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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)
as amended)

CC Docket No. 96-61

**REPLY OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION AND FORBEARANCE**

The Cellular Telecommunications Industry Association ("CTIA") hereby respectfully submits its reply to the oppositions filed by the States of Hawaii and Alaska (collectively, the "States") to the petitions for reconsideration and forbearance of the Commission's Reconsideration Order in the above-captioned proceeding.^{1/} Hawaii and Alaska provide no legitimate legal or policy justifications for their requests that the Commission mechanically apply the rate integration policy to Commercial Mobile Radio Services ("CMRS"), and they fail to address the myriad of practical difficulties and anti-competitive impacts

^{1/} 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, First Memorandum Opinion and Order on Reconsideration, FCC 97-269 at ¶ 18 (rel. July 30, 1997) ("Reconsideration Order").

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associated with such application. To the contrary, the States' filings emphasize the morass that would be created by attempting to fit CMRS into an entirely inappropriate regulatory framework.

Alaska and Hawaii recite the original policy grounds that led Commission to grant the rate integration policy but both States fail to explain why those issues are relevant in the context of CMRS. For instance, while Alaska notes that rate integration "is necessary to protect consumers in Alaska and other off-shore locations from having to pay more for interexchange services than other Americans," it provides no evidence that CMRS providers -- who have never been subject to rate integration -- have been charging discriminatory rates in such locations.^{2/} Similarly, Hawaii asserts, without any factual basis whatsoever, that failure to enforce Section 254(g) "would severely harm consumers."^{3/}

^{2/} Opposition of the State of Alaska, filed October 31, 1997, at 11 ("Alaska Opposition").

^{3/} Opposition of State of Hawaii, filed October 31, 1997, at 10 ("Hawaii Opposition"). There are at least six CMRS providers actively providing service in Hawaii, including Honolulu Cellular, GTE Wireless, VoiceStream, PrimeCo Personal Communications, Ameritech Cellular, and AT&T Wireless. There are also multiple carriers in Alaska, including MACTel Cellular, AT&T Wireless, MUS Cellular One, Arctic Slope Telecommunications Cellular, Cellulink/Pacific Telecommunications Cellular, Bristol Bay Cellular Partnership, Cellular Connection, Copper Valley

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This attempt by Alaska and Hawaii to preclude any exceptions to the rate integration policy cannot be countenanced absent some compelling evidence that Congress intended the policy to apply in the CMRS context or that expansion of rate integration in this manner would serve some useful purpose. Such evidence simply does not exist. As CTIA and the other petitioners demonstrated, Section 254(g) and its legislative history show no intent by Congress to expand rate integration. Indeed, if Congress had wished to place CMRS back under the strictures of rate regulation from which it had just been released, it would have said so explicitly. The Commission completely failed to explain why it believes Section 254(g) grants it authority to extend the rate integration policy to CMRS, and Alaska and Hawaii likewise provide no legitimate basis for the unprecedented action taken by the agency.

Neither Hawaii nor Alaska explain why thoughtless application of the rate integration policy in any conceivable circumstances would serve the public interest. Even if rate integration is a valuable policy in the context of traditional

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Cellular, and RJL Cellular Partnership. Two additional PCS licensees plan to offer service in the future. The reality of robust wireless competition stands in stark contrast to the States' unsupported claims of consumer harm.

landline interexchange services, it possesses none of these laudable attributes when imposed on CMRS providers. To the contrary, the application of rate integration could impede CMRS providers' ability to respond to competition, require elimination of innovative calling plans, and disrupt existing business relationships. These results are not only burdensome for CMRS providers, they would also work to the detriment of wireless consumers. Alaska and Hawaii have provided no basis - because there is none - to reverse the deregulation that has been accorded to CMRS providers since 1994.

Rather than provide a valid basis for the imposition of rate integration on CMRS providers, the States' filings highlight the serious problems with attempting to apply the rate integration policy to an industry to which it was never intended to apply. For example, at the same time that Hawaii chastises CMRS providers for failing to assist the Commission in determining which CMRS calls are interexchange, it acknowledges that in many instances attempts to categorize such calls are impossible.

