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February 2, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

RE: Ex Parte Presentation: CC Docket No. 96-61

Dear Ms. Salas:

On Friday, January 30, 1998, Charles W. Totto, Executive Director, Division of Consumer Advocacy, State of Hawaii and Herbert E. Marks of Squire, Sanders & Dempsey L.L.P. met with Commissioner Gloria Tristani and her Legal Advisor Paul Gallant.

At the meeting, the parties discussed the information presented in the attached document. As instructed by the Office of General Counsel, two copies of this letter as well as the written material presented at the meeting are submitted for inclusion in the public record. Due to the lateness of the hour at which this meeting concluded, this letter is being filed on the next business day, Monday, February 2, 1998.

Please contact the undersigned if you have any questions.

Sincerely,

Herbert E. Marks

Enclosures

cc: Gloria Tristani
Paul Gallant

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GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION ARE ESSENTIAL UNIVERSAL SERVICE SAFEGUARDS FOR CONSUMERS IN AREAS SUCH AS HAWAII

• HISTORICAL BACKGROUND

Hawaii is separated from the mainland U.S. by over 3000 miles of the Pacific Ocean. Although the State of Hawaii (the "State") was admitted to statehood in 1959, its residents historically were deprived of certain telecommunications services available to other Americans and were charged more for those that were available. For many years, mainland carriers serving the State classified Hawaii as an international point and established "separate" rate structures for their Hawaiian services. The rates, terms and conditions for services such as MTS, WATS, private line services and record services to and from Hawaii were higher and different than those for comparable services offered on the Mainland. This pervasive pattern of discrimination against the State adversely affected the State, its citizens, its economy, those who communicated with the State, and the nation as a whole. In addition, it suggested an unwarranted sense of "separation" -- not merely geographic -- between Hawaii and the rest of the United States.

• REGULATORY RESPONSE

In an effort to remedy this discriminatory situation, the Commission adopted *rate integration* in 1972. *Rate integration* requires that a carrier serving remote (or so-called "offshore") locations employ the <u>same</u> <u>rate</u> <u>structure</u> or <u>rate</u> <u>scheme</u> for those locations that it employs for non-remote locations. The policy is rooted in Section 202(a) of the Act, which prohibits any unreasonable discrimination for like services, as well as any undue disadvantages based on a customer's locality.

Geographic rate averaging is one type of rate structure that also greatly serves the public interest, and which the Commission has historically required of certain carriers, most prominently AT&T. A geographically averaged rate structure requires carriers to offer the same services, at the same rates, for the same distance, regardless of the location of the terminal points. The policy ensures that no person is deprived of telecommunications service at reasonable rates simply because of the high costs associated with serving the user's location.

• THE 1996 TELECOMMUNICATIONS ACT AND SECTION 254(g)

In the Telecommunications Act of 1996, Congress codified and expanded the Commission's *rate integration* and *geographic rate averaging* policies in Section 254(g), thereby affirming that these policies are essential elements of the broader national objective of promoting universal service. Congress used expansive language in Section 254(g) to ensure that these policies cover <u>all</u> interexchange carriers and services. The Commission, in implementing Section 254(g), has agreed, correctly rejecting carriers' repeated attempts to carve out exceptions to the requirements. Specifically, the Commission has ruled that Section 254(g) applies to all of the following:

- Affiliates of Nationwide Carriers
- Nationwide Carriers Competing Against "Regional" Carriers
- Regional Carriers Serving High-Cost Areas
- Small Carriers
- Satellite Services
- Commercial Mobile Radio Services ("CMRS")
- Both Originating and Terminating Services
- Business Services
- Customer-Specific Offerings

Except for a limited and temporary stay in the CMRS context, the Commission has rejected all claims for exemption from, or forbearance of, the *rate integration* requirement. In its legislative history, Congress expressly stated that any exception to its *geographic rate averaging* policy should be "limited." The Commission has allowed very limited exceptions to this requirement. Specifically, forbearance from *geographic rate averaging* has been granted for the following offerings: contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services. However, the Commission requires that carriers continue to make these services available to all similarly situated customers, regardless of their geographic location.

In order to protect the integrity of Section 254(g), the Commission should continue to take great care in setting forth the standards for granting any degree of forbearance from the *geographic rate averaging* requirement, or in otherwise describing the requirement.

