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November 12, 1993

WRITER'S DIRECT DIAL NUMBER

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: Notice of Ex Parte Contact
GN Docket No. 93-252

Dear Mr. Caton:

The Commission is hereby notified that copies of the following document summarizing the comments in GN Docket 93-252, the Commission's proceeding to implement Section 332 of the Communications Act, as amended, were distributed to a number of FCC personnel. In accordance with the FCC's ex parte rules, a copy of the document has been provided for inclusion in the docket file.

If any questions should arise concerning this notification, please contact the undersigned at (202) 828-3182.

Respectfully submitted,


Eric W. DeSilva

Encl.

**SUMMARY OF COMMENTS
IN GN DOCKET NO. 93-252
REGULATORY PARITY**

**WILEY, REIN & FIELDING
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ADVANCED MOBILECOMM TECHNOLOGIES, INC.
DIGITAL SPREAD SPECTRUM TECHNOLOGIES, INC.

I. IDENTITY AND INTEREST OF THE COMMENTER

- AMT is an affiliate of Advanced MobileComm, Inc., one of the largest providers of ESMR services. DSST is a subsidiary of CYLINK, a leader in design, development and manufacture of Part 15 spread spectrum equipment. (2)

II. DEFINITIONS

C. Private Mobile Service

- Believes legislative intent of "functionally equivalent" provision is to allow FCC discretion to regulate as a private mobile service any mobile service that may fall within the literal definition of CMS. (7)

V. REGULATORY CLASSIFICATION OF PCS

- Urges Commission to find that PCS licensees may provide both CMS and private mobile service. (4)
- FCC should not mandate any level or threshold of CMS to be provided by broadband and/or narrowband PCS licensees. (5 n. 10)
- PCS licensees should have flexibility to provide both commercial and private mobile services on a co-primary basis under a single license. (5)
- Support FCC's proposal in Docket 93-253 to require applicants seeking to provide both commercial and private mobile PCS services to file both FCC forms 410 and 574, but urge Commission to permit licensees the flexibility to modify their initial choices during their license term to respond to market demand. (6)

IX. OTHER

- Includes appendix analyzing the need for specialized PCS systems and services.

I. IDENTITY AND INTEREST OF THE COMMENTER

- Not-for-profit communications company of the air transport industry.

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Supports continued treatment of Part 87 aviation services as private mobile services since they are not offered for profit and are not available to the public. (3)
- Supports continued treatment of noncommercial, shared Part 90 systems as private mobile services for the same reasons as above. (3)

ALLCITY PAGING**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Provides Part 22 one-way paging services from over one hundred sites in states, such as Arizona, California, and Nevada. (1)

VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS (STATE AND FEDERAL)

- The Notice of Proposed Rulemaking offers no guidance as to what is meant by requiring commercial service carriers to provide interconnection with other mobile service providers. This makes it difficult to comment effectively. However, ALLCITY assumes that what is meant is that paging carriers will be forced to share their paging terminals with mobile service providers, and, perhaps, resellers and customers. (1-2)
- Because of the competitive state of the paging services industry, mandatory interconnection should not be required. Paging carriers do not operate "bottleneck" facilities that may inhibit competition. In addition, the Commission has recognized the competitive nature of the industry by classifying paging carriers as non-dominant. (2-3)
- If commercial mobile carriers are subject to Title II's resale provision, it will make paging services even more competitive, providing yet another reason why mandatory interconnection would serve no purpose. (4)

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**I. IDENTITY AND INTEREST OF COMMENTER**

- Nationwide, non-profit private land mobile trade association.

II. DEFINITIONS**A. Mobile Service**

- Supports proposal to include Part 90, 22, and 99 licensees in "mobile service." (6-7)

B. Commercial Mobile Service

- "For-profit" includes only those systems that provide service on a for-profit basis exclusively or as an adjunct to internal use. If system cost is shared on a pro-rata basis or no licensee derives a profit, the system is private. (9)
- Supports straight-forward approach to definitions of "interconnected service" and "PSN" in context of two-way services (no opinion regarding one-way). Under suggested approach, a system that enables subscribers to access and be accessed by positions in the PSTN, whether through a local exchange, interexchange, or other specialized carrier offering, has made available interconnected service. (9)
- "Effectively available" component hinges on capacity. Services that do not routinely permit aggregation of sufficient spectrum to serve the broad population are not CMS. (11)

