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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 16, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: 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

Dear Ms. Salas:

Transmitted herewith on behalf of the State of Alaska are an original and eleven (11) copies of the "Opposition of the State of Alaska To Petition For Reconsideration of Nextel Communications, Inc." in the above-referenced proceeding.

Should there be any questions regarding this matter, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "John W. Katz".

John W. Katz
Special Counsel to the Governor
Director, State/Federal Relations

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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of the Communications Act of 1934,)
as Amended)

CC Docket No. 96-61

**OPPOSITION OF THE STATE OF ALASKA
TO PETITION FOR RECONSIDERATION
OF NEXTEL COMMUNICATIONS, INC.**

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Dated: April 16, 1999

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SUMMARY

The State of Alaska opposes Nextel's petition for reconsideration. Nextel contends that the rate integration requirement of Section 254(g) of the Communications Act, as amended, does not apply to the provision of interstate interexchange services offered by commercial mobile radio service ("CMRS") providers, and that this requirement properly applies only to traditional landline interstate interexchange services.

The Commission's decision that the rate integration requirement of Section 254(g) applies to the provision of interstate interexchange services by CMRS is consistent with the plain language of the statute and the Commission's precedent. For example, the Commission has repeatedly confirmed the application of rate integration to mobile satellite-delivered interstate long distance services. Nextel's argument that the Commission has found the language of Section 254(g) to be ambiguous with respect to one issue does not mean that the Commission must, or should, find Section 254(g) ambiguous with respect to an entirely different issue. In any event, the legislative history of Section 254(g) supports the Commission's position that rate integration applies to CMRS interstate long distance offerings.

Application of rate integration to CMRS will not frustrate the Commission's deregulatory policies, as Nextel contends. Rate integration is not rate regulation; rather it is an anti-discrimination requirement. Moreover, rate integration is not inconsistent with competition, as its application to traditional landline long distance services demonstrates.

The State does not oppose providing Nextel and similar CMRS providers some flexibility with respect to the use of MTAs as the surrogate for the definitional boundary for the application of rate integration, as long as that flexibility is not abused to construct materially larger areas in which calls would be exempt from rate integration.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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| Implementation of Section 254(g) |) | |
| of the Communications Act of 1934, |) | |
| as Amended |) | |

**OPPOSITION OF THE STATE OF ALASKA
TO PETITION FOR RECONSIDERATION
OF NEXTEL COMMUNICATIONS, INC.**

The State of Alaska (“the State” or “Alaska”) opposes the petition filed by Nextel Communications, Inc. (“Nextel”) seeking reconsideration of the Commission’s December 31, 1998 order confirming the application of rate integration requirements to interstate interexchange services provided by commercial mobile radio service (“CMRS”) providers.¹ The petition largely reiterates arguments previously made to, and rejected by, the Commission and should be denied.

Notwithstanding Nextel’s arguments to the contrary, the Commission’s December 31, 1998 Order is consistent with both the clear language of Section 254(g) of the Communications Act of 1934, as amended by the Telecommunications

¹ 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 Docket No. 96-61, FCC 98-347 (released December 31, 1998) (“Order”).

Act of 1996, and its own precedent. Indeed, any contrary decision would plainly be at odds with Congress's requirement that *all* interstate interexchange telecommunications services be rate integrated. When Congress passed the 1996 Act, it knew how to exempt the CMRS providers from otherwise applicable statutory requirements, and it did so where it intended to do so. It did not do so with respect to Section 254(g).

Failure to apply rate integration requirements to all providers of interstate interexchange services, regardless of the technology used to deliver those services, would constitute discrimination against consumers in some states, most likely Alaska and Hawaii, and other off-shore points. It was this discrimination that Congress intended to preclude in passing Section 254(g).

BACKGROUND

Section 254(g) of the Communications Act, as amended by the Telecommunications Act of 1996, states that the Commission must adopt rules:

to 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.

The Commission adopted a rule tracking this language on August 7, 1996.²

² Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Report and Order, CC Docket No. 96-61, 11 FCC Rcd. 9564 (1996) ("Rate Integration Order"). See 47 C.F.R. § 64.1801.

The FCC found that the rate integration requirement applied to all providers of interstate interexchange service, specifically including American Mobile Satellite Carriers Subsidiary Corporation (“AMSC”), which had argued that rate integration requirements should not be applied to it. On July 30, 1997, the Commission denied petitions for reconsideration of that decision, and confirmed the application of rate integration requirements to the interstate interexchange services of CMRS providers.³ Subsequently, various CMRS providers filed petitions for further reconsideration and petitions for forbearance asking the Commission to reconsider or not to enforce the application of rate integration requirements to the interstate interexchange services of CMRS providers. The Commission denied those petitions in its December 31, 1999 Order, and it is that Order which Nextel now requests the Commission to reconsider.

