the instant filing demonstrates that several carriers have flagrantly disregarded the mandate of paragraph 92 (ordering clause) of the Report and Order. See, e.g., 47 C.F.R. § 1.80(a)(2).

Commonwealth and Guam, Sprint's final plan flagrantly disobeys the mandates of the Commission's Report and Order and Section 254(g) of the Telecommunications Act of 1996 ("1996 Act").⁶

In its final plan, Sprint states that "calls between Guam and the Commonwealth will not be integrated into the Dial 1 rate structure until certain facilities issues involving the Commonwealth are resolved."⁷ Sprint explains that these "facilities issues" are the exceptionally high access and facilities prices charged by the Commonwealth's incumbent local exchange carrier, Micronesian Telecommunications Corporation ("MTC").⁸

Sprint's final plan flatly violates the mandate in paragraph 92 (ordering clause) of the Commission's Report and Order, which specifically required Sprint to submit a final plan integrating rates for services between the Commonwealth and Guam.⁹ The Report and Order's language is clear; however, Sprint has willfully elected to disregard it.

Instead of filing a plan in accordance with paragraph 92, Sprint repeats the argument that higher costs justify forbearance from rate integration.¹⁰ This argument was rejected before by the

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 254(g).

⁷ See Letter from Kent Nakamura, Sprint, to Regina Keeney, Chief, Common Carrier Bureau, FCC, at 2 (June 1, 1997)("Sprint final plan").

⁸ As the Commission is aware, MTC is a wholly-owned subsidiary of GTE Hawaiian Tel ("GTE HawTel"), which in turn is a wholly-owned subsidiary of GTE.

⁹ See Report and Order at ¶ 92.

¹⁰ Sprint could have sought reconsideration of the Commission's Report and Order on these grounds, but chose not to. Sprint's arguments here are nothing more than a belated reconsideration request.

Commission in its Report and Order and must be again rejected here.¹¹ Indeed, the very purpose of rate integration is that rates for serving higher cost areas be averaged with mainland rates such that end user rates do not reflect these higher costs.¹²

It is undisputed that calls between the Commonwealth and Guam qualify as interstate, interexchange telecommunications services.¹³ Moreover, since Sprint currently integrates its rates for calls between Puerto Rico and the U.S. Virgin Islands,¹⁴ Sprint's declaration that it will not integrate its rates between the Commonwealth and Guam would constitute a discriminatory practice in violation of Section 202(a) of the 1934 Act.¹⁵

It is patently clear that Sprint has no legitimate legal basis for its refusal to include calls between the Commonwealth and Guam within its final plan. Sprint's implied claim that the high facilities costs of providing calls between the Commonwealth and Guam allow it to selectively forbear from rate integration flies in the face of the Report and Order, the Commission's rate integration policy and the express language of Section 254(g). The Commission should therefore

¹¹ See Report and Order at ¶¶ 52-53 (noting that high costs and competitive pressures are not legitimate grounds for forbearance under the rate integration mandates of the 1996 Act).

¹² See, e.g., Reply Comments of the Commonwealth of the Northern Mariana Islands, CC Dkt. No. 96-61 (filed May 3, 1996) at 5-7. In addition, Section 254(g) of the 1996 Act requires that "rates charged by providers of 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." 1996 Act at § 254(g)(emphasis added).

¹³ See 47 U.S.C. § 254(g), as amended; see also Report and Order at ¶ 55 (noting that the 1996 Act specifically extends rate integration to all U.S. territories and possessions as "states" for purposes of Section 254(g)).

¹⁴ See Sprint Tariff F.C.C. No. 1 at 1st Revised Page No. 168.1.

¹⁵ See 47 U.S.C. § 202(a).

take further appropriate action to ensure that all carriers, including Sprint, include calls between the Commonwealth and Guam within their integrated rates by August 1, 1997.

III. CARRIERS MUST INTEGRATE RATES FOR SERVICE FROM THE COMMONWEALTH TO AMERICAN SAMOA

Although the Report and Order clearly requires that carriers integrate rates for American Samoa, the final plans submitted by AT&T, MCI, and IT&E each fail to do so.¹⁶ Moreover, it is not clear from the final plans of GTE, Sprint or PCI whether these carriers intend to encompass American Samoa within integrated rates.

Final plans which do not integrate rates for service between the Commonwealth and American Samoa are also in violation of the express mandate of paragraph 92 (ordering clause) of the Report and Order.¹⁷ The carriers' treatment of American Samoa in their final plans is discussed below.

