

July 11, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

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

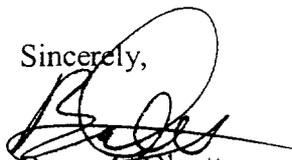
Dear Secretary Salas:

On Tuesday, July 10, 2001, Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii, met with Peter Tenhula, Senior Legal Advisor to Chairman Michael Powell, along with Intern, Allan Parr.

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

Sincerely,



Bruce A. Olcott

Cc: Peter Tenhula, Senior Legal Advisor  
Kyle Dixon, Common Carrier 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 10, 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 not 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.<sup>1</sup>
  - 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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<sup>1</sup> *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.

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Magalie Roman Salas, Secretary  
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Re: Permitted Oral Ex Parte Presentation  
IB Docket No. 98-21

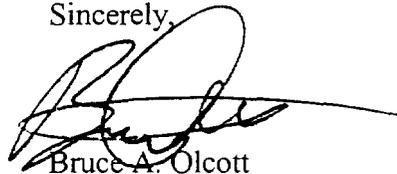
Dear Secretary Salas:

On July 10, 2001, Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii, met with Peter Tenhula, Senior Legal Advisor to Chairman Michael Powell, along with Intern, Allan Parr.

During the discussion, Marks and Olcott reiterated the position of the State of Hawaii that the Commission's geographic service rules, 47 C.F.R. § 100.53, already mandate that direct broadcast satellite ("DBS") licensees must provide service to Hawaii that is generally "comparable" in content and quality to DBS service in the rest of the United States. Marks and Olcott indicated that DBS licensees have failed to meet this standard and at least one of the current DBS licensees has provided no indication that it will attempt to meet this standard in the foreseeable future. The Commission was urged to address promptly discrimination by DBS licensees against the residents of Hawaii in its upcoming Part 100 Order on the DBS service.

The attached materials were distributed during the meeting. Please contact the undersigned if you have any questions.

Sincerely,



Bruce A. Olcott

Copy: Peter Tenhula, Senior Legal Advisor  
Linda Haller, Legal Advisor, International Bureau  
Christopher Murphy, Legal Advisory, International Bureau  
Rosalee Chiara, Deputy Chief, Satellite Policy Branch

## Direct Broadcast Satellite Service for Hawaii

### *Ex Parte* Presentation by The State of Hawaii in IB Docket No. 98-21

July 10, 2001

- The Commission adopted geographic service rules in 1995 mandating service to Hawaii and Alaska in recognition that these States have been subject to discriminatory treatment.
  - DBS orbital assignments are an important public resource because they can further “the statutory goal of providing equitable distribution of service throughout the nation” and can provide competitive choice with monopolistic cable television operators.
  - Additionally, the availability of DBS service can aid in the social, economic and technological integration of Alaska and Hawaii with other regions of the United States.
- The Commission should not retreat from its support for consumers in Hawaii and Alaska. Instead, it should reaffirm in its Part 100 Order that DBS licensees have an obligation to provide service to the States that is comparable to the services available in the mainland.
  - The FCC adopted geographic service rules not just to ensure that all states receive some DBS service, but also due to concern about the “extent of DBS service to Alaska and Hawaii” and the possibility that the States would never be “adequately served.”
  - The Commission indicated that its geographic service rules require the provision of “full service” to Alaska and Hawaii, noting that a licensee’s failure to provide “full service” would be a “violation of our regulations.”
- While the Commission’s actions have generated some progress, the DBS offerings, which were only recently introduced in the State, are not comparable with the programming that is available in the mainland and is not competitive with cable television services in Hawaii.
  - Directv’s offerings in Hawaii are radically different and deficient from its offerings in the mainland. While Directv’s Hawaii Choice package includes about 44 channels of cable programming for \$21.99, the package lacks most of the more popular programming available, such as CNN, Headline News, The Weather Channel, Discovery Channel, ESPN, ESPN 2, TBS, TNT and USA Network. It also lacks programming that is distributed exclusively by Directv, such as NFL Sunday Ticket.
  - While Echostar has made better progress, there are still shortcomings with its service to the State. Retailers report that there is a substantial demand among Hawaiians for EchoStar’s heavily promoted America’s Top 150 package. Unfortunately, the AT 150 package can be received in Hawaii only by purchasing two satellite dishes, which could double the equipment and installation costs to more than \$500.
- During the next year, both Directv and Echostar plan to launch several new satellites (Directv 4S and Echostar 7 and 8). The two operators will use these new satellites to improve service to Alaska and Hawaii only if the Commission makes it clear in its Part 100 Order that DBS licensees have an obligation to provide service to the States that is truly comparable to the services that are available in the mainland United States.