

FCC MAIL SECTION

Federal Communications Commission

FCC 97-269

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
Implementation of Section 254(g) of the ) CC Docket No. 96-61  
Communications Act of 1934, as amended )

FIRST MEMORANDUM OPINION AND  
ORDER ON RECONSIDERATION

Adopted: July 30, 1997

Released: July 30, 1997

By the Commission:

I. INTRODUCTION

1. In this Order, we deny petitions for reconsideration of the *Rate Averaging and Rate Integration Report & Order*<sup>1</sup> insofar as they raise issues concerning our implementation of the rate integration requirements of section 254(g) of the Communications Act of 1934, as amended.<sup>2</sup> We defer to a later decision issues raised in petitions for reconsideration of the Order concerning our implementation of the geographic rate averaging requirements of section

<sup>1</sup> See *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 FCC Rcd 9564 (1996) ("*Rate Averaging and Rate Integration Report and Order*" or the "*Report & Order*").

<sup>2</sup> Section 101(a) of the Telecommunications Act of 1996 ("1996 Act") adds Section 254(g) to the Communications Act of 1934 requiring interexchange carriers to integrate and average the rates they charge for service. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56, sec. 101(a).

254(g) of the Act. We additionally dismiss as moot the Motion for Partial Stay or Request for Extension filed by GTE Service Corporation (GTE).

## II. DISCUSSION

### A. Rate Integration Across Affiliates

#### 1. Background

2. Section 254(g) of the Act states 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>3</sup> This is the statutory provision that imposes the rate integration requirement on providers of interexchange services. In the Joint Explanatory Statement, Congressional conferees made clear that Congress intended section 254(g) to incorporate the Commission's existing rate integration policy.<sup>4</sup> Under that policy, since 1972, the Commission had required any carrier that provides domestic interstate interexchange service between the contiguous forty-eight states and various offshore points to integrate its rates for offshore points with its rates for similar services on the mainland.<sup>5</sup>

3. In the *Rate Averaging and Rate Integration Report & Order*, we adopted a rate integration rule that reiterated the language of section 254(g). We stated that this rule would incorporate our existing rate integration policy, and would apply to all interstate interexchange services as defined in the Act and to all providers of these services.<sup>6</sup> Because the Telecommunications Act defines "state" to include all U.S. territories and possessions, we concluded that providers of interexchange services to offshore points, including Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa, must do so on an integrated basis with services they provide to other states.<sup>7</sup> We directed carriers to implement rate integration for those points by August 1, 1997, and to file preliminary and

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<sup>3</sup> 47 U.S.C. § 254(g).

<sup>4</sup> S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement).

<sup>5</sup> See *Report & Order*, 11 FCC Rcd at 9586, ¶ 47.

<sup>6</sup> *Id.* at 9588, ¶ 52.

<sup>7</sup> *Id.* at 9596, ¶ 66.

final rate plans on February 1 and June 1, respectively.<sup>8</sup>

4. In the *Report & Order*, we interpreted the term, "provider," as used in section 254(g), "to include parent companies that, through affiliates, provide service in more than one state."<sup>9</sup> We rejected GTE's view that it was not required to integrate rates for services offered by the Micronesian Telephone Company (MTC), GTE's subsidiary offering originating service on CNMI, with GTE affiliates offering interexchange service in other states.<sup>10</sup>

## 2. Position of the Parties

5. GTE and US West, Inc. (US West) request that the Commission reconsider its decision to require rate integration across affiliates.<sup>11</sup> They argue that under the Act "provider," as used in section 254(g), is synonymous with "telecommunications carrier" because the Act defines "telecommunications carrier" as "any provider of telecommunications services," and that, since parent companies are not carriers, neither can they be providers.<sup>12</sup> US West maintains that the word "any" in the statutory definition makes clear that all providers of telecommunications services are telecommunications carriers.<sup>13</sup> US West contends that a holding company is not a carrier, citing *US West, Inc. v. FCC*, 778 F.2d 23, 28 (D.C. Cir. 1985).<sup>14</sup> GTE and US West also argue that integration across affiliates is inappropriate because their affiliates operate separately from each other and the parent company.<sup>15</sup> MCI, filing comments in support of GTE and US West's petitions, states that its

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<sup>8</sup> *Id.* at 9605, ¶ 92.

<sup>9</sup> *Id.* at 9598, ¶ 69.

<sup>10</sup> *Id.*

<sup>11</sup> Petition for Reconsideration and Clarification filed by GTE Service Corporation on behalf of its affiliated telecommunications companies ("GTE Petition") at 1; US West, Inc.'s Petition for Clarification, or, in the Alternative, Reconsideration ("US West Petition") at 1.

<sup>12</sup> The Act defines "telecommunications carrier" as "any provider of telecommunications services...." 47 U.S.C. § 153(49).

<sup>13</sup> US West, Inc.'s Reply to Oppositions to Petition for Clarification, or, in the Alternative, Reconsideration ("US West Reply Comments") at 5-6.

<sup>14</sup> US West Petition at 5.