Nextel contends that the Commission’s interpretation of Section 254(g) on which the Order “fails as a matter of law and is contrary to Commission precedent.”⁴ Specifically, it contends that Section 254(g) is ambiguous, as the Commission previously found, and that the Commission’s interpretation of Section 254(g) is contrary to legislative intent.⁵ It also contends that the Commission’s

³ 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, CC Docket No. 96-61, 12 FCC Rcd. 11,812 (1997) (“Rate Integration Reconsideration Order”).

⁴ Nextel Petition at 2.

⁵ Id. at 2-6.

Order will harm CMRS consumers and is inconsistent with the deregulatory policies the Commission has applied to CMRS.⁶ Finally, it argues that the Commission's decision to adopt major trading areas ("MTAs") as presumptive boundaries for determining whether interstate telecommunications provided by CMRS are actually interexchange services is unworkable for some CMRS providers, such as Nextel, which provides CMRS through Enhanced Specialized Mobile Radio ("ESMR") licenses and facilities.⁷

ANALYSIS

I. THE COMMISSION'S ORDER IS NOT CONTRARY TO LAW OR PRECEDENT.

The Commission's interpretation of Section 254(g) is not contrary to law or inconsistent with its own precedent. As set forth below, there is no ambiguity in the statute concerning the application of rate integration to all providers of interexchange telecommunications services and the Commission's precedent confirms this point. Although the Commission need not address the legislative history of Section 254(g), that history supports the Commission's Order.

A. Section 254(g) Is Not Ambiguous On This Issue.

Relying on *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*,⁸ Nextel argues that the relevant statutory language is ambiguous, but Section 254(g) is not ambiguous with respect to the services to which it applies. The statute

⁶ Id. at 6-8.

⁷ Id. at 8-10.

⁸ 467 U.S. 837 (1984).

requires the Commission to adopt rules requiring that a provider of interstate interexchange services offer those services in a rate integrated manner. There is no statutory language remotely suggesting that this requirement would apply only to some providers of interstate interexchange services and not to others depending on the technology used to provide part or all of that service. Nextel offers no basis on which the language of the statute can be read otherwise.⁹

Nextel contends that the Commission has already concluded that Section 254(g) is ambiguous. The conclusion to which Nextel refers, however, concerned an entirely different issue. The prior issue was whether Section 254(g) applies separately to individual common carriers, or whether it applies to all affiliates of a common carrier.¹⁰ The Commission's conclusion in the Order that the statute

⁹ More generally, in implementing other portions of Section 254, the Commission has concluded that one of its primary principles is to implement that section in a competitively neutral manner, that is, its rules should "neither unfairly favor nor disfavor one technology over another." Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8801 at ¶¶ 46-47 (1997). Interpreting Section 254(g) in a manner that excludes interstate interexchange communications provided by CMRS providers because the technology these providers employ for all or only part of the telecommunication is different than the technology employed by other providers would violate the principle of competitive neutrality.

¹⁰ That is, that issue was whether it is sufficient, to satisfy the statutory requirement for rate integration, for an individual carrier merely to integrate its own rates, or whether a carrier must integrate its rates for a given interstate interexchange service with the rates of affiliated carriers. Among other things, to prevent carriers from avoiding rate integration requirements by forming different affiliates to offer services in different states, the Commission concluded that the rate integration requirement must encompass like service offerings of affiliates. Rate Integration Reconsideration Order, 12 FCC Rcd. at 11,819, ¶¶ 14-15.

unambiguously applies to all providers of interstate interexchange telecommunications services, regardless of technology, has no logical relationship to, and is not inconsistent with, the Commission's prior statement that Section 254(g) is ambiguous with respect to the affiliate issue. Logically, the fact that the Commission found the statutory language to be ambiguous with respect to one question does not mean that the Commission must find that language to be ambiguous with respect to an entirely different question.

Moreover, as a legal matter, the Supreme Court in *Chevron* was clear that the appropriate unit of analysis is the specific *issue* being addressed:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to *the precise question at issue*. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed *the precise question at issue*, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or *ambiguous with respect to the specific issue*, the question for the court is whether the agency's answer is based on a permissible construction of the statute.¹¹

Nextel's attempt to bootstrap a Commission conclusion that Section 254(g) is ambiguous with respect to one issue into a requirement that the Commission reach the same conclusion with respect to a different issue is flatly contrary to the Supreme Court decision on which it relies.

