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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

APPLICATION FOR REVIEW

Margaret L. Tobey, P.C.
Phuong N. Pham, Esq.

Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, NW
Suite 400
Washington, DC 20036
(202) 887-4000
(202) 887-4288 (fax)

August 29, 1997

COUNSEL FOR IT&E OVERSEAS, INC.

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To: The Commission

APPLICATION FOR REVIEW

I. INTRODUCTION

Pursuant to Section 1.115 of the Rules of the Federal Communications Commission ("FCC" or the "Commission"), 47 C.F.R. § 1.115, IT&E Overseas, Inc. ("IT&E"), by its attorneys, respectfully submits this application requesting the Commission to review the Memorandum Opinion and Order ("MO&O") of the Deputy Chief of the Common Carrier Bureau (the "Bureau") acting under delegated authority in the above-captioned proceeding, which responds to IT&E's final rate integration plan, filed on June 2, 1997, and imposes certain additional obligations on interexchange carriers ("IXCs") serving Guam and the Commonwealth of the Northern Mariana Islands to comply with the Commission's rate integration rule. See MO&O, CC Docket No. 96-61 (Com. Car. Bur., released July 30, 1997).¹ In its MO&O, the

¹ Section 1.115(d) of the FCC's Rules, 47 C.F.R. § 1.115(d) (1995), requires applications for review of any Bureau action to be filed within 30 days following the date of public notice of such action. Since the Bureau's MO&O was released on public notice on July 30, 1997, this Application for Review therefore is timely filed.

Bureau denied IT&E's asserted right to adopt uniform rate schedules which apply equally to all of IT&E's subscribers, but which may contain rates that vary based on the location to which a call is terminated. Id. ¶ 19. The Bureau also denied IT&E's asserted right to offer temporary promotions and private line services on different terms and conditions based on a subscriber's geographic location. Id.²

As discussed herein, the Bureau's action directly conflicts with the express statutory language and legislative purpose of Section 254(g) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 254(g), as well as with the Commission's own rules and policies, including the Report and Order, CC Docket No. 96-61 (released Aug. 7, 1996), implementing Section 254(g). Accordingly, IT&E urges the Commission to reverse the Bureau's action and affirm IT&E's final rate integration plan, as proposed and submitted to the Commission on June 2, 1997.

II. The Bureau Erred in Prohibiting Rates That Vary Based on the Terminating Location of a Call

In both its preliminary and final rate integration plans, filed on February 3 and June 2,

² The Bureau further directed IT&E to integrate its private line services by September 1, 1997, and to file by August 15, 1997, a plan to achieve such rate integration. IT&E accordingly filed a supplement to its final rate integration plan on August 15, 1997, stating that its private line rates have been and continue to be in conformance with the FCC's rate integration rule. See Letter from M.L. Tobey and P.N. Pham, Counsel to IT&E, to R.M. Keeney, Chief, Com. Car. Bur., at 1 (Aug. 15, 1997). IT&E noted, however, that the application of the rate integration rule to private line services is inconsistent with the Commission's exemption of private line services from the geographic rate averaging rule. Id. at 2.

1997, respectively, IT&E asserted that the rate integration rule, as codified in Section 254(g) of the Act, 47 U.S.C. § 254(g), and as implemented in Section 64.1701(b) of the FCC's rules, 47 C.F.R. § 64.1701(b), does not prohibit an IXC from adopting a uniform rate schedule which applies equally to all of the IXC's subscribers, but which may contain rates that vary based on the terminating location of a call. See IT&E Preliminary Rate Integration Plan, at 2 (filed Feb. 33, 1997); IT&E Final Rate Integration Plan, at 2 (filed June 2, 1997). This argument was based on the literal language of the statute, which provides that "a provider of interstate interexchange 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." § 47 U.S.C. 254(g). Despite this clear statutory language, the Bureau rejected IT&E's view and concluded that allowing IXCs the flexibility to set rates that vary based on the call termination location would be "directly contrary to the goals of rate integration for offshore points and would permit carriers to charge excessive rates for calls to specific offshore points." MO&O, ¶ 19 (footnote omitted). The Bureau noted that Congress intended the rate integration requirement of Section 254(g) to incorporate the Commission's existing rate integration policy. Id. The Bureau further claimed that the rate integration policy of the Commission "historically has required IXCs to incorporate individual states, such as Alaska, into an entire nationwide rate regime, and not just into an originating rate regime." Id.

The Bureau failed to acknowledge, however, that the plain language of Section 254(g) requires only that an IXC provide service to all of its subscribers in each state "at rates no higher than the rates charged to its subscribers in any other State." 47 U.S.C. § 254(g). In fact, nothing in the language of Section 254(g) authorizes the Commission to prohibit IXCs from setting rates

that vary based on call termination location.

