

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

In the Matter of)	
)	
Policy and Rules Concerning the)	
Interstate, Interexchange)	
Marketplace)	RM No. 11415
)	
Implementation of Section 254(g))	
of the Communications Act)	
as amended)	

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**OPPOSITION OF
CTIA – THE WIRELESS ASSOCIATION®
TO PETITION FOR RULEMAKING**

CTIA – The Wireless Association^{®1/} respectfully opposes the Petition For Rule Making filed by South Seas Broadcasting, Inc. (“South Seas”) seeking to expand the application of rate integration to cover wireless carriers.^{2/} The Commission and the courts have thoroughly considered this issue. They concluded, correctly, that rate integration, a form of rate regulation intended for wireline long distance carriers, is unnecessary and inappropriate for wireless services. South Seas presents no new facts to justify re-opening this issue. The Commission should deny South Seas’ Petition because rate integration cannot practically be applied to the wireless industry as it exists today, and forcing the industry to restructure itself to fit the outdated mold of a rate-regulated wireline structure would not serve customers.

^{1/} CTIA – The Wireless Association[®] is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

^{2/} See Petition For Rule Making, RM 11415, filed July 23, 2007 (“South Seas Petition”); Public Notice, Petitions For Rulemakings Filed, Report No. 2848 (January 22, 2008).

I. INTRODUCTION AND OVERVIEW

Congress long ago mandated that wireless carriers should be given flexibility to establish new and innovative rate structures, and that competition should be the driver in wireless markets. Because of that policy choice, the wireless marketplace today is more competitive than ever, and competition—the most effective regulator—ensures that wireless charges are reasonable and non-discriminatory, and that they meet consumer demand. There is no evidence of unjust, unreasonable, or discriminatory charges being imposed upon calls to or from overseas territories, including American Samoa. There is, however, overwhelming evidence that competition has motivated carriers to develop innovative calling plans that eliminate long distance and roaming charges for calls within large regions and, in many cases, across the country. For example, as recently as this week, AT&T, Verizon Wireless and T-Mobile announced unlimited voice plans targeted to wireless users.³ With the variety of calling plans available, which include international calling plans that allow calls to American Samoa at discounted rates, consumers can choose an option best suited to their lifestyles and calling patterns.

South Seas does not describe any harm to consumers that requires correction, pointing instead to nothing more than some level of consumer disappointment that wireless rates were not integrated along with wireline interexchange rates—disappointment that South Seas itself

³ See <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25197>; <http://www.verizonwireless.com/b2c/splash/splash.jsp?v=7>; http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080219&title=T-Mobile%20Offers%20Consumers%20Unlimited%20Calling%20And%20Messaging%20Plan.

suggests may be due to misinformation provided by the American Samoa Telecommunications Authority (“ASTCA”).^{4/}

II. THE STATUTORY RATE INTEGRATION REQUIREMENT DOES NOT APPLY TO CMRS PROVIDERS

Section 254(g) of the Communications Act, added by the Telecommunications Act of 1996, directed the Commission to adopt rules to require rate integration by interstate, interexchange telecommunications service providers.^{5/} While the Commission initially determined in 1997 that this requirement applied to wireless carriers, the D.C. Circuit vacated the Commission’s wireless rate integration rule in 2000 and expressed skepticism that Congress intended it to be applied to wireless service.^{6/} Shortly thereafter, the Commission held that, in light of the court’s vacatur of the rule, “there is currently no rate integration rule to apply to CMRS carriers.”^{7/} The Commission never revisited the issue, and it is unlikely that such an interpretation of section 254(g) subjecting CMRS rates to the rate integration requirement would survive scrutiny.

^{4/} South Seas Petition at 3.

^{5/} 47 U.S.C. § 254(g).

^{6/} *GTE Service Corp. et al. v. Federal Communications Commission*, 224 F.3d 768, 774 (2000) (discussing legislative history of 1996 Act and finding no basis to believe that section 254(g), which Congress applied to “interexchange telecommunications service,” was intended to apply to CMRS, which does not use exchanges).