- **FCC PROCEEDINGS STILL PENDING**

1. Reconsideration of Aug. 1996 Decision Implementing Geographic Rate Averaging

2. Reconsideration of Aug. 1996 and July 1997 Decisions Applying Rate Integration to CMRS

3. Application for Review Filed By IT&E Regarding the Common Carrier Bureau's Decision to Reject Its Rate Integration Plan for Serving Guam and the Northern Mariana Islands

4. In its Access Charge Reform rulemaking proceeding, CC Docket No. 96-262, the Commission is currently considering whether to afford incumbent price cap LECs additional pricing flexibility and whether interexchange carriers should be permitted to de-average end-user subscriber charges that are based on a pass-through of geographically de-averaged carrier common line ("CCL") charges. The State submits that Section 254(g) prohibits the de-averaging of any subscriber rates based on interexchange service, regardless of whether carrier access charges are de-averaged.

REFERENCE GUIDE -- SECTION 254(g), FCC DECISIONS, AND D.C. CIRCUIT COURT CHALLENGES

STATUTE -- 47 U.S.C. § 254(g)

SEC. 254. UNIVERSAL SERVICE. . . . (g) INTEREXCHANGE AND INTERSTATE SERVICES. . . the Commission shall adopt rules to require that the rates charged by 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. Such rules shall also require 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.

LEGISLATIVE HISTORY

"New section 254(g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers. The conferees intend the Commission's rules to require geographic rate averaging and rate integration . . . . The conferees are aware that the Commission has permitted interexchange providers to offer non-averaged rates for specific services in limited circumstances (such as services offered under Tariff 12 contracts), and intend that the Commission, where appropriate, could continue to authorize limited exceptions to the general geographic rate averaging policy using the authority provided by new Section 10 of the Communications Act. Further, the conferees expect that the Commission will continue to require that geographically averaged and rate integrated services, and any services for which an exception is granted, be generally available in the area served by a particular provider." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996) (emphasis added).

FCC ORDERS

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, First Report and Order, 11 FCC Rcd 9564 (1996) (decides that *rate integration* requirements apply to all interexchange carriers and services, and permits limited exceptions to *geographic rate averaging* requirements for certain promotions and customer-specific offerings). (reconsideration of scope of *geographic rate averaging* requirements is pending).

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, 11 FCC Rcd 20730 (1996) (orders the detariffing of interexchange services, but requires carriers to make rate information for mass-market services available to the public -- decision stayed by D.C. Circuit Court of Appeals).

AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, 12 FCC Rcd 934 (1997) (denies AT&T's waiver petition and affirms that nationwide carriers are subject to Section 254(g) despite competition from regional carriers).

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997) (affirms decision to apply *rate integration* requirements to all interexchange carriers and all services, including CMRS).

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, 12 FCC Rcd 11548 (1997) (Common Carrier Bureau reviews *rate integration* plans for the Western Pacific region, and rejects some of them as noncompliant with Section 254(g)). (IT&E Application for Review is pending).

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Order on Reconsideration, 9 Comm. Reg. (P&F) 145 (1997) (affirms decision to detariff interexchange services, but eliminates rate disclosure requirement for mass-market services -- decision still stayed by D.C. Circuit Court of Appeals).

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Order, CC Docket No. 96-61, FCC 97-357 (released Oct. 3, 1997) (grants CMRS providers temporary and partial stay of *rate integration* requirement across CMRS affiliates and with respect to wide area calling plans). (reconsideration of decision applying *rate integration* to CMRS is pending).

Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, Erratum, CC Docket No. 96-61, 1997 FCC LEXIS 5827 (released Oct. 28, 1997) (corrects misstatement by reaffirming that the FCC has never forborne from the *rate integration* requirement).

PENDING D.C. CIRCUIT COURT CHALLENGE

GTE v. FCC	)	Consolidated Cases
U S WEST v. FCC	)	D.C. Circuit Nos. 97-1538, 97-1629, 97-1664
IT&E Overseas v. FCC	)	

There are three main issues being appealed. First GTE and U S WEST argue that rate integration should not be applied across affiliates, but should instead be limited to each company separately. Second, U S WEST argues that rate integration should not apply to CMRS providers. Third, IT&E argues that the FCC should have forborne from applying rate integration to interexchange carriers serving Guam and the Northern Mariana Islands.