

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.¹ Although the issues raised in the instant Notice were formidably complex and the response period extraordinarily brief, AMTA is confident that a record has been established sufficient to permit the agency to satisfy its statutory deadline for defining the regulatory status of PCS and to begin resolution of that matter vis a vis other mobile services.

I. INTRODUCTION.

In certain respects, the parties to this proceeding are in unprecedented agreement. Virtually all concur that the burgeoning wireless marketplace demands a more coherent, more consistent regulatory framework such as the Commercial Mobile Service ("CMS")/Private Mobile Service ("Private") delineation established by Congress. Many, including AMTA, agree that "like" services, those which are perceived as functionally equivalent by the subscriber, should be regulated in like fashion. It is also generally accepted that the likely level of competition in the CMS will obviate the need for all but the most minimal Title II regulatory oversight.

However, the differences among parties that share those

¹ Notice of Proposed Rule Making, GN Docket No. 93-252, 58 Fed. Reg. 53169 (October 14, 1993) ("Notice").

basic convictions are also fundamental. AMTA, as well as a number of private land mobile and small common carrier parties, consider the Conference Report indisputable evidence of Congressional intent to define the parameters of the Private Services broadly.² Under that approach, the FCC would reclassify as CMS only those heretofore private systems which possessed the essential criteria for CMS and which were deemed to be functionally equivalent to them. This interpretation of admittedly ambiguous legislative language is consistent with a recognized Congressional desire to correct a perceived regulatory imbalance between the cellular and wide-area SMR industries, the latter being exemplified by Nextel. It throws its net only broadly enough to include those service with comparable spectrum capacity, system configurations and marketplace objectives. It would continue to classify as Private those services which may be substitutable for, but which are not functionally equivalent to, cellular or broadband PCS.

Representatives of the nation's cellular interests, and certain PCS proponents, take the contrary view for the most part. They argue that Congress intended to include within CMS all services which satisfy the criteria specified in the legislation, as well as additional services which are deemed

² See, e.g., Comments of E.F. Johnson Company, Motorola, Inc., National Association of Business and Educational Radio, Inc. ("NABER"), Nextel Communications, Inc., and RAM Mobile Data USA Limited Partnership.

functionally equivalent although lacking one or more of the CMS indicia.³ Under this interpretation, a for-profit private carrier licensee providing a non-interconnected service on a single frequency might nonetheless be classified as CMS if that service was perceived as "functionally equivalent with" a CMS offering. Having defined the CMS category as broadly as possible, these parties then conclude, not unreasonably, that the very substantial degree of competition in that marketplace supports impositions of only minimal Title II regulations.

II. DISCUSSION.

A. The Definition Of Private Land Mobile Services Should Be Interpreted Broadly.

The record in this proceeding makes evident what participants in this industry have recognized for some time: the number of competitors and the level of competition in the wireless marketplace is substantial. The range of service providers which perceive themselves as participating or intending to participate in that marketplace includes cellular operators, ESMR licensees, analog SMR providers, private and common carrier paging operators, PCS proponents, private carriers below 800 MHz, IMTS operators, land mobile satellite systems and two-way data providers. The breadth of service

³ See, e.g., Comments of Bell Atlantic Companies, Bell South, McCaw Cellular Communications, Inc., Pactel Corporation, Southwestern Bell Corporation, and Cellular Telecommunications Association, Inc. ("CTIA"). Nynex Corporation has deviated from the traditional common carrier "party line" in this respect and suggests a less encompassing approach to the reclassification of individual private mobile services.

options available in varying combinations on those systems is equally expansive.

There is little or no dispute that some wireless marketplace participants, in particular those wide-area SMR operators, which are commonly referred to as ESMRs and PCS licensees, are expected to provide services that will both satisfy the CMS definition and be functionally equivalent to cellular. There appears to be no disagreement that such services will be classified as CMS under the new regulatory approach.⁴

In certain respects, of course, all of the mobile marketplace participants identified above provide somewhat substitutable services. Each is capable of enabling subscribers to establish a communications link between parties, at least one of which is not at a pre-determined, fixed location. Nonetheless, AMTA remains unpersuaded that Congress considered all potentially substitutable services as "functionally equivalent." The Report language accompanying the legislation cited by AMTA and numerous other parties clearly evidences the contrary since it distinguishes even between the traditional, typically single site, analog SMR operator and ESMRs employing frequency reuse over broad

⁴ AMTA has taken no position on the appropriate categorization of commercial paging services. To the extent there is general agreement within that industry that all such systems should be classified as CMS, the Association supports that determination.

geographic areas. Customers desiring mobile communications capability may select among a variety of substitutable services depending on their particular operational and economic requirements, but would not likely consider them all as functionally equivalent. In AMTA's opinion, Congress intended only those private land mobile systems that provide service functionally equivalent to cellular in terms of system capacity and geographic scope to be reclassified as CMS.

B. It Is Premature To Conclude That All CMS Should Be Regulated Identically.

AMTA disagrees with those parties which assert that all CMS licensees must be subject to identical degrees of regulation.⁵ As noted in its Comments, the Association believes it is premature to reach that conclusion. If, over AMTA's objections, the FCC adopts an inclusive interpretation of CMS, it may be appropriate to adopt certain differentiations among a very broad gamut of services. For example, if CMS should encompass both a three-frequency SMR operator in Cheyenne, Wyoming and a 40 MHz PCS operator providing essentially local loop telephone service in Manhattan, it is reasonable to anticipate that they might be subject to somewhat differing regulatory schemes.

There is no question that like services, those with genuine functional equivalency, should be governed by equivalent regulatory schemes. There is also an unambiguous

⁵ See, e.g., Comments of U.S. West, CTIA and McCaw.

record that the level of competition in the wireless marketplace, whether CMS or not, is sufficiently robust to support a general policy of forbearance from Title II regulation. Should the FCC identify particular instances in the future which warrant a greater level of regulatory oversight to promote the public interest, it will, of course, have full authority to implement appropriate measure at that time.

C. The Statutorily-Defined Transition Period Should Be Applied Uniformly Across Services.

Congress has already specified a three-year transition period for the conversion to CMS of whatever services heretofore regulated as private are determined to fall within this new regulatory category. That period was considered appropriate to facilitate the adjustment from private to common carrier status, and to ensure an opportunity for those parties to adjust their business plans and marketplace strategies to an entirely new regulatory scheme.

This analysis supports the retention of the current rules governing the permissibility of providing dispatch service on common carrier spectrum for this same period. Today's private systems will not necessarily be able to avail themselves as a matter of right to privileges inherent in common carrier status during this three-year transition. Thus, they might find themselves at a competitive disadvantage should the rules regarding dispatch be modified immediately. An adjustment period will be particularly critical should the Commission

adopt a broad interpretation of CMS since the smallest private carriers will be most vulnerable to competition from spectrum-rich common carrier competitors. Congress intended that licensees be given a reasonable amount of time to prepare themselves for this fundamental reordering of their regulatory environment. The FCC's decision herein should reflect that Congressional mandate.

III. CONCLUSION.

For the reasons described herein, AMTA requests that the Commission adopt a broad interpretation of Private service eligibility, that it impose on CMS services only Title II regulation which is necessary to promote the public interest, and to modify the rules regarding dispatch on common carrier systems in conjunction with the statutorily-defined transition period.