

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace)	CC Docket No. 96-61
)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2004

Released: April 5, 2004

By the Commission:

I. INTRODUCTION

1. In this order, we deny an application for review filed by IT&E Overseas, Inc. (IT&E).¹ IT&E requests that the Commission review a Common Carrier Bureau (Bureau) order² that rejected certain aspects of IT&E's final rate integration plan, filed pursuant to section 254(g) of the Communications Act of 1934, as amended (the Act).³ IT&E argues that, consistent with its rate integration obligations, it is entitled to (1) adopt rates that may vary based on the location to which a call is terminated, and (2) offer temporary promotions and private line services on different terms and conditions based on a subscriber's geographic location.⁴ As explained below, we reject both arguments.

¹ See Application for Review, filed by IT&E Overseas, Inc., CC Docket No. 96-61 (Aug. 29, 1997) (*IT&E AFR*). IT&E is a facilities-based international and domestic interexchange carrier (IXC) operating in Guam and the Commonwealth of the Northern Marianas Islands.

² See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Memorandum Opinion and Order, 12 FCC Rcd 11,548, DA 97-1628 (Com. Car. Bur. rel. Jul. 30, 1997) (*Bureau Order*). Pursuant to a Commission reorganization in March 2002, the Common Carrier Bureau was re-named the Wireline Competition Bureau.

³ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); see also 47 U.S.C. § 254(g).

⁴ See *IT&E AFR* at 2.

II. BACKGROUND

2. Section 254(g) of the Act says that “a provider of 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.”⁵ Congressional conferees made clear that Congress intended section 254(g) to incorporate the Commission’s existing rate integration policy.⁶ Since 1972 that policy required any carrier providing domestic interstate interexchange service between the 48 contiguous states and various offshore points to integrate its rates for offshore points with its rates for similar services on the mainland.⁷

3. In the *Rate Integration Report and Order*, the Commission adopted a rate integration rule mirroring the language of section 254(g), making the existing policy applicable to all interstate interexchange services as defined in the Act and to all providers of those services.⁸ Because the Act defines “state” to include all U.S. territories and possessions, the Commission concluded that providers of interexchange services to offshore points, including Guam and the Commonwealth of the Northern Marianas Islands, must provide such service on an integrated basis with services provided to other states.⁹ The Commission directed carriers to file final rate integration plans on June 1, 1997, and to implement rate integration for those points by August 1, 1997.¹⁰

4. Pursuant to that directive, IT&E filed a rate integration plan on June 2, 1997. The IT&E plan contained rates that varied based on the terminating location of the call, and that provided for promotions and private line services on different terms and conditions based on a subscriber’s geographic location.¹¹ The Bureau rejected these aspects of IT&E’s rate integration plan.¹²

5. IT&E filed an application for Commission review of the Bureau’s decision.¹³ The State of Alaska, the Office of the Governor of Guam and the Guam Telephone Authority, the State of Hawaii, and the Commonwealth of the Northern Marianas Islands filed oppositions and

⁵ 47 U.S.C. § 254(g).

⁶ S. Rep. No. 230, 104th Congress, 2d Sess. 1, 281-82 (1996) (Joint Explanatory Statement).

⁷ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9586, para. 47 (1996) (*Rate Integration Report and Order*).

⁸ *Rate Integration Report and Order*, 11 FCC Rcd at 9588, para. 52. See also 47 C.F.R. § 64.1801(b).

⁹ *Rate Integration Report and Order*, 11 FCC Rcd at 9596, para. 66. Accordingly, the remainder of this order, in referring to “states,” shall also mean all U.S. territories and possessions.

¹⁰ *Id.* at 9605, para. 92.

¹¹ IT&E Final Rate Plan at 2, paras. 3 and 4.

¹² *Bureau Order* at 9-10, para. 19.

¹³ *IT&E AFR*.

comments.¹⁴ IT&E filed a Reply.¹⁵

6. In support of its application for review, IT&E raises the following objections. First, IT&E argues that section 254(g) does not authorize the Commission to prohibit IXC's from setting rates that vary based on call termination location. IT&E contends that such a prohibition represents an unwarranted expansion of the statute, and contravenes the Commission's deregulatory policies with respect to the interstate, interexchange marketplace.¹⁶ Second, IT&E argues that the Bureau erred in extending rate integration to temporary promotions and private line services.¹⁷

III. DISCUSSION

7. Rates Based on Call Termination Location. We find that IT&E may not implement a rate schedule containing rates that vary based on the location to which the call is terminated. We find, as did the Bureau, that such an approach is impermissible because it would allow a carrier to charge its subscribers in every state a higher rate for calls destined for one state than the carrier assesses for calls of the same distance and duration to other states.¹⁸ IT&E contends that, under the plain language of section 254(g), an IXC is required only to provide service to all of its subscribers in each state "at rates no higher than the rates charged to its subscribers in any other State."¹⁹ IT&E asserts that under this language, IT&E may set rates that vary based on call termination location. We find that such an interpretation 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.²⁰ The Commission's rate integration policy, which Congress incorporated into section 254(g), historically has required IXC's to incorporate individual states, such as Alaska, into an entire nationwide regime, and not just into an originating rate regime.²¹ We therefore conclude that setting rates based on call

¹⁴ See Comments of the State of Alaska on Application for Review of IT&E Overseas, Inc., CC Docket No. 96-61 (Sept. 15, 1997); Joint Comments of the Office of the Governor of Guam and the Guam Telephone Authority, CC Docket No. 96-61 (Oct. 28, 1997); Opposition of the State of Hawaii, CC Docket No. 96-61 (Sept. 15, 1997); and Opposition to Application for Review by Commonwealth of the Northern Marianas Islands, CC Docket No. 96-61 (Sept. 15, 1997).

