



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

May 19, 1994

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

MAY 19 1994

Hand Delivered

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: In the Matter of Implementation of Sections  
3 (n) and 332 of the Communications Act,  
Regulatory Treatment of Mobile Services,  
GN Docket No. 93-252

Dear Secretary Caton:

Enclosed please find an original and four (4) copies of  
the Petition for Reconsideration of the Pennsylvania Public Utility  
Commission in the above-captioned matter.

Sincerely,

Maureen A. Scott  
Assistant Counsel

For the Pennsylvania Public  
Utility Commission

MAS/ms  
Enclosure

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of: )

Implementation of Sections 3(n)  
and 332 of the Communications Act )

) GN Docket No. 93-252

Regulatory Treatment of Mobile  
Services )

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**PETITION FOR LIMITED RECONSIDERATION  
AND CLARIFICATION OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
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**I. INTRODUCTION**

Pursuant to 47 C.F.R. § 1.429 and § 1.4(b), the Pennsylvania Public Utility Commission ("PaPUC") hereby petitions the Federal Communications Commission for limited reconsideration and clarification of its Second Report and Order released on March 7, 1994, in this proceeding ("Order").

In its Order, the FCC revised its rules to implement Sections 3(n) and 332 of the Communications Act of 1934 (the "Act"), as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). In so doing, the FCC interpreted the statutory elements that define commercial mobile radio services ("CMRS") and private mobile radio service ("PMRS"). Using these definitions, the FCC determined the regulatory status of new and existing mobile radio services. The FCC also determined the degree to which existing CMRS will be subject to regulation under Title II of the Act, the interconnection rights and

obligations of carriers and mobile service providers, and the procedural rules that will govern state petitions to initiate or continue rate regulation of CMRS providers.

The PaPUC seeks limited reconsideration and clarification of certain of the rules which are to govern state petitions to initiate or continue rate regulation of CMRS providers. The PaPUC is concerned that several of these rules may act to thwart or discourage state petitions in the future despite the existence of a legitimate need for state oversight to the detriment of consumers.

## II. DISCUSSION

The PaPUC requests that the FCC clarify and/or modify the following portions of its rules which will govern state petitions to rate regulate CMRS in the future.

### A. A Literal Interpretation of the Second Prong of the test for State Rate Regulatory Authority Does Not Comport With the Legislative History of the Statute Or Well Established Principles of Statutory Construction.

A state, in its petition to the FCC, is required to demonstrate that:

"(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(2) such market conditions exist and such service is a replacement for landline telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The FCC rejected arguments that the statute is ambiguous on its face since, if read literally, the second criteria would be superfluous.

The FCC's interpretation of this provision, however, does not comport with the legislative history of the Budget Act or well established principles of statutory construction.

Section 332(c)(3)(B) of the House Bill permitted states to petition the FCC for authority to regulate rates where mobile services have become a substitute for telephone service or where market conditions are such that consumers are not protected from unjust and unreasonable rates. While the Conference Report indicates that a Senate amendment was adopted, this amendment did not require that both conditions be met as part of the second prong of the test. Thus, the PaPUC believes that the FCC erred by interpreting the statute to require states to show both failed market conditions and that the radio service acts as a replacement for landline telephone exchange service in all cases.

Finally, the FCC's interpretation is not supported by recognized principles of statutory construction. It is well established that courts will avoid interpreting a statute where any portion of it is rendered superfluous. Every statute must be construed, if possible, to give effect to all its provisions.

**B. The FCC Should Not Require States To Go Through Lengthy Procedural Processes At The State Level Before State Petitions Will Be Considered.**

The requirement that states "identify and provide a detailed description of the specific existing or proposed rules that it would establish if we [the FCC] were to grant its petition,"<sup>1</sup> goes far beyond the statutory requirements and may pose

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<sup>1</sup>See, Order at p. 95.

some serious logistical problems especially for states petitioning the FCC to initiate CMRS rate regulation in the future.