<sup>15</sup> GTE Petition at 7-8; US West Petition at 2.

affiliate on Guam, Western Union International, Inc., has its own cost structure and rates.<sup>16</sup> MCI and GTE each state that none of its affiliates share facilities, and that they are regulated differently.<sup>17</sup> Similarly, US West argues that its subsidiaries, US West Communications Group and US West Media Group, Inc. operate on a completely independent basis offering different products with different brands and serving different customers. Additionally, US West argues that these subsidiaries are accountable to different investors pursuant to a targeted stock plan whereby investors can invest in the parent company's stock targeted directly to one of the two subsidiaries.<sup>18</sup> GTE states that mandating rate integration will require cross-subsidization between affiliates, contrary to previous actions by the Commission in which it has required separate entities to safeguard against cross-subsidies.<sup>19</sup> GTE further contends that rate integration across affiliates is contrary to Congressional intent because, prior to the 1996 Act, the Commission's rate integration policy did not require rate integration across affiliates.<sup>20</sup> GTE also argues that the statute is clear that the term, "provider," does not include a company's affiliates since the Act distinguishes between a provider and affiliates in other sections,<sup>21</sup> and the Conference Report states that 254(g) applies to "a particular provider."<sup>22</sup>

6. GTE also requests that the Commission clarify whether all affiliated carriers, including Commercial Mobile Radio Service (CMRS) providers and interexchange resellers,

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<sup>16</sup> Comments filed by MCI Telecommunications Corporation ("MCI Comments") at 2-3.

<sup>17</sup> GTE Petition at 5-9. According to GTE, GTE Hawaiian Telephone Company Incorporated ("GTE Hawaiian Tel") and Micronesian Telecommunications Corporation ("MTC") are price cap LECs; GTE Card Services Incorporated and GTE Long Distance ("GTELD") are nondominant LECs; GTE Mobilnet Incorporated is a nondominant CMRS provider that references that tariffs of the IXC's whose services it resells; and GTE Airfone Incorporated, an air-to-ground service provider reselling long distance, files its own tariff.

<sup>18</sup> US West Petition at 2, 5-6.

<sup>19</sup> GTE Petition at 9-10.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* at 4. Specifically, GTE cites the following sections from the Communications Act: section 224(g) addressing utilities engaged in the provision of telecommunications services imputing to its costs, and charging its affiliates, the pole attachment rate; section 271 prohibiting a Bell operating company or any affiliate from providing interLATA services; and section 652(a) prohibiting a local exchange carrier or any affiliate from acquiring a cable company in the local exchange telephone area. Alaska contradicts this argument noting that in each of GTE's examples, Congress was dealing with affiliates offering different services, not affiliates offering one service as here. Opposition of the State of Alaska to Petitions for Reconsideration, Partial Reconsideration and Clarification ("Alaska Comments") at 12.

<sup>22</sup> *Id.* at 3-5.

must integrate rates or whether only carriers providing facilities-based interexchange services to, or from, offshore points are required to do so. GTE suggests that, if rate integration must include all affiliates, rate integration for offshore points should include only those affiliates which operate interexchange facilities to, or from, offshore points.<sup>23</sup>

7. MCI suggests that the Commission "grandfather" existing affiliates and allow them to continue charging rates that reflect their unique historic and other costs, or to provide a three-year transitional period for such carriers.<sup>24</sup> The Rural Telephone Coalition (RTC) states that "legitimate" separate affiliates should not be required to integrate rates, but that the Commission should forbid manipulation of separate subsidiaries, and provide for expedited complaint processing when questions of manipulation are raised.<sup>25</sup>

8. CNMI questions claims by GTE and US West that their respective affiliates operate independently of the parent company and other affiliates in that both companies file annual reports containing consolidated financial statements encompassing their telecommunications subsidiaries.<sup>26</sup> In addition, CNMI points out that: MTC is wholly owned by GTE Hawaiian Tel, which is wholly owned by GTE; GTE includes MTC in its access tariff and files rates on behalf of MTC; GTE submits Commission filings on behalf of MTC; and MTC advertises that it is "backed by the strength of GTE."<sup>27</sup> Alaska challenges GTE's argument that its affiliates offer different services, noting that the Commission has stated that there is a single product and geographic market for interstate interexchange service, with no relevant product or geographic submarkets.<sup>28</sup>

9. AT&T supports integration across affiliates stating that it has had multiple regional IXC affiliates since divestiture, but the Commission has always applied its rate averaging and integration policies to AT&T as a single entity.<sup>29</sup> AT&T also states that

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<sup>23</sup> *Id.* at 12.

<sup>24</sup> MCI Comments at 3.

<sup>25</sup> The Rural Telephone Coalition (RTC) Opposition to Petitions for Reconsideration ("RTC Comments") at 7-8.

<sup>26</sup> Opposition to Petitions for Reconsideration filed by the Commonwealth of the Northern Mariana Islands ("CNMI Comments") at 8-9.

<sup>27</sup> *Id.* at 7-8.

<sup>28</sup> Alaska Comments at 11.

