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SEP 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 29, 1997

BY HAND

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

**Re: PrimeCo's Motion for Stay of Enforcement of Rate Integration,
CC Docket No. 96-61 and CCB/CPD 97-54**

Dear Mr. Caton:

Transmitted herewith on behalf of the State of Alaska are an original and four copies of the "Comments of the State of Alaska" in the above-referenced proceeding. As requested in the September 25, 1997 Public Notice, two copies are being sent to Wanda Harris of the Common Carrier Bureau and one copy is being sent to International Transcription Service, to the Chief Competitive Pricing Division, and to Jeanine Poltronieri of the Wireless Bureau.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

John W. Katz

Enclosures

- cc: Wanda Harris (with 2 copies)
- International Transcription Service (1 copy)
- Chief, Competitive Pricing Division (1 copy)
- Jeanine Poltronieri (1 copy)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Policy and Rules Concerning the)	
Interstate, Interexchange Marketplace)	CC Docket No. 96-61
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	
)	
Motion for Stay of Enforcement filed by)	CCB/CPD 97-54
PrimeCo Personal Communications, LP)	

COMMENTS OF THE STATE OF ALASKA

The State of Alaska ("Alaska" or "the State") wishes to comment briefly on the motion for stay filed by PrimeCo Personal Communications, LP ("PrimeCo") on September 23, 1997. The State believes that no general stay of the application of geographic rate averaging and rate integration rules to commercial mobile radio service ("CMRS") providers is necessary or appropriate.

These comments are necessarily brief because of the short period of time the State has had to prepare them. The Commission's public notice establishing the pleading cycle was released late on September 25, 1997.

As a preliminary matter, the State believes that an assumption underlying the motion is incorrect. The motion appears to assume that geographic rate averaging and rate integration rules will apply to CMRS providers for the first time beginning on October 3, 1997. That date is the effective date of the Commission's Order on Reconsideration in which the Commission ruled on various petitions for reconsideration of the Report and Order in which

the geographic rate averaging and rate integration rules were promulgated. Yet, the Order on Reconsideration denied or deferred the petitions for reconsideration and did not change any Commission rule. The geographic rate averaging and rate integration rules, therefore, have been unchanged and in effect since the Fall of 1996.

It is also clear, and in the State's view, has been clear for some time, that geographic rate averaging and rate integration are applicable to all interexchange services. The Telecommunications Act of 1996 itself is clear on this point. The new Section 254(g) it added to the Communications Act unambiguously states that geographic rate averaging and rate integration are to apply to all interexchange services.¹ It should have been apparent to CMRS providers since at least February 1996 that they would be required to comply with these fundamental statutory requirements.²

The Commission put everyone on notice of its view in this regard in the initial rulemaking notice. In its March 25, 1996, Notice of Proposed Rulemaking, the Commission said (at paragraph 67) that, with respect to geographic rate averaging:

we propose to adopt a rule requiring that the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. As established by the 1996 Act, this requirement

¹ Geographic rate averaging applies to all intrastate and interstate interexchange services; rate integration applies to all interstate interexchange services.

² CMRS providers cannot successfully argue that Congress did not view their long distance offerings as the provision of an interexchange service. There is nothing in the Telecommunications Act of 1996 that would support such a view, and there is clear evidence to the contrary. For example, CMRS providers that are affiliated with a Bell Operating Company are permitted to provide interLATA interexchange services as a result of Section 271(g)(3), which defines "incidental interLATA services" as including the interLATA provision of CMRS.

would apply to all providers of interexchange telecommunications services.

The Commission also indicated its intention to apply rate integration requirements to all interstate interexchange services. It said (at paragraph 76):

As required by the 1996 Act . . . we propose to adopt a rule requiring 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."

