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R. Furry
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PAC*TEL
Paging
A Pacific Telesis Company

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JAMES H. QUELLO

August 24, 1993 DOCKET FILE COPY ORIGINAL

Honorable James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 802
STOP CODE 0106
Washington, D.C. 20554

Doc-93-252

Dear Chairman Quello:

Recently, Telocator sent you a letter urging the Commission to institute a rulemaking, pursuant to the new Section 332(c) of the Communications Act of 1934, as amended ("Act"), to exempt commercial mobile service providers from the provisions of Title II of the Act. PacTel Paging ("PacTel") wholeheartedly supports Telocator's position and also urges the Commission to institute such a rulemaking to exempt paging carriers from the requirements of Title II of the Act.

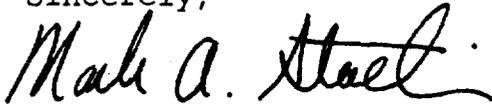
PacTel previously filed a Petition for Rulemaking seeking a declaratory ruling that paging carriers are not required to file tariffs under the Act because of the exemption contained in Section 221(b) of the Act. See Petition for Declaratory Ruling, File No. DA 93-400. In that proceeding, the Commission took public comment on PacTel's Petition. All of the commenters supported PacTel's position that federal tariffing would not serve the public interest, and might, in fact, substantially lessen competition. Furthermore, in the recent Memorandum Opinion and Order in CC Docket No. 93-36, Tariff Filing Requirement for Nondominant Carriers, FCC 93-401, released August 8, 1993, the Commission specifically found that tariffing requirements could harm competition.

Requiring tariffs for paging carriers does not serve the public interest. The paging industry is a highly competitive industry with generally five to twenty competitors in each major market. Competition among carriers is based primarily upon service, geographic coverage, and price. Tariffing would lessen competition by allowing competitors to anticipate price changes and would serve as a means to challenge a carrier's rates. The public interest would be disserved if these carriers were required to file tariffs because such a requirement could tend to lessen competition.

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PacTel, therefore, urges the Commission to expeditiously adopt a Notice of Proposed Rulemaking to exempt commercial mobile service providers, especially paging carriers, from the tariffing requirements of Title II.

Sincerely,

A handwritten signature in cursive script that reads "Mark A. Stachiw". The signature is written in dark ink and is positioned above the typed name.

MARK A. STACHIW
Attorney

cc: Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

29 SEP 1993

IN REPLY REFER TO:

Mr. Mark A. Stachiw
PacTel
Three Forest Plaza
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Dear Mr. Stachiw:

Thank you for your letter to Chairman Quello regarding the implementation of Section 332(c) of the Communications Act. In its September 23, 1993 agenda meeting, the Commission adopted a Notice of Proposed Rulemaking in PR Docket No. 93-252 to implement Title IV of the Omnibus Budget Reconciliation Act of 1993, which amended Sections 3(n) and 332 of the Communications Act. (I have enclosed a copy of the news release on this proceeding for your information.) One of the issues that will be addressed in that proceeding is whether the Commission should forbear from applying tariff regulation to commercial mobile services. Your letter has been placed in the record for that proceeding and will be fully considered by the Commission when taking final action on this matter.

Sincerely,

Kathleen B. Levitz/OK

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Enclosure



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

Report No. DC-2505

ACTION IN DOCKET CASE

September 23, 1993

RULEMAKING BEGUN ON IMPLEMENTATION OF 1993 BUDGET ACT INCLUDING
REGULATORY STATUS AND TREATMENT OF PCS PROVIDERS
(PR DOCKET 93-252)

At the direction of Congress, the Commission is initiating a rulemaking to implement amendments to the Communications Act made by Title VI of the Omnibus Budget Reconciliation Act of 1993 (the Budget Act), signed into law August 10, 1993. The Budget Act amended Sections 3(n) and 332 of the Communications Act to create a comprehensive framework for the regulation of mobile radio services and directed the Commission to establish rules defining the regulatory status and treatment of mobile services including Personal Communications Services (PCS).