In this regard, Hawaii states that a "possible type of interexchange calling could be a CMRS call between two mobile telephone switching offices ("MTSOs"), or between an MTSO and a landline LEC facility, that are located in different licensed

service territories."^{4/} Often, however, because of traffic flow concerns, two or more MTSOs are located in the same market within miles of each other. In addition, an MTSO and a LEC facility could be in the same LEC local calling area even if they are in different wireless geographic areas.

Hawaii's blanket assertion that an "obvious example of interexchange calling is a CMRS call that 'roams' between the CMRS systems of two different CMRS providers" is simply wrong.^{5/} Most roaming occurs between the systems of adjacent carriers, which frequently are located within the same State. For example, given the several wireless carriers serving Hawaii, a subscriber resident on one of the Hawaiian islands would be considered a "roamer" when using his or her phone on another of the islands. By definition, such calls would not be "interstate, interexchange," and the rate integration requirement would not apply. Likewise, a wireless caller may roam on the system of another provider within his own provider's service territory because the signal from the other carrier is stronger or because his provider has not completed the build out of its facilities in

^{4/} Hawaii Opposition at 22.

^{5/} Id.

that market. Moreover, just because a caller is roaming in another market does not mean that it will incur long distance charges or even higher airtime charges. Finally, while Hawaii believes that "roaming" means "interexchange," it has declined to answer CTIA's question about whether the charges would have to be integrated with the rates of the roamed-upon system or those of the home system.

The only complaint Hawaii is able to summon about using major trading areas ("MTAs") to determine which calls are local and which are interexchange is that "MTAs are very large in size."⁶ Given the Commission's recent designation of MTAs as the appropriate local calling area for CMRS,⁷ however, intra-MTA calls are not "interexchange" calls for rate integration purposes. While CTIA believes that many inter-MTA calls also cannot be classified as interexchange - for example when there are wide-area calling plans in such regions - there is no basis whatsoever for forcing CMRS providers to correlate their service areas with those of landline LECs.

⁶ Id. at 23.

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 at ¶ 1036 (1996).

While Hawaii is correct that CMRS providers are "most familiar with their wireless networks and their billing arrangements," that does not mean that CMRS providers can produce technical information that would allow the Commission to determine easily how to apply rate integration to such services. As the petitions amply demonstrate, each provider's service plans and networks are different and often there are wide disparities in the systems of a single provider from region to region. This diversity is not a bad thing and usually is used by consumers to their benefit. The Commission should reject Hawaii's and Alaska's calls for conformity.

The Commission casually extended the rate integration policy to CMRS without any record basis for such extension. Hawaii and Alaska have not enhanced the record in terms of providing legitimate grounds for the Commission's action. Nor have the States' supplied any justification for denying the petitioners' requests for forbearance from enforcement of Section 254(g). As CTIA stated, because of the vigorous competition in the CMRS industry, integration is not necessary to ensure that CMRS rates and policies are just, reasonable, and not unreasonably discriminatory. Nor is enforcement of the rate integration rule necessary to protect consumers. CMRS providers have heretofore priced interstate services in a non-discriminatory manner, with

no harm to consumers, even though wireless carriers have not historically been subject to rate integration policies. Finally, abstaining from rate integration enforcement would be in the public interest because it would allow CMRS providers to price their services competitively and offer innovative rate plans

CONCLUSION

In light of the substantial evidence set forth in the petitions for reconsideration that rate integration does not, cannot, and should not apply to CMRS, and the failure of Alaska and Hawaii to rebut this evidence, the Commission should reconsider that portion of its Reconsideration Order that applies to CMRS. If, however, the Commission determines that the rate integration rule applies to CMRS under certain circumstances,

then it should forbear from applying the rule to CMRS providers,
for the reasons set forth above and in the petitions for
reconsideration.

Respectfully submitted,

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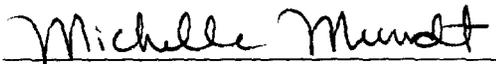
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