^{7/} *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 15 FCC Rcd 21066, 21068 ¶ 6 (2000) (“*Rate Integration Forbearance Order*”); see also *Petitions for Reconsideration filed by Nextel Communications, Inc. and Rand McNally Company, Further Notice of Proposed Rulemaking*, Memorandum Opinion and Order, 22 FCC Rcd 8967 (2007) (dismissing pending petitions for reconsideration of rate integration order as moot in light of prior court and Commission decisions) (“*Termination Order*”).

As the legislative history of section 254(g) demonstrates, this provision was intended only to codify existing rate integration and averaging policies for wireline carriers.^{8/} CMRS had never been subject to rate integration or averaging requirements. To the contrary, Congress in 1993 established a national regulatory framework for CMRS premised on deregulation,^{9/} and in 1996 specifically recognized that CMRS providers operated outside the legacy wireline strictures of exchanges by exempting them from the definition of local exchange carrier.^{10/} Moreover, as the General Counsel of the FCC and the Solicitor General of the United States noted in a recent brief to the Supreme Court of the United States, section 332 of the Communications Act “represents a ‘general preference in favor of reliance on market forces rather than regulation.’”^{11/} It would be fundamentally inconsistent with the structure and purpose of the 1993 and 1996 enactments to subject wireless carriers to a form of rate regulation intended for traditional landline providers.

Imposing rate integration on wireless carriers would also be at odds with the Commission’s own actions detariffing wireless rates^{12/} and its long history of otherwise recognizing that wireless and wireline telephony warrant different regulatory treatment.^{13/}

^{8/} See H.R. Conf. Rep. No. 104-458, at 132 (“Conference Report”) (“The conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to incorporate the policies contained in the Commission's proceeding entitled ‘Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands’ (61 FCC 2d 380 (1976)).”)

^{9/} See, e.g., Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b)(2), 107 Stat. 312 (1993) (codified at 47 U.S.C. § 332(c)(3)(A)) (preempting state regulation of CMRS rates).

^{10/} 47 U.S.C. § 153(26).

^{11/} Brief for the United States, Sprint Nextel Corp. et al. v. Nat’l Ass’n. of State Util. Consumer Advocates, 457 F.3d 1238 (11th Cir. 2006), cert. denied No. 06-1184 (U.S. Jan 22, 2008).

^{12/} See *Implementation of Section (3)(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, 1511 (1994) (“*CMRS Second Report and Order*”).

^{13/} See *id.*; see also, e.g., *Bundling of Cellular Customer Premises Equipment and Cellular Service*,

Deviating from this path would be particularly arbitrary where the result would be to apply a provision of the Act to CMRS despite evidence of Congress's intent to the contrary^{14/} and which, if applied to CMRS, would stifle the competitive dynamics of the wireless industry and introduce enormous costs for consumers.

III. RATE INTEGRATION IS INAPPROPRIATE FOR THE COMPETITIVE WIRELESS MARKETPLACE

Wireless carriers have not been subject to a rate integration rule for nearly eight years.^{15/} In today's competitive wireless marketplace there is, if anything, even less justification than in 2000 to subject wireless carriers to rate regulation. The Commission recently found in its *Twelfth Annual CMRS Report* that "U.S. consumers continue to experience significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the CMRS marketplace."^{16/} With multiple carriers vying to provide the most attractive plans for consumers, there would have to be an immediate, pressing, and significant need to correct a real problem that lacked any other remedy in order to justify restructuring the way that wireless rates are calculated. There is no such need.

A. Value Drives Wireless Competition

Report and Order, 7 FCC Rcd 4028 (1992) (permitting the bundling of cellular handsets with service packages, contrary to wireline context).