Specifically, the Commission is asking for comments on proposals that:

- Address the definitional issues raised by the amended section 332;
- Identify various services, including PCS, affected by the new legislation and describe their regulatory treatment;
- Delineate the provisions of Title II of the Communications Act that will be applied to commercial mobile services and those provisions that, within the bounds of the discretion afforded by Congress, will not be applied.

Under revised Section 332, which previously governed private land mobile services, mobile services are classified as either "commercial mobile service" or "private mobile service." Commercial mobile service providers are treated as common carriers under the Communications Act, except that the Commission may forbear from applying the provisions of Title II other than Sections 201, 202, and 208. Private mobile services are not subject to any Title II regulation. Section 332(c)(3) preempts state and local rate and entry regulation of both commercial and private mobile service, but allows the states to regulate other terms and conditions of commercial mobile service. In addition, states may petition for authority to regulate commercial mobile service rates under circumstances specified by statute.

Under the statutory revisions to Sections 332 and 3(n), the Commission must address the following issues: (1) How should the FCC interpret and apply the statutory definitions of "commercial mobile service" and "private mobile service?" (2) How will existing common and private carrier services be classified under these definitions? (3) How will future service such as PCS be classified? (4) What degree of Title II regulation should be imposed on commercial mobile service providers? (5) What transitional measures are necessary to implement these legislative changes?

(over)

Although the Budget Act established different timetables for resolving these issues as they apply to PCS and as they apply to mobile services generally, the Commission has decided that many of the issues are sufficiently interdependent that they must be addressed comprehensively. Therefore, it is combining the PCS and non-PCS portions of its proposal into a single proceeding and is soliciting comments and will promulgate rules on all the relevant regulatory issues within the 180-day time frame mandated by the legislation for PCS-related decisions.

Among the issues to be addressed and on which the Commission is soliciting comments are:

Definitions of commercial mobile service and private mobile service. The statute defines "commercial mobile service" as mobile service that is provided for profit and makes "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." "Private mobile service" is defined as any mobile service that is not a commercial mobile service or the "functional equivalent of a commercial mobile service." The Commission seeks comment on how these terms should be interpreted:

-- "Interconnected service": The statute defines "interconnected service" as service that is interconnected with the public switched network. The Commission seeks comment on possible alternative definitions of both "interconnected" and "public switched network." In particular, the Commission asks whether "interconnected service" includes paging services that use store-and-forward technology. The Commission also seeks comment on whether "public switched network" refers solely to landline telephone exchange and interexchange facilities or could also include wireless facilities that are connected to the wireline network.

-- "Available to the public or . . . a substantial portion of the public": The Commission seeks comment on how this criterion applies to services that are available: (1) to the general public without restriction, (2) to classes of eligible users that constitute a large sector of the general public in a given service area, and (3) to small or specialized user groups. The Commission also seeks comment on whether factors such as system capacity or service area should be considered in determining effective availability.

-- "Functional equivalent of commercial mobile service": The Commission seeks comment on whether this language: (1) was intended to provide that a service meeting the literal definition of a commercial mobile service could be classified as private if it is not the functional equivalent of a commercial mobile service, or (2) was intended to provide that a service not meeting the literal definition of a commercial mobile service could still be classified as a commercial mobile service if it is the functional equivalent of a commercial mobile service.

Classification of existing mobile services. The Commission seeks comment on how to classify the following categories of services: (1) non-profit services, e.g., local government, public safety, and private services dedicated solely to internal use by the licensee, (2) wide-area SMR systems that offer interconnected service, (3) traditional SMR local dispatch services, (4) specialized private carrier services offered to limited user groups, (5) paging services, and (6) common carrier mobile services.

