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SQUIRE, SANDERS & DEMPSEY L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
Office: +1.202.626.6600
Fax: +1.202.626.6780

SQUIRE SANDERS | LEGAL COUNSEL WORLDWIDE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 3, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

EX PARTE OR LATE FILED

Re: Permitted Oral 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 and 98-166

Dear Secretary Salas:

On Tuesday, July 3, 2001, Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii, met with Commissioner Michael Copps, along with Acting Senior Legal Advisor, Jordan Goldstein and Acting Legal Advisor, Lauren Maxim Van Wazer.

The meeting was held to discuss the concern of the State of Hawaii that the Commission's possible implementation of aspects of the Multi-Association Group ("MAG") Plan for regulation of certain interstate services should not undermine the requirements of Section 254(g) of the Communications Act, which were implemented by the Commission in Section 64.1801 of its Rules. The discussion addressed the MAG proposal that Section 64.1801 of the Commission's rules be modified to require interexchange ("IXCs") carriers to provide the same optional calling plans to customers in rural and urban areas. The State reiterated its position that 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.

The discussion also addressed the fact that the Commission should reaffirm its earlier decision that Section 254(g) of the Communications Act is applicable to licensees in the Commercial Mobile Radio Service ("CMRS"). It was argued that CMRS is currently marketed as a service that has many of the same attributes and billing structures as wireless telecommunications networks. Thus, it would be in the public interest to apply the requirements of Section 254(g) to CMRS providers.

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The attached handout was distributed during the meeting. Please contact the undersigned if you have any questions.

Sincerely,

Bruce A. Olcott

Cc: Commissioner Michael Copps
Jordan Goldstein, Acting Senior Legal Advisor
Lauren Maxim Van Wazer, Acting Legal Advisor
Katherine Schroder, Chief, Accounting Policy Division

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

July 3, 2001

- The Commission adopted rate integration and geographic averaging policies to ensure that "off shore points" – Alaska, Hawaii, and Puerto Rico/Virgin Islands – were integrated into the telecommunications rate and services structure prevailing in the Mainland States.

- Congress codified and expanded these policies by including them in Section 254(g) of the 1996 Telecommunications Act. Congress took this action even though the interexchange market was deemed competitive. The intent was to assure that all Americans, even those in remote areas, received the benefits of competition. Section 254(g) directs the FCC to:

  - mandate geographic rate averaging by requiring interexchange carriers ("IXCs") to charge rates in rural areas that are no higher than the rates they charge in urban areas.

  - enforce rate integration by requiring IXCs to provide services to subscribers in each State at rates no higher than the rates charged to subscribers in any other State.

- The Multi-Association Group (MAG) plan for regulation of interstate services of non-price cap incumbent local exchange carriers ("LECs") and IXCs 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 IXCs offer consumers in rural and urban areas the same optional calling plans.

- The MAG recommendation is unnecessary because Section 254(g) already obligates IXCs to offer consumers in rural and urban areas the same optional calling plans.

  - 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."

  - The sole exception involved temporary promotional offerings, which may be geographically limited, provided that they are temporary, meaning 90 days or less.

- Furthermore, the Commission did not provide any forbearance from the *rate integration* obligation of Section 254(g) for optional calling plans. Any optional calling plan offered by an IXC in a geographic area (state by state) would violate the rate integration requirement.

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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).

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.