^{14/} See *GTE Service Corp.*, 224 F.3d at 775 (interpreting section 254(g) as applying to wireless services "is certainly not compelled by the 'unambiguous' text of the statute."); see also Brief for the United States at 4-5, *supra* n. 11 (stating "The rates that cellular providers charge their customers thus are generally governed 'by the mechanisms of a competitive marketplace,' in which rates and terms of service are established by contract rather than by regulation.").

^{15/} See generally *Rate Integration Forbearance Order*, 15 FCC Rcd at 21068 ¶¶ 6-7 (declining to forbear from enforcement of § 254(g) to CMRS carriers since there was no rule to enforce).

^{16/} *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28, WT Docket No. 07-71, ¶ 1 (rel. Feb. 4, 2008) ("*Twelfth Annual CMRS Report*").

An analysis of usage and revenue trends over the past decade demonstrates that value is a key driver of wireless growth. Wireless consumers today get more for less than they ever have before, and as a result they are utilizing wireless services more than ever before. The average revenue per user (“ARPU”) in the wireless market—which is an indicator of what consumers pay for service in their monthly bills—was \$49.11 as of June 2007, which is *more than a dollar per month less* that it was a decade ago.^{17/} During the same period, the average minutes of use (“MOU”) per subscriber increased seven-fold, from an average of 110 MOU per month to an average of 746 MOU per month.^{18/} As a result, there are more than 250 million wireless subscribers today, compared with just over 50 million subscribers a decade ago.^{19/} These 250+ million users consumed over one trillion MOU in the first six months of 2007.^{20/}

Value is, and will remain, the driver of wireless growth as consumers face a broad choice of carriers who compete head-to-head to provide the best service at the lowest price. As of the Commission’s most recent report on CMRS competition, nearly 57 percent of the U.S. population is served by five or more wireless carriers, 90 percent of the population is served by four or more carriers, and 95 percent is served by three or more carriers.^{21/} There is simply no need for rate regulation in a market characterized by intense product and service competition among numerous competitors—if a carrier were to impose discriminatory or excessive charges for calls to American Samoa, customers could choose to do business with a different carrier.

^{17/} See CTIA Semi-Annual Wireless Industry Survey Annualized Results, November 2007, at 2 (“November 2007 Annualized Survey Results”).

^{18/} See CTIA Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Midyear 2007 Results, at 11-12 (rel. Nov. 2007).

^{19/} *Id.* at 197-98.

^{20/} See November 2007 Annualized Survey Results at 7.

^{21/} *Twelfth Annual CMRS Report* ¶ 38.

B. There is No Evidence of A Need For Wireless Rate Integration

South Seas does not even suggest that wireless carriers are charging unreasonable rates for calls between American Samoa and the mainland; rather, it bases its argument for rate integration on the fact that, due to certain omissions in news stories and the ASTCA's customer newsletter, "customers were led to believe that the new integrated rates" charged by wireline interexchange carriers ("IXCs") would also extend to wireless carriers, and were "shocked" to learn that this is not so.^{22/} Although any consumer confusion is unfortunate, the remedy for that confusion is the issuance of a clarifying statement by the ASTCA, not the restructuring of rates for the entire wireless industry.

South Seas also misstates the facts when it says that "none of the [domestic wireless] carriers notify their customers that American Samoa, which is now considered a 'domestic' number, is not considered a domestic call."^{23/} As an initial matter, South Seas' casual use of the shorthand label "domestic" to describe American Samoa's "number" confuses the issue, as the FCC has never stated that *all* calls to American Samoa are or should be considered "domestic." Rather, after years of back-and-forth negotiations between the Commission and the American Samoa Government and the American Samoa Office of Communications (the precursor to the ASTCA), the FCC required U.S. *wireline* IXCs who choose to serve the American Samoa market to integrate their service offerings.^{24/} The American Samoa Government and the ASTCA were well aware throughout this process that the D.C. Circuit had vacated and remanded the

^{22/} South Seas Petition at 3.

^{23/} *Id.*

^{24/} See *Policies and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, Order, 21 FCC Rcd 5971 (2006) ("American Samoa Order").