<sup>29</sup> AT&T Opposition to Petitions for Reconsideration and Clarification ("AT&T Comments") at 1-2.

allowing GTE to use non-integrated prices as part of a bundled offering would exacerbate the market inequalities AT&T faces in GTE territories.<sup>30</sup> Alaska argues that the Commission's conclusion is necessary to prevent IXCs from eviscerating section 254(g) by forming subsidiaries to provide interexchange service in different states.<sup>31</sup>

10. CNMI and the Office of the Governor of Guam (the Governor of Guam) and Guam Telephone Authority (GTA) believe that the Commission has the authority to interpret the term "provider" to include all affiliates of a parent company for purposes of rate integration.<sup>32</sup> CNMI states that the Commission may adopt any permissible construction of "provider" because the statute does not clearly define the term for purposes of section 254(g).<sup>33</sup> Alaska contends that petitioners' arguments that the parent companies cannot be treated as carriers under the Act are misplaced because, it states, whether or not the parent company is deemed a provider, the point of the *Rate Averaging and Rate Integration Order* is that all commonly-owned carriers that provide interstate interexchange service must be treated as a single entity for rate integration purposes.<sup>34</sup>

11. In response to GTE and US West's assertion that requiring integration would require CMRS services to cross-subsidize interexchange services, and require affiliates selling different products to integrate rates, Hawaii notes that rate integration applies only to individual services. For example, carriers would be required to offer uniform rate structures for residential toll service, but need not use those same structures in offering 800 and other business services, according to Hawaii.<sup>35</sup> Alaska challenges GTE's contention that rate integration would require different GTE subsidiaries to cross-subsidize others in violation of

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<sup>30</sup> *Id.* at 1-2.

<sup>31</sup> Alaska Comments at iii. *See also*, CNMI Comments at 6; Consolidated Opposition and Reply Comments of the State of Hawaii ("Hawaii Reply and Opposition") at 9-10 (at best, the statute is silent as to whether affiliates can be considered collectively so the Commission has discretion to interpret the statute as such).

<sup>32</sup> Joint Opposition filed by the Governor of Guam and Guam Telephone Authority ("Governor of Guam and GTA Comments") at 7; CNMI Comments at 4.

<sup>33</sup> CNMI Comments at 2-4 (citing *Chevron U.S.A. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984)).

<sup>34</sup> Alaska Comments at 9, n.20. Similarly, CNMI argues that "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." CNMI Comments at 3, n.7.

<sup>35</sup> Hawaii Reply and Opposition at 8-9.

FCC policy or regulation by stating that nothing in the Commission's rules require or authorize subsidiaries to "misallocate costs to another subsidiary, purchase services at above market price or cost, or engage in other forms of cross-subsidization."<sup>36</sup>

12. GTE also requests that the Commission clarify that its requirement that parent companies rate-integrate across affiliates applies to all parent companies, and not solely GTE, which was the only company specified in the *Report & Order*.<sup>37</sup> The Governor of Guam and GTA agree with GTE that the Commission should clarify that this requirement applies to all parent companies with affiliated carriers.<sup>38</sup>

### 3. Discussion

13. Section 254(g) requires that a provider of interstate interexchange services shall provide its services to subscribers in a state at rates no higher than provided to subscribers in any other state.<sup>39</sup> As noted, the legislative history to Section 254(g) makes clear that Congress intended section 254(g) to incorporate the Commission's pre-existing rate integration policy.<sup>40</sup> Pursuant to that policy, interexchange carriers offer service to subscribers in all fifty states, the U.S. Virgin Islands, and Puerto Rico on a rate-integrated basis.<sup>41</sup> Rates are generally structured by mileage bands so that a carriers' subscribers in any state will pay the same rate for calls of the same distance.<sup>42</sup> As noted, section 254(g) requires interexchange service providers serving U.S. territories and possessions to do so on an integrated basis with services provided to states because the Act's definition of "state" includes U.S. territories and possessions.<sup>43</sup> Thus, it is clear that Congress intended section 254(g) to preserve the

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<sup>36</sup> Alaska Comments at 12.

<sup>37</sup> GTE Petition at 12.

<sup>38</sup> The Governor of Guam and GTA Comments at 7-8.

<sup>39</sup> 47 U.S.C. § 254(g).

<sup>40</sup> In the Joint Explanatory Statement, the conferees stated that "[n]ew 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." S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement).

<sup>41</sup> *Id.* at 9586, ¶ 47.

<sup>42</sup> *Id.* at 9588, ¶ 52.

<sup>43</sup> *See supra.*, ¶ 3.

Commission's then existing rate integration policy and extend it to all interexchange carriers and all U.S. territories and possessions. We find that we should interpret any ambiguous language in section 254(g) so as to achieve that Congressional intent.

14. The meaning of the phrase "a provider of interstate interexchange telecommunications services" in section 254(g) is, in our view, ambiguous. That phrase is not specifically defined, nor does the statute give any explicit guidance on how to treat affiliated companies. Thus, we interpret this phrase in the way that best comports with our prior rate integration policy, and Congress' stated intent to codify that policy. The Commission's own rate integration policy has always required rate integration across affiliates. For instance, in the past, the Commission has treated all of AT&T's regional interexchange affiliates as a single entity for purposes of rate integration.<sup>44</sup> If we had not done so, rate integration could not have been achieved for mainland U.S. points and Alaska, Hawaii, and the U.S. Virgin Islands because AT&T could have used a different rate structure for each of its regional affiliates.<sup>45</sup> Thus, an interpretation of section 254(g) that requires rate integration across affiliates is consistent with Congressional intent that section 254(g) codify the Commission's past policies.