C. Private Mobile Service

- Congress intended by "functional equivalent" language to clarify that functional equivalency is the key element in the CMS versus private delineation, and that the private definition is intended to be expansive. (12)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Focus should be on legislative intent that like services be regulated comparably, and that services functionally equivalent to cellular, including but

not limited to wide-area SMR and broadband PCS, are CMS. (14)

- The only two-way service automatically reclassified from private to CMS is wide-area SMR service. (14) Two-way private carrier services offered on shared spectrum should be private. (9 n. 6)
- Traditional analog SMR and other two-way private carrier systems and cost-shared and internal systems remain private. (15)
- May be some non-cellular common carrier two-way services that should be reclassified as private if elements of CMS are missing and they are not a functional equivalent. (15)
- Reclassification from private to CMS will necessitate dual regulatory scheme on a common frequency. There is precedent for dual common and private carrier regulation in 928/952 MHz MAS allocation. (16)
- Requests further clarification of FCC preference to permit existing private licensees the option to provide both CMS and private service under a single license. Supports allowing licensees to provide both private and CMS under different licenses (e.g., trunked SMR operator with analog, non-interconnected license wide-area authorization employing same channels in a frequency reuse pattern). Opposes interpretation that would allow self-selection of regulatory classification by a licensee authorized to provide a specific service on spectrum allocated for that service. (17-18)
- Legislation does not mandate removal of dispatch prohibition and record does not support conclusion that public interest would be better served by removal, but if the Commission does decide to do so, it should wait until after completion of the three-year transition period to make any such rules effective. (22)

IV. REGULATORY PARITY

- Services that are "functionally equivalent" in capacity, service capabilities, and geographic scope should be regulated similarly. (4-5, 12-13)

V. REGULATORY CLASSIFICATION OF PCS

- Presumption is that PCS will fit CMS classification, but FCC should permit individual showings to the contrary. (18-19)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- Favors forbearance to fullest extent possible. (19-20)
- Supports different degrees of Title II obligations for different types of CMS licensees, but suggests that it is premature to sub-divide potential CMS eligibles based on the degree of appropriate Title II regulation, although flexibility to do so should be retained. (20)

VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS (STATE AND FEDERAL)

- Supports tentative conclusion that FCC should preempt state regulation of the right to intrastate interconnection and the right to specify the type. (21)
- New legislation should not limit Commission's authority to require common carriers to provide interconnection to private entities. (21)

AMERICAN PETROLEUM INSTITUTE**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Trade association for companies involved in the petroleum and natural gas industries.

II. DEFINITIONS**B. Commercial Mobile Service**

- Supports the position that costs-shared service would be viewed as not-for-profit service. Opposes any implication that any profit gained from sharing arrangements requires reclassification to commercial mobile service. (6)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Seeks to preserve the private mobile status of two-way mobile radio licensees who share their systems with other eligible users on both a non-profit and for-profit basis. (5)
- Would allow private mobile operators to resell some excess capacity (less than 50%) on a for-profit basis without being reclassified as commercial mobile service. (7-8)

IV. REGULATORY PARITY

- Recognizes that certain private mobile services are similar to some common carrier services and supports equal regulatory treatment in those instances. (4)

VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS (STATE AND FEDERAL)

- Private users must continue to have the capability of interconnecting with the PSTN without being subject to common carrier regulation. (5)

AMERITECH**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Regional Bell Operating Company.

IV. REGULATORY PARITY

- Opposes allowing only PCS licensees to provide both commercial and private mobile services on a co-primary basis under a single license. This would put cellular licenses at a competitive disadvantage since they do not have the same flexibility, decreasing competition and hurting the public. (4)
- Structural separation requirements on the BOCs' provision of cellular service should be removed since the Commission itself has found that the costs outweigh the benefits and non-structural requirements better serve the public interest at a lower cost. (6-8)
- Removing the structural separation requirements will: 1) ensure fair competition between BOCs' cellular affiliates and other cellular providers and 2) remove economic inefficiencies caused by the requirements. (5-6)

**VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS
(STATE AND FEDERAL)**

- Interconnection should be an obligation and a right of common carriers so that wireless licensees have maximum flexibility to provide services to their customers. (10)

AMSC SUBSIDIARY CORPORATION (AMSC)**I. IDENTITY AND INTEREST OF COMMENTER**

- Entity licensed to construct, launch and operate Mobile Satellite System.

