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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	

OPPOSITION OF THE STATE OF HAWAII

The State of Hawaii (the "State")[1] hereby opposes the petition for reconsideration of WorldCom, Inc ("WorldCom") filed on July 11, 1997 concerning the First Report and Order in the above-captioned proceeding.[2]

I. INTRODUCTION

WorldCom urges the Commission to forbear from enforcing the geographic rate averaging requirements of Section 254(g) of the Communications Act[3] with respect to the pass-

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[1] This opposition is submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

[2] Access Charge Reform, First Report and Order, CC Docket No. 96-262, FCC 97-158 (released May 16, 1997) ("Access Charge Order").

[3] 47 U.S.C. § 254(g); see also 47 C.F.R. § 64.1801 (1996).

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through to end-user subscribers of primary interexchange carrier charges ("PICCs") and other per-line charges paid by interexchange carriers ("IXCs").[4]

WorldCom made identical arguments in commenting on the Commission's Notice of Proposed Rulemaking in this docket. In its past pleadings in this docket, the State has strenuously objected to WorldCom's position, stating that forbearance from Section 254(g) was not justified.[5] Any, if any, deaveraging of access charges should not cause a deaveraging of end-user rates for interexchange services in violation of Section 254(g). The State submits that Section 254(g) prohibits the deaveraging of any subscriber rates based on interexchange service (including subscriber line charges), regardless of whether any carrier access charges are deaveraged. Geographic rate averaging mandates uniform subscriber rates in all geographical locations, regardless of whether these locations have disparate cost structures, including disparate access charge cost structures.

II. THE COMMISSION CORRECTLY CONCLUDED THAT FORBEARING FROM ENFORCING THE GEOGRAPHIC RATE AVERAGING REQUIREMENT OF SECTION 254(g) FOR THE PASS-THROUGH OF PER-LINE CHARGES PAID BY INTEREXCHANGE CARRIERS WOULD HARM CONSUMERS AND IS NOT JUSTIFIED

The State wholeheartedly agrees with the Commission's analysis in Paragraph 97 of the Access Charge Order, in which the Commission concluded that forbearance from Section

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[4] Petition for Reconsideration of WorldCom, Inc. at 22-23 (filed July 11, 1997).

[5] See, e.g., "Reply Comments of the State of Hawaii," CC Docket No. 96-262 (filed Feb. 14, 1997); Ex Parte Letter from Herbert E. Marks and James M. Fink, counsel for the State of Hawaii, to William F. Caton, FCC Secretary, CC Docket No. 96-262 (filed Jun. 19, 1997).

254(g) to permit IXCs to pass through flat-rated charges to subscribers on a deaveraged basis was not justified. The Commission stated that forbearance would:

> create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirement is unnecessary to ensure that charges are just and reasonable. In addition, because assessing subscribers flat-rated chargers on a deaveraged basis could lead to significantly higher rates for subscribers in high-cost areas, we find no basis in this record to conclude that it is unnecessary to enforce section 254(g) to ensure protection of consumers or to protect the public interest.[6]

Other petitioners agree with the Commission and the State that Section 254(g) forbearance is not warranted. For example, the Rural Telephone Coalition ("RTC") states in its petition:

> a persuasive showing has yet to be made to prompt the FCC to forbear from Section 254(g) of the Act -- and, in the RTC's view, the forbearance criteria will remain virtually impossible to satisfy for the foreseeable future.[7]

The Access Charge Order is but the latest instance where the Commission has considered and rejected calls to generally forbear from Section 254(g). For example, the Commission also concluded that general forbearance was unjustified in its August 7, 1996 Order in CC Docket

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[6] Access Charge Order at ¶ 97.

[7] Petition for Reconsideration of the Rural Telephone Coalition at 9 n.9 (filed July 11, 1997) (emphasis added).

96-61,[8] as well as in its rejection of AT&T's waiver petition.[9] The Commission should once again reject WorldCom's attempt to circumvent the clear mandate of Section 254(g).[10]

The very purpose of geographic rate averaging is to promote universal service by, if necessary, subsidizing the high costs of providing telephone service in rural areas with revenues from low-cost urban areas. Such cross-subsidies ameliorate the impact which regionally disparate costs -- including access costs -- otherwise impose on consumers in different parts of the country. Access charges, like wage rates and infrastructure costs, are just one of many types of costs incurred by IXCs in providing interexchange service. As the Commission noted in the Access Charge Order, "IXCs now pay access charges that often vary from location to location and from incumbent LEC to incumbent LEC, and still maintain geographically averaged rates."[11] Similarly, in the Rate Averaging Order, Congress was "fully aware of

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[8] 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, 9582-83 (1996) ("Rate Averaging Order").

[9] AT&T's Corp.'s Petition for Waiver and Request for Expedited Consideration, Order, CC Docket No. 96-61, DA 97-129 (rel. Jan. 17, 1997).

[10] Although the Commission is authorized to forbear from the geographic rate averaging requirement in certain situations, Congress made it clear that such forbearance authority should be used sparingly and only for "limited exceptions." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996). There is nothing in the record showing how an elimination of the geographic rate averaging requirement is likely to assure that users in communities with high-cost areas will receive service at the same rate levels as users in communities with low-cost areas. In other words, there is no showing of how the statutory mandate of Section 254(g) can be achieved by eliminating the regulatory rate averaging requirement.

[11] Access Charge Order at ¶ 97.

geographic differences in access charges when it adopted Section 254(g), and intended us to require geographic rate averaging even under these conditions."[12]

Congress codified the Commission's rate averaging and integration policies for the express purpose of ameliorating the adverse impact on subscribers of geographic variations in access costs and assuring that all Americans benefit from the advent of increased competition.[13] Geographical differences in carrier access costs is not a proper basis for avoiding a Congressional mandate that is based, in part, on the very fact that such costs do vary, and other costs may vary, between geographic areas.

III. CONCLUSION

Section 254(g) requires that all end-user charges remain geographically averaged and rate integrated. The very purpose of geographic rate averaging is to promote universal service -- to ensure that all Americans have affordable rates despite the fact that the costs of providing service (including access costs) vary significantly from one geographic location to

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[12] Rate Averaging Order, 11 FCC Rcd at 9583.

[13] The Commission has routinely acknowledged the regulatory distinction between access costs and subscriber charges. For example, this past February, the Commission determined that LECs may deaverage access-like charges to IXCs but that Section 254(g) requires IXCs to continue to geographically average subscriber charges. See Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs, Memorandum Opinion and Order on Reconsideration and Order Approving Cost Allocation Plan, AAD 94-119, DA 97-320, at ¶ 43 (Com. Car. Bur., Feb. 10, 1997) ("For IXCs, [access] rates are business costs which in addition to other costs are recovered from their subscribers through averaged rates.").

another. The Commission should, therefore, DENY that portion of WorldCom's petition for reconsideration that advocates the deaveraging of end-user (i.e., subscriber) rates based on the pass-through of carrier costs associated with deaveraged per-line carrier charges.

Respectfully submitted,

THE STATE OF HAWAII

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STATE OF HAWAII

August 18, 1997

CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 18th day of August, 1997, I have caused a copy of the foregoing "Opposition of the State of Hawaii" in CC Docket No. 96-262 to be served by first class, postage pre-paid mail to the persons listed below.

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