15. The interpretation urged by petitioners, however, would permit carriers to undermine the statute's rate integration policy for the fifty states, U.S. Virgin Islands, and Puerto Rico, and enable them effectively to thwart achievement of rate integration for additional offshore points. Under this interpretation, parent holding companies could establish separate affiliates, or use existing affiliates, to offer services to a state or several states on a non-integrated basis with services offered in other states. Similarly, the offering of service to various offshore and mainland points through separate affiliates could effectively prevent rate integration to offshore points if we read section 254(g) to permit providers operating under this corporate arrangement to provide service under rate schedules that are not integrated within a corporate family. GTE has not suggested that its reading of the statutory provision would impose any meaningful limits on the ability of firms to avoid the Congressional mandate of integrated interexchange rates by using or creating multiple interexchange carrier

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<sup>44</sup> AT&T Comments at 2; see, e.g., *Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corp.*, 11 FCC Rcd 732, 743, 747 (AT&T/Alascom as a separate subsidiary of AT&T files interstate tariffs with rates that "mirror the rate in AT&T's tariffs covering the contiguous 48 states). In *Integration of Rates and Services*, 61 FCC 2d 380, the Commission required GTE's affiliate Hawaiian Telephone Company ("HTC") to integrate the rates for Hawaii-mainland interexchange service into the rate structure established by AT&T in the mainland, even though (1) HTC provided no service between mainland points, and (2) HTC was not affiliated with AT&T. In the same order, the Commission conditionally required HTC to file a tariff for Hawaii-mainland WATS service that was patterned after the rate structure contained in AT&T's mainland WATS tariff. 61 FCC 2d at 394.

<sup>45</sup> See Joint Explanatory Statement at 132.

subsidiaries, each serving a separate geographic area. MCI suggests that the Commission could "grandfather," or provide a three-year transition period to, existing affiliates to allow them to continue to charge rates that are not integrated with each other.<sup>46</sup> Importantly, given the current structure of service provision to these offshore points, this would also effectively defer or prevent the achievement of rate integration to offshore points. We find nothing in the statute or legislative history that supports an interpretation of section 254(g) that would effectively undercut one of the primary stated purposes of that section.

16. In the *Report & Order*, we interpreted "provider" to include parent companies that, through affiliates, provide service in more than one state.<sup>47</sup> GTE argues that this means that parent holding companies would be telecommunications carriers under the Act. We have not determined whether parent companies should be treated as carriers, and we need not address this issue here. Rather, we note that "provider" is not defined anywhere in the statute, and there is more than one reasonable definition of the term. As suggested by Alaska, we interpret the statute as requiring that all affiliated carriers that are commonly owned or controlled be treated as a single provider for purposes of section 254(g).<sup>48</sup> We agree with Hawaii that interpreting the statute to consider collectively all carriers that are affiliated to the degree set out in our definition of "affiliated companies" as a single provider is a reasonable interpretation of the statutory language, and is necessary to the effectuation of section 254(g).<sup>49</sup> We find unpersuasive GTE's argument that the use of the term "affiliate" in other sections of the Act limits our interpretation of "provider" for purposes of section 254(g).<sup>50</sup> Congress' decision to refer explicitly to an entity and its affiliate in one section of the Act does not render our interpretation of "provider" to include affiliated carriers unreasonable, particularly when that interpretation is necessary to effectuate Congress' intent with respect to section 254(g). Absent a clear statement in the Act or its legislative history that we may not treat commonly owned and controlled interexchange affiliates as a single provider, for purposes of section 254(g), we conclude that "provider" in section 254(g) should be interpreted in ways that will permit achievement of the Congress' intent. Accordingly, we affirm our previous determination that section 254(g) requires the implementation of rate integration across affiliates.

17. We take this opportunity to specify the degree of affiliation necessary for application of the requirement that rate integration be applied across affiliates. The current

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<sup>46</sup> MCI Comments at 3.

<sup>47</sup> *Report & Order*, 11 FCC Rcd at 9598, ¶ 69.

<sup>48</sup> Alaska Comments at 8-13.

<sup>49</sup> Hawaii Comments at 9-10.

<sup>50</sup> See, *supra*, ¶ 5.

definitions of "affiliate" and "control" in section 32.9000 of the Commission's rules will be used to determine whether companies are sufficiently related so that they must integrate rates.<sup>51</sup> Thus, affiliates that are under common ownership and control shall be required to integrate across affiliates. These definitions will permit application of rate integration to closely related affiliates while excluding those not under common control. It will therefore permit effective implementation of section 254(g), as discussed above.

