Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The American Samoa Government's Proposed Rate Integration Plan for American Samoa	)	CC Docket No. 96-61
	)	
Policies and Rules Concerning the Interstate, Interexchange Marketplace	)	
	)	
Implementation of Section 254(g) of the Communications Act as Amended	)	

REPLY COMMENTS OF AT&T CORP.
AMENDMENT TO RATE INTEGRATION PLAN FILED BY AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY

Pursuant to the Commission's Public Notice released May 28, 2004 (DA 04-1410) ("*Public Notice*"), AT&T Corp. ("AT&T") submits these Reply Comments in response to a proposed amendment to the American Samoa Rate Integration Plan filed by the American Samoa Telecommunications Authority ("ASTCA") on May 3, 2004 ("Amendment") seeking approval of its rate integration plan for American Samoa.[1] Because ASTCA has not yet met the objectives established in the Commission's rate integration rulings, its request is premature and should therefore be denied.

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[1] The Amendment appears in a letter from David L. Sieradzski, Counsel for the American Samoa Telecommunications Authority, to Marlene H. Dortch, Federal Communications Commission (filed May 3, 2004).

INTRODUCTION

In the *1996 Rate Integration Report and Order*, the Commission determined that rate integration should apply to all United States territories and possessions, including offshore points such as American Samoa.[2] In the *1997 Rate Integration Order,* the Common Carrier Bureau ("Bureau") concluded that American Samoa should implement several measures – including participation in the North American Numbering Plan ("NANP"), provision of access services to IXCs on a basis comparable to that of LECs in other parts of the U.S., and provision of Feature Group D services upon request – to assist interexchange carriers ("IXCs") in integrating their service offerings to American Samoa with those offered in the United States and other offshore points:

> "[I]nclusion of American Samoa in the NANP would help carriers integrate American Samoa into their nationwide service plans, billing systems, and switching mechanisms. Implementation of Feature Group D service would provide subscribers with high-quality equal access to providers of interexchange service serving American Samoa. Provision of access services by American Samoa to interexchange carriers on a basis more comparable to such services provided in other parts of the U.S. could help interexchange carriers set rates at integrated levels. Further, these measures could promote the provision of competitive services to American Samoa and stimulate introduction of new services."[3]

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[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, 11 FCC Rcd 9564, 9588, para. 52 (1996) (*1996 Rate Integration Report and Order*), *aff'd on recon.*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997).

[3] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, Memorandum Opinion and Order*, 12 FCC Rcd 11548, 11557-58, para. 21 (Com Car. Bur. 1997) ("*1997 Rate Integration Order*") ("These steps include participation in the North American Numbering Plan, provision of access services to IXCs on a basis comparable to that of LECs in other parts of the U.S. (such as by offering National Exchange Carrier Association access rates), and provision of Feature Group D services if requested by IXCs.")

Because the record at the time was incomplete as to American Samoa's implementation of these measures, the Bureau encouraged American Samoa to "submit a complete plan for taking these and any other measures that could help to integrate provision of communications services to American Samoa."[4] In order to make "further determinations on these issues on the basis of a more complete record" the Bureau instituted a notice and comment proceeding during which it suspended the application of the American Samoa rate integration requirements.[5]

On October 1, 1997, the American Samoa Government ("ASG"), on its own behalf and on behalf of ASTCA's predecessor, the American Samoa Office of Communications, jointly filed an initial rate integration plan (the "American Samoa Rate Integration Plan" or the "Plan") with the Commission.[6] The ASG and ASTCA initially contended that American Samoa should not be required to enter the NANP, citing concerns about the costs of implementing the network modifications needed to achieve compliance with the requirements of the North American Numbering Plan Administration ("NANPA"), but later changed their position and sought permission to participate in the NANP in order to fully implement equal access for new entrants operating on American Samoa.[7] On December 24, 2002, the Wireline Competition Bureau issued a letter granting American Samoa's request for authority to enter the NANP, and

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4 *Id.* at para. 22 ("The record, however, does not indicate the extent to which the government of American Samoa . . . may plan to take any of these steps.")

5 *Id.*

6 The Plan was transmitted under a Letter from David L. Sieradzki, Counsel for the American Samoa Office of Communications and the American Samoa Government, to William F. Caton, Federal Communications Commission on October 1, 1997.

