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December 15, 1997

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
1919 M St, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-61 Policy and Rules Concerning Interstate Interexchange Marketplace Implementation of Section 254(g), and

Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Response to Rate Integration Reply Submission by the American Samoa Government on Nov. 26, 1997

Dear Madam Secretary:

The American Samoa Government (ASG) has submitted on November 26, 1997 a Reply to Comments on the Rate Integration Plan it submitted on October 1, 1997, pursuant to the "Commission's "permit-but-disclose" *ex parte* rules. Comments were submitted by the undersigned George A. Wray of American Samoa and others to ASG's plan on October 16, 1997.

The undersigned's Comments to this latest ASG Reply are herewith respectfully submitted on the same *ex parte* basis, as the submitted Reply, as follows:

The adversarial remarks in ASG's Reply of November 26, 1997, compel some observations. In its Reply, ASG first raises the issue of its credibility on two issues:

ASG CLAIMS ITS RATES ARE "REASONABLE AND AFFORDABLE" AND THAT IT IS "STRONGLY COMMITTED TO FULL IMPLEMENTATION OF RATE INTEGRATION".

First, ASG claims that it is dedicated to provide long distance telephone service to the people of American Samoa "at reasonable and affordable prices" (at page 2). At the moment this is being said, ASG is charging the people of American Samoa four times the residential rate that all other Americans pay to communicate within the nation - 60 cents per minute in this U.S. Territory versus an average of less than 15 cents per minute that the rest of the nation has available to it.

As ASG speaks of "reasonable and affordable" long distance telephone rates, it makes no pretense in declaring that what those words means is solely up to their own unfettered discretion. And in their view of the rate integration regulations, this discretion is unreviewable by any other party or entity. (Reviewed in Comments submitted by the undersigned on October 16, 1997 at Page 3. herein after referred to as 'Comments")

What is "reasonable and affordable" now to ASG is a long distance rate that provides ASG with an almost 400 % revenue over total costs of operation including local exchange.

Here is a small phone operation with $10.5 million dollars in annual revenue, and $2.5 million dollars in overall annual expenses, and no long term debt as all equipment has been priority paid in full out of past revenue. The profitability is enormous by any standards: $8 million in excess revenue generated from $2.5 million in expenses, with virtually all of this profitability coming from long distance phone rates, which volume is growing every year. See Comments, Exhibits A and C.

A recent ASG audit reported over $12 million dollars taken out of phone revenue in the last few years by ASG, unbudgeted and spent by ASG on desultory expenses unrelated to tho phone operation. This excludes the $2.1 million it spends annually on other government debt unrelated to the phone operation. ($1.5 m for an office building debt and $.6m for a loan repayment). See Comments, Exhibit C

Thus, what is "reasonable and affordable" in ASG's view, is that long distance phone rate that provides ASG with $7 to $8 million dollars each year in extra money to spend on its affairs. Regardless of what ASG says, this is the reality.

This Commentator submits that ASG's claim in this Reply that it has "reasonable and affordable prices" does not meet any known standards. In the same paragraph in its Reply where it claims that the 60 cent rates it now

charges are "reasonable and affordable", it tells the FCC with no conscious reflection, about the "relatively low median income" of the people from whom it is exacting these rates. (ASG Reply at page 2.) The low income of the people is recognized and used here to suggest the reasonableness of ASG lacking competition and being in possession of a monopoly. But the low income of the people is not recognized and used in the exercise of this monopoly, ASG charges its low income people four times what the more affluent people of the nation must pay. The raising of this issue is not just advocacy that is maladroit. It is instructive of the mindset of those who use the freedom of this monopoly to set these rates in their own discretion.

This single minded profit taking mentality of ASG is not just an observation and characterization of this Commentator. This is how the manager of ASG's own phone operation describes their efforts. In language seldom if ever used in articulating the goals of a government agency, the Director of Communications (ASOC) in a confidential Memorandum to the Governor on rate integration, tells how he has arranged for

> ".... the Office of Communications <u>to grow and prosper</u> as a self-designated common carrier". (Comments, Exhibit A, at page 2).