18. We also clarify that section 254(g) does not require a carrier to integrate an interstate interexchange CMRS service with other interstate interexchange service offerings. Although CMRS is primarily a telephone exchange and exchange access service,<sup>52</sup> many CMRS providers also offer interstate interexchange service as well. An interstate interexchange CMRS call enables a customer to place a long-distance call to an exchange in a different state. In our view, interstate interexchange CMRS offerings are not the same service as other interstate interexchange services. Consequently, we do not read section 254(g) to require a carrier to offer CMRS and other interexchange services under an integrated rate schedule. Moreover, as noted, Congress intended section 254(g) to codify our pre-existing rate integration policy and we have never required integration of interexchange CMRS rates with other interexchange service rates. Thus, while the rate integration provision applies to all interstate interexchange telecommunications services and therefore requires CMRS providers to provide the interstate interexchange CMRS service on an integrated basis in all their states, it does not require a carrier to offer interexchange CMRS and other interstate interexchange services under one rate schedule.

19. We also clarify that rate integration applies to all providers of interexchange

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<sup>51</sup> This rule defines "affiliated companies" as "companies that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the accounting company" and "control" as "the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means." 47 C.F.R. § 32.9000

<sup>52</sup> In the *Local Competition Order*, we found that many CMRS providers provide telephone exchange service and exchange access as defined by the 1996 Act. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC Rcd 15499, 15999 (1996) ("*Local Competition Order*") at ¶ 1013 (*vacated, in part, Iowa Utils. Bd., et. al. v. FCC*, No. 96-3321 (8th Cir. decided July 18, 1997)). The Commission has elsewhere described cellular service as exchange telephone service. *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, Memorandum Opinion and Order, 59 Rad. Reg. 2d 1275, 1278 (1986); *see also id.* at 1284 (cellular carriers are primarily engaged in the provision of local, intrastate exchange telephone service).

services, including both resellers and facilities-based service providers. There is no statutory basis for distinguishing between providers of interstate interexchange services based on whether the service is offered by a facilities-based provider or a reseller. Although the nature of the provider may vary, the service offered to the subscriber remains the same, and petitioners offer no reasonable basis for treating the providers differently. Of course, our determination that rate integration across affiliates applies separately to all corporate families, not just GTE companies.

20. As a final matter, GTE filed a motion for partial stay or request for extension seeking a stay of the requirement that it be required to implement rate integration across affiliates on the ground that it would be irreparably injured if it is required to implement rate integration across affiliates prior to the time the Commission rules on its petition for reconsideration.<sup>53</sup> In view of our decision today, we dismiss GTE's motion for partial stay or request for extension as moot.

**B. Application of Rate Integration to American Mobile Satellite Carriers Subsidiary Corp. (AMSC)**

**1. Background**

21. AMSC Subsidiary Corp. (AMSC) provides mobile satellite service through a satellite system that provides two-way mobile voice communications throughout the United States, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and coastal waters.<sup>54</sup> AMSC's satellite, launched in April 1995, has five slightly overlapping beams. The three central beams cover the continental United States. One peripheral beam covers Alaska and Hawaii and nearby coastal waters, while the other peripheral beam covers Puerto Rico, the U.S. Virgin Islands, and a significant portion of the Caribbean region.<sup>55</sup> AMSC assesses a higher charge, regardless of distance, when a customer operates a mobile terminal in an area served by one of the peripheral beams.<sup>56</sup> In the *Rate Averaging and Rate Integration Order*,

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<sup>53</sup> Motion for Partial Stay or Request for Extension filed by GTE Service Corporation, on behalf of its affiliated telecommunications companies, and the Micronesian Telecommunications Corporation (filed June 17, 1997). GTE also filed an Emergency Petition for a Writ of Mandamus with the United States Court of Appeals for the District of Columbia Circuit on June 17, 1997, and an Emergency Motion for Partial Stay with the same court on July 1, 1997. The court denied both requests on July 16, 1997. *GTE Service Corp. and Micronesian Telecommunications Corp v. FCC*, No. 97-1402 (D.C. Cir., decided July 16, 1997).

<sup>54</sup> Petition for Reconsideration filed by AMSC Subsidiary Corporation ("AMSC Petition") at 2.

<sup>55</sup> *Id.* at 3.

<sup>56</sup> *Id.* at 3.

the Commission determined that AMSC's service is subject to section 254(g) and that it must integrate rates charged for its offshore service into the rate structure for its mainland service.<sup>57</sup>

## 2. Positions of the Parties

22. AMSC has petitioned the Commission to reconsider its decision to apply rate integration to its mobile satellite service or, in the alternative, to clarify that AMSC's rate structure is consistent with rate integration policy.<sup>58</sup> AMSC contends that the design of its satellite system prevents AMSC from distinguishing local and international traffic from interstate traffic. It states that the amount of power required to communicate in either of the peripheral beams is more than twice that required to communicate in the central beams, and that it is justified in charging a higher rate for any service that requires more power than other services.<sup>59</sup> AMSC claims that the Commission has recognized that unique economic and technical factors justify exceptions to full rate integration, and that the Commission should recognize that the design of AMSC's satellite system presents economic and technical factors justifying an exception to rate integration.<sup>60</sup> AMSC explains that the Commission's rate integration policy was premised on fixed satellite service satellites having eliminated distance-sensitivity as a cost factor for service to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.<sup>61</sup> AMSC argues that the Commission, in permitting the use of uniform mileage bands to integrate rates, recognizes the relevance of cost factors as the distance of a call increases.<sup>62</sup> Although AMSC acknowledges that it is at times a provider of interstate interexchange service, it argues that it is unclear whether section 254(g) should apply to a hybrid provider like itself that offers undifferentiated provision of local, long distance, and international services.<sup>63</sup> It also notes that, in 1993, the Commission rejected a petition challenging its proposed tariffs that established its current rate structure.<sup>64</sup> Additionally, AMSC argues that it is permissible under the statute for a carrier to charge a higher rate

