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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY OF THE STATE OF HAWAII

The State of Hawaii (the "State"), by its attorneys and pursuant to section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby replies to the comments that were filed in response to the Further Notice of Proposed Rulemaking ("*FNPRM*") in the above captioned proceeding.[1]

The State limits its reply comments to the importance of preserving and enforcing the rate integration and geographic averaging requirements of Section 254(g) of the Communications Act. As a number of parties have highlighted in this proceeding, the Section 254(g) requirements provide benefits to the public interest that are as important today as they were when the Commission first developed its rate integration and geographic averaging policies in the 1970s.[2] Section 254(g) ensures that all Americans, even those in rural and remote areas, have

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[1] These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

[2] *See, e.g.*, *Comments of Beehive Telephone Company* at 4-5 (arguing that the Commission should take steps to enforce the Section 254(g) requirements); *Comments of the Coalition for Capacity-Based Access Pricing* at 27 (arguing that the Commission should insure that the existing dialing parity, rate averaging and rate integration rules remain in place so that those IXCs currently offering long distance service to customers served by rural carriers continue to do so); *Comments of the State of Alaska* at 1-5 (explaining that geographic rate averaging and rate integration guarantee that the resulting efficiencies of nationwide networks are shared by all consumers, regardless of where they live); *Comments of the Alaska Regulatory Commission* at 1 and 4-7 (observing that if toll rate averaging was eliminated, IXCs would raise rates in rural

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access to affordable and effective telecommunications services. Furthermore, Section 254(g) benefits all Americans, including those in urban and low cost areas, by greatly increasing the number of people that are served by public networks and thereby maximizing the number of people that they can contact.

Some parties echoed the *FNPRM* in expressing concern that Section 254(g), combined with the existing, non-uniform calling-party's-network-pays ("CPNP") regime, discourages national interexchange carriers ("IXCs") from providing service to rural and other high cost areas.[3] These parties also argue that the rate integration and geographic averaging requirements permit some local exchange carriers ("LEC"), particularly competitive local exchange carriers ("CLECs"), to charge excessive local access charges that must be averaged by IXCs, rather than passed directly to customers.[4]

Other parties have successfully refuted these arguments, explaining why concerns about IXCs withdrawing service from rural and high cost areas are either misplaced or irrelevant.[5]

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areas, which could impact economic development and harm residential rural consumers who rely on long distance services for contact to hospitals, government services, and emergency services); *Comments of Alexicon Telecommunications Consulting* at 11; *Comments of General Communications, Inc.* at 9-10 (the Section 254(g) requirements remain important so that Alaskan consumers benefit from the same rate bands and rate schedules as all other Americans, rather than being treated as if Alaska was a foreign country); *Comments of the State of Hawaii* at 2-3 .

[3] *See Comments of Qwest* at 31-32; *Comments of General Communications, Inc.* at 10; *Comments of Sprint Corporation* at 11.

[4] *See Comments of Qwest* at 32; *Comments of Time Warner Telecom* at 32-33, *Comments of KMC Telecom, Inc.* at 30 n.74; *Comments of SBC Communications, Inc.* at 10 n.15; *Comments of the Intercarrier Compensation Forum* at 13-14.

[5] *See, e.g., Comments of the National Association of State Utility Consumer Advocates* at 44; *Comments of the State of Alaska* at 5; *Comments of the Alaska Regulatory Commission* at 4-7; *Comments of the State of Hawaii* at 3; *Comments of The Rural Alliance* at 81; *Comments of the Coalition for Capacity-Based Access Pricing* at 26-27.

Both major IXCs and incumbent local exchange carriers ("ILECs") will continue to provide long distance service to rural and high cost areas, resulting in no disproportionate burden to IXCs.[6] In addition, the recent wave of mergers between IXCs and ILECs will further moot concerns about the possible disproportionate effects of Section 254(g).[7] For example, AT&T, historically the most vocal opponent of rate integration and geographic averaging, provided no comment on the issue in this proceeding.

Most important, Congress was clearly aware of the potential economic impacts of requiring IXCs and other long distance carriers to average their rates between geographic areas. In addressing this issue, Congress reached the same conclusion that the Commission had reached in the 1970s – the substantial public interest benefits that result from Section 254(g) clearly outweigh any economic distortions that may result.[8] It would therefore be inappropriate for the Commission to forebear from the longstanding rate integration and geographic averaging requirements. As a number of parties explained, it would also appear to constitute an impermissible use of the Commission's forbearance authority.[9]

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[6] *See, e.g., Comments of the National Association of State Utility Consumer Advocates* at 44; *Comments of the Alaska Regulatory Commission* at 7; *Comments of the State of Alaska* at 5; *Comments of the State of Hawaii* at 3.