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Satellite-delivered mobile services should be classified and regulated as CMS. (5)
- Commission urged to reiterate that Mobile Satellite Systems (MSS) may provide dispatch services. The Commission has always contemplated that MSS include dispatch, and allowing AMSC to provide dispatch service is technically justified and will promote competition. (7)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- Commission should exercise authority to forbear from applying Sections 203-205, 210-215, and 218-221 in the context of MSS and all other CMS providers. (5-6)
- Requests permission to tariff its services voluntarily in appropriate circumstances. Tariffing provides efficiencies in some circumstances, particularly when dealing with large numbers of similarly-situated customers. AMSC requests that it be permitted to file these tariffs in accordance with the rules recently established for nondominant carriers in CC Docket No. 93-36 rather than under the more stringent rules applicable to streamlined common carriers. (6)
- FCC should not impose safeguards on dominant common carriers with commercial mobile service affiliates. Each situation should be evaluated on a case-by-case basis, and include an investigation of market power, whether there are advantages resulting from the affiliation that could be detrimental to the marketplace, and appropriate safeguards relevant to the particular case. (7)

ARCH COMMUNICATIONS GROUP, INC.**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Provides common carrier paging, private carrier paging, common carrier mobile and Specialized Mobile Radio services. Has serious interest in PCS. (1)

II. DEFINITIONS**A. Mobile Service**

- Urges Commission not to defer resolution of the regulatory status of existing mobile services to permit prompt resolution of other delayed proceedings to remove unnecessary regulations. (3-4)
- The Commission should avoid classifications based on technical differences which are likely to change over time. (4)

B. Commercial Mobile Service

- The "for-profit" test should be based upon whether the service as a whole is offered on a commercial basis. (4)
- Whether a service is "effectively available to the public" should not be based on self-imposed restrictions by the licensee. Capacity should not be a factor in this decision because capacity is changing as technology improves. (5)
- Regulation of "mixed use" frequencies should not be based on the primary use of the frequency because it is difficult to distinguish primary use from secondary use. Licensees of dual use frequencies should be required to declare all uses which give rise to differing classifications and be able to provide multiple services on a co-primary basis. (7)
- Paging companies should be considered interconnected, and paging companies which utilize store-and-forward technology should be considered interconnected, as in the Intelsat decision. (7-8)

C. Private Mobile Services

- "Functionally equivalent" should be determined such that competing services are accorded similar treatment. (6)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- All PCP and SMR services should be deemed CMS. (8)
- Traditional mobile telephone, cellular telephone, radio paging services, general and commercial air-ground services provided under Part 22, the mobile satellite service regulated under Part 25, and the commercial mobile marine and aviation services under Parts 80 and 87 should be deemed CMS. (9)
- Services should be put into two categories: narrowband services (including paging, traditional mobile telephone and narrowband PCS) and broadband services (including cellular, ESMR, and wideband PCS). These classifications are likely to remain constant and the services in each category will likely compete against each other so they should be regulated similarly. (10)

IV. REGULATORY PARITY

- Part 22 and Part 90 paging services should be regulated similarly. (9)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- CMS services are highly competitive and should be subject to minimum regulation. (11)
- Tariff requirements should be removed since the CMS market meets all of the statutory tests. (11)

ASSOCIATION OF AMERICAN RAILROADS**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Trade association for railroads.

II. DEFINITIONS**B. Commercial Mobile Service**

- Agrees with the position that mobile radio systems used by government, public safety agencies, and businesses for internal communications would not be considered to be providing for-profit service. (3)
- The interconnection criterion of the definition for commercial mobile service should depend upon whether the system operator provides interconnected service to paying subscribers. (3)
- Land mobile systems used by specific industries, businesses, or other user groups defined in Part 90 of the Rules are not intended for use by a substantial portion of the public. (4)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- The use of mobile radio by railroads for internal communications should continue to be regulated as private mobile. (4-5)

**ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS
OFFICIALS-INTERNATIONAL, INC. ("APCO")**

I. IDENTITY AND INTEREST OF THE COMMENTER

- Communications organization for the public safety land mobile radio community.