How usual is it to put "prosper" in a description of a government service agency? In this confidential and candid Memorandum. ASG exhibits no difference from a private company that acts like an old time monopoly: mesmerized by habits of uninhibited profit, and focused on a concern for the maintenance of its monopoly power.

In view of all this, ASG Counsel makes an incomprehensible statement: "ASG is not a profit-maximizing corporation; it is a democracy and the representative of the people of American Samoa." (ASG Reply at page 7) This is what should be. This is not what is happening.

Indeed, every other U.S. government entity in today's world talks with enthusiasm and encouragement about the advantage of modern telecommunications, and making all of these new facilities accessible at the lowest possible cost to all of the people in their jurisdiction. We see none of these expressions in ASG submissions to the FCC or elsewhere.

Secondly, ASG raise the issue of its credibility of its commitment "to the full implementation of the letter and spirit of the rate integration statute". (ASG Reply at Page 2). It describes this commitment as "strong".

This "strong commitment" is consistent with ASG's desire for unfettered profit, and readily understandable when one realizes that ASG sets its rate integration up in the context of no competition, which no one else has done. ASG takes the position that rate integration for them only means one thing: that they can charge any rate, high as they wish, in an uncontrolled manner, providing they charge every U.S. point at the same rate.

That ASG embraces a literal construct of rate integration which runs bizarrely counter to the Congressional intention of the 1996 Telecommunications Act, was discussed at length from page 3 to page 7 of the Comments previously submitted.

ASG ADMITS CURTAILING COMPETITION, CREATING SERIOUS ANTITRUST ISSUES

ASG has other concerns. In commenting in its Reply on the importance of its providing "reasonable and affordable prices" for telephone service for the American Samoan people. ASG goes on to say: "This is a particularly important service in the light of the fact that no independent carrier has sought to provide... originating long distance service in American Samoa". (ASG Reply, page 2).

But ASG does not tell the FCC how they apparently and deliberately arranged for the carriers to agree not to "set up shop in American Samoa":

In the confidential Memorandum to the Governor (cited above) the Director of ASOC explains as follows:

> "I stated that unlike Guam and Saipan that do have U.S. carriers presence in their territory, the Government of American Samoa has all four (4) major carriers,AT&T, MCI, SPRINT and GTE Hawaii as distant correspondents. In other words, they all operate at the other end. There is really no legal basis for this. Instead, through tactful negotiations, they agreed not to set up shops in American Samoa." [1] Comments, Exhibit A, at page 3.

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[1]In the next sentence in this Memorandum, the Director of ASOC adds the comment: "Rate integration could change this, if the FCC orders these carriers to implement the rate integration decree."

The antitrust implications of these "tactful negotiations" and "agreements" not to compete, are yet to be explored. [2]

ASG CLAIMS CONSENSUS TO ITS "RATE INTEGRATION PLAN" WHERE CONSENSUS DOES NOT EXIST.

ASG's counsel claims in its Reply (at page 2) that no commentator challenged or disagreed with ASG's rate integration plan which existed solely in the "eliminations of distinctions between its rates for service" to all U.S. points.

This Commentator challenged and disagreed with this approach which seeks to hang on to the literal words of Section 254(g), and their mechanistic application to American Samoa's limited venue.

Obdurately ignored is the Joint Explanatory Statement by Congress on the intention of Section 254(g), that the Commission's Rules on enforcing this Section shall comply with the policies of the 1976 Offshore Points Proceeding (61 FCC 2d 380, 1976), which required rate integration of the islands "into domestic patterns".

Existing U.S. "domestic patterns" are in no way consistent with the ASG rate integration plan which consists solely of charging any single rate which ASG wishes to all U.S. points. ASG's rates are untouched by the possibility of competition for outgoing calls, which circumstance they admit they have arranged (as set out above); and, in their view, it is also untouchable by the possibility of control by the FCC, because the literal language of Section 254(g) protects them from all interference in their rate making.

