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November 12, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Suite 222
Washington, D.C. 20554

Re: GN Docket No. 93-252

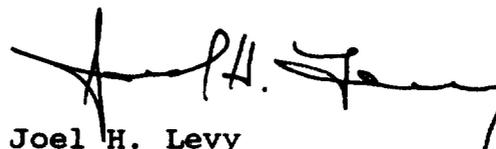
Dear Mr. Caton

On November 8, 1993, National Cellular Resellers Association filed comments in the above-referenced proceeding. On November 9, 1993 a typographical omission caused the Association to file a corrected page 21.

It has come to our attention that, due to a difficulty experienced with the firm's wordprocessing package, the last line of text on pages 12, 13, 20, 21 and 24 failed to appear in the Comments.

Transmitted herewith are reproductions of the corrected pages. It would be appreciated if the enclosed correct pages were substituted for the pages originally filed.

Very truly yours


Joel H. Levy

Enclosures

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physical collocation to all interconnectors that request it, though the parties remain free to negotiate satisfactory virtual collocation arrangements.

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Our decision in this proceeding represents one of many steps that the Commission is taking to ensure that telecommunications customers obtain the full benefits of new fiber optic and radio networks that compete with existing LEC services. This growing competition will expand service choices for telecommunications users, heighten incentives for efficiency, speed technological innovation, and increase pressure for cost-based prices. *Id.* at 7372. (Footnotes omitted)

15. Implementation of similar policies with respect to the commercial mobile services market would bring about similar advances and is, in any event, now legally required by Section 332(c)(1)(B), as well as the extension of Sections 201 and 202 to CMS providers. Moreover, the fact that facilities-based CMS providers use radio spectrum that comes conditioned with use in the public interest⁹ further requires such open entry and competitive access since the grant of such licenses conveys no right to exclude competitors, engage in monopolistic or anti-competitive practices or extract monopoly rents. Rather, the grant of such licenses, either through lottery, purchase, or spectrum auctions, confers no property rights on the licensee, only a right to operate radio

⁹ "It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use such channel, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed by Federal authority, and no such license shall be construed to create any rights, beyond the terms, conditions and periods of the license." 47 U.S.C. 301.

facilities for service to the public. Open entry to the underlying facilities of the spectrum licensed carrier, as well as open entry to the local exchange loop and ultimately to the mix of inter-exchange carriers through interconnection by the cellular reseller will thus energize competition in the mobile services market by enhancing competition at the retail level. Expanded Interconnection, 7 F.C.C. Rcd. 7369, supra.

III.

THE COMMISSION HAS FULL AUTHORITY AND RESPONSIBILITY TO DEVELOP A COMPETITIVE CMS INDUSTRY

16. Passage of the Omnibus Budget Reconciliation Act of 1993 has now removed much of the ambiguity that otherwise may be thought to have surrounded the scope of the Commission's authority to regulate commercial mobile services. Adoption of new Section 332 has not, however, reaffirmed or reinstated nunc pro tunc the deregulatory policies which led to the forbearance and detariffing rules which were struck down by the Court of Appeals in the 1992 AT&T case. Rather, the Congressional policy expressed in new Section 332 was intended to establish that the exercise, or forbearance of the exercise of certain regulatory powers is to be driven by the overriding goal of developing a competitive mobile services marketplace. The statute was not a narrow reinstatement of the power to deregulate but a broader expression of the specific public benefits and procedures to be followed by the FCC to establish the commercial mobile services marketplace.

25 F.C.C.2d 957, 965 (1970). Presumptions of lawfulness that attended streamlined tariff filings when the Commission believed it had the legal power to forbear, see Competitive Carrier Rulemaking, 85 F.C.C.2d 1, 31 (1980), are no longer viable upon overturn of that policy and Congress' reaffirmation in Section 332 that the Commission must assure the setting of just, fair and reasonable rates under Sections 201 and 202.

25. The Commission need not fear that eliminating the presumption of lawfulness will generate frivolous, or an undue number of, Section 208 complaints. Substantial practical impediments, like cost, time and the probability of substantial, beneficial outcomes, all counsel against use of the complaint process in any but the most egregious cases. Moreover, once the Commission specifically reaffirms what the law now clearly requires, there is no reason to doubt the willingness or ability of CMS licensees to comply with cost-based pricing. The recalcitrant renegade CMS providers ought to be small in number.

26. Interconnection practices have been recently exhaustively examined by the Commission with respect to CAP access to LEC facilities. There is no reason why the policies and procedures adopted in Expanded Interconnection, 7 F.C.C. Rcd 7369 (1992), cannot be utilized to govern interconnection rights of common carriers to CMS providers. To meet the statutory requirements of Section 332 regarding the swift implementation of the legislation, it would appear to be appropriate and timely for the Commission to utilize the Expanded Interconnection proceeding as the framework for implementation of CMS interconnect obligations.

V.

NCRA RESPONSE TO RELATED QUESTIONS RAISED
BY THE NPRM

1. Definitional Status of Cellular Resellers Under Section 332.

27. To the extent that the contention may be made that resellers may not, under § 332(c)(1)(B), be allowed to obtain interconnection with a common carrier, because they are not definitionally providing "a commercial mobile service," the Commission should make absolutely clear that such resellers do occupy the status of commercial mobile service providers and have, at the same time, full interconnection rights. The Commission has previously ruled and the courts have affirmed the conclusion that persons engaged in resale are common carriers within the provisions of Sections 201 and 202 of Title II of the Communications Act. In re Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C. 2d 261 (1976), reconsideration, 62 FCC 2d 588 (1977), aff'd sub nom., AT&T v. FCC 572 F.2d 17 (2d Cir.); cert. denied, 439 U.S. 875 (1978) (Resale Report and Order). Reseller rights to interconnection are therefore derived, in any event, from Sections 201 and 202 of the Act.

28. The only feature which resellers may lack is a license to engage in commercial mobile service as a facilities-based provider. This circumstance, however, does not diminish the role

commercial, to have a federally protected right to interconnect with LEC facilities and that inconsistent state regulation should be preempted.

32. Finally, the Commission, in paragraph 79, has requested comment on state petitions to extend rate regulation authority, which is provided for under § 332(c)(3)(A) and (B). NCRA believes that the establishment of a uniform system of regulation -- the very goal of the regulatory parity legislation -- requires the adoption of federal rules and appropriate limitations on inconsistent state activity. Congress has specifically recognized that special circumstances involving the need to protect universal land line telephone exchange service, and the possible failure that federal regulation of rates to achieve a competitive marketplace may indicate the need for state regulatory action on rates. Where the states have made reasoned determinations about rate regulation and how it may be utilized to promote competition pursuant to state statutory duties in accordance with the Federal statutory standards, those decisions should be respected. In this regard, the Commission should adopt a standard of review of state petitions requesting to extend or initiate rate regulation that is