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

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

OPPOSITION TO APPLICATION FOR REVIEW

The Commonwealth of the Northern Mariana Islands ("Commonwealth"),¹ by its attorneys, hereby opposes the Application for Review ("Application") filed by IT&E Overseas, Inc. ("IT&E") in the above-captioned proceeding on August 29, 1997.

As demonstrated below, IT&E's Application fails to demonstrate that the Memorandum Opinion and Order² released by the Common Carrier Bureau ("Bureau") on July 30, 1997 conflicts either with the statutory language of Section 254(g) of the Telecommunications Act of 1996 ("1996 Act")³ or with the Commission's long-established rate integration policies. IT&E's Application is consequently without merit and must be denied.

¹ This Opposition is submitted by the Office of the Governor on behalf of the people of the Commonwealth.

² Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Memorandum Opinion and Order, CC Dkt. No. 96-61 (rel. July 30, 1997) ("Memorandum Opinion").

³ Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 254(g).

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**I. THE BUREAU PROPERLY REJECTED RATES
BASED UPON THE TERMINATING LOCATION OF A CALL**

In its Application, IT&E asserts that the Bureau may not prohibit it from “setting rates that vary based on call termination location” since Section 254(b) only requires that carriers provide services “at rates no higher than the rate charged to its subscribers in any other State.” IT&E Application at 3. Contrary to IT&E’s misconceived reading of Section 254(g), a terminating-based ratemaking methodology would fundamentally undermine the rate integration policy, and the Bureau properly rejected it as inconsistent with both Section 254(g) and the Commission’s long-established rate integration policies.

As the Bureau correctly concluded, IT&E’s termination-based regime would permit a carrier to “charge its subscribers in every state a higher rate for calls destined for one state than the carrier assessed for calls of the same distance and duration to other states.”⁴ As the Bureau further noted, “[T]his [result] is directly contrary to the goals of rate integration for offshore points [citation omitted] and would permit carriers to charge excessive rates for calls to specific offshore points.”⁵

Such location-based pricing variations, of course, are precisely the evil which the Commission’s rate integration policy is intended to prevent. The rate integration policy is intended to reduce proportionately higher rates to off-shore or insular areas by requiring carriers to utilize a uniform, nationwide ratemaking methodology under which comparable rates are

⁴ See Memorandum Opinion at 9.

⁵ Id.

charged for calls traversing comparable distances.⁶ If the Bureau had allowed IT&E to establish a different methodology for each terminating location which it served, IT&E could have set rates which would discriminatorily vary from rates for comparable calls of similar distance, duration and time of day. Such a terminating-based ratemaking methodology would not facilitate a nationwide averaging of rates, reducing rates to offshore locations (which is the very purpose of rate integration). Instead, such an approach would permit disproportionately higher rates to high-cost, off-shore points, undermining the goal of rate integration.

IT&E's argument that terminating-based rates comport with the express language of Section 254(g) is totally unjustified. As the Bureau recognizes, "Congressional conferees made it clear that Section 254(g) was intended to incorporate the Commission's existing rate integration policy."⁷ Terminating-based rates clearly do not comply with the existing rate integration policy; instead, they are totally inconsistent with it and would render the policy a nullity. Therefore, IT&E's argument was properly rejected by the Bureau.

IT&E also claims that the Memorandum Opinion "directly contravenes the Commission's well-established deregulatory policies" concerning the interexchange marketplace. IT&E Application at 6. This argument ignores the fact that rate integration constitutes a general exception to deregulation and represents a policy determination, both on the part of Congress and

⁶ See In re AT&T ("Equalization Filing"), 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.")

⁷ Id. at 9-10.

the Commission, to ensure affordable rates to off-shore, higher-cost locations.

While the Commission has been in the process of deregulating certain aspects of the telecommunications marketplace, and while the 1996 Act contains important deregulatory mandates, the policy of rate integration has always stood on its own, and was never repudiated under the Commission's deregulatory policies. Indeed, Section 254(g) of the 1996 Act contains an unmistakable mandate that the Commission shall adopt rules codifying the nationwide rate integration policy. Clearly, both the Commission and Congress have determined that the rate integration policy must be retained in the face of deregulation to protect consumers in the U.S. insular areas. Thus, IT&E's argument that rate integration somehow conflicts with deregulation -- and thus should not be applied to preclude rates based on terminating location -- is unavailing.