Accordingly, ASG wants the FCC to look at the literal words of Section 254(g) and nothing else. In this way ASG can retain its high profit level from its monopoly operation. In this way ASG is looking to have this rate integration proceeding shore up their pricing power, instead of bringing restraints.

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[2] Antitrust liability is both organizational and individual. Since this evidence of possible and apparent antitrust violations has come before the Commission in documents submitted as a part of this official proceeding, it is respectfully suggested that the Commission may consider that it has an obligation to refer this matter to the Department of Justice, and that the public can depend on the appropriate response of the Commission.

The other Commentators did not comment on this simplistic ASG rate integration plan. It was not because they agreed with it, but because in the words of this ASG Reply, it was none of their business: The Carriers are responsible "to discharge their own obligations to implement rate integration", not the obligations of ASG. (ASG Reply at page 5).

In sum, ASG's rate integration plan has not been agreed to by consensus, as ASG's counsel has attempted to make it appear.

Another consensus claim was trumpeted by ASG's counsel in regard to ASG's proposed restructuring of ASOC, which simply brings ASOC into compliance with the basic FCC regulations that it has ignored in the past 32 years. There was never any possibility of disagreement.

None of this "restructuring" is part of rate integration. Wrapping the embarrassment of 32 years of ignoring FCC regulations in the cloak of a rate integration plan now, is exactly what it appears to be: an aggressive face saving device.

ASG WANTS TO BARGAIN WITH THE COMMISSION.

ASG Counsel can, and in this Commentator's view, is obligated by law to bring ASOC into FCC compliance now. The obligation is immediate. The obligation is not contingent. And for ASG's Counsel to state as he has in this Reply, that he will only bring ASOC into basic FCC compliance when, and if, the FCC approves ASG's one sentence rate integration plan, is as brazen a ploy as one will ever see in these proceedings. Listen to Counsel"s bargaining language at page 3 of ASG's Reply:

> "...ASG respectfully requests that the Commission approve its [rate integration] proposals so it may begin the complex process of implementing these plans."

It must be noted that ASG has already fully implemented the only rate integration proposal it put before the Commission. To comply with rate integration, ASG said through its Counsel, all it had to do was charge the same rate to all U.S. points. It has done this two months ago. It is completed So in ASG's view, their rate integration effort is finished.

What, then, is meant or implied by this quoted statement above, is that ASG's Counsel is requiring FCC approval of its rate integration plan, before he acts to bring ASG into compliance with any prior existing FCC obligations.

"These plans" which ASG has yet to implement, are those relating to compliance with FCC Regulations, now in default for over 32 years. These "plans" should have been implemented long before rate integration came on the scene. There is no requirement of prior approval to submit applications for the basic FCC authority to operate, which ASG has so long neglected. [3]

So why is the FCC's approval of its rate integration plan being held as a bargaining chip by ASG's Counsel? Why does ASG's Counsel think he can force FCC approval of ASG's rate integration plan, before he acts to bring ASG into compliance with the long ignored basic FCC laws and regulations?

This blatant hustling of the Commission surely has little precedent.

ASG'S JOINING NANP IS ESSENTIAL AND ASG's CONTINUED REFUSAL REMAINS UNEXPLAINED

All the carriers responded to ASG"s rate integration plan by saying that ASG has made a significant omission in refusing to join the North American Numbering Plan, which provide domestic area code protocols for access under which the entire telecommunications industry of the Nation operates.

LIMITED TO BASIC RATES TO AMERICAN SAMOA.

The carriers have pointed out that ASG's joining NANP is a *sine qua non* for inclusion in the domestic rate patterns. These patterns now include heavy reliance on discounted rate plans for domestic use which requires adoption of NANP protocols for the complex access and billing purposes. Without NANP, the people calling American Samoa cannot have access to these rate plans.