It is well established that the “plain meaning of legislation should be conclusive, except in the ‘rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.’” United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1988) (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)). Indeed, the statutory language provides the best expression of legislative intent, and, in the absence of some ambiguity in the statutory language, there is no reason to suspect that Congress did not mean what the language of the statute says. See id. at 241, 246. Nonetheless, despite the unambiguous meaning of Section 254(g), the Bureau apparently has concluded that a straightforward interpretation of Section 254(g), as proposed by IT&E, would directly conflict with Congressional intent.

Contrary to the Bureau’s suggestion, however, nothing in the legislative history of Section 254(g) evidences a Congressional intent to deny IXCs the flexibility to set rates that vary based on the call termination location. Other than the plain language of Section 254(g), the only indication of legislative intent can be found in the Joint Explanatory Statement accompanying the Telecommunications Act of 1996, in which the Congressional conferees stated that Section 254(g) “simply incorporates . . . the existing practice of geographic rate averaging and rate integration for interexchange, or long distance, telecommunications rates to ensure that rural customers continue to receive such service at rates that are comparable to those charged to urban customers.” S. Rep. No. 230, 104th Cong., 2d Sess. 1, 132 (1996). Thus, it appears that the sole legislative intent underlying Section 254(g) was to ensure that rural and urban subscribers receive comparable rates, and not to impose any further restrictions on the ability of IXCs to set

their rates.

While it is true that the Congressional conferees intended Section 254(g) to incorporate the Commission's then existing rate integration policy, it is at best unclear whether such a policy prohibited IXCs from setting rates that vary based on the call termination location.³ Moreover, even if such a policy existed, it is unclear whether the Congressional conferees in fact were aware of this policy. Although the Bureau maintains that the Commission's rate integration policy historically has prohibited IXCs from setting rates that vary based on the call termination location, it fails to cite to any prior Commission policy statement or case precedent supporting such a tenuous proposition. Indeed, prior to the adoption of the Report and Order in the above-captioned proceeding implementing Section 254(g), IXCs freely were permitted to set rates that vary based on the call termination location. For example, AT&T, MCI, and Sprint historically have maintained separate rates for calls terminating in Puerto Rico and the Virgin Islands, as opposed to calls terminating elsewhere in the United States. See, e.g., AT&T Tariff FCC No. 27, at 24-2, 24-15 (effective Feb. 17, 1996) (Attachment 1); MCI Tariff FCC No. 1, at 18.4 (effective Apr. 1, 1996) (Attachment 2); MO&O, ¶ 18.⁴ Furthermore, the Commission on numerous

³ It should be noted that, at the time of enactment of Section 254(g), the Commission's existing rate integration policy did not extend to Guam and the CNMI.

⁴ In its MO&O, the Bureau suggested that even though AT&T traditionally has maintained a separate rate structure for Puerto Rico and the Virgin Islands, such a rate structure "generally cover[s] distances that match appropriate mileage bands used for calls within the mainland and Hawaii and reflect[s] the rates for those mileage bands." MO&O, ¶ 5 n.13. IT&E respectfully disagrees with this conclusion. If, in fact, AT&T's separate rates for Puerto Rico and the Virgin Islands traditionally have matched its rates for calls involving comparable distances between other U.S. locations, there would have been no need to maintain a separate rate structure for Puerto Rico and the Virgin Islands in the first place. Indeed, (Continued ...)

occasions has reviewed extensively AT&T's interstate, interexchange tariffs and has concluded that such tariffs are consistent with geographic rate averaging and rate integration principles. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5892 (1991); Report and Order, CC Docket No. 96-61, ¶ 13 (released Aug. 7, 1996).

Thus, the Bureau's strict prohibition against rates that vary based on the call termination location represents a significant, unwarranted expansion of not only the limited scope of Section 254(g), as contemplated by Congress, but also the Commission's own rate integration policy as it existed at the time of enactment of Section 254(g). Moreover, such a strict prohibition directly contravenes the Commission's well-established deregulatory policies with respect to the interstate, interexchange marketplace. See, e.g., Policy and rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1 (1980). Indeed, the Commission has long determined that IXC's generally lack sufficient market power to charge unlawful rates because customers can always seek service from competitors if rates exceed prevailing market levels. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Sixth

contrary to the Bureau's suggestion, AT&T's rates for calls terminating in Puerto Rico and the Virgin Islands historically have been significantly higher than its rates for calls involving comparable distances between other U.S. locations. For example, although the distance between San Juan, Puerto Rico and Honolulu, Hawaii is approximately 5,718 miles and thus would otherwise fall within AT&T's previously existing mileage band of 4251 - 5750 miles, AT&T's rates for calls originating in Honolulu and terminating in San Juan historically have been much higher than its rates for calls between other U.S. locations that involve the same distance. See AT&T Tariff FCC No. 27, at 24-2, 24-15 (effective Feb. 17, 1996) (Attachment 1).