II. THE BUREAU'S DECISION REQUIRING IT&E TO INTEGRATE ITS PRIVATE LINE AND PROMOTIONAL OFFERINGS WAS PROPER

In its Application, IT&E (citing Paragraph 24 of the Report and Order) repeats its claim that it does not have to rate integrate its private line services and promotional offerings since such services are exempted from rate averaging. IT&E Application at 7-8. IT&E's argument ignores the fact that the Commission has clearly stated that rate integration applies to all interexchange services. The argument also fallaciously attempts to blend what is fundamentally two separate policies with separate regulatory requirements.

Section 254(g) requires the rate integration "of interexchange telecommunications services," a group which plainly includes private line services and promotional offerings.⁸ It is also well

⁸ See § 153(46) (defining "telecommunications service" as the offering of telecommunications for a fee to the public) and 47 U.S.C. § 153(22) (defining "interstate communication" to include all services provided between U.S. points), cited in Policy and Rules

established under the Commission's policies that rate integration encompasses all interexchange services, without exception.⁹ Accordingly, there is no statutory or historical basis for IT&E's claims that it may exempt private line services and promotional offerings from rate integration.

Unable to justify its claims under the Commission's rate integration policies, IT&E is instead forced to argue that it may offer private line services and promotional offerings at non-uniform terms as a matter of rate averaging. IT&E Application at 7-8. A distinction must be drawn between what is permissible under these two related but distinct policies. The Commission's Report and Order recognizes that rate integration and rate averaging are distinct and different policies, addresses them in separate sections of the decision,¹⁰ and establishes separate requirements applicable to each.¹¹ In particular, although the Report and Order exempted private line services and promotional services from rate averaging, it distinctly required that interexchange carriers include all services in rate integration.¹²

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, at ¶ 66 (1996) ("Report and Order"). Neither of these statutory definitions specify any exceptions.

⁹ See id. at ¶ 47, citing In re Integration of Rates and Services, Memorandum Opinion, Order and Authorization, 61 FCC 2d 380, 392 (1976) (requiring AT&T to include all of the services it provided to Hawaii within rate integration) and In re Integration of Rates and Services, Memorandum Opinion, 62 FCC 2d 693, 695 (1976) (declining to limit rate integration to certain services); see also id. at ¶ 52 (stating that rate integration will apply to all domestic interexchange telecommunications services as defined in the 1996 Act and to all providers of such services).

¹⁰ Compare id. at ¶¶ 6-46 (concerning rate averaging) with ¶¶ 47-73 (concerning rate integration).

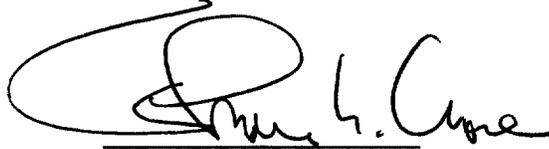
¹¹ Compare id. at ¶¶ 9-12, 27-30, 38-41, 42-46 (rate averaging requirements and state authority over intrastate services) with ¶¶ 52-54, 66-73 (rate integration requirements).

¹² Id. at ¶ 52. This requirement is consistent with Section 254(g)'s mandate that services be provided "at rates no higher than the rates charged . . . in any other State." Section 254(g) makes

III. CONCLUSION

For the reasons stated herein, the Commission must deny IT&E's Application.

Respectfully submitted,



Dave Ecret
Special Assistant to the Governor
for Telecommunications and Utilities
OFFICE OF THE GOVERNOR
Commonwealth of the Northern
Mariana Islands
Capitol Hill
Saipan, MP/USA 96950

Thomas K. Crowe
Michael B. Adams, Jr.
LAW OFFICES OF THOMAS K. CROWE,
P.C.
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 973-2890

COUNSEL FOR THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

Dated: September 15, 1997

no exceptions. The Commission's distinction is consistent with the legislative history of Section 254(g), which indicates that while Congress permitted for limited exceptions from rate averaging, it did not allow for such exceptions to rate integration. See Conference Report at 132, reprinted in 1996 U.S.C.C.A.N. at 143.