Classification of PCS. The Commission proposes that no single regulatory classification would be imposed on broadband or narrowband PCS services. Instead, PCS licensees would be permitted to choose whether to provide commercial mobile or private mobile service.

Interconnection rights of mobile service providers. The Commission proposes that providers of interstate mobile service be entitled to obtain interconnection from local exchange carriers that is reasonable for the particular system and no less favorable than that offered to any other customer or carrier.

Forbearance. New Sections 332(c)(1)(A) and 332(c)(1)(C) authorize the Commission to promulgate regulations exempting some or all commercial mobile services from regulation under any provision of Title II other than Sections 201, 202 and 208. The Notice tentatively concludes that the Commission has authority to establish classes or categories of commercial mobile services for purposes of applying such regulations and seeks comment on the types of categories and classifications that should be established, if any. The Notice seeks comment on whether the Commission should forbear from applying most of Title II, including tariff regulation, and the related entry and exit provisions, in Sections 203, 204, 205, 211, and 214. The Notice also proposes to forbear from enforcing or adopting rules pursuant to Sections 210, 212, 213, 215, 218, 219, 220, and 221. The Notice tentatively concludes that the Commission should not forbear from applying Sections 206, 207, and 209, as these sections are provisions associated with the complaint remedy described in Section 208, from which the Commission, pursuant to the statute, may not forbear. The Notice also tentatively concludes that the Commission should not forbear from applying Sections 216 and 217, which extend the application of the Act to receivers and agents. Finally, the Notice requests comment as to whether the Commission should forbear from applying Sections 223, 225, 226, 227 and 228, which are provisions of more recent origin that contain specific protections for consumers.

Action by the Commission September 23, 1993, by Notice of Proposed Rulemaking (FCC 93-454). Chairman Quello, Commissioners Barrett and Duggan with Commissioner Duggan issuing a separate statement.

- FCC -

News Media contact: Rosemary Kimball at (202) 632-5050.

Common Carrier Bureau contacts: Peter Batacan at (202) 632-6450, Nancy Boocker at (202) 632-0935, or Judith Argentieri at (202) 632-6917.

Private Radio Bureau contacts: David Furth or Karen Kincaid at (202) 634-2443.

**Separate Statement
of
Commissioner Ervin S. Duggan**

In Re: Implementation of Title VI of the Omnibus Budget Reconciliation Act of 1993, Regulatory Treatment of Mobile Services

In adopting a new Section 332 of the Communications Act, the Congress forged a new regulatory scheme for mobile services, which I hope will not only allow the FCC to give PCS a good start in life, but also to reconcile often conflicting and ill-fitting modes of regulating other mobile services.

Because there will be multiple licensees in the mobile services arena in the future, we need to focus our regulatory efforts narrowly. In my view, those efforts should be aimed at making commercial mobile services--- whether cellular, SMRS, or PCS--- a real success for consumers: affordable, easy to use, widely available, and rich with features. Most of this will be accomplished in the marketplace. But the FCC will have a role:

- o We can require nondiscriminatory interconnection among all providers, whether wireless or wireline.
- o We can make interconnection easier to accomplish by using our Title II regulatory powers as needed--- perhaps even requiring tariffs, if it comes to that.
- o We can promote interoperability among mobile service providers to the extent feasible, so that consumers can switch providers without necessarily switching handsets, and so that the same handset will work anywhere.
- o We can ensure that roaming arrangements are simple to accomplish and are seamless, if not invisible, from the consumer's point of view.
- o We can try to ensure that competition will be fair and vigorous.

I will be most interested in parties' suggestions for wielding the regulatory tools that Congress has provided us in the way most likely to promote the success of PCS.

Congress' decision to create a unified regulatory scheme for mobile services also suggests that it may be time to consider a suggestion I put forward tentatively in the past: consolidating

the FCC's regulatory efforts into a single "Mobile Services Bureau." Such an approach could make the FCC's efforts more focused, more efficient, and bring harmony to our regulatory efforts.

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