

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
)	
Policy and Rules Concerning the)	
Interstate, Interexchange Marketplace)	CC Docket No. 96-61
Universal Service)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	
)	

Reply Comments of AirTouch Communications, Inc.

AirTouch Communications, Inc. (“AirTouch”) respectfully submits its reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceedings.¹ AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite, and other operations.

The comments in this proceeding uniformly reflect the view that the rate integration concept was never intended to apply to Commercial Mobile Radio Services (“CMRS”), and that it is harmful to consumers to apply it to such a dynamic, competitive industry. Perhaps most importantly, however, the most recent round of comments in this proceeding demonstrates that application of the rate integration requirements to CMRS is absolutely irrelevant to the prices paid for interstate services by CMRS subscribers in Alaska and Hawaii. Importantly, the record, including the most recent round of

¹ In the Matter of Implementation of Section 254(g) of the Communications Act of 1934,” Further Notice of Proposed Rulemaking, CC Docket 96-61, FCC 99-43, (released April 21, 1999)(“Further Notice”); see Memorandum Opinion and Order, FCC 98-347 (released December 31, 1998)(“Rate Integration Forbearance Order”); Order, 12 FCC Rcd 15, 739 (1997)(“Rate Integration Stay Order”); First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11,812 (1997) (“Rate Integration Reconsideration Order”); Report and Order, 11 FCC Rcd 9564 (1996) (“Rate Integration Order”).

comments, is starkly bereft of any evidence - anecdotal or otherwise - of any actual harm or discrimination to date with respect to interstate CMRS services. As Sprint PCS observes, new CMRS regulations should not - indeed, may not - be imposed absent a “clear cut need.”² Alaska and Hawaii, the only parties to support application of rate integration to CMRS carriers, have not to date demonstrated any “clear cut need,” much less explained how it is that Section 254(g) could actually work to protect CMRS consumers in those States. As Sprint points out, the case for regulation is entirely theoretical.³

Moreover, the only discrete theoretical scenario identified by any party as being potentially unfair to consumers - a “local calling” service area that excludes Hawaii⁴ - is not a violation of Section 254(g). That section prohibits interstate, interexchange carriers from charging its subscribers in a given State a rate for such services that is higher than rates for the same services in another State. But as PrimeCo notes, CMRS competition is local in nature.⁵ A CMRS carrier who owns licenses to provide service in, say, a region comprising several northeastern States, could charge each of its subscribers 10 cents/minute to call anywhere “in-region,” 15 cents/minute to call anywhere in the contiguous 48 states, and 20 cents/minute to call Alaska, Hawaii or other offshore points, without violating Section 254(g).⁶ No subscriber to that carrier would be charged a rate, in his or her State, that is higher than a rate charged by that carrier to its subscribers in any other State. The rate integration rule, designed for a nationwide wireline long-distance carrier, is irrelevant to CMRS services.

²Comments of Sprint at 3, citing 5 U.S.C. §§ 551 *et seq.*

³Comments of Sprint at 3.

⁴Comments of Hawaii at 4.

⁵Comments of PCS PrimeCo at 14-15.

At the same time, CMRS consumers in Alaska, Hawaii, and other offshore points have market protections against unreasonable charges for calls to and from those points. As PrimeCo observes, the rates of interstate CMRS services are determined primarily by local characteristics and there is therefore little incentive for a CMRS carrier to charge novel or discriminatory rates for calls to or from insular points such as Alaska and Hawaii where local competitive characteristics would discourage excessive pricing for interstate CMRS services.⁷

The only operative question for Hawaii (or Alaska) is whether sufficient competition exists within the State to permit consumers to change carriers if they feel they are being charged excessively for interstate calls, including calls to the contiguous 48 states. And, as CTIA documents, such competition is robust.⁸ PrimeCo also points out that CMRS carriers have - in response to market incentives - offered service plans that offer free long distance, anywhere in the nation, as part of a packaged offering. And although not required to offer these plans everywhere, CMRS carriers do offer these plans in Alaska and Hawaii.⁹

The arrangement that Hawaii suggests might “circumvent” the rate integration rule is in fact not even addressed by the rate integration rule. And even absent any regulatory requirement, CMRS consumers in Alaska and Hawaii have a choice among just, reasonable and competing service offerings for interstate calling. Ironically, the only thing “accomplished” by application of the rate integration rule to CMRS providers is that consumers are harmed because CMRS carriers are foregoing price decreases that might otherwise be called for in response to market conditions, and that new, innovative

⁶PrimeCo notes that this arrangement might, however, raise issues under Sections 201 and 202 of the Communications Act, providing further indication that application of Section 254(g) to CMRS is unnecessary to protect consumers or those states’ interests. See Comments of PCS PrimeCo at 9.

⁷ See Id.; see also Comments of Hawaii at 5 (most long-distance CMRS calls are completed primarily through the use of wireline plant).

⁸See, e.g., Comments of CTIA at 5, citing Rob Perez, *Isle Consumers Dialing Up Some Good Deals for Wireless Phones*, Honolulu Star-Bulletin (October 21, 1996).

⁹Comments of PCS PrimeCo at 9 (noting both GTE and AT&T offer plans in Hawaii that provide for free CMRS long-distance service as part of a bundled package).

offerings are being chilled because of uncertainty created by the Commission's pronouncements in this area. As we have explained on the record, price decreases are being chilled in certain markets due to the Commission's determination that Section 254(g) applies to CMRS carriers.¹⁰

In contrast, neither Alaska nor Hawaii document even a single anecdotal instance of actual behavior by a CMRS carrier in this area that could be found to be contrary to the public interest. Also, if rate integration was in fact intended to apply to CMRS, one would expect that Alaska and Hawaii would have raised such evidence early on in these proceedings, as well as now. Yet the question of Section 254(g)'s application to CMRS did not arise until the First Reconsideration Order in this proceeding.¹¹ Given the stark lack of evidence of any problem that is being addressed by this regulation, AirTouch believes that, at a minimum, the Commission must take a hard look at its earlier refusal to forbear in this area.

Moreover, the Commission's actions here should be more consistent with its general policy direction and mandate to remove regulations wherever possible, particularly in the dynamic, competitive CMRS market. Instead, Hawaii is proposing detailed reporting requirements, not only with respect to affiliation and ownership structures, but with respect to the nature and interstate/intrastate classification of the facilities used to complete interstate calls. Certainly application of ex ante reporting requirements akin to the wireline Part 32/Part 36 accounting and separations regulations are absolutely inappropriate and unprecedented for the competitive CMRS industry.

¹⁰Comments of AirTouch at 3.

¹¹ *Policy and Rules Governing the Interstate, Interexchange Marketplace*, CC Docket 96-61, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997).

As Chairman Kennard recently noted, “the top-down regulatory model is as out-of-date for the 21st century as the rotary phone.”¹² More immediately, the Commission’s choice is clear: the rate integration rule has been - and continues to be - entirely irrelevant with regard to the process of ensuring affordable interstate CMRS services in Alaska, Hawaii or other offshore points, while continued application of the rate integration rule harms consumers throughout America.

Respectfully submitted,

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June 28, 1999

¹² Comments of PCS PrimeCo at 13, quoting William E. Kennard Testimony before the Senate Commerce Committee at 3.