AT&T/MCI Final Plans — Both AT&T and MCI propose to continue tariffing and rating calls between American Samoa and the contiguous U.S., its territories and commonwealths as international, in direct violation of the Report and Order. In its final plan, AT&T states that it will not be able to include American Samoa in rate integration until American Samoa participates in the

¹⁶ See Letter from E.E. Estey, AT&T, to Regina Keeney, Chief, Common Carrier Bureau, FCC, at note 3 (June 2, 1997) (“AT&T final plan”) and Letter from Donald Elardo, MCI, to William F. Caton, Acting Secretary, FCC, at note 1 (May 30, 1997) (“MCI final plan”) and Letter from Margaret Tobey and Phuong Pham, IT&E, to Regina Keeney, Chief, Common Carrier Bureau, FCC, at Attachment (June 2, 1997) (“IT&E final plan”).

¹⁷ See Report and Order at ¶¶ 71-73 and 92 (requiring that carriers implement rate integration for the Commonwealth, Guam and American Samoa by August 1, 1997, in compliance with Section 254(g)).

North American Numbering Plan (“NANP”).¹⁸ In contrast, MCI’s final plan claims that American Samoa has “repudiated any rights accorded it under the law” to rate integration.¹⁹

The Commission has previously rejected these arguments in its Report and Order. As the Commission expressly ruled in the Report and Order, membership in the NANP is not a precondition for rate integration.²⁰ The Commission also considered American Samoa’s claim that it had already achieved the benefits of rate integration, but nonetheless concluded that American Samoa would also be subject to rate integration.²¹ The Report and Order concludes that the carriers required to submit plans were to include American Samoa within rate integration, including services provided between American Samoa and the other Pacific insular areas.²² In other words, the federal rate integration requirement cannot be repudiated and carriers must integrate their rates for American Samoa.

IT&E Final Plan — While not as blatant as AT&T’s and MCI’s actions, the rate structure which IT&E’s final plan specifies for American Samoa also violates the Commission’s rate integration policy. Unlike AT&T and MCI, IT&E proposes to incorporate calls between American Samoa and the contiguous U.S., its territories and commonwealths in its domestic tariff. Notwithstanding this, IT&E would simply continue to rate the calls at non-rate integrated, international rates. The net effect of this approach is that IT&E’s rates for calls to American Samoa

¹⁸ See AT&T final plan at note 3.

¹⁹ See MCI final plan at note 1.

²⁰ See Report and Order at ¶ 68. The Commission notes that while NANP membership will facilitate rate integration, it is “not a precondition of the rate integration of services provided to these points.” Id.

²¹ See Report and Order at ¶ 71.

²² See id. at ¶ 71 and ¶ 92.

do not utilize a uniform ratemaking methodology and thus are unlawful.

The Commission has historically considered a carrier's rates to be "reasonable" and thus consistent with a uniform nationwide ratemaking methodology if they are *proportionate* in relation to existing nationwide mileage patterns.²³ The Commission reiterates this "proportionate test" in its Report and Order in referring to a "new mileage step with a proportionate increase in rates."²⁴

Under IT&E's proposal, a direct dial call made from the Commonwealth to American Samoa, covering a distance of approximately 3,604 miles²⁵ would cost \$2.25 per minute.²⁶ In contrast, a call from the Commonwealth to the U.S. Virgin Islands, covering approximately 9,328 miles or 2.5 times the distance, would cost only \$.99 per minute.²⁷ This disparity in IT&E's proposed rates

²³ See, e.g., In re Integration of Rates and Services, Memorandum Opinion, 62 F.C.C. 2nd 693, ¶ 7 (1976)("[w]e see no just or reasonable basis for concluding that rates for services between Puerto Rico and the Virgin Islands should be substantially higher in proportion to rates for service to the Mainland"); In re AT&T, Memorandum Opinion and Order, 89 F.C.C. 2d 1000, ¶ 28 (1982)("[g]enerally speaking, the main objective of our rate integration policy for offshore points such as Hawaii has been to ensure that these points would benefit from the advent of distance insensitive technology (e.g., satellites) by incorporation of offshore points into the mainland rate schedule. For example, under this regime, rates for calls from San Francisco to Hawaii would be roughly equivalent to rates for calls from San Francisco to Maine.")

²⁴ See Report and Order at ¶ 47, n.99 (citing In re Establishment of Domestic Communications Satellite Facilities, Second Report and Order, 35 F.C.C.2d 844, at ¶¶ 36-37, aff'd on recon., 38 F.C.C.2d 665 (1972), aff'd sub nom. Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975)("Domsat II"). The Commission cites Domsat II as "conditioning domestic satellite authorization for message telephone service on integration of Alaska, Hawaii and Puerto Rico into the uniform mileage (sic) rate pattern of the contiguous states, perhaps by extending the last mileage step to reach those distances, or by creating a new mileage step with a proportionate increase in rates [.]" Id.

²⁵ All mileage calculations in these Comments were obtained through the use of an on-line mileage calculator. See How Far Is It? (visited June 9, 1997) <<http://www.indo.com/distance/>>.