Commission’s rules requiring wireless rate integration, and were reminded of the fact that rate integration does not apply to wireless carriers in the very FCC order that mandated rate integration for wireline IXCs.^{25/}

Furthermore, South Seas’ statement that wireless carriers^{26/} do not inform customers that calls to American Samoa are not considered “domestic” calls is simply incorrect. Each of the listed carriers, in addition to publishing calling plan coverage maps that very clearly do not include American Samoa, discloses that calls to American Samoa are treated as international calls.^{27/} South Seas concedes as much when it states, in the same paragraph where it claims that wireless carriers, including Sprint, do not disclose that American Samoa is outside of their domestic calling plans, that “Sprint PCS’s domestic calling plan includes such offshore locales as Puerto Rico (area codes 787 and 989), the U.S. Virgin Islands (area code 340), and even Guam (area code 671), but not American Samoa.”^{28/} Even if South Seas were correct—and it is not—that wireless carriers have not informed their customers that calls to American Samoa are outside of their domestic calling plans, the remedy would not be the restructuring of wireless rates.

The fact that all of the national carriers include Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands (and in some cases, as South Seas points out, “even Guam”) within their domestic calling plans proves that competitive forces alone are sufficient to protect consumers. Like

^{25/} See *id.* at note 1 (“There is currently no Commission rule requiring wireless carriers to provide services on an integrated basis.”) (citing *GTE Service Corp.*, 224 F.3d 768).

^{26/} Specifically, “Sprint/Nextel, AT&T/Cingular, Verizon, T-Mobile, and Cellular One.” South Seas Petition at 3.

^{27/} See, e.g., www.sprint.com/internationalrates; www.wireless.att.com/learn/international/long-distance; http://mobileoptions.vzw.com/international/country/North_America/Mexico.html; <http://www.t-mobile.com/International/LongDistanceOverview.aspx>. Cellular One is a trademark licensed to multiple entities; however, in 2007 AT&T acquired Dobson Cellular, the largest entity using the Cellular One trademark, and AT&T clearly discloses the status of American Samoa.

^{28/} South Seas Petition at 3.

South Seas argues on behalf of American Samoa today, both Alaska and Hawaii (and no other party) argued nearly a decade ago that application of section 254(g) to wireless rates was necessary to forestall inevitable discrimination against citizens of those distant states.^{29/} Their concerns have proven unfounded, and South Seas' concerns will prove to be unfounded as well, given the competitiveness of the wireless market.

IV. SUBJECTING WIRELESS RATES TO SECTION 254(g) IS INADVISABLE TODAY NO LESS THAN IT WAS A DECADE AGO

It is not surprising that rate integration was not applied to CMRS prior to the 1996 Act given the practical difficulties of applying the rule to wireless carriers. CMRS service areas do not follow state lines and do not coincide with local exchange carrier ("LEC") "exchanges." Rather, CMRS licenses are issued by MSAs and MTAs, which frequently cover multistate areas within which some calls might be considered inter-LATA or interexchange calls in the wireline context. As the D.C. Circuit noted in 2000, this distinction alone suggests that Congress did not intend for rate integration to apply to wireless services given the plain language of section 254(g).^{30/}

Similarly, and more importantly from the consumer's point of view, the majority of plans offered by the major U.S. wireless carriers today are nationwide "single rate" plans, with no distinction made between inter- or intra-MTA calls, interstate or interexchange calls, "local" or "long distance" calls, or any other such label. On its face, section 254(g) presumes that interstate

^{29/} See Reply Comments of the State of Alaska, CC Docket No. 96-61, at 2-3 (filed June 28, 1999) (arguing that wireless rate integration was necessary to ensure non-discrimination for all customers); Reply Comments of the State of Hawaii, CC Docket No. 96-61, at 3-4 (filed June 28, 1999) (arguing that rate integration is necessary to protect consumers and that integration existing at the time may have been due to the rate integration requirement).