7 Amendment, p. 2, Exhibit 1.

authorized the NANPA to set aside 10 NXX codes (100,000 numbers) in the "684" NPA code for use exclusively in American Samoa (the "Bureau Letter").[8]

In accordance with the Bureau Letter, the NANPA determined that American Samoa's entry into the NANP should be implemented in stages, with permissive dialing of the "684" NPA code beginning in October 2004 and mandatory dialing beginning in April 2005.[9] The NANPA began planning for the technical aspects of the transition to dialing "684" by conducting a series of conference calls in which ASTCA and other carrier representatives participated, and in which milestones to be passed in order to meet these starting dates were discussed.[10] On May 3, 2004, ASTCA filed the Amendment to its rate integration plan, asserting that it had completed several of the steps outlined in the *1997 Rate Integration Order* and requesting that the Commission resolve the outstanding issues related to its rate integration plan without further delay.[11]

The Bureau thereupon issued the *Public Notice* seeking public comment on the Amendment and in particular, on whether ASTCA has met the objectives outlined in the *1997*

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8 Letter of William F. Maher, Wireline Competition Bureau to Ron Conners, Director-North American Numbering Plan Administration, dated December 24, 2002 ("Bureau Letter").

9 *See North American Numbering Plan Administration, Introduction of NPA 684 (American Samoa) Planning Letter* (March 24, 2003) ("Introduction of the 684 NPA will begin with a period of permissive dialing. During the permissive dialing period, either the old or new dialing patterns . . . will be acceptable in a dialed number terminating in American Samoa. After the permissive dialing period ends, all calls dialed with the incorrect country code will be routed to intercept and a recorded message instructing callers to dial the correct country and area codes.")

10 Amendment, at 2.

11 Amendment, at 4 ("ASTCA notes that the 1997 Rate Integration Plan has been pending before the Commission for over 5 ½ years. ASTCA welcomes the Commission's renewed focus on this proceeding and looks forward to resolution of the matters under consideration.")

Rate Integration Order. On June 17, 2004, AST Telecom LLC dba Blue Sky Communications ("Blue Sky"), a facilities-based competitive carrier providing interexchange services through a point of presence ("POP") in American Samoa, filed comments in response to the *Public Notice*. In its comments, Blue Sky disputes ASTCA's claim that ASTCA has taken the steps needed to enable IXCs to implement rate integration, and identifies a number of shortcomings in ASTCA's filings that have impeded the efforts of interexchange carriers to implement rate integration.

DISCUSSION

In support of its request, ASTCA asserts that in the American Samoa Rate Integration Plan, "ASG and ASTCA made a number of commitments, which have since been achieved."[12] ASTCA states, for example, that it has established integrated outbound rates – *i.e.,* identical long-distance rates for calls carried by ASTCA from American Samoa to all other U.S. points.[13] ASTCA also claims that it has come into compliance with the Commission's access charge, universal service, and other common carrier rules, and has become a member of the National Exchange Carrier Association ("NECA").[14] ASTCA contends that it is in compliance with the local competition provisions of the Act and the Commission's rules, having established an interconnection agreement with a competitive carrier – Blue Sky Communications – pursuant to Sections 251 and 252 of the Act. ASTCA also asserts that it has worked successfully with the

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[12] Amendment, at 1.

[13] *Id.*

[14] *Id.* at 2.

numbering plan administrator and several other carriers to meet the Commission's rate integration objectives.[15]

ASTCA's efforts to implement rate integration to date have been commendable but remain incomplete. The record in this proceeding makes it clear that considerable work must be done before the Commission can conclude that ASTCA has taken the steps needed to facilitate rate integration pursuant to Section 254(g). For example, in the American Samoa Rate Integration Plan, ASG and ASTCA committed to provide equal access and Feature Group D ("FGD") interconnection with competitive long-distance carriers within a reasonable time after receiving a *bona fide* request for such services.[16] Blue Sky states that while it formally requested ASTCA to provide Feature Group D trunking for equal access in 1999, *more than five years* have passed and ASTCA has not yet done so, even though ASTCA's switches are technically cable of supporting FGD.[17]

The Bureau has made it clear that ASTCA's provision of FGD service to interexchange carriers will facilitate the efforts of IXCs to achieve rate integration for calls to American Samoa.[18] ASTCA concedes that this is so, but asserts that "FGD access arrangements and the existing tariffed NECA access charges that apply to such services are available *only* to IXCs that

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15 *Id.*

16 ASTCA states that it has received Blue Sky's request "and is planning to begin offering FGD later this year." Amendment, at 3.

17 Comments of Blue Sky, at 2. ("It is Blue Sky's understanding that Feature Group D will be implemented soon after American Samoa enters the North American Numbering Plan in October 2004. It is Blue Sky's further understanding that ASTCA is willing to initiate the equal access balloting process in January of 2005. Blue Sky notes that this is more than five years after Blue Sky formally made its bona fide request.")