These positions were confirmed in the Report and Order adopting the geographic rate averaging and rate integration rules. The Commission then stated:

As required under the 1996 Act, our rule will apply to all providers of interexchange telecommunications services and to all interexchange "telecommunications services," as defined in the Act. (Paragraph 9)

This [rate integration] rule will apply to all domestic interstate interexchange telecommunications services as defined in the 1996 Act, and all providers of such services." (Paragraph 52)

Moreover, the Commission specifically rejected the notion that rate integration applied only to traditional wireline providers of interexchange services when it rejected AMSC's suggestion that it not be subject to rate integration.

AMSC is required by the plain terms of the 1996 Act to integrate the rates charged . . . Further, as with rate averaging, we interpret Section 254(g) to extend to all providers of interexchange service the rate integration policy that previously was applied only to AT&T. AMSC's services would appear to fall within the definition of interstate interexchange telecommunications services subject to Section 254(g). (Paragraph 54)

The application of Section 254(g) requirements should not have been a surprise that arose just recently. Indeed, GTE's Petition for Reconsideration and Clarification, filed September 16, 1996, raised the issue of how affiliation rules would apply to CMRS providers. (See pages 6-8 of that petition.) GTE seemed to understand that its CMRS operations would

be subject to rate averaging and rate integration requirements (although it challenged the Commission's determination that all GTE affiliates should be required to integrate their rates together).

Thus, because the language of the Telecommunications Act of 1996 is clear, and because the Commission's Notice of Proposed Rulemaking and Report and Order were equally clear, that geographic rate averaging and rate integration were to apply to all interexchange services, the State disagrees with PrimeCo that there are procedural deficiencies in the application of these rules to CMRS providers.

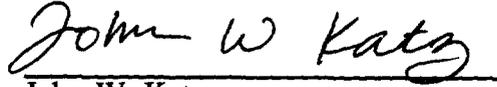
The State also disagrees with PrimeCo that grant of its motion would not injure other parties and would serve the public interest. Congress codified geographic rate averaging and rate integration, and required the Commission to adopt implementing rules within a very short period of time (six months), because it felt that these were fundamentally important national telecommunications policies. It felt that these policies were necessary to provide consumers in rural and high cost areas access to interexchange services at affordable and nondiscriminatory rates. These policies are thus designed to provide all consumers, wherever they are located, with the lowest possible prices for interexchange services. The State does not believe that the public interest would be served by a Commission ruling that is contrary to the plain language of Section 254(g).

For these reasons, the State believes that interexchange CMRS is subject to geographic rate averaging and rate integration requirements and that PrimeCo's motion requesting a stay

of the application of those rules to CMRS providers should be denied.³

Respectfully submitted,

THE STATE OF ALASKA



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September 29, 1997

³ PrimeCo is concerned that the application of the Commission's "affiliation" rule to it will require the integration of the interstate interexchange service rates of PrimeCo's different ultimate "parent" entities -- Bell Atlantic Corporation, AirTouch Communications, Inc., and U S West, Inc. The State understands the concern that requiring unaffiliated ultimate "parents" to integrate their rates, because they may share control of a provider of interexchange services, may raise antitrust or other anti-competitive concerns. PrimeCo indicates that it will be filing a petition for reconsideration which will address this point. The State has no objection to a limited extension of the period of time to comply with the rate integration rule with respect to CMRS entities like PrimeCo which are controlled by more than one ultimate "parent" and those "parents" are otherwise not commonly controlled.

This waiver should not, however, excuse PrimeCo (or any similarly situated firm) from failing to satisfy geographic rate averaging and rate integration requirements with respect to its own operations. It would merely not require PrimeCo to integrate its interexchange rates with its ultimate "parents" and not require the otherwise unaffiliated "parents" to average or integrate their interexchange service rates among themselves. Such an extension should not extend beyond the period in which the Commission considers the relevant petitions for reconsideration.

CERTIFICATE OF SERVICE

I, Marideth J. Sandler, hereby certify that on this 29th day of September 1997, copies of the foregoing Comments of the State of Alaska in CC Docket No. 96-61 and CCB/CPD 97-54 were served on the following by hand to:

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

The Honorable James J. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
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The Honorable Susan Ness
Federal Communications Commission
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Marideth J. Sandler