[7] *See Comments of the Alaska Regulatory Commission* at 6; *Comments of the State of Hawaii* at 3; *Comments of The Rural Alliance* at 81; *Comments of the Coalition for Capacity-Based Access Pricing* at 26-27.

[8] *See Comments of the State of Alaska* at 3; *Comments of the State of Hawaii* at 4.

[9] *See Comments of the State of Alaska* at 3-4; *Comments of the Alaska Regulatory Commission* at 4-6; *Comments of the State of Hawaii* at 4-5.

The Commission should therefore reaffirm its commitment to enforcing the statutory obligations of Section 254(g). At the same time, the Commission should replace or repair its outdated intercarrier compensation regime.

As explained by numerous parties in this proceeding, replacing or repairing the intercarrier compensation system will eliminate the market distortions that form the basis of the Commission's apparent concern about the potential burden of Section 254(g).[10] For example, if the Commission adopts a bill-and-keep approach, the necessity of averaging disparate access charges would be eliminated, easing compliance with rate integration and geographic averaging.[11] Alternatively, if the Commission reforms the intercarrier compensation regime, such as through the adoption of uniform, cost-based access charges, the need to average disparate access charges would be reduced considerably, again easing compliance with Section 254(g).[12]

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[10] *See Comments of the Alaska Regulatory Commission* at 4; *Comments of the Public Service Commission of the State of Missouri* at 18; *See Comments of Western Wireless Corporation* at 20-21; *Comments of the Intercarrier Compensation Forum* at 61; *Comments of SBC Communications, Inc.* at 10 n.15; *Comments of the National Association of State Utility Consumer Advocates* at 43-45; *Comments of XO Communications, Inc.* at 8; *Comments of the Public Utilities Commission of Ohio* at 19; *Comments of Pac-West Telecomm, Inc.* at 27; *Comments of The Rural Alliance* at 81.

[11] *See Comments of Western Wireless Corporation* at 20-21 (explaining that the adoption of a bill-and-keep approach would eliminate existing artificial cost differences between service to urban and rural areas, thereby diminishing concerns about Section 254(g) compliance); *Comments of the Intercarrier Compensation Forum* at 61 (arguing that, until termination rate levels become uniform, disparate termination rates will continue to frustrate and impede the goals of rate integration and geographic averaging); *Comments of SBC Communications, Inc.* at 10 n.15 (noting that the elimination of access charges would resolve the economic distortions that result from the Section 254(g) requirements).

[12] *See Comments of the National Association of State Utility Consumer Advocates* at 43-45 (explaining that if access charges are uniformly reduced, IXCs would no longer have difficulty complying with the Section 254(g) requirements); *Comments of XO Communications, Inc.* at 8 (arguing that the adoption of "target rates" that LECs must meet in order to bring access charges closer to cost would reduce the incentive for IXCs to refrain from serving rural and other high cost areas); *See Comments of the Public Utilities Commission of Ohio* at 19 (explaining that adoption of cost-

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Thus, rather than investigate the possibility of forbearing from Section 254(g), the Commission should undertake needed reforms to the intercarrier compensation regime. The implementation of such reforms will substantially lessen, if not eliminate, the alleged conditions that have prompted concerns about Section 254(g).

Even if the Commission refrains from reforming the intercarrier compensation regime, the Commission should still take no action with respect to the longstanding rate integration and geographic averaging requirements. The Section 254(g) mandates continue to serve important public interest goals and the Commission does not have the statutory authority to forbear from these beneficial requirements.

Respectfully submitted,

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July 20, 2005

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based compensation rates based on the CPNP regime will make it easier for IXCs to comply with the Section 254(g) requirements in rural areas); *Comments of Pac-West Telecomm, Inc.* at 27 (explaining that the adoption of a cost-based intercarrier compensation regime in which a single nationwide cost would be establish for the termination or carriage of all types of traffic should largely eliminate any incentive for IXCs to withdraw service from rural and high-cost areas); *Comments of The Rural Alliance* at 81 (explaining that if the Commission imposes unified nationwide levels for wholesale access rates, costs for nationwide IXCs will become more uniform and compliance with Section 254(g) will be easier).