^{30/} See *GTE Service Corp.*, 224 F.3d at 774 ("Because CMRS does not use exchanges, it is by no means obvious that the Congress, when it used a phrase in which the term 'interexchange' is an essential term, was referring to CMRS.").

service is being provided at a separately-identifiable “interstate” rate, but as the Commission has again just recently recognized, many wireless plans do not include separate rates for local, intrastate, or interstate calls.^{31/}

Any attempt to apply the rate integration requirement to a calling plan that includes no interexchange or long distance rate would deprive consumers of the benefits of these innovative rate plans, and would create unnecessary regulatory costs and impede the ability of CMRS providers to respond to competitive pressures. Because similar plans do not exist in the conventional, landline interexchange market, there can be no easy application of rate integration in this context.

Furthermore, the way that people use their mobile phones is itself incompatible with the very concept of rate integration. Consumers regularly drive across state lines and in and out of MTA boundaries while carrying on conversations on their wireless phones, such that a call that would have been considered an interexchange call if placed on a land line from the departure point would also be considered a local call if placed from a land line at the customer’s final destination. The rate integration concept found in section 254(g) simply cannot be applied in this context without perverse—or endlessly complicated and confusing—results.

The public interest is best served when CMRS providers have the necessary flexibility to tailor their rates and service plans to respond to competitive conditions. This flexibility includes the freedom to determine the scope of calling plans and to negotiate roaming agreements that

^{31/} See *Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, Declaratory Order, WC Docket No. 06-122, FCC 07-231, ¶¶ 8-11 (rel. January 24, 2008) (describing difficulties of applying universal service contribution methodology for “toll” service to wireless calling plans that have no interexchange or long distance rate element) (“2008 USF Declaratory Order”).

most effectively permit subscribers to use their wireless phones even when they are outside of their providers' service areas. It was for this reason that every single commenter, including Alaska and Hawaii, who responded to the Commission's last request for comments on this issue recognized the unique difficulties inherent in applying rate integration to wireless carriers,^{32/} and every commenter other than Alaska and Hawaii agreed that attempting to apply rate integration requirements developed for interstate wireline carriers to the vibrant and competitive wireless marketplace is unnecessary.

The vast majority of commenters agreed in 1999 that the business models and service offerings that characterize the wireless market would make enforcement of the rate integration requirements a hopelessly frustrating task for regulators and service providers, and this remains true today.

V. CONCLUSION

The South Seas Petition presents a solution in search of a problem. If, as South Seas suggests, there is consumer confusion in American Samoa over the applicability of section 254(g) to wireless rates, then the solution to that problem is better consumer education. Likewise, if there is consumer confusion over whether or not American Samoa is included in carriers' various calling plans, the solution is better consumer education.

^{32/} See Comments of the State of Hawaii, CC Docket No. 96-61 at 7 (filed May 27, 1999) (recognizing need for a modified definition of "affiliate" for wireless rate integration); Comments of the State of Alaska, CC Docket No. 96-61 at 2-3 (filed May 26, 1999) (recognizing need for simplified plan for wireless carriers).

Nothing in the South Seas Petition provides any justification for restructuring the way that wireless carriers build their calling plans and structure their rates, particularly given the extraordinary benefits that consumers have reaped, in terms of lower prices and greatly increased value, from the innovative structuring of rates and plans. The wireless industry's innovative approach to calling plans and rate structures has led the way in transforming the old local/long distance paradigm into a unified telecommunications market, where the very idea of making a "long distance" call would now be considered quaint by many younger consumers. There is absolutely no justification for applying rate integration, which is a relic of a former age, to the wireless market and thereby forcing it to change direction to fit itself into the rate-regulated local/long distance paradigm.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shanee Meeks, do hereby certify that on this 21st day of February 2008, I caused copies of the foregoing “Opposition of CTIA – The Wireless Association® to Petition for Rulemaking” to be delivered to the following via First Class U.S. mail:

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