Report and Order, 99 FCC 2d 1020, 1028 n. 29 (1985).⁵ Consequently, the Commission's deregulation of interstate, interexchange services reflects a deliberate intent to afford IXCs maximum flexibility to respond to the demands of the competitive marketplace and to experiment with price and service offerings. In contrast, the Bureau's strict prohibition against rates that vary based on the call termination location reflects a basic mistrust of the competitive forces driving the domestic interstate, interexchange market and thus undermines the Commission's fundamental rationale for deregulating such market.

III. The Bureau Erred in Extending Rate Integration to Temporary Promotions and Private Line Services

In both its preliminary and final rate integration plans, IT&E sought to reserve the right to offer private line services and temporary promotions on different terms and conditions to different groups of subscribers within its service area. See IT&E Preliminary Rate Integration Plan, at 2; IT&E Final Rate Integration Plan, at 2. The Bureau nonetheless denied such an asserted right and stated that IT&E failed to provide any support for such a right. See MO&O, ¶ 19. However, contrary to the Bureau's assertion that IT&E failed to explain or support its view regarding the application of the FCC's rate integration rule to private line services and temporary promotions, IT&E in fact noted in both its preliminary and final rate integration plans that such a view was consistent with the Commission's application of its geographic rate

⁵ For this reason, IT&E disagrees with the Bureau's conclusion that acceptance of IT&E's position "would permit carriers to charge excessive rates for calls to specific offshore points." MO&O, ¶ 19. Moreover, the FCC has ample enforcement tools to ensure that IT&E's rates are just and reasonable. See 47 U.S.C. §§ 201-209.

averaging rule to private line services and temporary promotions. IT&E also cited to Paragraph 24 of the Commission's Report and Order in the above-referenced proceeding, in which the FCC expressly declared the following:

Thus, except for temporary promotions and private line services, interexchange telecommunications service offerings will be available on the same terms throughout a carrier's service area. In addition, we do not believe based on the record that allowing geographically deaveraged private line rates will produce unjust or unreasonable or unjustly or unreasonably discriminatory rates, as it is our current practice and has not raised such concerns. Thus, we find that enforcement of the geographic rate-averaging requirement for . . . temporary promotions, and private line services is not necessary to ensure that charges, practices, and classifications are just and reasonable and not unjustly and unreasonably discriminatory.

Report and Order, ¶ 24 (emphasis added).

In light of the FCC's express exemption permitting private line services to be offered on a geographically deaveraged basis, IT&E fails to understand the Bureau's basis for precluding IT&E from offering private line services and temporary promotions at rates and on terms and conditions that may vary based on a subscriber's geographic location. Indeed, the Bureau's refusal to exempt private line services and temporary promotions from the rate integration rule directly conflicts with the Commission's exemption of such services from the geographic rate averaging rule. In particular, exempting private line services and temporary promotions from the geographic rate averaging rule, but not from the rate integration rule, effectively would preclude IXCs serving U.S. offshore areas from doing what other IXCs that serve the U.S. mainland already are permitted to do -- that is, provide private line services and temporary promotions at rates and on terms and conditions that vary based on a subscriber's geographic location.

IV. CONCLUSION

Based on the foregoing, IT&E urges the Commission to review and reverse the Bureau's denial of IT&E's asserted right to set rates that vary based on the terminating location of a call and to offer private line services and temporary promotions at rates and on terms and conditions that may vary based on a subscriber's geographic location.

Respectfully submitted,

IT&E OVERSEAS, INC.

By: 
Margaret L. Tobey, P.C.
Phuong N. Pham, Esq.

Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, NW
Suite 400
Washington, DC 20036
(202) 887-4000
(202) 887-4288 (fax)

August 29, 1997

Its Attorneys

ATTACHMENT 1

24.1.1. Rates - Domestic Message Telecommunications Service

A. Intra-Mainland, Mainland-Alaska and Mainland-Hawaii Service
 Rate Schedules

Usage Rates: Applicable before 2/17/96

N

RATE MILEAGE	Dial Station					
	DAY		EVENING		NIGHT/WEEKEND	
	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD
1-10	0.2400	0.2400	0.1400	0.1400	0.1200	0.1200
11-22	0.2400	0.2400	0.1400	0.1400	0.1300	0.1300
23-55	0.2500	0.2500	0.1600	0.1600	0.1300	0.1300
56-124	0.2600	0.2600	0.1600	0.1600	0.1400	0.1400
125-292	0.2700	0.2700	0.1600	0.1600	0.1400	0.1400
293-430	0.2700	0.2700	0.1700	0.1700	0.1400	0.1400
431-925	0.2700	0.2700	0.1700	0.1700	0.1400	0.1400
926-1910	0.2700	0.2700	0.1700	0.1700	0.1400	0.1400
1911-3000	0.2800	0.2800	0.1700	0.1700	0.1500	0.1500
3001-4250	0.3100	0.3100	0.2200	0.2200	0.1700	0.1700
4251-5750	0.3400	0.3400	0.2300	0.2300	0.1700	0.1700

Usage Rates: Applicable on or after 2/17/96*

RATE MILEAGE	Dial Station					
	DAY		EVENING		NIGHT/WEEKEND	
	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD
1-10	0.2500 I	0.2500 I	0.1400	0.1400	0.1200	0.1200
11-22	0.2600 .	0.2600 .	0.1500 I	0.1500 I	0.1300	0.1300
23-55	0.2700	0.2700	0.1600	0.1600	0.1300	0.1300
56-124	0.2700	0.2700	0.1600	0.1600	0.1400	0.1400
125-292	0.2800	0.2800	0.1600	0.1600	0.1400	0.1400
293-430	0.2800	0.2800	0.1800 I	0.1800 I	0.1400	0.1400
431-925	0.2800	0.2800	0.1800 .	0.1800 .	0.1500 I	0.1500 I
926-1910	0.2800	0.2800	0.1800 .	0.1800 .	0.1500 .	0.1500 .
1911-3000	0.3000	0.3000	0.1800 I	0.1800 I	0.1600 I	0.1600 I
3001-4250	0.3200 .	0.3200 .	0.2200	0.2200	0.1700	0.1700
4251-5750	0.3500 I	0.3500 I	0.2300	0.2300	0.1700	0.1700

* - Customers in the geographical areas served by the Local Exchange Companies where AT&T provides the billing, listed below, will receive the February 17, 1996 rates:

Illinois Bell	NYNEX - New York
Michigan Bell	NYNEX - New England
Ohio Bell	Pacific Bell
Indiana Bell	Nevada Bell
Wisconsin Bell	Southwestern Bell
Bell Atlantic - New Jersey	U. S. West
Bell Atlantic - Pennsylvania	GTE
Bell Atlantic - Delaware	United Telephone
Bell Atlantic - Maryland	Southern New England Telephone
Bell Atlantic - Virginia	CENTEL
Bell Atlantic - District of Columbia	CONTEL
Bell Atlantic - West Virginia	ALLTEL
Bell South - Southern Bell	
Bell South - South Central Bell	Cincinnati Bell

For all other areas, the February 17, 1996 rates will be applied to Customer's usage as billing becomes available, but no later than March 30, 1996. Until billing becomes available, the rates in effect prior to February 17, 1996 will apply.

Certain material previously found on this page can now be found on Page 24-2.1.

24.1.1. Rates - Domestic Message Telecommunications Service
 (continued)

C. Mainland and Hawaii - Puerto Rico and U.S. Virgin Islands
 Service Rate Schedules

Usage Rates: Applicable before 2/17/96

N

Dial Station

MILEAGE RATE BAND	DAY		EVENING		NIGHT/WEEKEND	
	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD
BAND 1	0.2700	0.2700	0.1700	0.1700	0.1400	0.1400
BAND 2	0.2800	0.2800	0.1700	0.1700	0.1500	0.1500
BAND 3	0.3100	0.3100	0.2200	0.2200	0.1700	0.1700
BAND 4	0.5700	0.5000	0.3800	0.3300	0.2900	0.2600

Usage Rates: Applicable on or after 2/17/96*

Dial Station

MILEAGE RATE BAND	DAY		EVENING		NIGHT/WEEKEND	
	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD	INITIAL PERIOD	EACH ADD'L PERIOD
BAND 1	0.2800 I	0.2800 I	0.1800 I	0.1800 I	0.1500 I	0.1500 I
BAND 2	0.3000 .	0.3000 .	0.1800 I	0.1800 I	0.1600 I	0.1600 I
BAND 3	0.3200 I	0.3200 I	0.2200	0.2200	0.1700	0.1700
BAND 4	0.5700	0.5000	0.3800	0.3300	0.2900	0.2600