¹¹ Chevron, 467 U.S. at 842-43 (emphasis added and footnotes omitted).

In a footnote, Nextel argues that the Commission's prior action applying rate integration only to calls between MTAs effectively concedes that the statute is ambiguous since the standard definition of interexchange refers to calls between exchanges.¹² As Nextel later admits,¹³ the Commission has chosen to use MTAs as a "surrogate" or proxy for exchanges in this context. This action was taken largely because using MTAs as the basis for determining the application of rate integration would not be disruptive to existing service arrangements.¹⁴ This accommodation to CMRS providers cannot properly be viewed as an action that creates an ambiguity.¹⁵

B. The Order is Consistent With Commission Precedent.

Far from being inconsistent, the Order is perfectly consistent with prior Commission action. In the Commission's decision implementing the rate integration rule, the Commission flatly rejected the argument of AMSC that rate

¹² Nextel Petition at 3 n.5, citing Commissioner Powell's statement dissenting from the Order.

¹³ Nextel Petition at 8.

¹⁴ 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, 12 FCC Rcd. 15,739, 15,747 at ¶ 15 (1997).

¹⁵ In the final section of its petition, Nextel argues that the use of MTAs as the definitional boundary for the application of rate integration to CMRS providers competitively disadvantages carriers such as Nextel whose network design and licensed service areas are not defined in terms of MTAs. Nextel requests that the Commission reconsider this determination and provide some flexibility in this regard. Petition at 8-10. The State has no objection to
(continued...)

integration requirements should not apply to it. It held that the language in the Act “was plain” and encompassed all domestic interstate interexchange telecommunications services.¹⁶ The Commission reiterated this position in denying a petition for reconsideration filed by AMSC, stating that “the service offered by AMSC’s mobile satellite is an interstate interexchange telecommunications service. Therefore, our rate integration policy applies to the provision of this service, just as it applies to the provision of other interexchange services, such as basic Message Toll Service.”¹⁷

The same reconsideration order also rejected a petition from GTE challenging the application of rate integration to CMRS providers. The Commission stated that “[a]lthough CMRS is primarily a telephone exchange and exchange access service, many CMRS providers also offer interstate interexchange service as well. An interstate interexchange CMRS call enables a customer to place a long-distance call to an exchange in a different state.”¹⁸ The Commission’s December 31, 1998 Order is consistent with these prior decisions.

(...continued)

providing some flexibility, as long as that flexibility is not abused to construct materially larger areas in which calls would be exempt from rate integration.

¹⁶ Rate Integration Order, 11 FCC Rcd. at 9588-89, ¶¶ 52, 54.

¹⁷ Rate Integration Reconsideration Order, 12 FCC Rcd. at 11,825, ¶ 25.

¹⁸ Id. at 11,821, ¶ 18.

C. Legislative History Does Not Support Nextel's Position.

Because the language of the statute is unambiguous (as well as being consistent with prior Commission action), the Commission need not address Nextel's contention that the application of rate integration to CMRS providers is contrary to legislative intent.¹⁹ Even were it to do so, however, the legislative history does not support Nextel's interpretation.

Nextel argues that Congress plainly intended Section 254(g) merely to codify the Commission's prior rate integration policy.²⁰ There are several respects in which this statement is plainly inaccurate. For example, there is no dispute that Congress intended to expand rate integration to apply to Guam and the Commonwealth of the Northern Mariana Islands, locations that were not covered by the Commission's prior policy.²¹ Moreover, Nextel's argument would also mean that Congress did not intend to expand upon the Commission's parallel policy of geographic rate averaging, yet that argument is also plainly incorrect. For example, Congress required that geographic rate averaging apply to intrastate interexchange services, an application that goes beyond prior Commission policy.

¹⁹ See Nextel Petition at 2 ("As the Commission properly recognized, statutory interpretation under the well-established *Chevron* analysis requires a threshold determination of whether the language of the provision under review is unambiguous. If the meaning is plain, that is the end of the analysis."). (Footnote omitted.)

²⁰ Nextel Petition at 5.

²¹ Rate Integration Order, 11 FCC Rcd. at 9596, ¶ 66.