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<sup>57</sup> *Report & Order*, 11 FCC Rcd at 9589, ¶ 54.

<sup>58</sup> AMSC Petition at 1.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.* at 1.

<sup>61</sup> *Id.* at 6-7.

<sup>62</sup> *Id.* at 7.

<sup>63</sup> *Id.* at 4.

<sup>64</sup> *Id.* at 5. *But see*, Alaska Comments at 15 (contending that Congress expanded rate integration beyond the policy previously established by the Commission). 12

based on the location of the mobile terminal, as long as that rate is applied to all subscribers.<sup>65</sup> Alternatively, AMSC argues that the Commission should forbear from imposing rate integration in order to provide it flexibility to charge more for the higher power required to provide mobile service with low-power beams.<sup>66</sup>

23. Alaska asserts that AMSC's petition contains essentially the same arguments as its comments submitted prior to the issuance of the *Rate Averaging and Rate Integration Order*, and that AMSC has provided no basis for the Commission to change its decision.<sup>67</sup> Alaska and CNMI argue that, because AMSC offers interexchange service, it is covered by the Act.<sup>68</sup> Alaska also maintains that geographic rate averaging requires that any higher costs of providing service to Alaska and Hawaii must be averaged into AMSC's interexchange service cost structure and recouped in a geographically averaged rate structure.<sup>69</sup> Finally, Alaska opposes AMSC's argument that the Commission has previously approved its rate structure noting that any previous action by Commission staff did not constitute a Commission decision on the lawfulness of the tariff and, in any event, predated the Act.<sup>70</sup> CNMI argues that AMSC is not entitled to forbearance because it has failed to justify forbearance under section 10 of the Act.<sup>71</sup> Hawaii states that AMSC should not be relieved of rate integration obligations merely because it does not have the technology to determine when it is handling an interexchange call.<sup>72</sup> It also questions AMSC's position that it is entitled to relief because the design of its system serves offshore points at a higher cost since it could have designed its system differently.<sup>73</sup>

### 3. Discussion

24. The rate integration provision of section 254(g) applies to "interstate

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<sup>65</sup> AMSC Petition at 6.

<sup>66</sup> *Id.* at 1.

<sup>67</sup> Alaska Comments at 14.

<sup>68</sup> *Id.* at 14; CNMI Comments at 11-12.

<sup>69</sup> Alaska Comments at 17; *see also* Hawaii Reply and Opposition at 13.

<sup>70</sup> Alaska Comments at 17; *see also* Hawaii Reply and Opposition at 13.

<sup>71</sup> CNMI Comments at 13-14.

<sup>72</sup> Hawaii Reply and Opposition at 13.

<sup>73</sup> *Id.* at 14.

interexchange telecommunications services."<sup>74</sup> As explained in the *Rate Averaging and Rate Integration Order*, the service offered by AMSC's mobile satellite is an interstate, interexchange telecommunications service.<sup>75</sup> Therefore, our rate integration policy applies to the provision of this service, just as it applies to the provision of other interexchange services, such as basic Message Toll Service (MTS). We find no basis in the text of section 254(g) or its legislative history for concluding that AMSC's mobile satellite service is excluded from application of the statute. In addition, as a general proposition, under the statute and our prior rate integration policy, the fact that a provider may incur higher costs to serve certain subscribers does not relieve such providers of the duty to integrate rates charged to such subscribers with the rates assessed to other subscribers. Accordingly, absent forbearance, AMSC's mobile satellite service is subject to section 254(g).

25. We are also not persuaded by the argument that it is permissible under section 254(g) to charge mobile service subscribers that originate calls while located in a state or an offshore region higher rates than calls originated in another state or offshore region, as long as all subscribers that originate calls in that state or region are assessed those rates. Applied most broadly, AMSC's interpretation of section 254(g) would eviscerate the rate integration provisions of that section by permitting carriers to charge customers in different states different rates as long as it charged all customers within that state the same rate. The specific language of section 254(g) requires, however, that subscribers be charged rates no higher than subscribers in different states, not within a state.<sup>76</sup> Accordingly, we reject AMSC's arguments on this point.