For instance, the submission of proposed rules (or a detailed description of the proposed rules) by a state poses logistical problems because proposed rules are always subject to change during the rulemaking process depending upon several factors, not the least of which is the interest of legislative and regulatory oversight bodies. Would subsequent changes to the state's proposed rules in the state rulemaking process necessitate the state having to seek additional approval from the FCC, thereby consuming additional time and expense. If so, this could also result in lengthy procedural delays.

On the other hand, the FCC cannot reasonably expect states desiring to initiate CMRS rate regulation to undergo a lengthy rulemaking proceeding before knowing whether the FCC will grant its petition. State rulemakings can be very lengthy proceedings sometimes lasting as long as 12-18 months. This would significantly and unreasonably lengthen the application time for states. Additionally, any final rules adopted by the state would be subject to further change as a result of the subsequent FCC proceeding.

Thus, the FCC should clarify how it intends the operation of this rule to work.

**C. The FCC Should Reconsider Several Of The Procedural Deadlines Or Time frames Established By Its Rules.**

First, the FCC should reconsider allowing parties to file petitions to suspend state regulation 18 months after such

regulatory authority has been granted or extended.<sup>2</sup> In adopting this requirement, the FCC agreed that parties should not be allowed to file such petitions until the state has had an opportunity to implement rate regulation and make the necessary adjustments.<sup>3</sup> However, the PaPUC questions whether the 18 months will be reasonable in all cases, especially in light of the various state proceedings which may be required, and the fact that the FCC will on a case-by-case basis, be authorizing the specific state regulations only for the specified period of time it finds necessary to "ensure that rates will be neither unjust nor unreasonably discriminatory".

Because of the safeguards already built into the rules, the PaPUC respectfully suggests that the following modification might reflect a more proper balancing of public and private interests on this issue. The 18 month rule should be modified to permit parties to seek suspension of state authority after 18 months or the period of time the FCC authorizes state rules to remain in effect, whichever is greater.

Finally, a 15 day response time to reply to comments filed in response to a state petition may not be sufficient in all cases. Depending upon the nature of the comments and data submitted in response to a state's petition, a state may need more than a 15 day response time. The PaPUC submits that a 20-30 day period may be more appropriate.

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<sup>2</sup>See, Order at p. 96.

<sup>3</sup>Id.

**D. The FCC's Rules Should Expressly Provide For State Access To The Information Necessary To Determine The Need For State Rate Regulation.**

States will need access to considerable information possessed by carriers or CMRS providers to determine whether market conditions are such that state rate regulation is necessary and to ultimately support its petition that is eventually filed with the FCC. While the PaPUC strongly supports the FCC's agreement to informally meet with NARUC's Communications Committee and agrees that this is an important first step towards a cooperative effort in establishing reciprocal access to mobile service monitoring information.

However, recognizing that most landline mobile affiliates and CMRS providers will not be regulated at the state level, at least in the short term, and that as a result access to information may be difficult to obtain, the PaPUC requests that provision be expressly made in the FCC rules for state access to the information required by the statute to assess market conditions and ultimately support a petition, if necessary, before the FCC. While strong arguments can be made that states are entitled to information as a result of the statutory requirements and their authority to "oversee" the other terms and conditions of CMRS service, specific provision in the FCC rules would eliminate any disputes and delay that may otherwise occur when information is needed from a carrier that may also not be available from other sources.

**III. Conclusion**

For all of the above reasons, the PaPUC respectfully

requests that the FCC reconsider the provisions discussed above relating to state petitions to rate regulate CMRS to ensure that when the need for state rate authority arises, it is not thwarted by unnecessary or burdensome procedural hurdles and requirements.

Respectfully submitted,

  
Maureen A. Scott  
Assistant Counsel

Veronica A. Smith  
Deputy Chief Counsel

John F. Povilaitis  
Chief Counsel

Counsel for the Pennsylvania  
Public Utility Commission

Dated: May 19, 1994.