II. DEFINITIONS

B. Commercial Mobile Service

- Government and non-profit public safety services are outside of the scope of the definition of commercial mobile service. (2)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Takes no position on the regulatory treatment of for-profit shared use arrangements of private land mobile systems. (2)
- Non-profit shared use arrangements among governmental agencies should remain private mobile service. (3)

THE BELL ATLANTIC COMPANIES**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Regional Bell Operating Company.

II. DEFINITIONS**A. Mobile Services**

- "Mobile services" should be broad and include, among other things, all existing public and private land mobile services. (3)

B. Commercial Mobile Service

- CMS should include "all mobile services that, either in whole or in part, are offered for profit to subscribers and that offer direct or indirect access to the public switched network." (4)
- A broad definition, which encompasses some private services, is consistent with Congress' intent and will avoid the definitional problems encountered in Computer I as technologies change. (5-6)
- "For profit" should consider whether service to subscribers is offered for profit, and should include carriers selling excess capacity and shared systems with a for profit manager. (7)
- "Interconnected service" should be defined as "all services which enable a customer to send or receive message to or from points in the public switched network," which includes indirect (PBX) access and store-and-forward systems. (8-10)
- Service to the "public" should be deemed to be satisfied if a carrier is eligible to provide service to the commercial market, ignoring capacity, reuse, and service area. (10-12)

C. Private Mobile Service

- To be consistent with Congressional intent, a mobile service that does not fall within the literal definition of CMS should be classified as CMS if it is "functionally equivalent" to CMS. (13-14)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- Most services should be classified as CMS, including SMRS, PCPs, RCCs, and cellular. (14-17)
- All carriers should be able to offer dispatch, since there is no technical justification for continuing the prohibition, eliminating the prohibition will promote competition, and to promote parity goals. (17-19)
- All carriers should be free to offer SMR service to promote regulatory parity. (19-20)

IV. REGULATORY PARITY

- All CMS carriers should also have the opportunity to offer private services on their spectrum. (17)

V. REGULATORY CLASSIFICATION OF PCS

- PCS is principally commercial, so it should be PCS, but flexibility should exist to offer private PCS as well. (16)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- Supports tariff forbearance for most CMS carriers, and notes that there is no basis to discriminate between paging, SMR, cellular (notes extensive findings by state commissions and other) and others, since all are competitive. (21-26)
- Due to competition, supports forbearance from Sections 204, 205, 210, 211, 212, 213, 214, 215, 218, 219, 220 and 221 of the Communications Act for CMS. (26-27)
- No basis exists to differentiate between local CMS carriers, but AT&T's dominance in the IXC market warrants retaining Section 203 requirements for AT&T/McCaw. (27-30)
- All CMS carriers should be required to provide equal access to IXCs to ensure equal regulation subject to a number of rules requiring nondiscrimination in terms and conditions of interconnection, use of MFJ exchange areas, balloting and other requirements. (30-35)
- All CMS affiliates of dominant carriers should be subject to the same rules, including accounting safeguards and structural separation. (35-39)

**VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS
(STATE AND FEDERAL)**

- All CMS providers should have equal interconnection rights and obligations, and LEC interconnection obligations should also be imposed on CMS carriers. (39)
- Consumers are best served when all service providers design their networks to facilitate interconnection, so new providers should design their networks to be open from the start while embedded facilities may need time to convert. (40)

VIII. PREEMPTION OF STATE REGULATION OF CMS PROVIDERS

- To effectuate Congressional intent, only states should be able to petition for relief, the petition should identify the proposed regulations, differential regulations should be justified, and the petition process should be expedited. (41-43)

BELLSOUTH**I. IDENTITY AND INTEREST OF THE COMMENTER**

- Regional Bell Operating Company.