²⁶ See IT&E final plan at Attachment.

²⁷ Id.

signifies that residents of the Commonwealth calling all U.S. points other than American Samoa would pay a lower, integrated rate,²⁸ while Commonwealth residents placing calls to American Samoa would pay higher, non-integrated rates based on a completely different methodology.²⁹ Thus, IT&E's proposed rates to American Samoa from the Commonwealth are not proportionate, are unreasonable and violate the Commission's rate integration policy.

GTE/Sprint/PCI Final Plans — Lastly, the final plans submitted by GTE, Sprint and PCI do not make clear that they will include American Samoa within their domestic tariffs at integrated rates.³⁰ Since these carriers currently treat American Samoa as subject to international rates under their international tariffs, it can probably be assumed that these carriers also have no intention of integrating rates for calls to American Samoa.

The Commonwealth therefore requests that the Commission ensure that all carriers providing service from the Commonwealth to American Samoa properly include American Samoa within their integrated, domestic rates.

²⁸ The methodology underlying these rates appears to be mileage-based, with two bands. The first band covers calls to Guam, while the second band -- which is expansive -- covers calls beyond this up to 9,328 miles.

²⁹ If IT&E utilized a consistent ratemaking methodology, calls from the Commonwealth to American Samoa would fall within the second band, see supra note 27, and would be proportionate in terms of mileage.

³⁰ See Letter from F. Gordon Maxson, GTE, to William F. Caton, Acting Secretary, FCC (June 2, 1997)(“GTE final plan”) and Sprint final plan at 1-2 and Letter from Eric Fishman, PCI, to Regina Keeney, Chief, Common Carrier Bureau, FCC, at 1-3 (May 30, 1997)(“PCI final plan”).

IV. GTE'S FINAL PLAN APPEARS NOT TO INTEGRATE CERTAIN IMPORTANT SERVICE OFFERINGS

GTE's final plan includes a schedule of "basic rates" which applies only to 1+ direct-dialed calls.³¹ The plan, submitted under protest, does not appear to integrate rates for Operator Handled calls, private line services, calling card services or prepaid calling card services. By not integrating these services, GTE's final plan would fundamentally undermine rate integration by excluding important service offerings from the doctrine's reach.³²

The Commission's Report and Order makes clear that "rate integration applies to *all* interstate interexchange telecommunications services as defined in the Communications Act [footnote omitted]."³³ This is consistent with Section 254(g) of the 1996 Act which mandates that *services* be provided "at rates no higher than the rates charged . . . in any other State."³⁴

The Commission should take appropriate action to ensure that GTE -- and all other carriers -- extend rate integration to all services across all affiliates, including those identified below.

Operator Handled Calls — MTC's current daytime rate for Operator Handled, station-to-station calls is \$7.00 (first three minutes), and its daytime rate for Operator Handled, person-to-

³¹ See GTE final plan.

³² The instant Comments focus on the final plan of GTE since GTE is the dominant, off-island interexchange service provider in the Commonwealth. However, it is not clear that other carriers' final plans would offer all services, including those discussed herein, at integrated rates. For example, Sprint's plan would similarly only integrate "Dial-1 interstate" rates. See Sprint final plan at 2-3. The plan does not make clear that operator assisted calling and calling card rates would be integrated.

³³ See Report and Order at ¶ 66 (emphasis added).

³⁴ See 47 U.S.C. § 254(g)

person calls is \$9.00 (first three minutes).³⁵ Each additional minute of daytime service costs \$1.80.³⁶ MTC's evening and night rates for these Operator Handled calls are only several cents less expensive.³⁷ Under MTC's final plan, direct-dialed rates would be reduced by over two thirds; however, the exceptionally high Operator Handled rates would remain at non-integrated levels. This would be the case despite the fact that GTE offers these same services through its other affiliates, GTE Card Services Incorporated (d/b/a GTE Long Distance)("GTE Long Distance") and GTE HawTel, with which MTC's rates should be rate integrated.³⁸

Private Line Services — The Commonwealth is concerned that GTE's final plan apparently does not extend rate integration to private line services.³⁹ Although MTC is currently providing private line services in the Commonwealth⁴⁰ and soon plans to expand its private line offerings between the Commonwealth and Guam over a newly-completed fiber-optic cable,⁴¹ GTE has

³⁵ See MTC Tariff F.C.C. No. 1 at 1st Revised Page 16B.

³⁶ Id.

³⁷ Id.

³⁸ See GTE Hawaiian Tel Tariff F.C.C. No. 1 at 55th Revised Page 17A, 2nd Revised Page 17AAA, 3rd Revised Page 17AAAB, 13th Revised Page 17AB and 9th Revised Page 17AC (station-to-station and operator handled services); GTE Long Distance Tariff F.C.C. No. 1 at Original Page 38 (Operator Assisted: Station-to-Station/Calling Card/Person-to-Person).