26. We further determine on this record that AMSC has not shown that we are required by section 10 of the Act to forbear from applying section 254(g) to AMSC.<sup>77</sup> Section 10(a) of the Communications Act provides that a carrier may petition the Commission for forbearance from any regulation, and that the Commission shall grant such petition if it determines that: (1) enforcement of the requirement is not necessary to ensure that rates are just and reasonable, and are not unjustly and unreasonably discriminatory; (2) the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.<sup>78</sup> Section 10(b) states that the Commission shall consider whether forbearance from enforcing the regulation will promote competitive market conditions, including the extent to which such

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<sup>74</sup> 47 U.S.C. § 254(g).

<sup>75</sup> *Report & Order*, 11 FCC Rcd at 9589, ¶ 54.

<sup>76</sup> 47 U.S.C. § 254(g).

<sup>77</sup> *See* 47 U.S.C. § 254(g).

<sup>78</sup> 47 U.S.C. § 160.

forbearance will enhance competition among providers of telecommunications services.<sup>79</sup> AMSC's petition does not address specifically any of these standards for forbearance nor does its petition set forth any substantive showing that would support the findings required by section 10 to justify exercise of our forbearance authority. Thus, AMSC has not shown that section 254(g) is not necessary to assure reasonable rates for its subscribers. Nor do its generalized allegations of cost differences show that its rates are not unreasonably discriminatory in light of the requirements of section 254(g). For the same reason, we are not persuaded that enforcement of section 254(g) is not necessary to protect consumers. Further, AMSC has not shown that forbearance from application of section 254(g) would serve the public interest. Finally, nothing in the record suggests that forbearance from applying section 254(g) to AMSC will promote competition. Accordingly, we reject AMSC's request for forbearance.

27. AMSC has separately filed a request for extension of the compliance deadline for rate integration.<sup>80</sup> The Common Carrier Bureau ("Bureau") granted AMSC an interim waiver of rate integration requirements pending further consideration of AMSC's request, and required that any rate changes it makes pending consideration of its request be consistent with achieving compliance with Section 254(g) and rate integration requirements.<sup>81</sup> The Bureau will address separately AMSC's extension request. AMSC may continue its present rate structure pending consideration by the Bureau of its request.

### C. Application of Rate Integration Policies in the Pacific Region

#### 1. Background

28. As noted, in the *Rate Averaging and Rate Integration Order*, we determined that Congress made rate integration applicable to all U.S. territories and possessions, including Guam, CNMI, and American Samoa, because the rate integration requirement of section 254(g) applied to "states" and because the Act defined states to include U.S. territories and possessions.<sup>82</sup> The Commission required providers of interexchange services to integrate services offered to subscribers in Guam, CNMI, and American Samoa no later than August 1, 1997. We stated that a provider serving these points should establish rates for services

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<sup>79</sup> *Id.*

<sup>80</sup> AMSC Request for Extension of Compliance Deadline (filed Aug. 23, 1996).

<sup>81</sup> *See Order and Order Seeking Comment*, DA-96-1538, CC Docket No. 96-61 (rel. Sept. 13, 1996) ("*AMSC Order*"). AMSC was initially required to implement rate integration by September 16, 1996.

<sup>82</sup> *Report & Order*, 11 FCC Rcd at 9596, ¶ 66.

consistent with the rate methodology it employs for services it provides to other states.<sup>83</sup>

## 2. Positions of the Parties

29. IT&E Overseas, Inc. ("IT&E"), an IXC that provides outgoing interstate interexchange service from Guam and CNMI to other U.S. points, states that competition in Guam and CNMI is currently thriving, but that regional carriers will be unable to compete with below-cost national carriers.<sup>84</sup> IT&E asks the Commission to monitor the effect of rate integration on competition in Guam and CNMI.<sup>85</sup> The Governor of Guam (jointly with GTA) as well as Sprint support this request.<sup>86</sup>

30. IT&E also requests forbearance from application of rate integration for the services it provides on Guam and CNMI so that it can charge higher rates to its subscribers in CNMI than on Guam due to the higher cost of serving CNMI.<sup>87</sup> IT&E explains that all outgoing calls from CNMI are placed through Guam. Because, until recently, there was no cable from CNMI to Guam, these calls had to be made using the expensive services of Comsat. According to IT&E, higher costs also result from non-cost based access charges of MTC, the incumbent LEC on CNMI.<sup>88</sup> IT&E states that any differential between the rates charged to subscribers on Guam and those charged to subscribers in CNMI for calls to the U.S. mainland is wholly attributable to the higher costs of serving CNMI, and therefore, rate integration will lead to rate increases for its subscribers on Guam. IT&E claims that forbore treatment would be consistent with the temporary waiver from rate integration requirements that the Commission recently granted AMSC for its mobile satellite service based on high cost of the service to offshore points.<sup>89</sup> Sprint states that it shares IT&E's concerns that the high cost of providing service between end users on Guam and CNMI may inhibit the carriers' ability to integrate these points immediately into those rate structures.<sup>90</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> Petition for Partial Reconsideration filed by IT&E Overseas, Inc. ("IT&E Petition") at 1-4.

<sup>85</sup> *Id.* at 1.

<sup>86</sup> Comments of Sprint on Petitions for Reconsideration ("Sprint Comments") at 16-17; Governor of Guam and GTA Comments at 6-7.

<sup>87</sup> IT&E Petition at 6.