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[3] This default was an admittedly deliberate stance to avoid FCC regulation of its monopoly, so ASOC could maximize uncontrolled profits. (See ASOC Memorandum, Comments, page 8, and Exhibit A.)

Counsel for ASG does not address this. Instead, he makes the following statement in its Reply at page 7:

> "... the benefits of coming within the NANP are minimal... and is unnecessary to achieve the majority of the benefits of rate integration - - lower basic rates for calls between U.S. points and American Samoa, matching the basic rates for service between other domestic points."

This is misleading, as ASG's Counsel talks only of "basic rates", but omits discussion of the impossibility of domestic rate plans being made available in calls to American Samoa, which can be significantly lower than "basic rates". [4]

EXCLUSION FROM DOMESTIC NATIONWIDE 800 NUMBER PLANS.

This statement is also misleading because it does not address the 800 toll free access availability from America Samoa for all U.S. 800 number customers. While ASG suggests that the problem is only one of price: the FCC should order the $2.15 per minute for interNational 800 number service to American Samoa to be lowered to the domestic rate of 12. 5 cents.

Even if this were possible, ASG does not address the major stumbling block explained by all the carriers as one of domestic marketing inclusion. The 800 numbers are marketed throughout the U.S. in domestic protocols for billing and routing purposes. American Samoa as an interational point would be excluded from this. It is difficult to see how the carriers can be forced to market 800 number inclusion for American Samoa. As a practical consequence, the U.S. Territory of American Samoa will be excluded from 800 number access that is enjoyed by every other American Community.

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[4] For outgoing calls from American Samoa to the rest of the Nation, the people of American Samoa have to deal with the uncompetitive ASOC. To achieve comparable rate plans similar to those that are popularly marketed by the major carriers for calls within the Nation, the people have no choice but to ask the FCC to set comparable outgoing domestic rates levels for American Samoa, to be enforced on ASOC as a dominant carrier.

The importance of access to all domestic 800 numbers cannot be over emphasized. To any rural or insular U.S. community, 800 numbers make up for being so far out from urban centers. Indeed, use of these numbers have become so basic in American society to the process of providing information, whether of commerce or public service information, that no other telephone number is often available other than an 800 number.

For instance, service support centers for manufacturers of machinery and equipment, computers and software are often only available on 800 numbers with no other access being offered. Public health groups offering aid for sufferers of particular health problems are available only on 800 numbers with no alternate number being offered, so confident is everyone that 800 toll free service is available to all Americans. This exclusive reliance on 800 numbers for customer and public service continues to grow.

The deprivation of domestic 800 numbers to the people of American Samoa is a serious disability. Unless we are able to be included when a nationwide 800 number is being offered to a carrier customer, we will not have this service. ASG's counsel refuses to deal with the details of this problem, in blithe references to carriers protocol and accounting problems.

## THE UNEXPLAINED $3.5 MILLION PROBLEM

ASG still does not provide a reasonable or reliable answer as to why it wants to penalize its community by not joining NANP and having a domestic area code.

ASG only talks of a purported $3.5 million dollar expense that will be incurred in joining NANP and thereby obtaining a domestic area code.

Commentators on October 16, 1997, noted that this expense was an unsupported declaration by ASG. No a single detail was offered. Commentators invited ASG to explain this cost. ASG in its Reply, ignored these requests for substantiation, and simply repeats the statement that:

> "ASG's opposition to coming within the NANP is intended to save the people of American Samoa an expense of $3.5 million or more, which in ASG's view is a cost that is not likely to be justified by the benefits to the people of American Samoa." (ASG Reply at page 6)

In reply the following points can be shortly stated:

1) ASG has a conflict of interest. The money they don't spend on a domestic area code, is the money they keep for other purposes. Not joining NANP puts money in their pocket. ASG's credibility is seriously challenged on this point.

The ASOC that gives us this $3.5 million cost for getting a domestic area coder, is the same ASOC that published in the islands the bogus claim that ASG needed a "$100 million fiber optic cable" in order to have a domestic area code. Comments, at page 17.

