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June 18, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Katherine Schroder, Chief, Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Permitted Written Ex Parte Presentation
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers
CC Docket Nos. 00-256, 96-45, 98-77 & 98-16

Dear Katherine:

As we have discussed previously, the State of Hawaii has an active interest in the Commission's enforcement of the rate integration and geographic averaging requirements of Section 254(g) of the 1996 Communications Act, which were implemented by the Commission in Section 64.1801 of its Rules. As a part of this interest, the State has been urging the Commission to ensure that its implementation of other provisions of the 1996 Communications Act, such as the universal service provisions, does not undermine the important requirements of Section 254(g).

For example, the Commission is currently considering the MAG proposal, which, *inter alia*, calls for the modification of Section 64.1801 in order to require interexchange ("IXCs") carriers to provide the same optional calling plans to customers in rural and urban areas. The State believes that any modification of Section 64.1801 is unnecessary because both the Commission's Rules and Section 254(g) of the Communications Act already require IXCs to make available optional calling plans to customers in rural and urban areas without discrimination.

In order to summarize the State's position on this subject, we are providing to you the attached bullet points addressing the State's position on the pre-existing requirements of Section 64.1801 of the Commission's Rules with respect to optional calling plans. We hope that the attached materials help to clarify the record on this issue.

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Thank you for your attention to this matter. Please contact the undersigned if you have any questions.

Sincerely,

Herbert E. Marks
Bruce A. Olcott

Cc: Richard Lerner, Deputy Chief, Competitive Pricing Division
Eric Einhorn, Acting Deputy Chief, Accounting Policy Division,
William Scher, Accounting Policy Division
Theodore Burmeister, Accounting Policy Division
Doug Slotten, Competitive Pricing Division
Magalie Roman Salas, Secretary

Attachments

Section 254(g) of the Communications Act

Ex Parte Presentation by The State of Hawaii in

CC Docket Nos. 00-256, 96-45, 98-77 and 98-166

- The State of Hawaii is concerned about any suggested departures from Section 254(g) because the State has been historically been subject to discriminatory telecommunications rates and services. The history of this issue before the FCC goes back to 1975 and earlier.
- The MAG plan includes provisions (embodied as proposed changes to Section 64.1801 of the Commission's Rules) to ensure rate and service comparability in urban and rural areas, including an obligation that interexchange carriers ("IXCs") offer consumers in rural and urban areas the same optional calling plans.
- The MAG recommendation is unnecessary because IXCs are *already* subject to an obligation to offer consumers in rural and urban areas the same optional calling plans. The obligation is inherent in Section 254(g) of the Communications Act, which was implemented by the Commission in Section 64.1801 of its Rules. Section 254(g) directs the Commission to:
  - -- mandate geographic rate averaging by requiring IXCs to charge rates in rural areas that are no higher than the rates they charge in urban areas.
  - -- enforce rate integration by adopting rules that require IXCs to provide services to their subscribers in each State at rates no higher than the rates charged to their subscribers in any other State.
- The Commission did <u>not</u> waive these obligations when it decided in August 1996 to forbore from applying the geographic rate averaging requirement of Section 254(g) "to the extent necessary" to allow carriers to make available optional calling plans, contract tariffs, Tariff 12 offerings, temporary promotions and private line services.[1]
- In adopting this forbearance, the Commission expressly noted that carriers must still make these services "available to all similarly situated customers, regardless of their geographic location." (*Id.*, ¶ 27; *see also id.*, ¶ 13)
- The sole exception involved temporary promotional offerings, which the Commission concluded could be "'geographically limited,' provided that the promotions are temporary," meaning 90 days or less. (*Id.*, ¶ 27)

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[1] *Policies and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934 as Amended*, FCC 96-331, ¶ 27 (Aug. 7, 1996).

- The Commission stated in its 1996 Order that it was not sure that forebearance was needed. Indeed, since the typical optional calling plan is based on an averaged rate structure, there was good reason for the Commission's skepticism. If there was an "optional calling" plan that was based on deaveraged rates offered under the forebearance authority, such optional calling plan would still have to be offered in all geographic areas served by the provider, pursuant to the Commission Order and explicit statements in legislative history.

- Furthermore, the Commission did not forbear even colorably from applying the *rate integration* obligation of Section 254(g) to optional calling plans. (*Id.*, ¶ 52) Any optional calling plan offered by an IXC in a geographic area (state by state) would violate the rate integration requirement. (47 CFR 1801(b)). The legislative history is quite specific on this.

- Finally, if the Commission adopts the MAG plan, it should not do so by amending Section 64.1801. The MAG plan suggests additions to Section 64.1801 in order to address matters unrelated to geographic averaging. The State of Hawaii takes no position on these unrelated matters. To avoid confusion, however, the State believes that Section 64.1801 should address only Section 254(g) and collateral matters should be addressed in another Section.

Section 254(g) of the Communications Act

Ex Parte Presentation by The State of Hawaii in

CC Docket Nos. 00-256, 96-45, 98-77 and 98-166

47 U.S.C. § 254 – Universal Service

(g) **Interexchange and interstate services.** Within 6 months after February 8, 1996, 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.

47 C.F.R. § 64.1801 – Geographic rate averaging and rate integration.

(a) 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.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.

Multi-Association Group Plan Proposed Addition to § 64.1801

(c) Providers of interstate interexchange telecommunications services must offer customers in rural and high-cost areas of the United States the same optional calling plans, including discount or volume-based plans, that are available to their customers in urban areas. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States are prohibited from imposing minimum monthly charges on their residential customers. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States must pass through to long distance customers the savings that IXCs realize from lower access rates charged by Path A LECs and Path B LECs.