II. DEFINITIONS**B. Commercial Mobile Service**

- Section 332 mandates a broad definition of CMS in order to effectuate regulatory parity. (14-20)
- "For profit" means "service is provided for a commercial purpose and the provider of the service is an entity other than a governmental body or an entity organized solely for nonprofit purposes and found qualified by the [IRS] for tax exemption pursuant to [statute] unless the governmental body or the tax exempt entity is providing service for a commercial purpose." (5, 6-7)
- "Interconnected service" means, for purposes of defining CMS only, "a service where the provider, directly or indirectly, provides or facilitates a physical, electronic, or other means of transmitting or interchanging information between a mobile station and the [PSN]." (5, 7-10)
- "Available to the public" means "if, under the [FCC's] rules, there are only minimal restrictions on the eligibility of users for the service." (5, 10-13)
- "Effectively available to. . ." means "if, under the [FCC's] rules, the class of eligible users for the service exceeds five percent of the population in a licensee's service area, or as the [FCC] may determine on a case-by-case basis." (5, 10-13)
- "Public switched network" means the facilities of local exchange and interexchange providers of telephone service. (9-10)

C. Private Mobile Service

- "Functional equivalents" to CMS should be classified as CMS to avoid regulatory disparities, any other attempted reading of the statute would turn this purpose on its head. (20-23)

III. PROPOSED REGULATORY TREATMENT OF EXISTING SERVICES

- All CMS providers should be able to provide dispatch services. (31-32)
- The wireline prohibition on SMR ownership should be eliminated. (32-33)

V. REGULATORY CLASSIFICATION OF PCS

- Most PCS should be classified as CMS. (25-26)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- There is no statutory reason why CMS providers should not also be allowed to offer private services on their spectrum without filing a separate application. (25)
- Because no provider has market power in commercial mobile services, minimal regulation is justified; the Commission should forbear from tariffing and Sections 210 (franks & passes); 212 (interlocking directorates); 213 (valuation of property); 215 (transactions relating to services); 218 (inquiries into management); 219 (annual or other reports); 220 (depreciation); 221 (special provisions for telcos); 222 (competition among record carriers); and 224 (pole attachments). (26-31)
- Unless the RBOC restriction is removed, all CMS providers should have to offer equal access. (34)

VII. INTERCONNECTION RIGHTS OF PCS AND CMS PROVIDERS (STATE AND FEDERAL)

- Requests for interconnection should be evaluated individually, since the reasonableness of a request is fact-sensitive and the statute does not provide any indication as to whether other classes of common carriers (e.g., IXCs and CMSs) are required to offer interconnection. (35-36)
- Section 201 requires interstate common carriers to provide interconnection; no requirement exists for intrastate or non-common carrier networks. (36)
- Preemption of state regulation of interconnection rates is unnecessary. (36)

IX. OTHER

- The FCC should reexamine its block allocation structure, which classifies spectrum as either private or common carrier land mobile, and determine whether bands should be private, commercial, or shared. (23-24)

**THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

I. IDENTITY AND INTEREST OF COMMENTER

- Representative of state citizens and state utility board.

II. DEFINITIONS

B. Commercial Mobile Service

- In view of abuses in the context of aggregator/reseller arrangements in the interexchange market (i.e., switching of IEC customers without customer knowledge, misleading advertising), CPUC advises FCC to exercise caution in designating shared systems managed by a for-profit entity as not-for-profit. (4)

V. REGULATORY CLASSIFICATION OF PCS

- Commission's goal of allowing varied regulatory classifications and licensee-choice is laudable but will be difficult to implement and enforce. CPUC thus recommends that provision of commercial and private mobile service not be permitted on the same license. Would not oppose allowing providers to sell unused spectrum as opposed to offering communications service. (2-3 n. 1)
- FCC should not allow non-profit mobile service providers to change their regulatory status simply upon notification of regulators. Upon exit by a common carrier from the commercial market, the FCC or other appropriate entity must ensure that subscribers are not harmed. (3)

VI. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

- Adequate competition does not exist in California to ensure just, reasonable and nondiscriminatory rates, as evidenced by the California cellular industry. Accordingly, the CPUC believes that it would be premature for the FCC to forbear from tariff regulation of the rates for commercial mobile service provided to subscribers. (7-8)
- Also urges FCC not to forbear from prescribing accounting systems under Section 220 for dominant providers of CMS in order to guard against anti-competitive abuses by such providers. (8)