¹⁵ See Consolidated Reply of IT&E Overseas, Inc., CC Docket No. 96-61 (Nov. 12, 1997).

¹⁶ *IT&E AFR* at 5-6.

¹⁷ *IT&E AFR* at 7-8.

¹⁸ See *Bureau Order* at 9, para. 19.

¹⁹ *IT&E AFR* at 3 (citing 47 U.S.C. § 254(g)).

²⁰ See *Rate Integration Report and Order*, 11 FCC Rcd at 9586, para. 47. Indeed, the Commission's rate integration policy integrated offshore points into the domestic interstate interexchange rate structure to ensure that the benefits of growing competition and other developments related to interstate interexchange telecommunications services would be available throughout the nation. *Id.* at 9588, para. 52. See also Alaska Opposition at 4 ("Clearly, both the Commission and Congress have determined that the rate integration policy must be retained in the face of deregulation to protect consumers in the U.S. insular areas.")

²¹ *Bureau Order* at 9-10, para. 19 (citing Joint Explanatory Statement). For example, in 1976, the Commission required carriers offering message toll, private line, private line and specialized services to or from Alaska, Hawaii, Puerto Rico, and the Virgin Islands to integrate their rates for those services into the rate structures

(continued...)

termination location violates section 254(g) of the Act and the Commission's rate integration rule.

8. Temporary Promotions and Private Line Services. We find that, under the rate integration rule, IT&E may not offer temporary promotions and private line services on different terms and conditions to different groups of subscribers. In the *Rate Integration Report and Order*, the Commission concluded that section 254(g)'s rate integration requirement applies to temporary promotions and private line services.²² We disagree with IT&E's argument that this conclusion should be reversed because it conflicts with the Commission's treatment of such services under the geographic rate averaging rule.²³ Rate averaging and rate integration are related, but distinct, policies.²⁴ Although neither rule allows carriers to offer temporary promotions and private line services on different terms and conditions to different groups of subscribers, Congress specifically permitted the Commission to depart from this general rule in the case of geographic rate averaging through exercise of its forbearance authority. The legislative history of section 254(g) clarified Congress' intent to incorporate the Commission's existing policy regarding geographic rate averaging, which had permitted, under certain circumstances, the offering of temporary promotions and private line services on different terms and conditions to different groups of subscribers.²⁵ Indeed, Congress explicitly stated that the Commission "could continue to authorize limited exceptions to the general rate averaging policy" using the forbearance authority provided by section 10 of the Act.²⁶ Accordingly, the Commission concluded that it could exercise its forbearance authority to permit carriers to depart from geographic rate averaging to the extent necessary to offer temporary promotions and private line services in accordance with the policy already in existence.²⁷ By contrast, in the case of IT&E, the Commission did not forbear from the rate integration principle for any service, and

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applicable to the mainland. See *Rate Integration Report and Order*, 11 FCC Rcd at 9586, para. 47 (citations omitted).

²² The Commission stated that "to the extent that a provider of interexchange service offers . . . discounts, promotions, and private line services to its subscribers on the mainland, it should use the same ratemaking methodology and rate structure when offering those services to its subscribers in Guam or the Northern Marianas." *Rate Integration Report and Order*, 11 FCC Rcd at 9596-97, para. 67.

²³ *IT&E AFR* at 7-8.

²⁴ Geographic rate averaging requires a carrier to charge the same rate between any two points where the distance is the same. Rate integration requires a carrier to implement the same rate structure it uses for calls to or from offshore points as it uses for its mainland services. Accordingly, the Commission addressed rate averaging and rate integration in separate sections of the decision, and established separate requirements applicable to each. See *Rate Integration Report and Order*, 11 FCC Rcd at 9568-9571, 9574-9579, 9582-9584, 9585, paras. 9-12, 20-30, 38-41, 46 (rate averaging requirements and state authority), and at 9588-9589, 9596-9599, paras. 52-54, 66-73 (rate integration requirements).

²⁵ *Rate Integration Report and Order*, 11 FCC Rcd at 9574-75, para. 21.

²⁶ *Rate Integration Report and Order*, 11 FCC Rcd at 9574-75, para. 21. See also Joint Explanatory Statement at 282.

²⁷ *Integration Report and Order*, 11 FCC Rcd at 9576, paras. 24-25.

no petition for such forbearance has been filed.²⁸

IV. CONCLUSION AND ORDERING CLAUSES

9. For the reasons stated above, we affirm the order below responding to IT&E's final rate integration plan, and deny the application for review filed by IT&E.

10. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules, that the Application for Review filed by IT&E Overseas, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁸ *Rate Integration Report and Order*, 11 FCC Rcd at 9588-89, paras. 52-54.