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 Opposition to Application for Review was sent by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (*), this 15th day of September, 1997, to the following:

The Honorable Reed E. Hundt *
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

The Honorable Rachelle B. Chong *
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

The Honorable Susan Ness *
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

The Honorable James H. Quello *
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

Regina Keeney *
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Senator Daniel K. Inouye
SH-722
Hart Senate Office Building
Washington, D.C. 20510-1102

Senator Ted Stevens
SH-522
Hart Senate Office Building
Washington, D.C. 20510-0201

Representative Robert A. Underwood
414 Cannon House Office Building
Washington, D.C. 20515-5301

Representative Eni F. H. Faleomavaega
2422 Rayburn Building
Washington, D.C. 20515

Patrick Donovan *
Federal Communications Commission
Common Carrier Bureau Room 518
1919 M Street, NW
Washington, D.C. 20554

Neil Fried *
Federal Communications Commission
Common Carrier Bureau Room 518A
1919 M Street, NW
Washington, D.C. 20554

Sherille Ismail *
Federal Communications Commission
International Bureau
Suite 800
2000 M Street, NW
Washington, D.C. 20554

William J. Bailey *
Federal Communications Commission
Common Carrier Bureau Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Allen P. Stayman
Territorial and International Affairs
U.S. Department of the Interior
1849 C Street, N.W. M.S. 4328
Washington, D.C. 20240

Pheobe Isaies
Junta Reglamentadora de
Telecomunicaciones de Puerto Rico
Juan Calaf #400
Suite 439
Hato Rey, PR 00918-9903

Claudius Moore
Public Services Commission
U.S. Virgin Islands
Post Office Box 40
Charlotte Amalie, St. Thomas
Virgin Islands 00804

Margaret Tobey *
Phuong N. Pham
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, NW
Suite 400
Washington, DC 20036

E. E. Estey
Government Affairs Vice President
AT&T
1120 20th Street, Suite 1000
Washington, DC 20036

James Stoke
AT&T
295 North Maple Avenue
Room 1130LI
Basking Ridge, NJ 07920

John W. Katz
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

Charles W. Totto
Division of Consumer Advocacy
Department of Commerce and Consumer
Affairs
Post Office Box 541
Honolulu, HI 96809

Robert F. Kelley
Office of the Governor
Post Office Box 2950
Agana, Guam 96910

Robert M. Halperin
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

F. Gordon Maxson
Director, Regulatory Affairs
GTE Service Corporation
1850 M Street, NW Suite 1200
Washington, DC 20036-5801

Eric Fishman
Fletcher, Heald & Hildreth 11th Flr.
1300 North 17th Street
Rosslyn, VA 22203

Jamshed K. Madan
Georgetown Consulting Group, Inc.
456 Main Street
Ridgefield, CT 06877

Paul Untalan
GTA
Post Office Box 9008
Tamuning, GU 96931

Carl Thorsen
Principal
Coopers & Lybrand Consulting
333 Market Street
San Francisco, CA 94105

Tedson Meyers
Coudert Brothers
Government of Guam
1627 I Street, NW Suite 1200
Washington, DC 20006

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle, LL.P.
Suite 700
One Thomas Circle
Washington, DC 20005

Robert J. Maloney
PCI Communications, Inc.
135 Chalan Santo Papa
Agana, GU 96910

Kent Nakamura
General Attorney
Sprint
1850 M Street, NW Suite 1100
Washington, DC 20036

Herbert E. Marks
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
Post Office Box 407
Washington, D.C. 20044-0407

Ric Novak
Saipan Cable Telecommunications, Inc.
530 West O'Brien Drive
Agana, Guam 96910

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

John M. Borlas
IT&E Overseas, Inc.
Post Office Box 24881
GMF, GU 96921

Randall Slocum
MCI
1200 South Hayes
Arlington, VA 22202

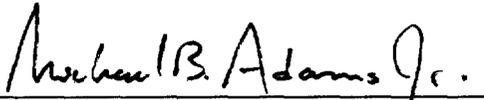
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Department 0360001
Washington, DC 20006

Larry Sampson
NECA
Director, Member Service
100 South Jefferson Road
Whippany, NJ 07981

Danny Santos
Sprint Guam
816 North Marine Drive
Suite 206
Tamuning, GU 96911

Mr. Del E. Jenkins
Micronesian Telecommunications Corp.
P.O. Box 306
Saipan, MP 96950

J. Jeffrey Mayhook
V.P. Legal & Regulatory Affairs
GST Telecom, Inc.
4317 NE Thurston Way
Vancouver, WA 98662


Michael B. Adams, Jr.