Indeed, the Telecommunications Act of 1996 is otherwise clear on the point that CMRS providers do offer interexchange services that were intended to be covered by Section 254(g). Prior to enactment of that statute, CMRS providers that were affiliated with a Bell Operating Company (“BOC”) could not offer interLATA interexchange services. They are permitted to do so now only because Congress enacted Section 271(g)(3) of the Communications Act, 47 U.S.C. § 271(g)(3), which includes interLATA CMRS services in the definition of “incidental interLATA services” which BOC affiliates can offer immediately upon enactment of the 1996 Act. If a CMRS call that otherwise qualifies as an interexchange or interLATA call were not considered an interLATA telecommunications service, this provision would make no sense. Indeed, the decision by Congress to carve CMRS long distance out of the prohibition on BOC provision of in-region long distance services demonstrates that Congress knew how to limit the application of provisions of the 1996 Act to CMRS and did so when it intended to do so.

Nextel also argues that the underlying purpose of Section 254(g) demonstrates that rate integration was not intended to apply to CMRS providers. The purpose of the statute, Nextel claims, is to ensure that rates for interstate interexchange services paid by residents of off-shore areas are not higher than the rates paid by residents of the contiguous United States. CMRS providers in off-

shore locations, Nextel claims, typically resell landline long distance services which are rate integrated, and they “have no reason to modify those rates.”²²

This argument, however, only confirms that Congressional intent would not be satisfied without the application of rate integration to CMRS providers. Nextel does not contend that CMRS providers must resell these services at integrated rates. It thus impliedly admits that consumers in off-shore points are not legally protected from non-integrated rates. Moreover, even if a CMRS provider does not alter those rates, it may be charging different rates for interstate interexchange services it provides in other states. This rate difference is precisely what Congress intended to prevent in enacting the rate integration requirement.

II. APPLICATION OF RATE INTEGRATION TO CMRS DOES NOT FRUSTRATE DEREGULATORY POLICIES.

Nextel contends that the application of rate integration is inconsistent with the Commission’s deregulatory approach to CMRS and would harm consumers.²³ Yet, this argument misstates the nature of the rate integration requirement and ignores the context in which rate reductions and new rate plans have been offered.

Rate integration is not rate regulation. The Commission does not regulate the rates for interstate interexchange services provided by such carriers as AT&T, MCI WorldCom, and Sprint, but there is no question that rate integration applies to those services. Rate integration is a long-standing, fundamental Commission

²² Nextel Petition at 6.

²³ Id. at 6-8.

policy, now codified in statute, that requires that carriers providing an interstate, interexchange service not discriminate against those residing in remote or insular portions of the Nation.

Rate integration is not inconsistent with a market that is characterized by substantial competition. Indeed, Congress enacted Section 254(g), the statutory requirement for rate integration, after the Commission had concluded that AT&T, by far the largest interexchange carrier, was no longer to be regulated as a dominant carrier. The Commission's decision was necessarily based on the finding that competition in the interexchange business was sufficiently competitive that the carrier with the largest market share did not have market power. Nonetheless, Congress concluded that a statutory requirement for rate integration was necessary to make sure that all Americans benefited from competition.

Moreover, the marketplace developments to which Nextel refers have taken place in an environment in which rate integration applies. It is reasonable for the Commission to conclude that these developments would not have occurred in the absence of rate integration. Moreover, there has been no showing that the pro-consumer benefits of "one-rate" plans are available to all consumers and are available uniformly across the Nation.

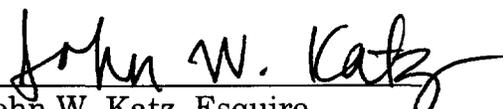
Indeed, the Commission's most recent annual report on the status of competition in wireless telecommunications confirms that CMRS competition is not uniform throughout the Nation. It said that although there has been "substantial progress towards a truly competitive mobile telephone marketplace," "this

development is still in its early stages” and “there is ample room for improvement.” Moreover, “many less populated areas are still awaiting the arrival of mobile telephone competition.”²⁴ These findings, in the State’s view, support the conclusion that rate integration is necessary to deliver to all Americans the benefits of increased competition in interexchange telecommunications services offered by CMRS providers.

CONCLUSION

For these reasons, the State requests that the Nextel petition be denied.

Respectfully submitted,


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Dated: April 16, 1999

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²⁴ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services, FCC 98-91, 12 (P&F) Comm. Reg. 623, 663 (1998).

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 1999, a copy of the foregoing Opposition of The State of Alaska To Petition For Reconsideration Of Nextel Communications, Inc. was served by first-class mail on the following:

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