When this was publicly challenged as "nonsense", the claim was quietly dropped. The $3.5 million could well be much the same sort of claim.

2) The people of American Samoa are already being "taxed" twice this amount every year in rates that provide excess revenue for ASG of over $7 million annually. So there is no added expense to the people. The "burden" is already being imposed. ASG clearly has the revenue to pay this $3.5 million. Even if it did not, the equipment purchases necessary are available for reasonable monthly payments.

3) The $3.5 million is a reasonable expense for the overall benefits to all concerned. Under rate integration, each carrier has to bear the cost of its own part in making it happen. No one is excused. ASG is not excused when the FCC determines that a domestic area code is necessary to bring about the goals of rate integration, which include full access to domestic 800 toll free numbers on a par with the rest of the Nation.

4) In the first place, it does not appear reasonable or necessary that there should be anywhere near a $3.5 million dollar expense for ASOC to convert to a domestic area code. ASOC already has a protocol set up which separates domestic U.S. calls from international calls. To direct dial a U.S. point from American Samoa, the caller dials 1+1 as the prefix to a U.S. domestic area code. International calls to non U.S. points require the normal 0+1+1 used in the U.S. Surely, it cannot be a great expense to change the two "ones" to a single "one" for accessing in the normal domestic protocol. There is no evidence that the current digital switches cannot be used for domestic area codes. Then, what creates this claimed $3.5 million expense? No one knows.

ASOC's opposition to joining NANP and providing a domestic area code for the people, remains a mystery for which there is no rational explanation.

One can only speculates as to the private fears that ASOC has in joining NANP. Perhaps, ASOC perceives that if it joins NANP, it will lose control over setting international accounting rates from American Samoa to other countries because ASOC assumes it will become part of country "1". This is an unfounded fear. ASG can belong to NANP, and still be free to negotiate international rates from American Samoa. Belonging to NANP does not compromise its ability to hold itself out as an international point for accounting purposes with other countries.

Perhaps the answer is in what the Director of ASOC recently said in a two hour interview with the Publisher of the Territory's largest newspaper. The Publisher reported back in an article on December 8, 1997, discussing why he had not published the results of this interview. This article is attached here as Exhibit 1. The Publisher stated in these printed remarks:

> "At any rate, I will share with you one thing I learned in my two hour briefing with Director of Communications, Alexi Sene. He said that if they changed the name of the North American Numbering Plan to the United States Numbering Plan, ASOC would drop its opposition to joining the Plan.
>
> "His statement undercuts ASOC's position that the NANP would be too costly to join. Is it a matter of cost or geographic linguistics?
>
> "Like so many other aspects of this issue, what appears to be so, or what people and companies claim to be so, apparently bears little relation to what is actually so."

The real reason that lies behind ASOC's strange refusal to join the NANP, may never be known. What is known is that obtaining a domestic area code will enable this U.S. Territory to conform to all the market driven protocols that create a cohesive and equally accessible telecommunication system for all the inhabitants of this Nation.

NANP appears to be the platform upon which this accessibility has grown, and so much has been invested in it, that NANP appears to be the platform for future growth. If American Samoa does not get on board now, when?

The people of American Samoa should not be deprived of this nationwide platform, merely because of a parochial refusal to join NANP that defies rational explanation; other than it is wrongly perceived as a profit benefit to ASOC in trying to maintain itself as an international point for accounting purposes. However, maybe the provincial problem with the NANP's name is really at the heart of the matter. It is as good an explanation as any.

THE FCC's COMMENTS ON THE REQUIREMENT OF JOINING NANP.