<sup>88</sup> *Id.* at 5-6, 8.

<sup>89</sup> *Id.* at 7 (*citing AMSC Order*).

<sup>90</sup> Sprint Comments at 16-17.

31. The Governor of Guam and GTA oppose the petition stating that Guam must pay its fair share of the burden of rate integration even if that results in higher IT&E rates for Guam subscribers.<sup>91</sup> CNMI also opposes the petition on the ground that it is inconsistent with the Commission's goal of providing rate integration to U.S. Pacific territories. CNMI also states that IT&E's petition is distinguishable from the Commission's granting AMSC a temporary waiver because IT&E faces no technological constraints in adopting rate integration and, unlike AMSC, cannot claim to be a non-traditional provider of interexchange services.<sup>92</sup> Hawaii argues that IT&E fails to demonstrate that the forbearance criteria are met or that the higher rates it would charge correspond to higher costs.<sup>93</sup> Hawaii also argues that IT&E is no different from any other regional carrier, and that granting forbearance would open the door to other similarly situated regional carriers to seek the same treatment.<sup>94</sup> In reply comments, IT&E maintains that there are unique conditions in providing service to CNMI and Guam that warrant an exemption from rate integration.<sup>95</sup> It states that forbearance will not adversely affect consumers because it would still have to compete with the integrated rates of competitors.<sup>96</sup>

### 3. Discussion

32. As noted, the Commission required interexchange providers to implement rate integration for CNMI and Guam by August 1, 1997.<sup>97</sup> The providers' rate integration plans filed with the Common Carrier Bureau propose substantial decreases from the rate levels that were in effect in August 1996.<sup>98</sup> Thus, it appears that subscribers in these points will experience significant benefits from rate integration. We also anticipate that competitive forces will assure that subscribers in these points receive new service offerings. We will

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<sup>91</sup> Governor of Guam and GTA Comments at 7.

<sup>92</sup> CNMI Comments at 17-20.

<sup>93</sup> Hawaii Reply and Opposition at 10.

<sup>94</sup> *Id.* at 12.

<sup>95</sup> Consolidated Reply to Oppositions filed by IT&E Overseas, Inc. ("IT&E Reply Comments") at 3.

<sup>96</sup> *Id.* at 5-6.

<sup>97</sup> *Report & Order*, 11 FCC Rcd at 9605, ¶ 92.

<sup>98</sup> For example, AT&T's first minute standard residential dial station rate to Guam has dropped from \$2.19 in August 1996 to \$.29 as of July 15, 1997. See AT&T Tariff F.C.C. No. 27 at 1st Revised Page 24-71 (August, 1996), AT&T F.C.C. Tariff No. 27 at 5th Revised Page 24-2 (July, 1997). The same rate to CNMI dropped from \$2.15 to \$.29 as of July 15, 1997. See AT&T Tariff F.C.C. No. 27 at 1st Revised Page 24-74.

continue to keep abreast of developments concerning provision of service to offshore points to assure that the mandate of section 254(g) is achieved and that consumers receive the benefits of competition.

33. IT&E, on this record, has not shown that forbearance is justified so that it can charge higher rates to subscribers in CNMI than in Guam.<sup>99</sup> The alleged cost differentials of providing service to Guam and CNMI does not justify forbearance from enforcement of rate integration requirements on IT&E. As we stated in the *Report & Order*, we will not forbear from applying rate integration to smaller carriers serving high cost areas on the grounds that they may have difficulty competing against nationwide carriers.<sup>100</sup> IT&E has not demonstrated any basis for treating it differently from other carriers. IT&E has not shown that its rates to subscribers would be reasonable and nondiscriminatory, absent application of section 254(g). Nor has IT&E shown that application of section 254(g) is not necessary to protect consumers from discriminatory rates, or that it would be in the public interest, or that it would promote competition. IT&E has also failed to demonstrate that forbearance would be consistent with, or supported by, the Bureau's interim waiver to AMSC to consider its request for extension of time to comply.<sup>101</sup> The Bureau's decision did not address in any respect the merits of AMSC's request, nor does AMSC's waiver petition before the Bureau request forbearance. Accordingly, we reject IT&E's request for forbearance.

### III. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED that the Petition for Reconsideration and Clarification by GTE Service Corporation on behalf of its affiliated telecommunications companies, the Petition for Clarification, or, in the alternative, Reconsideration by US West, Inc., the Petition for Partial Reconsideration by IT&E Overseas, Inc., the Petition for Reconsideration by AMSC Subsidiary Corporation, the Petition for Reconsideration by AT&T Corporation, and the Petition for Clarification and Reconsideration of the State of Hawaii ARE DENIED to the extent discussed above and are otherwise deferred.

35. IT IS FURTHER ORDERED that the Motion for Partial Stay or Request for Extension filed by GTE Service Corporation is DISMISSED.

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<sup>99</sup> See 47 U.S.C. § 160.

<sup>100</sup> *Report & Order*, 11 FCC Rcd at 9587-9588, at ¶ 50.

<sup>101</sup> See *supra.*, ¶ 27.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "William F. Caton".

William F. Caton  
Acting Secretary