* - Customers in the geographical areas served by the Local Exchange N Companies where AT&T provides the billing, listed below, will receive the February 17, 1996 rates:

Illinois Bell	NYNEX -New York
Michigan Bell	NYNEX - New England
Ohio Bell	Pacific Bell
Indiana Bell	Nevada Bell
Wisconsin Bell	Southwestern Bell
Bell Atlantic - New Jersey	U. S. West
Bell Atlantic - Pennsylvania	GTE
Bell Atlantic - Delaware	United Telephone
Bell Atlantic - Maryland	Southern New England Telephone
Bell Atlantic - Virginia	CENDEL
Bell Atlantic - District of Columbia	CONDEL
Bell Atlantic - West Virginia	ALLDEL
Bell South - Southern Bell	
Bell South - South Central Bell	Cincinnati Bell

For all other areas, the February 17, 1996 rates will be applied to Customer's usage as billing becomes available, but no later than March 30, 1996. Until billing becomes available, the rates in effect prior N to February 17, 1996 will apply.

ATTACHMENT 2

CUSTOMIZED BUSINESS COMMUNICATIONS SERVICE
SECTION C - SERVICE DESCRIPTIONS AND RATES

3. METERED USE SERVICE

02 Option A (Execunet) (Cont.)

.021 Monthly Recurring Charges (Cont.):

.0211 Intercity Facilities Usage Charges (Cont.):

.02111 Per Minute Base Rates (Cont.):

.021112 From U.S. Mainland and Hawaii to Puerto Rico and U.S. Virgin Islands' Per Minute Usage Charges: Apply to all Execunet Service calls which originate in the cities set forth in Section C-12, Table V, Part A, and terminate in Puerto Rico and the U.S. Virgin Islands.

PER MINUTES USAGE CHARGES:

MILEAGE RATE BAND	BUSINESS DAY		EVENING		NIGHT & WEEKEND	
	1st Min.	Add'l Min.	1st Min.	Add'l Min.	1st Min.	Add'l Min.
Band 1	\$.2699	\$.2699	\$.1699	\$.1699	\$.1399	\$.1399
Band 2	.2799	.2799	.1699	.1699	.1499	.1499
Band 3	.3099	.3099	.2199	.2199	.1699	.1699
Band 4	.5672	.4975	.3724	.3249	.2899	.2599

- Band 1 - Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.
- Band 2 - Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wisconsin, Wyoming.
- Band 3 - California, Idaho, Montana², Nevada, Oregon, Washington.
- Band 4 - Hawaii

.021113 Time of Day Discount Periods: For calls within the United States and to Puerto Rico and the U.S. Virgin Islands, Execunet offers an Evening Discount as well as a Night and Weekend Discount at the rates specified in Sections C-3.021111 and C-3.021112 for calls placed within the time periods as set forth in the figure below.

	MON	TUES	WED	THUR	FRI	SAT	SUN
8:00 AM TO 4:59 PM	BUSINESS DAY RATE						
5:00 PM TO 10:59 PM	EVENING RATE						EVE- EVENG
11:00 PM TO 7:59 AM	NIGHT & WEEKEND RATE						

On MCI Recognized National Holidays (Schedule A), as defined in Section A of this Tariff, all domestic direct dialed calls will be free of charge for those customers who have subscribed to the Friends & Family Option B and who make calls to Members of their Calling Circles for whom MCI is the Primary Interexchange Carrier (PIC).³ In addition, Friends & Family Option B (Section C-3.026122) and Friends & Family Worldwide (Section C-3.025113) customers' domestic Personal 800 Plan R calls on Schedule A Holidays will be free of charge and these customers will receive a 44 percent discount on domestic FGD calls between 8:00 a.m. and 4:59 p.m. on Schedule B Holidays in addition to the Friends and Family Option B discounts as defined in Section C-3.026122.

¹ Until further notice, Option A (Execunet) service to Puerto Rico and the U.S. Virgin Islands is limited to subscribers of MCI's Dial "1" Long Distance Service only.

² For future information only. Service is currently not available from this state.

³ This discount is available only to customers who have subscribed to Friends & Family Option B prior to April 1, 1996.

CERTIFICATE OF SERVICE

I, Eileen O'Hara, an employee of Akin Gump Strauss Hauer & Feld, LLP, certify that the foregoing APPLICATION FOR REVIEW was hand-delivered on August 29, 1997, to the following parties:

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, DC 20554

Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Kathleen B. Levitz
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, DC 20554

James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Patrick J. Donovan
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Susan P. Ness
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

Neil Fried
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Rachelle Chong
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554


Eileen O'Hara