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

In the Matters of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services	)	CC Docket No. 01-337
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Docket Nos. 95-20, 98-10
	)	
Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises	)	WC Docket No. 04-242
	)	
Consumer Protection in the Broadband Era	)	WC Docket No. 05-271

COMMENTS 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 comments on the Notice of Proposed Rulemaking ("*NPRM*") in the above captioned proceeding.[1]

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

The State limits its comments to expressing support for the Commission in ensuring that its actions in this proceeding do not jeopardize the policies of Section 254(g).[2] As the Commission acknowledges in its *NPRM*, "the policies underlying section 254(g) remain important."[3] Specifically, "geographic rate averaging benefits rural areas by providing access to a nationwide telecommunications network at rates that do not reflect the disproportionate burdens that may be associated with recovery of common line costs in rural areas" and "ensures that rural customers will share in lower prices resulting from nationwide interexchange competition."[4] In addition, the Commission's rate integration policy of "integrating 'offshore points' such as Hawaii and Alaska into the mainland's interstate interexchange rate structure brings the benefits of growing competition to the entire nation."[5]

The Commission has repeatedly reaffirmed the public interest benefits of the Section 254(g) requirements. In 2001, the Commission stated in its MAG proceeding that "we remain committed to enforcing our long and well-established policy of geographic rate averaging and

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[2] *See NPRM*, ¶ 157. Section 254(g) directed the Commission to adopt geographic averaging rules "to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas . . . be no higher than the rates charged by each such provider to its subscribers in urban areas" and to adopt rate integration rules to "require that a provider of interstate interexchange telecommunications services . . . provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." *Id.* (*quoting* 47 U.S.C. § 254(g)).

[3] *Id.*

[4] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4724 (2005) (*citing See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 11 FCC Rcd 9564, 9567 (1996)).

[5] *Id.*

rate integration."[6] In 2004, the Commission rejected the rate integration plan of an interexchange carrier serving U.S. pacific territories stating that the plan "would be directly contrary to the goals of rate integration for offshore points and would impermissibly allow carriers to charge excessive rates for calls to specific offshore points."[7]

The public interest goals of Section 254(g) continue to be important as broadband technologies provide consumers with a potential substitute for narrowband interexchange services. Broadband service providers are increasingly able to offer consumers interstate voice and data communications services that serve as a replacement for narrowband interexchange telecommunications services. It would seriously undermine the underlying policies of Section 254(g) if broadband service providers were able to evade the geographic averaging and rate integration requirements, possibly by employing discriminatory and burdensome rate structures in high cost and non-contiguous regions of the country.

In reviewing that background of Section 254(g), the *NPRM* states that the Commission "has forborne from the requirements of section 254(g) with regard to private line services, of which DSL is one."[8] The *NPRM*, however, clarifies in a footnote that the Commission's forbearance for private line services applied only to the geographic averaging and not to the rate

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[6] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19691 (2001).

[7] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Memorandum Opinion and Order, FCC 04-83, ¶ 7 (April 5, 2004).

[8] *Id.*

integration requirements of Section 254(g).[9] Not only would it be inappropriate to forbear from the Commission's rate integration requirements, but it is far from clear whether the Commission has the statutory authority to do so.[10]

The Commission has used its authority under Title I to impose public interest mandates that are the same or similar to those which it has imposed under Title II.[11] The Commission has also proposed to impose other public interest mandates to Title I broadband service providers.[12] The underlying policy mandates of Section 254(g) clearly could be imposed consistent with the Commission's new regulatory approach, and are certainly equally worthy of enforcement.

Although Section 254(g), by its terms, applies solely to interexchange telecommunications services, Section 254(g) was a codification of Commission policies that

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[9] *See id.* (*citing Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 11 FCC Rcd 9564, 9577 (1996) (forbearing from section 254(g) "to the extent necessary to permit carriers to depart from geographic rate averaging to offer . . . private line services")).

[10] The Commission's forbearance authority stems from Section 10(a) of the Communications Act, which forbids forbearance where doing so would result in "charges, practices, classifications, or regulations" that are "unjustly or unreasonably discriminatory." 47 U.S.C. § 10(a). At the same time, the Commission's rate integration policy was originally based on Section 202(a) of the Communications Act, which prohibits unreasonable discrimination based on a customer's location. *See, e.g., Policy and Rules Concerning the Interstate Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; Petitions for Forbearance*, Memorandum Opinion and Order, 14 FCC Rcd 391, 398, 400 & 407 (1998). Because the Commission has long understood non-integrated rates to violate the Section 202(a) prohibition against unreasonable discrimination, it follows that the Commission cannot forbear from the rate integration requirement without condoning the use of rate methodologies that discriminate based on location, in clear violation of Section 202(a).

[11] *See NPRM*, ¶ 110.

[12] *See id.*, ¶ 148 et seq.

have existed for decades.[13] These policies are based on Section 202(a) of the Communications Act, which prohibits unreasonable discrimination based on a customer's location.[14] Imposing these non-discriminatory obligations on broadband service providers would be reasonably ancillary to the Commission's obligations under Sections 254(g) and 202(a), particularly since broadband services provide practical substitutes for Title II interexchange services.

The imposition of geographic averaging and rate integration requirements on broadband services would also be consistent with the Commission's obligations under Section 151 of the Act, which directs the Commission to make available "to all of the people of the United States . . .a rapid, efficient, *Nation-wide*, and world-wide wire and radio communications."[15] The Commission was therefore correct in observing in the *NPRM* that its appropriate goal in this proceeding is to protect the "*policies underlying section 254(g)*" and not just the strict statutory requirements of Section 254(g).[16] The Commission should achieve this goal by imposing

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[13] *See, e.g.*, S. Res. 318, 94th Cong. (1975) (enacted) (calling on the FCC to take action to ensure the integration of interstate telecommunication services).

[14] *See supra* at note 10 for discussion on the relationship between Sections 254(g) and 202(a).

[15] 47 U.S.C. § 151 (*emphasis added*).

[16] *NPRM*, ¶ 157.

geographic averaging and rate integration requirements on broadband voice and data services that provide a practical substitute for interexchange telecommunications services.

Respectfully submitted,

THE STATE OF HAWAII

By: _____

John E. Cole
Executive Director
Department of Commerce
and Consumer Affairs
STATE OF HAWAII
250 South King Street
Honolulu, Hawaii 96813

Bruce A. Olcott
Herbert E. Marks
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
(202) 626-6600

January 17, 2006