³⁹ It is well-established under the Commission's policies that the rate integration requirement applies to private line services. See Report and Order at ¶ 47, and cases cited therein.

⁴⁰ See MTC Tariff F.C.C. No. 4 (covering private line service between the Commonwealth and various domestic points, including Guam, Hawaii, and the contiguous U.S.).

⁴¹ See Transmittal No. 125, MTC Tariff No. 4, Apr. 15, 1997 (adding fiber-optic service rates to MTC's private line tariff). Although MTC subsequently withdrew this transmittal after facing opposition from PCI, MTC is expected to refile its fiber-optic cable rates within the near

previously informed the Commission that it does not intend to integrate MTC's private line rates with those charged by GTE's mainland private line service affiliates -- GTE Government Systems and GTE Telecom Incorporated -- on the basis that these affiliates do not "currently provide[] services to or from the Commonwealth."⁴²

The fact that GTE's two mainland private line affiliates do not currently provide private line services to or from the Commonwealth is of no relevance since the Commission has determined that GTE must integrate across affiliates.⁴³ GTE Government Systems and GTE Telecom Incorporated provide private line service in the contiguous U.S., and MTC provides private line service in the Commonwealth. The mandate of Section 254(g) and the Commission's Report and Order is simply that their rates for private line services be integrated.

GTE's apparent refusal to integrate private line services flies in the face of the Report and Order. GTE's argument that it does not have to integrate its rates on a corporate basis was expressly rejected in the Report and Order. Accordingly, since GTE provides private line services in the Commonwealth as well as in the contiguous U.S., it must rate integrate those services by August 1, 1997.⁴⁴

future and initiate service shortly thereafter.

⁴² See Letter from Gail L. Polivy, GTE, to William F. Caton, Acting Secretary, FCC, at n.16 (June 20, 1996) ("Polivy Letter"). Specifically, GTE stated that it is not required to integrate its private line rates because "[n]either GTE Telecom Incorporated nor GTE Government Systems currently provides service to or from the Commonwealth." *Id.* See also GTE's preliminary rate integration plan, Letter from F. Gordon Maxson, GTE, to William F. Caton, Acting Secretary, FCC, at 1 (Jan. 31, 1997).

⁴³ See Report and Order at ¶ 69.

⁴⁴ The Commonwealth also raised this concern in its ex parte Comments addressing GTE's preliminary rate integration plan. See Ex Parte Comments of the Commonwealth in CC Dkt. No.

In light of GTE's continuing record of resisting rate integration, the Commission should ensure that GTE extends rate integration--across all affiliates--to all services offered in the Commonwealth, including those addressed above, which are similar to those offered in the contiguous U.S.

Calling Card/Prepaid Calling Card — Finally, MTC's international tariff under which calls from the Commonwealth are currently rated contains high international rates for calling card and prepaid calling card services.⁴⁵ Since MTC's final plan purports to only integrate "basic rates" which correspond to direct-dialed rates, it would appear that MTC does not intend to integrate rates for calling card and prepaid card services, both of which are offered by GTE Hawaiian Tel and GTE Long Distance.⁴⁶ MTC's calling card and prepaid calling card rates, under the Report and Order, must be integrated with the rates for like services provided by these two affiliates.

96-61, at 8-9 (Apr. 30, 1997).

⁴⁵ See MTC Tariff F.C.C. No. 1 at Original Page 43 and 1st Revised Page 44.

⁴⁶ See GTE Hawaiian Tel Tariff F.C.C. No. 1 at Original Page 27AA to 27N (prepaid card rates); GTE Long Distance Tariff F.C.C. No. 35 at 3rd Revised Page 35 to 1st Revised Page 36 (prepaid calling service rates).

V. CONCLUSION

As demonstrated above, the rate integration plans submitted by the carriers contain serious deficiencies which threaten to undermine rate integration. In several instances, they ignore the mandates of the Report and Order. The Commonwealth requests that the Commission take appropriate action as specified herein to ensure that the carriers comply with the Report and Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael B. Adams, Jr., an attorney with the Law Offices of Thomas K. Crowe, P.C., hereby certify that a copy of the foregoing Comments were sent by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (*), this 16th day of June, 1997, to the following:

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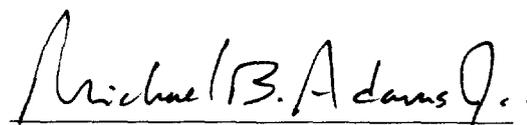
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A handwritten signature in black ink that reads "Michael B. Adams, Jr." with a horizontal line underneath the signature.

Michael B. Adams, Jr.