18 *1997 Rate Integration Order,* para. 21.

choose to establish physical Points of Presence (POPs) within American Samoa."[19] ASTCA claims that it does not provide FGD in any event because the NANPA cannot assign Carrier Identification Codes ("CICs") to the company until NANP entry has been implemented: once American Samoa is fully integrated into the NANP, ASTCA claims, the NANPA will be able to issue CICs to ASTCA, thus enabling ASTCA to provide FGD. The Commission's rate integration objectives cannot be met by making excuses or promises of future compliance. The Amendment makes clear that ASTCA has several tasks ahead before it can meet its commitment to provide FGD access and before the Bureau can approve ASTCA's plan.[20]

In addition, ASTCA's Plan is neither complete nor fully accurate. For example, ASTCA does not disclose critical competitive considerations, such as the limited nature of the services provided by Blue Sky, the other allegedly competitive facilities-based carrier in American Samoa. In particular, ASTCA failed to disclose that, while Blue Sky established a POP in July 1999, it cannot yet provide toll calling to American Samoan landline customers through the

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[19] Amendment, at 3. To date, no IXC (other than Blue Sky) has established a POP in American Samoa. IXCs provide service terminating in American Samoa via "connecting carrier" arrangements pursuant to 47 C.F.R. § 61.3(l), in which they operate satellite half-circuits that meet half-circuits operated by ASTCA, and they pay ASTCA to terminate calls on their behalf.

[20] ASTCA claims (Amendment, at 3-4) that "a carrier's decision not to establish a POP in a particular geographic area of the United States does not excuse the carrier from its statutory obligation, under Section 254(g) of the Act, to provide rate integrated service to that geographic area." The Bureau has suspended the rate integration rules applicable to American Samoa pending its review of the Plan and the record in this proceeding, however. Once that review is complete, the Bureau will determine whether additional regulatory action is necessary before the rules will go into effect. As the Bureau stated in the *1997 Rate Integration Order* (at para. 21) "[o]n the basis of the resulting record, we will determine whether any regulatory action is necessary. . .. Pending resolution of this issue, we temporarily suspend the obligation of carriers to provide service on an integrated basis to American Samoa."

equal access balloting process.[21] Similarly, while ASTCA stated that it operates without a specific government subsidy, it failed to acknowledge the many advantages it enjoys as a government entity, including ready access to government-owned rights of way, Federal Emergency Management Agency (FEMA) cost reimbursement, and an exemption from paying American Samoa Corporate Income Tax. As Blue Sky states, "ASTCA is implicitly subsidized and should not be permitted to state otherwise."[22] ASTCA's Plan also contains inaccuracies concerning critical matters such as subscribership. While ASTCA's Plan states (at 3) that "[m]ore than 80 percent of the households in American Samoa subscribe to telephone service provided by [ASTCA]," U.S. Census Bureau information shows that only 68.3% of households in the Territory have phone service of any kind.[23] ASTCA should be required to correct these omissions and inaccuracies before its plan can be properly reviewed or approved.

ASTCA also has failed to update critical portions of the Plan. As Blue Sky observes:

> "ASTCA's original Rate Integration Proposal ("RIP"), filed on October 1, 1997, contained a Transition Plan with a timeline of events that would occur both before and after ASTCA's RIP is approved. In view of the seven years that have elapsed since the submission of the RIP, Blue Sky believes that the timeline needs to be updated. At the time its RIP was filed, ASTCA did not intend to join the North American Numbering Plan (NANP). ASTCA's timeline and toll rate reductions were established under a

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21 Comments of Blue Sky, at 3.

22 *Id.* at 4.

23 According to 1990 United States Census Bureau data, 62.55% of American Samoan households had telephone service in that year, far short of the 80% claimed by ASTCA. *U.S. Census Bureau, 1990 Census of Population and Housing Statistics: Social, Economic, and Housing Characteristics, American Samoa; 1990 CPH-6-AS (April 1992).* According to the most recent census data, only 68.3 percent of American Samoan households have telephone service *U.S. Census Bureau, 2000 Census of Population and Housing Statistics: Social, Economic, and Housing Characteristics, American Samoa; 2000 SFAS (2002).*

> different set of premises. Updating these rates will benefit all IXCs and will assist them in implementing rate integration for American Samoa."[24]

The Commission should require ASTCA to update its toll rates and meet the milestones set forth in its Transition Plan. Until it does so, the Plan will be incomplete and out of date, and ASTCA will have no significant incentive to accelerate the availability of equal access, or to facilitate the implementation of rate integration.

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[24] Comments of Blue Sky, at 3.

CONCLUSION

ASTCA cannot meet the requirements of the *1997 Rate Integration Order* simply by filing an amendment to a rate integration plan that is inaccurate and incomplete, nor rely on promises of future compliance with the Commission's requirements rather than proof of current compliance. The record in this proceeding demonstrates that ASTCA has not yet met its own prior commitments, let alone the Commission's requirements. Before the Commission can approve the American Samoa Rate Integration Plan and conclude these proceedings, ASTCA must be required to provide an updated rate integration filing that is accurate and complete. For the reasons set forth herein, ASTCA's request is premature and should be denied.

Respectfully submitted,

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Dated: June 28, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of AT&T Corp. Amendment To Rate Integration Plan Filed by American Samoa Telecommunications Authority was served by the noted methods, the 28th day of June 2004 on the following:

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