Finally, in trying to avoid the move to a domestic area code and joining NANP to accomplish this, ASG depends heavily on the comment made in the August 7, 1996, FCC Memorandum, Opinion and Order in this docket. There, the FCC observed in Paragraph 57, based on the evidence it had on the record at the time:

> "The Working Group resolutions urge that rate integration for services provided to Guam and the Northern Marinas should take place concurrently with, or shortly after, the inclusion of Guam and the Northern Marinas into the NANP, the implementation of Feature Group D service, and the GTA's revision to its access charge structure. All three events are expected to occur by July 1, 1997. We do not view these developments as preconditions for rate integration of services provided to these points. Rather, the statute requires rate integration regardless of whether these developments occur. However, we believe that these developments will facilitate rate integration. Inclusion of Guam and the Northern Marinas in the NANP will help carriers integrate them into their Nationwide service plans."

Thus, ASG claims that this comment supports their notion that rate integration for American Samoa does not require their joining NANP.

As it turns out, what appeared to be true of Guam and the Northern Marinas, is not true of American Samoa. American Samoa has presented a different working problem for rate integration than existed with these other two territories.

Guam and the Northern Marinas showed no resistance to a domestic area code in joining NANP. The FCC, therefore, did not have the opportunity to review any input from the carriers as to the obstacles of rate integration for a domestic point without a domestic area code. The ramifications of truncated service that would occur if NANP was not joined, was not in evidence before the Commission when these comments were made.

For the first time now, this evidence has been presented to the FCC, occasioned by ASG's unique refusal to participate in NANP.

The evidence shows that without a domestic area code:

!) The domestic rate plans of the various carriers which are available for other domestic points will not be available in connection with American Samoa calls. At best they will be consigned to some "basic" rate, which may not carry the same discount opportunities. American Samoa will not be on an equal footing with rest of the Nations and its territories

2) American Samoa will be excluded from the normal marketing mechanisms of domestic inclusion and availability of all 800 domestic toll free access. American Samoa will not be on an equal footing with rest of the Nations and its territories in accessing this immense range of advice and information available to the U.S. population through the toll free domestic system. As part of the population of this Nation, the people of American Samoa are entitled to be part of this "domestic pattern" of telecommunication service.

With this new evidence on the record, we request the Commission to respond in the same fashion that it has throughout these rate integration proceedings, in adopting policies and requirements that meet and make possible, the legislated goals of the Telecommunications Act of 1996.

We request the Commission to find, that based on this new evidence, rate integration for American Samoa, requires its joining NANP and acquiring a domestic protocol conforming area code, so that the competitive marketing plans of the carriers and 800 toll free access, will be equally available for American Samoa as a true domestic point.

This is the reality of domestic rate patterns today. This is the reality of rate integration that we believe the law requires the FCC to enforce.

Respectfully submitted,

George A. Wray

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Dated December 19. 1997

An original and five copies of this Comment to the Reply by ASG, are herewith submitted

Exhibit 1

Emerging Competition: [illegible] Executive Director.

# * Letter to the Editor...

from page B 4

*Of all the many issues I have covered in 13 years at the Samoa News, I don't think any is as complicated as this one. Water flows downhill and most stories likewise have an inexorable flow to them. But the laws of gravity are suspended when dealing with this Telecommunications issue.*

*Reducing the arguments to a newspaper article that does justice to the situation will be very difficult.*

*The letter-writer is correct that it will most likely confuse the public to debate the matter.*

*There has been no story written recently about this issue because a) I've been busy with other priorities (our new building and press), and b) because the only thing that matters now is the pending decision of the Federal Communications Commission. This isn't a matter for the local public, or anyone who even lives in American Samoa, to decide. It will be decided by the FCC and then we will all live with whatever the FCC comes up with.*

*This has been true for many months and has been explained in newspaper articles I have written in the past. The new filings from ASG don't change that fact at all.*

*At any rate, I will share with you one thing I learned in my 2-hour briefing with Director of Communications Aleki Sene. He said that if they changed the name of the North American Numbering Plan to the United States Numbering Plan, ASOC would drop its opposition to joining the Plan*

*His statement undercuts ASOC's position that the NANP would be too costly to join. Is it a matter of cost, or of geographic linguistics?*

*Like so many other aspects of this issue, what appears to be so or what people and companies claim to be so apparently bears little relation to what is actually so.* -[ljw]